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 7. STATE OFFICE OF ADMINISTRATIVE HEARINGS

CHAPTER 155. RULES OF PROCEDURE

SUBCHAPTER C. FILING AND SERVICE OF DOCUMENTS

1 TAC §155.101, §155.105

The State Office of Administrative Hearings (SOAH) adopts amendments to §155.101 and §155.105 of Texas Administrative Code, Title 1, Part 7, Chapter 155, Rules of Procedure, Subchapter C, Filing and Service of Documents. The amendments are adopted without changes to the proposed text as published in the June 21, 2019, issue of the Texas Register (44 TexReg 3045) and will not be republished.

Reasoned Justification

Texas Government Code, §2003.055 imposes a statutory obligation on SOAH to promote the effective use of technology in performing its functions. In furtherance of this requirement, SOAH recognizes the inherent efficiencies and cost-savings to be gained through the adoption of e-filing technology compatible with that used by the judicial court system in Texas. The adopted rule amendments modify certain terminology and procedural requirements regarding the filing and service of documents at SOAH to facilitate the use of e-filing technology for administrative proceedings in a manner that will generally conform the e-filing practices currently used by the judicial court system. The adopted rule amendments affect only §155.101 and §155.105 of SOAH's Rules of Procedure.

The adopted amendments to §155.101 regarding filing documents at SOAH replace specific references to SOAH's "Case Information System" or "CIS" with general references to the use of electronic filing. The amendments also provide that SOAH may require parties to electronically file documents through the electronic filing manager established by the Office of Court Administration in accordance with applicable technology standards. Other amendments to §155.101 include changes necessary to conform SOAH's filing rule with Rules 21 and 21a of the Texas Rules of Civil Procedure regarding the time of filing, and the procedure for addressing technological failures of the e-filing system. Filing procedures for unrepresented parties who are unable to electronically file documents are amended only to clarify certain aspects of the current procedure. The rule changes do not impact current filing requirements associated with contested cases referred by the Public Utility Commission of Texas, the Texas Commission on Environmental Quality, or Individuals with Disabilities in Education Act (IDEA) cases referred by the Texas Education Agency.

Public Comments

No comments were received regarding the proposed rule.

Statutory Authority

The rules are proposed under: (i) Texas Government Code, §2003.050, which provides that the Chief Administrative Law Judge shall adopt rules that govern procedures that relate to hearings conducted by SOAH; (ii) Texas Government Code, §2003.055, which provides that the Chief Administrative Law Judge shall develop and implement the effective use of technological solutions to improve the agency's ability to perform its functions; and (iii) Texas Government Code, §2001.004, which requires the adoption of rules of practice setting forth the nature and requirements of formal and informal procedures under the Administrative Procedures Act.

Cross Reference to Statute


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 19, 2019.

TRD-201902788
Shane Linkous
General Counsel
State Office of Administrative Hearings

Effective date: September 8, 2019
Proposal publication date: June 21, 2019
For further information, please call: (512) 936-6624.

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES

The Texas Health and Human Services Commission (HHSC) adopts amendments to §355.112, concerning Attendant Compensation Rate Enhancement; §355.723, concerning Reimbursement Methodology for Home and Community-Based Services and Texas Home Living Programs; and §355.6907, Reimbursement Methodology for Day Activity and Health Services. Section 355.112 and §355.723 are adopted with changes to the proposed text as published in the July 5, 2019, issue of the Texas Register (44 TexReg 3365) and will be republished.

ADOPTED RULES August 30, 2019 44 TexReg 4691
Section 355.6907 is adopted without changes to the proposed text as published in the July 5, 2019, issue of the Texas Register (44 TexReg 3365) and will not be republished.

BACKGROUND AND JUSTIFICATION

The amendments are necessary to comply with House Bill (H.B.) 1, General Appropriations Act, 86th Legislature, Regular Session, 2019, Rider 44.

Rider 44(a)(1) appropriates $20,985,362 in General Revenue (GR) for the biennium for rate increases in the Home and Community-Based Services (HCS) program. These funds are intended to provide rate increases for the benefit of direct care staff through increased direct care staff wages. Rider 44(a)(1) also requires that HHSC increase the factor for HCS Supervised Living and Residential Support Services (SL/RSS) and Day Habilitation services from 4.4 percent to 7.0 percent. The factor is applied to the median rates to cover the costs for more providers than a simple median.

Rider 44(b) directs HHSC to increase the factor in Texas Home Living (TxHmL) Day Habilitation and Day Activity and Health Services (DAHS) to increase the factor from 4.4 percent to 7 percent. Although the factor will increase, total reimbursement rates for these providers will not change because the rider did not include a related appropriation.

To comply with the provisions in Rider 44, HHSC proposed rule amendments to the reimbursement methodologies for attendant compensation rate enhancement, HCS/TxHmL, and DAHS to increase the HCS rates and to increase the factor for HCS SL/RSS, HCS and TxHmL Day Habilitation, and DAHS from 4.4 to 7.0 percent. HHSC is also adopting clarifying amendments to these rules.

COMMENTS

The 31-day comment period ended August 5, 2019, and during this period, HHSC received comments regarding the proposed rules from four commenters, including persons representing the Private Providers Association of Texas (PPAT), the Providers Alliance for Community Services of Texas (PACSTX), and the Texas Council of Community Centers. A summary of comments relating to the rules and HHSC’s responses follows.

Comment: One commenter stated that the rule amendments did not address the direction in Rider 44 that HHSC create separate categories in the rate enhancement program based on the number of attendant hours included in the billing unit.

Response: HHSC intends to address Rider 44’s requirements to change the Attendant Compensation Rate Enhancement program through a separate rule amendment as these changes do not go into effect until September 1, 2020. HHSC will not make a change at this time in response to this comment.

Comment: One commenter stated that the fourth paragraph in the Preamble under “Background and Purpose” indicates that, to comply with Rider 44, HHSC is proposing rule amendments to the reimbursement methodology for common waiver services, but there are no proposed amendments to that rule section in this proposal.

Response: HHSC appreciates the comment. HHSC included this reference in the preamble of the proposal in error.

Comment: One commenter stated that the proposed amendment to §355.723(b)(2) deletes language stating that the TxHmL DH rate is equal to HCS DH LON 5 rate. The result of this deletion is that there is no specific methodology for determining the TxHmL DH rate.

Response: The rate methodology for TxHmL Day Habilitation is in §§355.723(c)(1) and (d). HHSC will not make a change at this time in response to this comment.

Comment: One commenter asked if the purpose of the proposed amendment to §355.723(c)(2)(C) was to break the tie between HCS Supervised Home Living (SHL) and TxHmL Community Support Services (CSS).

Response: HHSC is separating the rates for HCS SHL and TxHmL CSS because it is necessary to comply with Rider 44. HHSC will not make a change at this time in response to this comment.

Comment: Three commenters expressed concerns about the age of the rate model and suggested reviewing and updating the rate model.

Response: HHSC will not make changes at this time in response to these comments. To update the rate model is a long term project requiring a workgroup with HHSC staff and stakeholders. HHSC intends to convene a workgroup in the near future to review the reimbursement methodology to determine if changes are appropriate.

Comment: Three commenters stated they are in support of the amendments to §§355.112, 355.723, and 355.6907.

Response: HHSC appreciates the commenters’ support of the rules.

Comment: One commenter suggested that clarifying language be added to §355.112(l)(2)(B) that specifies the effective date of September 1, 2019, applies only to HCS Supervised Living/Residential Support Services (SL/RSS), HCS Day Habilitation, TxHmL Day Habilitation, and both the Residential and Day Habilitation Cost Areas of the Intermediate Care Facilities for Individuals with Intellectual Disabilities rate.

Response: HHSC agrees and has revised the rule as suggested.

SUBCHAPTER A. COST DETERMINATION PROCESS

1 TAC §355.112

STATUTORY AUTHORITY

The amendment 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 §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for Medicaid payments under Texas Human Resources Code, Chapter 32.

§355.112 Attendant Compensation Rate Enhancement.

(a) Eligible programs. Providers contracted in the Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions (ICF/IID) (“Related Conditions” has the same meaning as in 40 TAC §9.203 (relating to Definitions)), Home and Community-based Services (HCS), Texas Home Living (TxHmL), Primary Home Care (PHC); Day Activity and Health Services (DAHS); Residential Care (RC); Community Living Assistance and Support Services (CLASS)--Direct Service Agency (DSA); Community Based Al-
alternatives (CBA)--Home and Community Support Services (HCSS); Deaf-Blind with Multiple Disabilities Waiver (DBMD); and CBA--Assisted Living/Residential Care (AL/RC) programs are eligible to participate in the attendant compensation rate enhancement.

(b) Definition of attendant. An attendant is the unlicensed caregiver providing direct assistance to individuals with Activities of Daily Living (ADL) and Instrumental Activities of Daily Living (IADL).

(1) In the case of the ICF/IID, DAHS, RC, and CBA AL/RC programs and the HCS Supervised Living (SL)/Residential Support Services (RSS) and HCS and TxHmL Day Habilitation (DH) settings, the attendant may perform some nonattendant functions. In such cases, the attendant must perform attendant functions at least 80% of his or her total time worked. Staff in these settings not providing attendant services at least 80% of their total time worked are not considered attendants. Time studies must be performed in accordance with §355.105(b)(2)(B)(i) of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures) for staff in the ICF/IID, DAHS, RC, and CBA AL/RC programs and the HCS SL/RSS and HCS and TxHmL DH settings that are not full-time attendants but perform attendant functions to determine if a staff member meets this 80% requirement. Failure to perform the time studies for these staff will result in the staff not being considered to be attendants. Staff performing attendant functions in both the HCS SL/RSS and HCS and TxHmL DH settings that combine to equal at least 80% of their total hours worked would be included in this designation.

(2) Attendants do not include the director, administrator, assistant director, assistant administrator, clerical and secretarial staff, professional staff, other administrative staff, licensed staff, attendant supervisors, cooks and kitchen staff, maintenance and groundskeeping staff, activity director, DBMD Interveners I, II or III, Qualified Intellectual Disability Professionals (QIDPs) or assistant QIDPs, (formerly known as Qualified Mental Retardation Professionals (QMRPs) or assistant QMRPs), direct care worker supervisors, direct care trainer supervisors, job coach supervisors, foster care providers, and laundry and housekeeping staff. In the case of HCS Supported Home Living, TxHmL, Community Supports, PHC, CLASS, CBA--HCSS, and DBMD, staff other than attendants may deliver attendant services and be considered an attendant if they must perform attendant services that cannot be delivered by another attendant to prevent a break in service.

(3) An attendant also includes a driver who is transporting individuals in the ICF/IID, DAHS, RC, and CBA AL/RC programs and the HCS SL/RSS and HCS and TxHmL DH settings.

(4) An attendant also includes a medication aide in the HCS SL/RSS setting and the ICF/IID, RC and CBA AL/RC programs.

(5) An attendant also includes direct care workers, direct care trainers, job coaches, supported employment direct care workers, and employment assistance direct care workers.

(c) Attendant compensation cost center. This cost center will include employee compensation, contract labor costs, and personal vehicle mileage reimbursement for attendants as defined in subsection (b) of this section.

(1) Attendant compensation is the allowable compensation for attendants defined in §355.103(b)(1) of this title (relating to Specifications for Allowable and Unallowable Costs) and required to be reported as either salaries and/or wages, including payroll taxes and workers' compensation, or employee benefits. Benefits required by §355.103(b)(1)(A)(iii) of this title to be reported as costs applicable to specific cost report line items, except as noted in paragraph (3) of this subsection, are not to be included in this cost center. For ICF/IID, attendant compensation is also subject to the requirements detailed in §355.457 of this title (relating to Cost Finding Methodology). For HCS and TxHmL, attendant compensation is also subject to the requirements detailed in §355.722 of this title (relating to Reporting Costs by Home and Community-based Services (HCS) and Texas Home Living (TxHmL) Providers).

(2) Contract labor refers to personnel for whom the contracted provider is not responsible for the payment of payroll taxes, such as FICA, Medicare, and federal and state unemployment insurance, and who perform tasks routinely performed by employees where allowed by program rules.

(3) Mileage reimbursement paid to the attendant for the use of his or her personal vehicle and which is not subject to payroll taxes is considered compensation for this cost center.

(d) Rate year. The rate year begins on the first day of September and ends on the last day of August of the following year.

(e) Open enrollment. Open enrollment begins on the first day of July and ends on the last day of that same July preceding the rate year for which payments are being determined. HHSC notifies providers of open enrollment by electronic mail (e-mail) to an authorized representative per the signature authority designation form applicable to the provider's contract or ownership type. If open enrollment has been postponed or cancelled, the Texas Health and Human Services Commission (HHSC) will notify providers by e-mail before the first day of July. Should conditions warrant, HHSC may conduct additional enrollment periods during a rate year.

(f) Enrollment contract amendment.

(1) For CBA--HCSS and AL/RC, CLASS--DSA, DBMD, DAHS, RC and PHC, an initial enrollment contract amendment is required from each provider choosing to participate in the attendant compensation rate enhancement. On the initial enrollment contract amendment, the provider must specify for each contract a desire to participate or not to participate and a preferred participation level.

(A) For the PHC program, the participating provider must also specify if he wishes to have priority, nonpriority, or both priority and nonpriority services participate in the attendant compensation rate enhancement.

(B) For providers delivering both RC and CBA AL/RC services in the same facility, participation includes both the RC and CBA AL/RC programs.

(2) For ICF/IID, HCS and TxHmL, an initial enrollment contract amendment is required from each provider choosing to participate in the attendant compensation rate enhancement. On the initial enrollment contract amendment, the provider must specify for each component code a desire to participate or not to participate and a preferred participation level. All contracts of a component code within a specific program must either participate at the same level or not participate.

(A) For the ICF/IID program, the participating provider must also specify the services he wishes to have participate in the attendant compensation rate enhancement. Eligible services are residential services and day habilitation services. The participating provider must specify whether he wishes to participate for residential services only, day habilitation services only or both residential services and day habilitation services.

(B) For the HCS and TxHmL programs, eligible services are divided into two categories: non-day habilitation services and day habilitation services. The non-day habilitation services category includes SL/RSS, supported home living/community supports, respite,
supported employment and employment assistance. The day habilitation services category includes day habilitation. The participating provider must specify whether he wishes to participate for non-day habilitation services only, day habilitation services only or both non-day habilitation services and day habilitation services. For providers delivering services in both the HCS and TxHmL programs, the categories selected for participation must be the same for their HCS and TxHmL programs.

(3) After initial enrollment, participating and nonparticipating providers may request to modify their enrollment status during any open enrollment period. A nonparticipant can request to become a participant; a participant can request to become a nonparticipant; a participant can request to change its participation level.

(4) Providers whose prior year enrollment was limited by subsection (u) of this section who request to increase their enrollment levels will be limited to increases of three or fewer enhancement levels during the first open enrollment period after the limitation. Providers that were subject to an enrollment limitation may request to participate at any level during open enrollment beginning two years after limitation.

(5) Requests to modify a provider's enrollment status during an open enrollment period must be received by HHSC Rate Analysis by the last day of the open enrollment period as per subsection (e) of this section. If the last day of open enrollment is on a weekend day, state holiday, or national holiday, the next business day will be considered the last day requests will be accepted. Providers from which HHSC Rate Analysis has not received an acceptable request to modify their enrollment by the last day of the open enrollment period will continue at the level of participation in effect during the open enrollment period within available funds until the provider notifies HHSC in accordance with subsection (x) of this section that it no longer wishes to participate or until the provider's enrollment is limited in accordance with subsection (u) of this section.

(6) To be acceptable, an enrollment contract amendment must be completed according to instructions, signed by an authorized representative as per HHSC's signature authority designation form applicable to the provider's contract or ownership type, and legible.

(g) New contracts. For the purposes of this section, for each rate year a new contract is defined as a contract or component code whose effective date is on or after the first day of the open enrollment period, as defined in subsection (e) of this section, for that rate year. Contracts that underwent a contract assignment or change of ownership and new contracts that are part of an existing component code are not considered new contracts. For purposes of this subsection, an acceptable contract amendment is defined as a legible enrollment contract amendment that has been completed according to instructions, signed by an authorized representative as per HHSC's signature authority designation form applicable to the provider's contract or ownership type, and received by HHSC Rate Analysis within 30 days of notification to the provider that such an enrollment contract amendment must be submitted. If the 30th day is on a weekend day, state holiday, or national holiday, the next business day will be considered the last day requests will be accepted. New contracts will receive the nonparticipant attendant compensation rate as specified in subsection (I) of this section with no enhancements. For new contracts specifying their desire to participate in the attendant compensation rate enhancement on an acceptable enrollment contract amendment, the attendant compensation rate is adjusted as specified in subsection (r) of this section, effective on the first day of the month following receipt by HHSC of an acceptable enrollment contract amendment. If the granting of newly requested enhancements was limited by subsection (p)(2)(B) of this section during the most recent enrollment, enrollment for new contracts will be subject to that same limitation. If the most recent enrollment was cancelled by subsection (e) of this section, new contracts will not be permitted to be enrolled.

(h) Attendant Compensation Report submittal requirements.

(1) Annual Attendant Compensation Report. For services delivered on or before August 31, 2009, providers must file Attendant Compensation Reports as follows. All participating contracted providers will provide HHSC Rate Analysis, in a method specified by HHSC Rate Analysis, an annual Attendant Compensation Report reflecting the activities of the provider while delivering contracted services from the first day of the rate year through the last day of the rate year. This report must be submitted for each participating contract if the provider requested participation individually for each contract; or, if the provider requested participation as a group, the report must be submitted as a single aggregate report covering all contracts participating at the end of the rate year within one program of the provider. A participating contract that has been terminated in accordance with subsection (v) of this section or that has undergone a contract assignment in accordance with subsection (w) of this section will be considered to have participated on an individual basis for compliance with reporting requirements for the owner prior to the termination or contract assignment. This report will be used as the basis for determining compliance with the spending requirements and recoupment amounts as described in subsection (s) of this section. Contracted providers failing to submit an acceptable annual Attendant Compensation Report within 60 days of the end of the rate year will be placed on vendor hold until such time as an acceptable report is received and processed by HHSC Rate Analysis.

(A) When a participating provider changes ownership through a contract assignment, the prior owner must submit an Attendant Compensation Report covering the period from the beginning of the rate year to the effective date of the contract assignment as determined by HHSC, or its designee. This report will be used as the basis for determining any recoupment amounts as described in subsection (s) of this section. The new owner will be required to submit an Attendant Compensation Report covering the period from the day after the date recognized by HHSC, or its designee, as the contract-assignment effective date to the end of the rate year.

(B) Participating providers whose contracts are terminated voluntarily or involuntarily must submit an Attendant Compensation Report covering the period from the beginning of the rate year to the date recognized by HHSC or its designee as the contract termination date. This report will be used as the basis for determining recoupment as described in subsection (s) of this section.

(C) Participating providers who voluntarily withdraw from participation, as described in subsection (x) of this section, must submit an Attendant Compensation Report within 60 days of the date of withdrawal as determined by HHSC. This report must cover the period from the beginning of the rate year through the date of withdrawal as determined by HHSC and will be used as the basis for determining any recoupment amounts as described in subsection (s) of this section.

(D) Participating providers whose cost report year, as defined in §355.105(b)(5) of this title, coincides with the state of Texas fiscal year, are exempt from the requirement to submit a separate Attendant Compensation Report. For these contracts, their cost report will be considered their Attendant Compensation Report.

(2) For services delivered on September 1, 2009, and thereafter, cost reports as described in §355.105(b)-(c) of this title will replace the Attendant Compensation Report with the following exceptions:
(A) For services delivered from September 1, 2009, to August 31, 2010, participating providers may be required to submit Transition Attendant Compensation Reports in addition to required cost reports. The Transition Attendant Compensation Report reporting period will include those days in calendar years 2009 and 2010 not included in either the 2009 Attendant Compensation report or the provider's 2010 cost report. This report must be submitted for each participating contract if the provider requested participation individually for each contract; or, if the provider requested participation as a group, the report must be submitted as a single aggregate report covering all contracts participating at the end of the transition reporting period within one program of the provider. A participating contract that has been terminated in accordance with subsection (v) of this section or that has undergone a contract assignment in accordance with subsection (w) of this section will be considered to have participated on an individual basis for compliance with transition reporting requirements for the owner prior to the termination or contract assignment. This report will be used as the basis for determining any recoupment amounts as described in subsection (s) of this section for the transition reporting period. Participating providers failing to submit an acceptable Transition Attendant Compensation Report within 60 days of the date of the HHSC request for the report will be placed on vendor hold until such time as an acceptable report is received and processed by HHSC Rate Analysis.

(B) When a participating provider changes ownership through a contract assignment or change of ownership, the previous owner must submit an Attendant Compensation Report covering the period from the beginning of the provider's cost reporting period to the date recognized by HHSC, or its designee, as the contract-assignment or ownership-change effective date. This report will be used as the basis for determining any recoupment amounts as described in subsection (s) of this section. The new owner will be required to submit a cost report covering the period from the day after the date recognized by HHSC or its designee as the contract-assignment or ownership-change effective date to the end of the provider's fiscal year.

(C) When one or more contracts or, for the ICF/IID, HCS and TxHmL programs, component codes of a participating provider are terminated, either voluntarily or involuntarily, the provider must submit an Attendant Compensation Report for the terminated contract(s) or component code(s) covering the period from the beginning of the provider's cost reporting period to the date recognized by HHSC, or its designee, as the contract or component code termination date. This report will be used as the basis for determining any recoupment amounts as described in subsection (s) of this section.

(D) When one or more contracts or, for the ICF/IID, HCS and TxHmL programs, component codes of a participating provider are voluntarily withdrawn from participation as per subsection (x) of this section, the provider must submit an Attendant Compensation Report within 60 days of the date of withdrawal as determined by HHSC, covering the period from the beginning of the provider's cost reporting period to the date of withdrawal as determined by HHSC. This report will be used as the basis for determining any recoupment amounts as described in subsection (s) of this section. These providers must still submit a cost report covering the entire cost reporting period. The cost report will not be used for determining any recoupment amounts.

(E) For new contracts as defined in subsection (g) of this section, the cost reporting period will begin with the effective date of participation in the enhancement.

(F) Existing providers who become participants in the enhancement as a result of the open enrollment process described in subsection (e) of this section on any day other than the first day of their fiscal year are required to submit an Attendant Compensation Report with a reporting period that begins on their first day of participation in the enhancement and ends on the last day of the provider's fiscal year. This report will be used as the basis for determining any recoupment amounts as described in subsection (s) of this section. These providers must still submit a cost report covering the entire cost reporting period. The cost report will not be used for determining any recoupment amounts.

(G) A participating provider that is required to submit a cost report or Attendant Compensation Report under this paragraph will be excused from the requirement to submit a report if the provider did not provide any billable attendant services to HHSC recipients during the reporting period.

(3) Other reports. HHSC may require other reports from all contracts as needed.

(4) Vendor hold. HHSC, or its designee, will place on hold the vendor payments for any participating provider who does not submit a timely report as described in paragraph (1) of this subsection, or for services delivered on or after September 1, 2009, a timely report as described in paragraph (2) of this subsection completed in accordance with all applicable rules and instructions. This vendor hold will remain in effect until HHSC Rate Analysis receives an acceptable report.

(A) Participating contracts or, for the ICF/IID, HCS and TxHmL programs, component codes that do not submit an acceptable report completed in accordance with all applicable rules and instructions within 60 days of the due date described in this subsection or, for cost reports, the due dates described in §355.105(b) of this title will become nonparticipants retroactive to the first day of the reporting period in question and will be subject to an immediate recoupment of funds related to participation paid to the contractor for services provided during the reporting period in question. These contracts or component codes will remain nonparticipants and recouped funds will not be restored until they submit an acceptable report and repay to HHSC, or its designee, funds identified for recoupment from subsection (s) of this section. If an acceptable report is not received within 365 days of the due date, the recoupment will become permanent and, if all funds associated with participation during the reporting period in question have been recouped by HHSC, or its designee, the vendor hold associated with the report will be released.

(B) Participating contracts or, for the ICF/IID, HCS and TxHmL programs, component codes that have terminated or undergone a contract assignment or ownership-change from one legal entity to a different legal entity and do not submit an acceptable report completed in accordance with all applicable rules and instructions within 60 days of the contract assignment, ownership-change or termination effective date will become nonparticipants retroactive to the first day of the reporting period in question. These contracts or component codes will remain nonparticipants and recouped funds will not be restored until they submit an acceptable report and repay to HHSC, or its designee, funds identified for recoupment under subsection (s) of this section. If an acceptable report is not received within 365 days of the contract assignment, ownership-change or termination effective date, the recoupment will become permanent and, if all funds associated with participation during the reporting period in question have been recouped by HHSC, or its designee, the vendor hold associated with the report will be released.

(5) Provider-initiated amended Attendant Compensation Reports and cost reports functioning as Attendant Compensation Reports. Reports must be received prior to the date the provider is notified of compliance with spending requirements for the report in question in accordance with subsection (s) of this section.
(i) Report contents. Each Attendant Compensation Report and cost report functioning as an Attendant Compensation Report will include any information required by HHSC to implement this attendant compensation rate enhancement.

(j) Completion of compensation reports. All Attendant Compensation Reports and cost reports functioning as Attendant Compensation Reports must be completed in accordance with the provisions of §§355.102 - 355.105 of this title (relating to General Principles of Allowable and Unallowable Costs; Specifications for Allowable and Unallowable Costs; Revenues; and General Reporting and Documentation Requirements, Methods, and Procedures) and may be reviewed or audited in accordance with §355.106 of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports). Beginning with the rate year that starts September 1, 2002, all Attendant Compensation Reports and cost reports functioning as Attendant Compensation Reports must be completed by preparers who have attended the required cost report training for the applicable program under §355.102(d) of this title. For the ICF/IID program, cost reports functioning as Attendant Compensation Reports must also be completed in accordance with the provisions of §355.456 of this title (relating to Reimbursement Methodology). For the HCS and TxHmL programs, cost reports functioning as Attendant Compensation Reports must also be completed in accordance with the provisions of §355.722 of this title.

(k) Enrollment. Providers choosing to participate in the attendant compensation rate enhancement must submit to HHSC a signed enrollment contract amendment as described in subsection (f) of this section. Participation is determined separately for each program specified in subsection (a) of this section, except that for providers delivering both RC and CBA AL/RC services in the same facility, participation includes both the RC and CBA AL/RC programs and for providers delivering both HCS and TxHmL services, participation includes both the HCS and TxHmL programs. For PHC, participation is also determined separately for priority and nonpriority services. For ICF/IID, participation is also determined separately for residential services and day habilitation services. For HCS and TxHmL, participation is also determined separately for the non-day habilitation services category and the day habilitation services category as defined in subsection (f)(2)(B) of this section. Participation will remain in effect, subject to availability of funds, until the provider notifies HHSC, in accordance with subsection (x) of this section, that it no longer wishes to participate or until HHSC excludes the contract from participation for reasons outlined in subsection (u) of this section. Contracts or component codes voluntarily withdrawing from participation will have their participation end effective with the date of withdrawal as determined by HHSC. Contracts or components codes excluded from participation will have their participation end effective on the date determined by HHSC.

(l) Determination of attendant compensation rate component for nonparticipating contracts.

(1) For the PHC: DAHS; RC; CLASS--DSA; CBA--HCSS; DBMD; and CBA--AL/RC programs, HHSC will calculate an attendant compensation rate component for nonparticipating contracts as follows.

(A) Determine for each contract included in the cost report data base used in determination of rates in effect on September 1, 1999, the attendant compensation cost center from subsection (c) of this section.

(B) Adjust the cost center data from subparagraph (A) of this paragraph in order to account for inflation utilizing the inflation factors used in the determination of the September 1, 1999 rates.

(C) For each contract included in the cost report data base used to determine rates in effect on September 1, 1999, divide the result from subparagraph (B) of this paragraph by the corresponding units of service. Provider projected costs per unit of service are rank-ordered from low to high, along with the provider's corresponding units of service. For DAHS, the median cost per unit of service is selected. For all other programs, the units of service are summed until the median unit of service is reached. The corresponding projected cost per unit of service is the weighted median cost component. The result is multiplied by 1.044 for PHC, CLASS--DSA, CBA--HCSS, and DBMD; and by 1.07 for RC, CBA--AL/RC, and DAHS. The result is the attendant compensation rate component for nonparticipating contracts.

(D) The attendant compensation rate component for nonparticipating contracts will remain constant over time, except in the case of increases to the attendant compensation rate component for nonparticipating contracts explicitly mandated by the Texas legislature and for adjustments necessitated by increases in the minimum wage. Adjustments necessitated by increases in the minimum wage are limited to ensuring that these rates are adequate to cover mandated minimum wage levels.

(2) For ICF/IID DH, ICF/IID residential services, HCS SL/RSS, HCS DH, HCS respite, HCS supported employment, HCS employment assistance, TxHmL DH, TxHmL community support, TxHmL respite, TxHmL supported employment, and TxHmL employment assistance, for each level of need, HHSC will calculate an attendant compensation rate component for nonparticipating contracts for each service as follows:

(A) For each service, for each level of need, determine the percent of the fully-funded model rate in effect on August 31, 2010 for that service accruing from attendants. For ICF/IID, the fully-funded model is the model as calculated under §355.456(d) of this title (relating to Reimbursement Methodology) prior to any adjustments made in accordance with §355.101 of this title (relating to Introduction) and §355.109 of this title (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs). For HCS and TxHmL, the fully-funded model is the model as calculated under §355.723(d) of this title (relating to Reimbursement Methodology for Home and Community-based Services and Texas Home Living Programs) prior to any adjustments made in accordance with §355.101 of this title and §355.109 of this title for the rate period.

(B) For each service, for each level of need, multiply the percent of the fully-funded model rate in effect on August 31, 2010 for that service accruing from attendants from subparagraph (A) of this paragraph by the total adopted reimbursement rate for that service in effect on August 31, 2010. Effective September 1, 2019, the result is multiplied by 1.044 for HCS supported home living, HCS respite, HCS supported employment, HCS employment assistance, TxHmL community support services, TxHmL respite, TxHmL supported employment, and TxHmL employment assistance and by 1.07 for HCS SL/RSS, HCS DH, TxHmL DH and ICF Residential and ICF Day Habilitation. The result is the attendant compensation rate component for that service for nonparticipating contracts.

(C) The attendant compensation rate component for nonparticipating contracts will remain constant over time, except in the case of increases to the attendant compensation rate component for nonparticipating contracts explicitly mandated by the Texas legislature; and for adjustments necessitated by increases in the minimum wage. Adjustments necessitated by increases in the minimum wage are limited to ensuring that these rates are adequate to cover mandated minimum wage levels.
(D) Effective July 1, 2017, the attendant compensation rate component for nonparticipating contracts for HCS supported home living and TxHmL community supports is equal to $14.52 per hour.

(E) Effective, September 1, 2019, the attendant compensation rate component for nonparticipating contracts for HCS Supported home living is calculated using cost data from the most recently audited cost report multiplied by 1.044.

(m) Determination of attendant compensation base rate for participating contracts.

(1) For each of the programs identified in subsection (a) of this section except for CBA AL/RC, the attendant compensation base rate is equal to the attendant compensation rate component for nonparticipating contracts from subsection (l) of this section.

(2) For CBA AL/RC, the attendant compensation base rate will be determined by taking into consideration quality of care, labor market conditions, economic factors, and budget constraints.

(n) Determination of attendant compensation rate enhancements. HHSC will determine a per diem add-on payment for each enhanced attendant compensation level using data from sources such as cost reports, surveys, and/or other relevant sources and taking into consideration quality of care, labor market conditions, economic factors, and budget constraints. The attendant compensation rate enhancement add-ons will be determined on a per-unit-of-service basis applicable to each program or service. Add-on payments may vary by enhancement level.

(o) Enhanced attendant compensation. Contracts or component codes desiring to participate in the enhanced attendant compensation rate may request attendant compensation levels from an array of enhanced attendant compensation options and associated add-on payments determined in subsection (n) of this section during open enrollment.

(1) ICF/IID providers must select a single attendant compensation level for all contracts within a component code for the day habilitation and/or residential services they have selected for participation.

(2) HCS and TxHmL must select a single attendant compensation level for all contracts within a component code for the non-day habilitation and/or day habilitation services they have selected for participation.

(p) Granting attendant compensation rate enhancements. Eligible programs are divided into two populations for purposes of granting attendant compensation rate enhancements. The first population includes the PHC; DAHS; RC; CLASS--DSA; CBA--HCSS; DBMD; CBA--AL/RC; and ICM AL/RC programs and the second population includes the ICF/IID; HCS; and TxHmL programs. Enhancements for the two populations are funded separately; funds intended for enhancements for the first population of programs will never be used for enhancements for the second population and funds intended for enhancements for the second population of programs will never be used for enhancements for the first population. For each population of programs, HHSC divides all requested enhancements, after applying any enrollment limitations from subsection (u) of this section, into two groups: pre-existing enhancements, which providers request to carry over from the prior year, and newly-requested enhancements. Newly-requested enhancements may be enhancements requested by providers who were nonparticipants in the prior year or by providers who were participants in the prior year who seek additional enhancements. Using the process described herein separately for each population of programs, HHSC first determines the distribution of carry-over enhancements. If funds are available after the distribution of carry-over enhancements, HHSC determines the distribution of newly-requested enhancements. HHSC may not distribute newly-requested enhancements to providers owing funds identified for recoupment under subsection (s) of this section.

(1) For all programs and levels except for CBA AL/RC Level 1, HHSC determines projected units of service for contracts and/or component codes requesting each enhancement level and multiplies this number by the enhancement rate add-on amount associated with that enhancement level as determined in subsection (n) of this section. For CBA AL/RC Level 1, HHSC determines projected units of service for CBA AL/RC contracts requesting Level 1 and multiplies this number by the sum of the difference between the base rate and the nonparticipant rate and the enhancement add-on amount associated with enhancement Level 1 as follows: (Base Rate - Nonparticipant Rate) + Level 1 add-on amount.

(2) HHSC compares the sum of the products from paragraph (1) of this subsection to available funds.

(A) If the sum of the products is less than or equal to available funds, all requested enhancements are granted.

(B) If the sum of the products is greater than available funds, enhancements are granted beginning with the lowest level of enhancement and granting each successive level of enhancement until requested enhancements are granted within available funds. Based upon an examination of existing compensation levels and compensation needs, HHSC may grant certain enhancement options priority for distribution.

(q) Notification of granting of enhancements. Participating contracts and component codes are notified, in a manner determined by HHSC, as to the disposition of their request for attendant compensation rate enhancements.

(r) Total attendant compensation rate for participating providers. Each participating provider's total attendant compensation rate will be equal to the attendant compensation base rate from subsection (m) of this section plus any add-on payments associated with enhanced attendant compensation levels selected by and awarded to the provider during open enrollment.

(s) Spending requirements for participating contracts and component codes. HHSC will determine from the Attendant Compensation Report or cost report functioning as an Attendant Compensation Report, as specified in subsection (b) of this section and other appropriate data sources, the amount of attendant compensation spending per unit of service delivered. The provider's compliance with the spending requirement is determined based on the total attendant compensation spending as reported on the Attendant Compensation Report or cost report functioning as an Attendant Compensation Report for each participating contract or component code. Compliance with the spending requirement is determined separately for each program specified in subsection (a) of this section, except for providers delivering both RC and CBA AL/RC services in the same facility whose compliance is determined by combining both programs and providers delivering services in both the HCS and TxHmL programs whose compliance is determined by combining both programs. HHSC will calculate recoupment, if any, as follows.

(1) The accrued attendant compensation revenue per unit of service is multiplied by 0.90 to determine the spending requirement per unit of service. The accrued attendant compensation spending per unit of service will be subtracted from the spending requirement per unit of service to determine the amount to be recouped. If the accrued attendant compensation spending per unit of service is greater than or equal to the spending requirement per unit of service, there is no recoupment.
(2) The amount paid for attendant compensation per unit of service after adjustments for recoupment must not be less than the amount determined for nonparticipating contracts or component codes in subsection (i) of this section.

(3) In cases where more than one enhancement level is in effect during the reporting period, the spending requirement will be based on the weighted average enhancement level in effect during the reporting period calculated as follows:

(A) Multiply the first enhancement level in effect during the reporting period by the most recently available, reliable Medicaid units of service utilization data for the time period the first enhancement level was in effect.

(B) Multiply the second enhancement level in effect during the reporting period by the most recently available, reliable Medicaid units of service utilization data for the time period the second enhancement level was in effect.

(C) Sum the products from subparagraphs (A) and (B) of this paragraph.

(D) Divide the sum from subparagraph (C) of this paragraph by the sum of the most recently available, reliable Medicaid units of service utilization data for the entire reporting period used in subparagraphs (A) and (B) of this paragraph.

(t) Notification of recoupment and request for recalculation.

(1) Notification of recoupment. The estimated amount to be recouped is indicated in the State of Texas Automated Information Reporting System (STAIRS), the online application for submitting cost reports and Attendant Compensation reports. STAIRS will generate an e-mail to the entity contact, indicating that the provider's estimated recoupment is available for review. The entity contact is the provider's authorized representative per the signature authority designation form applicable to the provider's contract or ownership type. If a subsequent review by HHSC or audit results in adjustments to the Attendant Compensation Report or cost reporting, as described in subsection (h) of this section, that change the amount to be repaid, the provider will be notified by e-mail to the entity contact that the adjustments and the adjusted amount to be repaid are available in STAIRS for review. HHSC, or its designee, will recoup any amount owed from a provider's vendor payment(s) following the date of the initial or subsequent notification. For the HCS and TxHmL programs, if HHSC, or its designee, is unable to recoup owed funds in an automated fashion, the requirements detailed under subsection (dd) of this section apply.

(2) Request for recalculation. Providers notified of a recoupment based on an Attendant Compensation Report described in subsection (h)(2)(A) or (h)(2)(F) of this section may request that HHSC recalculate their recoupment after combining the Attendant Compensation Report with the provider's most recently available, audited full-year cost report. The request must be received by HHSC Rate Analysis no later than 30 days after the date on the e-mail notification of recoupment. If the 30th calendar day is a weekend day, national holiday, or state holiday, then the first business day following the 30th calendar day is the final day the receipt of the request will be accepted.

(A) The request must be made by e-mail to the e-mail address specified in STAIRS, hand delivery, United States (U.S.) mail, or special mail delivery. An e-mail request must be typed on the provider's letterhead, signed by a person indicated in subparagraph (B) of this paragraph, then scanned and sent by e-mail to HHSC.

(B) The request must be signed by an individual legally responsible for the conduct of the provider, such as the sole proprietor, a partner, a corporate officer, an association officer, a governmental official, a limited liability company member, a person authorized by the applicable signature authority designation form for the provider at the time of the request, or a legal representative for the provider. The administrator or director of a facility or program is not authorized to sign the request unless the administrator or director holds one of these positions. HHSC will not accept a request that is not signed by an individual responsible for the conduct of the provider.

(u) Enrollment limitations. A provider will not be enrolled in the attendant compensation rate enhancement at a level higher than the level it achieved on its most recently available, audited Attendant Compensation Report or cost report functioning as an Attendant Compensation Report. HHSC will notify a provider of its enrollment limitations (if any) prior to the first day of the open enrollment period.

(1) Notification of enrollment limitations. The enrollment limitation level is indicated in STAIRS. STAIRS will generate an e-mail to the entity contact, indicating that the provider's enrollment limitation level is available for review.

(2) Requests for revision. A provider may request a revision of its enrollment limitation if the provider's most recently available audited Attendant Compensation Report or cost report functioning as an Attendant Compensation Report does not represent its current attendant compensation levels.

(A) A request for revision of enrollment limitation must include the documentation specified in subparagraph (B) of this paragraph and must be received by HHSC Rate Analysis no later than the deadline indicated in the notification of open enrollment specified in subsection (e) of this section. A request for revision that is not received by the stated deadline will not be accepted, and the enrollment limitation specified in STAIRS will apply.

(B) A provider that requests a revision of its enrollment limitation must submit documentation that shows that, for the period beginning September 1 of the current rate year and ending April 30 of the current rate year, the provider met a higher attendant compensation level than STAIRS indicates. In such cases, the provider's enrollment limitation will be established at the level supported by its request for revision documentation. It is the responsibility of the provider to render all required documentation at the time of its request for revision. Requests that fail to support an attendant compensation level different from what is indicated STAIRS will result in a rejection of the request, and the enrollment limitation specified in STAIRS will apply.

(C) A request for revision must be signed by an individual legally responsible for the conduct of the provider or legally authorized to bind the provider, such as the sole proprietor, a partner, a corporate officer, an association officer, a governmental official, a limited liability company member, a person authorized by the applicable DADS signature authority designation form for the interested party on file at the time of the request, or a legal representative for the interested party. A request for revision that is not signed by an individual legally responsible for the conduct of the interested party will not be accepted, and the enrollment limitation specified in STAIRS will apply.

(D) If the provider's Attendant Compensation Report or cost report functioning as an Attendant Compensation Report for the rate year that included the open enrollment period described in subsection (e) of this section shows the provider compensated attendants below the level it presented in its request for revision, HHSC will immediately recoup all enhancement payments associated with the request for revision documents, and the provider will be limited to the level supported by the report for the remainder of the rate year.

(3) Informal reviews and formal appeals. The filing of a request for an informal review or formal appeal relating to a provider's
most recently available, audited Attendant Compensation Report or cost report functioning as an Attendant Compensation Report under §355.110 of this title (relating to Informal Reviews and Formal Appeals) does not stay or delay implementation of an enrollment limitation applied in accordance with the requirements of this subsection. If an informal review or formal appeal relating to a provider's most recently available, audited Attendant Compensation Report or cost report functioning as an Attendant Compensation Report is pending at the time the enrollment limitation is applied, the result of the informal review or formal appeal shall be applied to the provider's enrollment retroactively to the beginning of the rate year to which the enrollment limitation was originally applied.

(4) New owners after a contract assignment or change of ownership that is an ownership change from one legal entity to a different legal entity. Enhancement levels for a new owner after a contract assignment or change of ownership that is an ownership change from one legal entity to a different legal entity will be determined in accordance with subsection (w) of this section. A new owner after a contract assignment or change of ownership that is an ownership-change from one legal entity to a different legal entity will not be subject to enrollment limitations based upon the prior owner's performance.

(5) New providers. A new provider's enrollment will be determined in accordance with subsection (g) of this section.

(v) Contract terminations. For contracted providers or component codes required to submit an Attendant Compensation Report due to a termination as described in subsection (h) of this section, HHSC, or its designee, will place a vendor hold on the payments of the contracted provider until HHSC receives an acceptable Attendant Compensation Report, as specified in subsection (h) of this section, and funds identified for recoupment from subsection (s) of this section are repaid to HHSC, or its designee. Informal reviews and formal appeals relating to these reports are governed by §355.110 of this title. HHSC, or its designee, will recoup any amount owed from the provider's vendor payments that are being held. In cases where funds identified for recoupment cannot be repaid from the held vendor payments, the responsible entity from subsection (cc) of this section will be jointly and severally liable for any additional payment due to HHSC, or its designee. Failure to repay the amount due or submit an acceptable payment plan within 60 days of notification will result in the recoupment of the owed funds from other HHSC and/or DADS contracts controlled by the responsible entity, placement of a vendor hold on all HHSC and/or DADS contracts controlled by the responsible entity, and will bar the responsible entity from enacting new contracts with HHSC and/or DADS until repayment is made in full. The responsible entity for these contracts will be notified as described in subsection (t) of this section prior to the recoupment of owed funds, placement of vendor hold on additional contracts, and barring of new contracts.

(w) Contract assignments. The following applies to contract assignments.

(1) Definitions. The following words and terms have the following meanings when used in this subsection.

(A) Assignee--A legal entity that assumes a Community Care contract through a legal assignment of the contract from the contracting entity as provided in 40 TAC §49.210 (relating to Contractor Change of Legal Entity).

(B) Assignor--A legal entity that assigns its Community Care contract to another legal entity as provided in 40 TAC §49.210.

(C) Contract assignment--The transfer of a contract by one legal entity to another legal entity as provided in 40 TAC §49.210.

(i) Type One Contract Assignment--A contract assignment by which the assignee is an existing Community Care contract.

(ii) Type Two Contract Assignment--A contract assignment by which the assignee is a new Community Care contract.

(2) Participation after a contract assignment. Participation after a contract assignment is determined as follows:

(A) Type One Contract Assignments. For Type One contract assignments, the assignee's level of participation remains the same while the assignor's level of participation changes to the assignee's.

(B) Type Two Contract Assignments. For Type Two contract assignments, the level of participation of the assignor contract(s) will continue unchanged under the assignee contract(s).

(3) The assignee is responsible for the reporting requirements in subsection (h) of this section for any reporting period days occurring after the contract assignment effective date. If the contract assignment occurs during an open enrollment period as defined in subsection (e) of this section, the owner recognized by HHSC, or its designee, on the last day of the enrollment period may request to modify the enrollment status of the contract in accordance with subsection (f) of this section.

(4) For contracted providers required to submit an Attendant Compensation Report due to contract assignment, as described in subsection (h) of this section, HHSC, or its designee, will place a vendor hold on the payments of the existing contracted provider until HHSC receives an acceptable Attendant Compensation Report, as specified in subsection (h) of this section, and funds identified for recoupment from subsection (s) of this section are repaid to HHSC, or its designee. HHSC, or its designee, will recoup any amount owed from the provider's vendor payments that are being held. In cases where funds identified for recoupment cannot be repaid from the held vendor payments, the responsible entity from subsection (cc) of this section will be jointly and severally liable for any additional payment due to HHSC, or its designee. Failure to repay the amount due within 60 days of notification will result in the recoupment of the owed funds from other HHSC and/or DADS contracts controlled by the responsible entity, placement of a vendor hold on all HHSC and/or DADS contracts controlled by the responsible entity, and will bar the responsible entity from enacting new contracts with HHSC and/or DADS until repayment is made in full. The responsible entity for these contracts will be notified, as described in subsection (t) of this section, prior to the recoupment of owed funds, placement of vendor hold on additional contracts, and barring of new contract.

(x) Voluntary withdrawal. Participating contracts or component codes wishing to withdraw from the attendant compensation rate enhancement must notify HHSC Rate Analysis in writing by certified mail and the request must be signed by an authorized representative as designated per the DADS signature authority designation form applicable to the provider's contract or ownership type. The requests will be effective the first of the month following the receipt of the request. Contracts or component codes voluntarily withdrawing must remain nonparticipants for the remainder of the rate year. Providers whose contracts are participating as part of a component code must request withdrawal of all the contracts in the component code.

(y) Adjusting attendant compensation requirements. Providers that determine that they will not be able to meet their attendant compensation requirements may request to reduce their attendant compensation requirements and associated enhancement payment to a lower participation level by submitting a written request to HHSC.
Rate Analysis by certified mail and the request must be signed by an authorized representative as designated per the DADS signature authority designation form applicable to the provider's contract or ownership type. These requests will be effective the first of the month following the receipt of the request. Providers whose contracts are participating as part of a component code must request the same reduction for all of the contracts in the component code.

(z) All other rate components. All other rate components will continue to be calculated as specified in the program-specific reimbursement methodology and will be uniform for all providers.

(aa) Failure to document spending. Undocumented attendant compensation expenses will be disallowed and will not be used in the determination of the attendant compensation spending per unit of service in subsection (s) of this section.

(bb) Appeals. Subject matter of informal reviews and formal appeals is limited as per §355.110 of this title.

(cc) Responsible entities. The contracted provider, owner, or legal entity which received the attendant compensation rate enhancement is responsible for the repayment of the recoupment amount.

(1) HCS and TxHmL providers required to repay enhancement funds will be jointly and severally liable for any repayment.

(2) Failure to repay the amount due or submit an acceptable payment plan within 60 days of notification will result in placement of a vendor hold on all HHSC or DADS contracts controlled by the responsible entity.

(dd) Manual Repayment. For the HCS and TxHmL programs, if HHSC, or its designee, is unable to recoup owed funds using an automated system, providers will be required to repay some or all of the enhancement funds to be recouped through a check, money order or other non-automated method. Providers will be required to submit the required repayment amount within 60 days of notification.

(ee) Determination of compliance with spending requirements in the aggregate.

(1) Definitions. The following words and terms have the following meanings when used in this subsection.

(A) Commonly owned corporations--two or more corporations where five or fewer identical persons who are individuals, estates, or trusts own greater than 50 percent of the total voting power in each corporation.

(B) Entity--a parent company, sole member, individual, limited partnership, or group of limited partnerships controlled by the same general partner.

(C) Combined entity--one or more commonly owned corporations and one or more limited partnerships where the general partner is controlled by the same identical persons as the commonly owned corporation(s).

(D) Control--greater than 50 percent ownership by the entity.

(2) Aggregation. For an entity, for two or more commonly owned corporations, or for a combined entity that controls more than one participating contract or component code in a program (with RC and CBA AL/RC considered a single program, and HCS and TxHmL considered a single program), compliance with the spending requirements detailed in subsection (s) of this section can be determined in the aggregate for all participating contracts or component codes in the program controlled by the entity, commonly owned corporations, or combined entity at the end of the rate year, the effective date of the change of ownership of its last participating contract or component code in the program, or the effective date of the termination of its last participating contract or component code in the program rather than requiring each contract or component code to meet its spending requirement individually. Corporations that do not meet the definitions under paragraph (1)(A) - (C) of this subsection are not eligible for aggregation to meet spending requirements.

(A) Aggregation Request. To exercise aggregation, the entity, combined entity, or commonly owned corporations must submit an aggregation request, in a manner prescribed by HHSC, at the time each Attendant Compensation Report or cost report is submitted. In limited partnerships in which the same single general partner controls all the limited partnerships, the single general partner must make this request. Other such aggregation requests will be reviewed on a case-by-case basis.

(B) Frequency of Aggregation Requests. The entity, combined entity, or commonly owned corporations must submit a separate request for aggregation for each reporting period.

(C) Ownership changes or terminations. For the ICF/IID, HCS, TxHmL, DAHS, RC, DBMD, CBA--AL/RC programs, contracts or component codes that change ownership or terminate effective after the end of the applicable reporting period, but prior to the determination of compliance with spending requirements as per subsection (s) of this section, are excluded from all aggregate spending calculations. These contracts' or component codes' compliance with spending requirements will be determined on an individual basis and the costs and revenues will not be included in the aggregate spending calculation.

(ff) Conditions of participation for day habilitation. The following conditions of participation apply to each ICF/IID, HCS and TxHmL provider specifying its wish to have day habilitation services participate in the attendant compensation rate enhancement.

(1) A provider who provides day habilitation in-house or who contracts with a related party to provide day habilitation will report job trainer and job coach compensation and hours on the required cost report items (e.g., hours, salaries and wages, payroll taxes, employee benefits/insurance/workers' compensation, contract labor costs, and personal vehicle mileage reimbursement). Day habilitation costs cannot be combined and reported in one cost report item.

(2) A provider who contracts with a non-related party to provide day habilitation will report its payments to the contractor in a single cost report item as directed in the instructions for the cost report or Attendant Compensation Report as described in subsection (h)(2) and (3) of this section. HHSC will allocate 50 percent of reported payments to the attendant compensation cost area for inclusion with other allowable day habilitation attendant costs in order to determine the total attendant compensation spending for day habilitation services as described in subsection (s) of this section.

(3) The provider must ensure access to any and all records necessary to verify information submitted to HHSC on Attendant Compensation Reports and cost reports functioning as an Attendant Compensation Report.

(4) HHSC will require each ICF/IID, HCS and TxHmL provider specifying their wish to have day habilitation services participate in the attendant compensation rate enhancement to certify during the enrollment process that it will comply with the requirements of paragraphs (1) - (3) of this subsection.

(gg) New contracts within existing component codes. For ICF/IID, HCS and TxHmL, new contracts within existing component codes will be assigned a level of participation equal to the existing
component code’s level of participation effective on the start date of the contract as recognized by HHSC or its designee.

(hh) Disclaimer. Nothing in these rules should be construed as preventing providers from compensating attendants at a level above that funded by the enhanced attendant compensation rate.

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 13, 2019.

TRD-201902623
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Effective date: September 2, 2019
Proposal publication date: July 5, 2019
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SUBCHAPTER F. REIMBURSEMENT METHODOLOGY FOR PROGRAMS SERVING PERSONS WITH MENTAL ILLNESS OR INTELLECTUAL OR DEVELOPMENTAL DISABILITY

1 TAC §355.723

STATUTORY AUTHORITY

The amendment 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 §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for Medicaid payments under Texas Human Resources Code, Chapter 32.

§355.723. Reimbursement Methodology for Home and Community-Based Services and Texas Home Living Programs.

(a) Prospective payment rates. The Texas Health and Human Services Commission (HHSC) sets payment rates to be paid prospectively to Home and Community-based Services (HCS) and Texas Home Living (TxHmL) providers.

(b) Levels of need.

(1) Variable rates. Rates vary by level of need for the following services: Residential Support Services, Supervised Living, Host Home/Companion Care, and HCS Day Habilitation.

(2) Non-variable rates. Rates do not vary by level of need for the following services: Supported Home Living, High Medical Needs Support, Community Support Services, Supported Employment, Employment Assistance, Respite, Registered Nurse (RN), Licensed Vocational Nurse (LVN), High Medical Needs RN, High Medical Needs LVN, Dietary, Behavioral Support, Physical Therapy, Occupational Therapy, Speech Therapy, Audiology, Cognitive Rehabilitative Therapy, Social Work, and TxHmL Day Habilitation.

(c) Recommended rates.

(1) Rate Models. The recommended modeled rates are determined for each HCS and TxHmL service listed in subsection (b)(1) - (2) of this section by type and, for services listed in subsection (b)(1) of this section, by level of need to include the following cost components: direct care worker staffing costs (wages, benefits, modeled staffing ratios for direct care workers, direct care trainers and job coaches), other direct service staffing costs (wages for direct care supervisors, benefits, modeled staffing ratios); facility costs (for respite care only); room and board costs for overnight, out-of-home respite care; administration and operation costs; and professional consultation and program support costs. The determination of all components except for the direct care worker staffing costs component is based on cost reports submitted by HCS and TxHmL providers in accordance with §355.722 of this subchapter (relating to Reporting Costs by Home and Community-based Services (HCS) and Texas Home Living (TxHmL) Providers). The determination of the direct care worker staffing costs component is calculated as specified in §355.112 of this chapter (relating to Attendant Compensation Rate Enhancement).

(2) Supported Home Living and Community Support Services.

(A) Effective July 1, 2017, the recommended modeled rates for HCS Supported Home Living and TxHmL Community Support Services include the following cost components: direct care worker staffing costs, and administration and operation costs. The modeled rates for these two services do not include a cost component for other direct service staffing costs. The determination of the administration and operation cost component is calculated as specified in subsection (d)(10) of this section. The determination of the direct care worker staffing costs component is calculated as specified in §355.112 of this chapter.

(B) Effective September 1, 2019, the recommended modeled rate for HCS Supported Home Living is calculated as specified in subsection (c)(1) and subsection (d) of this section.

(C) Effective September 1, 2019, the recommended modeled rate for TxHmL Community Support Services is equal to the rate that was in effect for these services on August 31, 2019.

(3) High Medical Needs Support. Payment rates for High Medical Needs Support are developed based on payment 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 analysis in accordance with §355.105(h) of this chapter (relating to General Reporting and Documentation Requirements, Methods, and Procedures).

(d) Administration and operation cost component. The administration and operation cost component included in the recommended rates described in subsection (c) of this section for each HCS and TxHmL service type is determined as follows.

(1) Step 1. Determine total projected administration and operation costs and projected units of service by service type using cost reports submitted by HCS and TxHmL providers in accordance with §355.722 of this subchapter.

(2) Step 2. Determine the host home/compassion care coordinator component of the host home/compassion care rate as follows:

(A) For fiscal years 2010 through 2013, the host home/compassion care coordinator component of the host home companion care rate was modeled using the weighted average host home/compassion care coordinator wage as reported on the most recently available and reliable audited HCS cost report plus 10.25 percent for payroll taxes and benefits inflated to the rate period and a consumer to host home/compassion care coordinator ratio of 1:15.
(B) For fiscal years 2012 and 2013, the host home/companion care coordinator component of the host home companion care rate was remodeled using a consumer to host home/companion care coordinator ratio of 1:20.

(C) For fiscal years 2014 and thereafter, this component is determined by summing total reported host home/companion care coordinator wages and allocated payroll taxes and benefits from the most recently available audited HCS cost report, inflating those costs to the rate period and dividing the resulting product by the total number of host home units of service reported on that cost report.

(3) Step 3. Determine total host home/companion care coordinator dollars as follows. Multiply the host home/companion care coordinator component of the host home/companion care rate from paragraph (2) of this subsection by the total number of host home care units of service reported on the most recently available, reliable audited HCS cost report database.

(4) Step 4. Determine total projected administration and operation costs after offsetting total host home/companion care coordinator dollars as follows. Subtract the total host home/companion care coordinator dollars from paragraph (3) of this subsection from the total projected administration and operation costs from paragraph (1) of this subsection.

(5) Step 5. Determine projected weighted units of service for each HCS and TxHmL service type as follows:

(A) Supervised Living and Residential Support Services in HCS. Projected weighted units of service for Supervised Living and Residential Support Services equal projected Supervised Living and Residential Support units of service times a weight of 1.00.

(B) Day Habilitation in HCS and TxHmL. Projected weighted units of service for Day Habilitation equal projected Day Habilitation units of service times a weight of 0.25.

(C) Host Home/Companion Care in HCS. Projected weighted units of service for Host Home/Companion Care equal projected Host Home/Companion Care units of service times a weight of 0.50.

(D) Supported Home Living in HCS, High Medical Needs Support in HCS, and Community Support Services in TxHmL. For each service, projected weighted units of service equal projected units of service times a weight of 0.30.

(E) Respite in HCS and TxHmL. Projected weighted units of service for Respite equal projected Respite units of service times a weight of 0.20.

(F) Supported Employment in HCS and TxHmL. Projected weighted units of service for Supported Employment equal projected Supported Employment units of service times a weight of 0.25.

(G) Behavioral Support in HCS and TxHmL. Projected weighted units of service for Behavioral Support equal projected Behavioral Support units of service times a weight of 0.18.

(H) Physical Therapy, Occupational Therapy, Speech Therapy, Audiology, and Cognitive Rehabilitative Therapy in HCS and TxHmL. Projected weighted units of service for Physical Therapy, Occupational Therapy, Speech Therapy, Audiology, and Cognitive Rehabilitative Therapy equal projected Physical Therapy, Occupational Therapy, Speech Therapy, Audiology, and Cognitive Rehabilitative Therapy units of service times a weight of 0.18.

(I) Social Work in HCS. Projected weighted units of service for Social Work equal projected Social Work units of service times a weight of 0.18.

(J) Nursing in HCS and TxHmL and High Medical Needs Nursing in HCS. Projected weighted units of service for Nursing and High Medical Needs Nursing equal projected Nursing and High Medical Needs Nursing units of service times a weight of 0.25.

(K) Employment Assistance in HCS and TxHmL. Projected weighted units of service for Employment Assistance equal projected Employment Assistance units of service times a weight of 0.25.

(L) Dietary in HCS and TxHmL. Projected weighted units of service for Dietary equal projected Dietary units of service times a weight of 0.18.

(6) Step 6. Calculate total projected weighted units of service by summing the projected weighted units of service from paragraph (5)(A) - (L) of this subsection.

(7) Step 7. Calculate the percent of total administration and operation costs to be allocated to the service type by dividing the projected weighted units for the service type from paragraph (5) of this subsection by the total projected weighted units of service from paragraph (6) of this subsection.

(8) Step 8. Calculate the total administration and operation cost to be allocated to that service type by multiplying the percent of total administration and operation costs allocated to the service type from paragraph (7) of this subsection by the total administration and operation costs after offsetting total host home/companion care coordinator dollars from paragraph (4) of this subsection.

(9) Step 9. Calculate the administration and operation cost component per unit of service for each HCS and TxHmL service type by dividing the total administration and operation cost to be allocated to that service type from paragraph (8) of this subsection by the projected units of service for that service type from paragraph (1) of this subsection.

(10) Step 10. The final recommended administration and operation cost component per unit of service for each HCS and TxHmL service type is calculated as follows:

(A) For HCS supported home living, HCS respite, HCS supported employment, HCS employment assistance, TxHmL community supports services, TxHmL respite, TxHmL supported employment, and TxHmL employment assistance multiply the administration and operation cost component from paragraph (9) of this subsection by 1.044.

(B) For HCS SL/RSS, HCS DH, and TxHmL DH, multiply the administration and operation cost component from paragraph (9) of this subsection by 1.07.

(11) Step 11. Effective July 1, 2017, the final recommended administration and operation cost component per unit of service for Supported Home Living in HCS, Community Support Services in TxHmL, and High Medical Needs Support in HCS is equal to the administrative and facility cost component of Habilitation Services in the Community Living Assistance and Support Services (CLASS) program as specified in §355.505 of this chapter (relating to Reimbursement Methodology for the Community Living Assistance and Support Services Waiver Program).

(12) Step 12. Effective September 1, 2019, the recommended modeled rates for all TxHmL services except TxHmL Community Support Services are equal to the rates that were in effect for these services on August 31, 2019. The recommended modeled rate for TxHmL Community Support Services is calculated as specified in subsection (c)(2)(C) of this section.
(e) Refinement and adjustment. Refinement/adjustment of the cost components and model assumptions will be considered, as appropriate, by HHSC.

(f) Total Medicaid Spending Requirement. Effective for costs and revenues accrued on or after September 1, 2015, through August 31, 2017, all HCS and TxHmL providers are required to spend at least 90 percent of revenues received through the HCS and TxHmL waiver programs’ Medicaid payment rates on Medicaid allowable costs under these programs.

(1) Compliance with the total Medicaid spending requirement will be determined in the aggregate for all component codes controlled by the same entity across the HCS, TxHmL, and Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions (ICF/HD) programs within the same cost report year.

(2) Compliance with the spending requirement is determined on an annual basis using cost reports as described in Chapter 355, Subchapter A, of this title (relating to Cost Determination Process) and this subchapter.

(A) When a provider changes ownership through a contract assignment, the prior owner must submit a report covering the period from the beginning of the provider’s fiscal year to the effective date of the contract assignment as determined by HHSC or its designee. This report is used as the basis for determining compliance with the spending requirement.

(B) Providers whose contracts are terminated voluntarily or involuntarily must submit a report covering the period from the beginning of the provider’s fiscal year to the date recognized by HHSC or its designee as the contract termination date. This report is used as the basis for determining compliance with the spending requirement.

(C) When part of a cost reporting period is subject to spending accountability and part is not subject to spending accountability, a provider may choose to have HHSC divide their costs for the entire cost reporting period between the part of the period subject to spending accountability and the part of the period not subject to spending accountability on a pro-rata basis (i.e., pro-rata allocation). For example, if six months of a twelve month cost reporting period are subject to spending accountability, HHSC would divide the provider’s costs for the entire cost reporting period by two to determine the costs subject to spending accountability. Providers who do not choose to have HHSC divide their costs on a pro-rata basis must report their costs for the period subject to spending accountability separately from their costs for the period not subject to spending accountability (i.e., direct reporting). Once a provider indicates to HHSC their choice between a pro-rata allocation and direct reporting for a specific cost reporting period, that choice is irrevocable for that cost reporting period.

(3) Allowable costs are those described in Chapter 355, Subchapter A, and this subchapter.

(4) The total Medicaid revenue for an HCS or TxHmL provider participating in the attendant compensation rate enhancement is offset by any recoupment made under §355.112(s) of this title prior to determining compliance with the spending requirement.

(5) Revenue and costs for the HCS and TxHmL waiver programs are combined for a component code for determination of compliance with the spending requirement.

(6) Providers who fail to meet the 90 percent spending requirement are subject to a recoupment of the difference between the 90 percent spending requirement and their actual Medicaid allowable HCS and TxHmL costs. Recoupments for each rate period under this subsection are limited to the difference between the provider’s Medicaid revenues for services provided at the rates subject to spending accountability and what the provider’s Medicaid revenues would have been for services provided at the Medicaid rates in effect on August 31, 2015.

(7) The contracted provider, owner, or legal entity which received the Medicaid payment is responsible for the repayment of the recoupment amount. Failure to repay the amount due or submit an acceptable payment plan within 60 days of notification results in placement of a vendor hold on all HHSC and Texas Department of Aging and Disability Services contracts controlled by the responsible entity.

(8) If HHSC, or its designee, is unable to recoup owed funds using an automated system, providers are required to repay some or all of the funds to be recouped through a check, money order or other non-automated method. Providers are required to submit the required repayment amount within 60 days of notification.

(9) Prior to each rate period through August 31, 2017, providers will be given the option of receiving the Medicaid rates adopted by HHSC for the rate period and the Medicaid rates that were in effect on August 31, 2015. Providers who choose to receive the Medicaid rates that were in effect on August 31, 2015, will not be subject to the spending accountability requirements described in this subsection.

(10) For rate periods beginning on or after September 1, 2017, the Total Medicaid Spending Requirement described in this sub-section will no longer apply. Additionally, providers who chose to receive the Medicaid rates that were in effect on August 31, 2015, will receive the rates that were adopted effective September 1, 2015.

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 13, 2019.
TRD-201902624
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Effective date: September 2, 2019
Proposal publication date: July 5, 2019
For further information, please call: (512) 424-6637

SUBCHAPTER G. ADVANCED TELECOMUNICATIONS SERVICES AND OTHER COMMUNITY-BASED SERVICES

1 TAC §355.6907

STATUTORY AUTHORITY

The amendment 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 §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for Medicaid payments under Texas Human Resources Code, Chapter 32.
The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency’s legal authority.

Filed with the Office of the Secretary of State on August 13, 2019.
TRD-201902625
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Effective date: September 2, 2019
Proposal publication date: July 5, 2019
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SUBCHAPTER J. PURCHASED HEALTH SERVICES
DIVISION 4. MEDICAID HOSPITAL SERVICES

1 TAC §355.8052

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts amended §355.8052, concerning Inpatient Hospital Reimbursement. The amendment to §355.8052 is adopted without changes to the proposed text as published in the July 5, 2019, issue of the Texas Register (44 TexReg 3370), and therefore will not be republished.

BACKGROUND AND JUSTIFICATION

The purpose of the amendment is to comply with the 2020-21 General Appropriations Act (Article II, H.B. 1, 86th Legislature, Regular Session, 2019, Rider 11 and Rider 28), which allocates certain funds appropriated to HHSC to provide increased Medicaid inpatient reimbursement to rural hospitals. In addition, the amendment will comply with Senate Bill (S.B.) 500, which appropriates $50 million in general revenue funds for increased Medicaid reimbursement to Children’s Hospitals. The amendment also makes technical corrections and amends the definition of “children’s hospital.”

The current Standard Dollar Amounts (SDAs) for rural hospitals have been in effect since September 1, 2013. Subsection (d) in Rider 11 directs HHSC to increase inpatient rates for rural hospitals by trending forward to 2020 using an inflationary factor. This rule amendment will inflate the current SDAs using the Centers for Medicare and Medicaid Services (CMS) Prospective Payment System Hospital Market Basket inflation factors. Applying these inflation factors will result in a 17.68 percent increase in the SDA of each rural hospital.

Subsection (e) in Rider 11 directs HHSC to provide increases to inpatient rates in addition to those identified in subsection (d), using a specific amount of appropriated funding. Therefore, the rule amendment will increase the inflated SDAs an additional 6.25 percent.

The combination of these two increases will result in new Final SDAs for rural hospitals.

Rider 28 directs HHSC to provide a Medicaid add-on payment for labor and delivery services provided by rural hospitals. This rule amendment creates an alternate SDA for inpatient stays related to labor and delivery in rural hospitals, which will be equal to the new Final SDA plus an SDA add-on sufficient to increase payment for each claim by no less than $500.

The rule amendment also creates a new SDA Add-on for children’s hospitals called the Children’s Hospital Supplemental add-on. This new SDA Add-on will be effective for inpatient hospital discharges occurring after August 31, 2019 and before September 1, 2020. The add-on amount will be $1128.18.

COMMENTS

The 31-day comment period ended August 5, 2019.

During this period, HHSC received comments regarding the proposed rule from eight commenters, including the Texas Hospital Association, the Children’s Hospital Association of Texas, Texas Children’s Hospital, South Texas Health System, Teaching Hospitals of Texas, the Texas Organization of Rural and Community Hospitals, Community Health Systems, and Preferred Management Corporation. A summary of comments relating to the Inpatient Hospital Reimbursement rule amendment and HHSC’s responses follows.

Comment: Two commenters request that HHSC continue to work closely with hospital stakeholders on implementation of the additional funding for rural hospitals, and to ensure that the intended increases are actually received by the hospitals through Managed Care Organizations (MCOs).

Response: The Medicaid managed care capitation rates will be adjusted to reflect the estimated increase in cost for providing services to rural hospitals due to the funding provided in the 86th Legislative Session, effective September 1, 2019. HHSC has included in the contracts between HHSC and the MCOs that HHSC will monitor the MCO for compliance with the legislative direction to increase reimbursement rates to providers. No revision to the rule text is necessary.

Comment: One commenter asks that HHSC communicate strongly to the Legislature in advance of next session and include in its Legislative Appropriations Request (LAR) the funding levels needed to comply with S.B. 170.

Response: HHSC has no response to this request at this time, as the request is outside of the scope of this rule amendment. No revision to the rule text is necessary.

Comment: One commenter states that MCOs are not properly reimbursing rural hospitals and requests that HHSC, either through rule amendments or revising contracts with the MCOs, improve the situation. The commenter states, "Because of limitations the MCOs arbitrarily impose on rural hospitals that limit payments the MCO will make to rural hospitals, none of us and many other rural hospitals will receive no benefit from any increase to the SDAs, no matter how large, because of the terms of our current contracts."

Response: HHSC has no response to this request at this time, as the request is outside of the scope of this rule amendment. No revision to the rule text is necessary.

Comment: One commenter requests that HHSC immediately implement further increases to rural hospital reimbursement through additional rate adjustments and/or alterations to Medicaid supplemental programs. The commenter specifically suggests:

- Additional increases to rural hospital inpatient rates.
- Implementation of increases to rural hospital outpatient rates.
 Amendment to the 1115 Waiver to allocate uncompensated care (UC) funds based on total uninsured cost, rather than only charity cost.

- Favorable Uniform Hospital Rate Increase Program (UHRIP) percentages or designated funds for rural hospitals.

- A separate Disproportionate Share Hospital (DSH) pool for rural facilities.

Response: HHSC is implementing increases to rural hospital inpatient rates with this rule amendment, in compliance with direction and funding provided by the Texas Legislature. Further increases to either inpatient or outpatient rates would require additional appropriations from the Legislature. The items related to more favorable reimbursement under the 1115 Waiver, UHRIP, and DSH are outside of the scope of this rule amendment. No revision to the rule text is necessary.

Comment: Two commenters recommend that HHSC pay out the additional appropriation funding to the children's hospitals over an 18-month period, instead of the proposed 12-month period. The commenters state that spending the full appropriation in a single year may have unintended negative consequences to children's hospitals participating in the DSH program, UHRIP, and the UC funding portion of the 1115 Waiver.

Response: HHSC disagrees and declines to revise the rule in response to this comment. HHSC is amending the rule to comply with S.B. 500, which provided an appropriation to HHSC for a rate increase to children's hospitals. HHSC believes it is appropriate to disburse the additional funding to children's hospitals in an expedient manner.

While the rate increases will be factored into the calculation of the Hospital Specific Limit (HSL), the increases will only adversely affect DSH hospitals if the increased Medicaid payments cause the HSL to fall below what a hospital is allocated in DSH based on their percent-to-total of Medicaid and low-income days. This analysis would be done on a provider-by-provider basis, and it is inaccurate to assume that children's hospitals would be adversely impacted as a group, as many still have significant HSL room after DSH payments are made.

Further, HHSC is currently determining the UC pool size for federal fiscal year 2020 and beyond, as well as fine tuning its methodology for dispersing the pool size. Because the pool size is unknown and payment methodology is still being determined, neither providers nor HHSC can properly assess if children's hospitals will be adversely impacted, or if they will see a reduction in overall reimbursement even after factoring in the Legislative rate increase. HHSC is still determining the methodology for calculating and allocating UHRIP payments to providers beginning in state fiscal year 2021, and has yet to determine if the Medicaid shortfall will be factored into the calculations. No revision to the rule text is necessary.

Comment: One commenter states that they do not agree with any proposed changes to the payment period for distributing the additional funding to the children's hospitals, including a change of the payment period from 12 months to 18 months. The commenter states that a shift, for example from 12 to 18 months, would increase children's hospital payments at the expense of other hospitals that did not receive a rate increase.

Response: HHSC appreciates the support for the proposed amendment and does not intend to implement any proposed changes to the payment period for distributing the additional funding to the children's hospitals. No revision to the rule text is necessary.

Comment: One commenter requests that HHSC revise the proposed amendment to the definition of a children's hospital. In this rule amendment, HHSC proposed the following definition of a children's hospital:

"A Medicaid hospital designated by Medicare as a children's hospital and exempted by CMS from the Medicare prospective payment system."

The commenter is proposing the following definition of a children's hospital.

"A Medicaid hospital designated by Medicare as a children's hospital that is either exempted by CMS from the Medicare prospective payment system, or designated by Medicare as a Medicaid-Only Children's Hospital."

The commenter states, "making Texas Medicaid participation/reimbursement contingent on the children's hospital's Medicare participation/payment status is...nonsensical".

Response: HHSC disagrees and declines to revise the rule in response to this comment. The rule amendment does not affect the ability of a hospital to participate in Medicaid. HHSC is revising the definition of "children's hospital" in paragraph §355.8052(b)(7) to be consistent with the definitions currently in the rule for "in-state children's hospital" and "out-of-state children's hospital." In addition, HHSC does not make Medicaid participation and reimbursement for a children's hospital contingent on the hospital being exempt by CMS from the Medicare prospective payment system. The definition of a children's hospital in the rule simply specifies which hospitals are eligible for the higher standard dollar amounts (SDA's) that are typically the result of the different calculation methodology that is used to calculate base SDA's for children's hospitals that fall under that definition.

A children's hospital that does not meet the definition because it is not exempted by CMS from the Medicare prospective payment system could nevertheless be eligible to be an enrolled Medicaid provider in Texas, and this type of hospital is reimbursed for services provided to Medicaid patients.

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 amendment affects Texas Government Code §531.0055, Chapter 531 and Texas Human Resources Code Chapter 32.

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

Filed with the Office of the Secretary of State on August 12, 2019.

TRD-201902609
TITLE 7. BANKING AND SECURITIES

PART 1.  FINANCE COMMISSION OF TEXAS

CHAPTER 2.  RESIDENTIAL MORTGAGE
LOAN ORIGINATORS REGULATED BY
THE OFFICE OF CONSUMER CREDIT
COMMISSIONER

SUBCHAPTER B.  OPERATIONAL
REQUIREMENTS

7 TAC §2.201

The Finance Commission of Texas (commission) adopts amendments to §2.201 (relating to License Term, Renewal, and Expiration) in 7 TAC, Chapter 2, concerning Residential Mortgage Loan Originators Regulated by the Office of Consumer Credit Commissioner.

The commission adopts the amendments without changes to the proposed text as published in the July 5, 2019, issue of the Texas Register (44 TexReg 3380). The amendments will not be republished.

The commission received no written comments on the proposal.

In general, the purpose of the adopted amendments in 7 TAC, Chapter 2 is to implement provisions related to licensing and administration in HB 1442, the Sunset legislation for the Office of Consumer Credit Commissioner (OCCC). The Texas Legislature passed HB 1442 in the 2019 legislative session.

HB 1442 continues the OCCC’s existence as a state agency, and was passed in response to recommendations of the Texas Sunset Advisory Commission. The bill authorizes the commission to set the term of each license or registration issued by the OCCC, for a period up to two years.

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review and then held a stakeholder meeting and webinar regarding the rule changes. The agency believes that the participation of stakeholders in the rulemaking process is invaluable in presenting balanced proposals.

The adopted amendments specify the license term, renewal process, and expiration date for residential mortgage loan originators. These amendments implement Texas Finance Code, §14.112 (as added by HB 1442), which provides that the commission shall prescribe the licensing or registration period for licenses and registrations issued by the OCCC. In addition, the amendments modernize or remove obsolete language.

The individual purposes of the adopted amendments to Chapter 2 are provided in the following paragraph.

In §2.201, adopted amendments specify the term, renewal process, and expiration date for a residential mortgage loan originator license. The amendments maintain the current one-year term, the current December 31 expiration date, and the current reinstatement period from January 1 through the last day of February, all of which are currently described in §2.104 (relating to Application and Renewal Fees). The title of §2.201 is also amended to state “License Term, Renewal, and Expiration,” to ensure that the rule's title clearly conveys its contents, and to ensure consistency with other rules being amended in this adoption. In addition, adopted amendments shorten the titles of Chapter 2 and its two subchapters, in order to make these titles more simple and concise, and to clarify that Chapter 2 applies to residential mortgage loan originators regulated by the OCCC, not just those applying for licensure.

The amendments to 7 TAC, Chapter 2 are adopted under Texas Finance Code, §180.004, which authorizes the commission to adopt rules necessary to implement Texas Finance Code, Chapter 180. In addition, the amendments in §2.201 are authorized under Texas Finance Code, §14.112 (as added by HB 1442), which authorizes the commission to set license and registration terms.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapters 14 and 180.

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 16, 2019.

TRD-201902683
Matthew J. Nance
Deputy General Counsel
Finance Commission of Texas
Effective date: September 5, 2019
Proposal publication date: July 5, 2019
For further information, please call: (512) 936-7640

PART 2.  TEXAS DEPARTMENT OF BANKING

CHAPTER 11.  MISCELLANEOUS

SUBCHAPTER A.  GENERAL

7 TAC §§11.10 - 11.12

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts new §§11.10 - 11.12, concerning complaints, with a change to the proposed text as published in the July 5, 2019, issue of the Texas Register (44 TexReg 3383). The new rules will be republished.

A change made to the proposed new rules is in response to the commission's recommendation to delete the word "signed" from the definition of a Complaint.

These new rules establish consistent procedures for persons to complain about conduct of persons regulated by the department. The new rules are in response to a recommendation of the Sunset Advisory Commission that the department update its complaint processing provisions in line with the Sunset Advisory Commission.
Commission's Licensing and Regulation Model guidelines (Sunset Model).

The Sunset Model is intended as a guide to assist in evaluating occupational licensing and regulatory agencies to see if they are efficient, effective, fair, and accountable in their mission to protect the public. Complaint filing, processing, and recordkeeping are topics covered in the Sunset Model. The new rules implement the applicable recommendations contained in the Sunset Model.

The rules create new regulations concerning complaint handling to conform to recommendations from the Sunset Advisory Commission.

The department received no comments regarding the proposed new rules except for the commission's recommendation to remove the requirement for a complaint to be signed.

The new rules are adopted pursuant to Government Code, §2001.004, which provides the authority to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

§11.10. Definitions.

(a) "Complainant" means a person who files a complaint or inquiry.

(b) "Complaint" means a written communication submitted to the department by a person that alleges misconduct by a person believed to be engaging in an activity that is regulated by the department. For purposes of this subchapter, a complaint shall contain at least the following information:

1. the complainant's name and contact information;
2. the name of the entity against whom the complaint is submitted;
3. the date and place of the alleged violation;
4. a description of the facts or conduct alleged to violate applicable statutes or rules; and
5. written documentation supporting the complaint.

(c) "Inquiry" means a communication made to the department about an entity believed to be engaging in an activity that is regulated by the department, but such communication does not include all of the required elements of a complaint.

§11.11. Complaint Processing.

(a) Complaints and inquiries filed with the department are generally considered public information, unless a specific statutory exception applies.

(b) Upon receipt of a complaint or inquiry, the department will make a good faith effort to protect complainant's identity to the extent possible. The department will determine if the complaint or inquiry relates to an activity that the department regulates.

(c) If the department does not regulate the activity that is the subject of the complaint or inquiry, the department shall close the complaint or inquiry, notify the complainant and refer the complaint or inquiry to the appropriate regulatory entity within five business days of receiving the complaint or inquiry, if known.

(d) If the department regulates the activity that is the subject of a complaint, the department shall initiate an investigation into the merits of the complaint by sending, within 10 business days of receiving the complaint, a copy of the complaint and any supporting documentation to the entity that is the subject of the complaint.

(e) The department shall prioritize complaints for purposes of determining the order in which complaints are investigated, taking into account the seriousness of the allegations made in a complaint and the length of time a complaint has been pending.

(f) A regulated entity that receives a complaint forwarded by the department shall respond within 30 days from the date the request is mailed by the department.

(g) The banking commissioner may appoint a hearings officer or other subject matter expert to investigate a complaint received by the department.

(h) The department may, at the discretion of the commissioner, arrange for the services of a qualified mediator or subject matter expert to assist in resolving the complaint.

(i) The department shall monitor how long each complaint is open, and shall make all reasonable efforts to resolve complaints within 90 days of receipt. The department shall notify the complainant of their complaint status at least quarterly if more than 45 days have elapsed since the complaint was received.

(j) If the department determines that the complaint is not supported by the evidence, or if the complaint is resolved to the satisfaction of the parties, the complaint will be dismissed.

(k) The department shall notify all parties to the complaint within 10 business days of closing the complaint.

(l) A complainant who disagrees with the disposition of a complaint may appeal by filing a petition against the department in a district court in Travis County.


(a) The department shall maintain in accordance with its retention policy records of all complaints received. Such records shall include the information required in Finance Code, §12.108.

(b) A representative sample of complaints closed due to lack of jurisdiction or evidence shall be reviewed quarterly by the head of the division that received the complaint.

(c) At least quarterly, the department shall submit to the Finance Commission a report of the sources, subjects, types, and dispositions of complaint activity during the preceding period.

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 19, 2019.

TRD-201902779
Catherine Reyer
General Counsel
Texas Department of Banking
Effective date: September 8, 2019
Proposal publication date: July 5, 2019
For further information, please call: (512) 475-1301

CHAPTER 24. CEMETERY BROKERS

7 TAC §§24.1 - 24.4

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts the repeal of Chapter 24, §§24.1 - 24.4, concerning cemetery brokers, without changes to the proposed text as published in
the July 5, 2019, issue of the Texas Register (44 TexReg 3386). The repealed rules will not be republished.

The repeal of Chapter 24 is in response to the legislative directives that persons are no longer required to be licensed or registered to sell a plot in a dedicated cemetery for another person, and Subchapter C-1, Chapter 711, Texas Health and Safety Code, concerning cemetery broker registration, is repealed in its entirety.

The department received no comments regarding the proposed repeal.

The repeal of Chapter 24 is adopted pursuant to Texas Health and Safety Code §711.012(a), which authorizes the commission to adopt rules for the regulation of perpetual care cemeteries.

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 19, 2019.

TRD-201902780
Catherine Reyner
General Counsel
Texas Department of Banking
Effective date: September 8, 2019
Proposal publication date: July 5, 2019
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CHAPTER 25. PREPAID FUNERAL CONTRACTS

SUBCHAPTER B. REGULATION OF LICENSES

7 TAC §§25.13, 25.23, 25.24

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts amendments to §25.13, concerning the annual report filing; §25.23, concerning the application fees; and §25.24, concerning the annual examination fee (annual assessment) for existing permits to sell prepaid funeral benefits, without changes to the proposed text as published in the July 5, 2019, issue of the Texas Register (44 TexReg 3386). The amended rules will not be republished.

The amendment to §25.13 adds the definition of a valid permit to clarify that a permit issued by the department to sell prepaid funeral benefits remains in effect until it is revoked by the department or surrendered by the permit holder.

The amendment to §25.23 eliminates the annual renewal fee, including the Renewal Fee Schedule. The new definition of a valid permit makes existing permits perpetual rather than requiring that they be renewed each year. This supports the legislative directive that the commission by rule prescribe the term of a permit issued, which may be for more than one year. Existing permits will still be subject to revocation due to violations of state law.

The amendment to §25.24 combines the current Renewal Fee Schedule in §25.23(b)(2) and the current Annual Assessment Schedule in §25.24(b)(1) into one new annual assessment schedule based on the number of outstanding prepaid funeral benefit contracts. The new annual assessment rates will still be billed in quarterly or fewer installments to preserve the advantages of the assessment system over the annual fee system. Combining the two current schedules into one new assessment schedule preserves the revenue to the department with little or no impact to existing permit holders.

To eliminate the need for large, one-time increases in annual assessments, the amendment to §25.24 also allows the department to escalate the new assessment rates based on the percentage change in an inflation index beginning September 1, 2020. The inflation index is the Gross Domestic Product Implicit Price Deflator (GDPIPD), published quarterly by the Bureau of Economic Analysis, United States Department of Commerce. While the Consumer Price Index (CPI) published by the Bureau of Labor Statistics, United States Department of Labor, is the most well-known measure, it measures only the prices of goods and services typically purchased by urban consumers. These goods and services constitute only about 60% of the economy’s total production. In contrast, the GDPIPD captures the overall level of inflation in everything that an economy produces and is typically used to calculate inflation at the corporate or governmental level.

Each September 1, the assessment rates set forth in the amendment to §25.24 will be reviewed by the department to determine if they should be revised upward (or downward) by an amount equal to the percentage change in the GDPIPD index values from the first quarter value of the previous calendar year (the previous March-to-March period). An increase in the GDPIPD can result in an increase in assessment rates if adopted by the department.

As provided by §25.24(c)(1), the department may periodically forgive a portion of assessments otherwise due in a year when the additional funds are not needed to fund the department’s operations. Over the past five fiscal years, the department has discounted or forgiven a portion of the permit holders’ annual assessments because the forgiven revenue was not needed to cover the department’s regular operations. In fiscal years 2014, 2015, 2016, 2017 and 2018, the department reduced total billable annual assessments by 19%, 30%, 30%, 13% and 18%, respectively. Therefore, an increase in assessment rates will not necessarily result in a proportionate increase in assessments collected.

The department received no comments regarding the proposed amendments.

The amendment is adopted pursuant to Texas Finance Code (Finance Code), §154.051(b) and §154.054, which authorize the commission to adopt rules necessary or reasonable to recover the cost of supervision and regulation by imposing and collecting reasonable fees.

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 19, 2019.

TRD-201902781
CHAPTER 26. PERPETUAL CARE CEMETORIES

7 TAC §26.1

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts amendments to §26.1, concerning the fees for a certificate of authority (certificate) to operate a perpetual care cemetery, without changes to the proposed text as published in the July 5, 2019, issue of the Texas Register (44 TexReg 3389). The amended rule will not be republished.

The amendments are in response to a legislative directive that the commission by rule prescribe the term of a certificate issued, which may be for more than one year.

First, the amendments to §26.1 add the definition of a "certificate of authority" to clarify that a certificate issued by the department to operate a perpetual care cemetery remains in effect until it is revoked by a district court or the department, or surrendered by the certificate holder. The amendments also eliminate the word "renewal" from all references to the report that must be filed with the department each year.

Second, the amendments to §26.1 eliminate the annual renewal fee, including the Annual Fee Schedule. The new definition of a "certificate of authority" makes existing certificates perpetual rather than requiring that they be renewed each year. This supports the legislative directive that the commission by rule prescribe the term of a certificate issued, which may be for more than one year. Existing certificates will still be subject to revocation due to violations of state law.

Third, the amendments to §26.1 combine the current Annual Fee Schedule in §26.1(b)(2) and the current Annual Assessment Schedule in §26.1(b)(4) into one new annual assessment schedule based on the fund balance shown on the statement of funds in the most recent annual report. The new annual assessment rates will still be billed in quarterly or fewer installments to preserve the advantages of the assessment system over the annual fee system. Combining the two current schedules into one new assessment schedule preserves the revenue to the department with little or no impact to existing certificate holders.

Finally, to eliminate the need for large, one-time increases in annual assessments, the amendments to §26.1 also allow the department to escalate the new assessment rates based on the percentage change in an inflation index beginning September 1, 2020. The inflation index is the Gross Domestic Product Implicit Price Deflator (GDPIPD), published quarterly by the Bureau of Economic Analysis, United States Department of Commerce. While the Consumer Price Index (CPI) published by the Bureau of Labor Statistics, United States Department of Labor, is the most well-known measure, it measures only the prices of goods and services typically purchased by urban consumers. These goods and services constitute only about 60% of the economy's total production. In contrast, the GDPIPD captures the overall level of inflation in everything that an economy produces and is typically used to calculate inflation at the corporate or governmental level.

Each September 1, the assessment rates set forth in the amendments to §26.1 will be reviewed by the department to determine if they should be revised upward (or downward) by an amount equal to the percentage change in the GDPIPD index values from the first quarter value of the previous calendar year (the previous March-to-March period). An increase in the GDPIPD can result in an increase in assessment rates if adopted by the department.

As provided by §26.1(c)(1), the department may periodically forgive a portion of assessments otherwise due in a year when the additional funds are not needed to fund the department's operations. Over the past five fiscal years, the department has discounted or forgiven a portion of the certificate holders' annual assessments because the forgiven revenue was not needed to cover the department's regular operations. In fiscal years 2014, 2015, 2016, 2017 and 2018, the department reduced total billable annual assessments by 22%, 30%, 30%, 13% and 18%, respectively. Therefore, an increase in assessment rates will not necessarily result in a proportionate increase in assessments collected.

The department received no comments regarding the proposed amendments.

The amendments are adopted pursuant to Texas Finance Code (Finance Code), §712.008(a) which authorizes the commission to adopt rules necessary or reasonable to defray the cost of supervision and regulation by imposing and collecting reasonable fees.

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 19, 2019.

TRD-201902782

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Effective date: September 8, 2019
Proposal publication date: July 5, 2019
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PART 4. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 52. DEPARTMENT ADMINISTRATION

SUBCHAPTER A. COMPLAINTS AND APPEALS

7 TAC §§52.10 - 52.13

The Finance Commission (the commission), on behalf of the Department of Savings and Mortgage Lending (the department), adopts new Chapter 52, new Subchapter A, Complaints and Appeals, new §§52.10 - 52.13, concerning complaints, without changes to the proposed text as published in the July 5,
2019, issue of the Texas Register (44 TexReg 3393). The rules will not be republished.

The Department received one written comment on the proposal from Pioneer Bank, SSB (“Commenter”). The comment mentions §§52.10(b), (d), and 52.11(a), (b), (d), (f), and (h). The comment does not specify whether it is for or against the adoption of the proposal but rather states that the comments are to address perceived anomalies. The Department's response to the comment is included in the following discussion.

The new rules are adopted to provide consistent procedures for persons to complain about conduct of entities and individuals regulated by the Department. The new rules are adopted in response to a recommendation of the Sunset Advisory Commission that the Department update its complaint processing provisions in line with the Sunset Advisory Commission’s Licensing and Regulation Model guidelines (Sunset Model).

The Sunset Model is intended as a guide to assist in evaluating occupational licensing and regulatory agencies to see if they are efficient, effective, fair, and accountable in their mission to protect the public. Complaint filing, processing, and recordkeeping are topics covered in the Sunset Model. The adopted new rules implement the applicable recommendations contained in the Sunset Model.

The Department distributed a draft of the proposed new chapter to the Office of the Governor, who had no comments on the proposed rules. The Department then held a stakeholder meeting to which it did not receive any formal written precomments, but did receive verbal feedback. The Department appreciates the thoughtful input provided by stakeholders and believe that the participation of stakeholders in the rulemaking process is invaluable in presenting balanced proposals.

Concerning §52.10(b), Commenter suggests the inclusion of a question regarding the consumer's efforts to resolve their complaint directly with the financial institution. The Department believes such addition is unnecessary as the Department's complaint form already includes such a question.

Concerning §52.10(d), Commenter believes the definition of inquiry is overbroad and may potentially encourage the filing of complaints. The Department believes the definition is appropriate, as it is essentially simply a classification for any communication from a consumer that is not a complaint, and is consistent with the proposed definitions from the other finance commission agencies.

Concerning §52.11(a), Commenter has concerns regarding complaints being made public and wanted to ensure the financial institution's response was made public as well. The Department notes that §52.11(a) is essentially a brief restatement of Texas’ law concerning open records/public information and believes that Commenter's concerns are thus addressed in said laws.

Concerning §52.11(b), Commenter proposes that the Department refer Inquirers directly to the relevant financial institution, rather than to the Department's website. The primary reason to refer an Inquirer to the Department's website is to comply with certain statutory provisions requiring that complaints be signed and in writing. Referring Inquirers to their financial institution would not achieve this objective.

Concerning §52.11(d), Commenter is concerned regarding the Department protecting Complainants' identities, as concealing them from a financial institution could make resolving the complaint unworkable, but making private information public could put Complainants' information at risk. The Department believes the inclusion of the qualifiers "good faith effort" and "to the extent possible" address Commenter's initial concern, and the state's public information laws address the second concern.

Concerning §52.11(f), Commenter suggests the Department extend the time a financial institution has to respond to a complaint from 14 calendar days to 20 calendar days, as well as state they are calendar and not business days. The Department notes 14 calendar days has been a longstanding timeframe for a response, with extensions granted as needed. Therefore an across the board extension is unnecessary. Further, the rules specify few instances where business days are the standard, with the remainder defaulting to calendar days.

Concerning §52.11(h), Commenter believes additional detail should be given regarding the time frame for resolution of complaints. The Department notes that §52.11(h) specifically, and the new Chapter 52 generally, is essentially the formalization in rule of the Department's current policies and procedures regarding the handling of complaints. As there have not been issues raised with the execution of these policies generally, and those in §52.11(h) in particular, the Department believes it is unnecessary to depart from them at this time.

The new rules are adopted under Government Code §2001.004, which provides the authority to adopt rules of practice stating the nature and requirements of all available formal and informal procedures, Finance Code §11.307, which provides that the finance commission shall adopt rules applicable to each entity regulated by the Department relating to consumer complaints, Finance Code §13.011, which provides that the savings and mortgage lending commissioner shall prepare information concerning the Department's regulatory functions and consumer complaint procedures, Finance Code §96.002, which provides that the finance commission may adopt rules necessary to supervise and regulate savings banks and to protect public investment in savings banks, Finance Code §156.102, which provides that the finance commission may adopt and enforce rules necessary for the intent of or to ensure compliance with Chapter 156, Finance Code §157.0023, which provides that the finance commission may adopt and enforce rules necessary for the intent of or to ensure compliance with Chapter 157, Finance Code §158.003, which provides that the finance commission may adopt rules necessary to ensure that residential mortgage loan servicers comply with federal and state laws, rules, and regulations, and Finance Code §180.004, which provides that the finance commission may implement rules necessary to comply with Chapter 180.

The statutory provisions affected by the adoptions are contained Finance Code Title 3, Subtitles B and C, and also Finance Code Chapters 13, 156, 157, 158, and 180.

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 16, 2019.

TRD-201902672
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Effective date: September 5, 2019
Proposal publication date: July 5, 2019
For further information, please call: (512) 475-2534
CHAPTER 61. HEARINGS

7 TAC §61.1

The Finance Commission (the commission), on behalf of the Department of Savings and Mortgage Lending (the department), adopts an amendment to 7 TAC §61.1, concerning hearings, without changes to the proposed text as published in the July 5, 2019, issue of the Texas Register (44 TexReg 3395). The rule will not be republished.

The Department received no comments on the proposal.

The amendment is adopted to provide consistent procedures for persons to complain about conduct of entities and individuals regulated by the Department. The amendment is adopted in response to a recommendation of the Sunset Advisory Commission that the Department update its complaint processing provisions in line with the Sunset Advisory Commission’s Licensing and Regulation Model guidelines (Sunset Model).

The Sunset Model is intended as a guide to assist in evaluating occupational licensing and regulatory agencies to see if they are efficient, effective, fair, and accountable in their mission to protect the public. Complaint filing, processing, and recordkeeping are topics covered in the Sunset Model. The adopted amendment implements the applicable recommendations contained in the Sunset Model.

The Department distributed a draft of the proposed amendment to the Office of the Governor, who had no comments. The Department then held a stakeholder meeting to which it did not receive any formal written precomments, but did receive verbal feedback. The Department appreciates the thoughtful input provided by stakeholders and believe that the participation of stakeholders in the rulemaking process is invaluable in presenting balanced proposals.

The amendment is adopted under Government Code §2001.004, which provides the authority to adopt rules of practice stating the nature and requirements of all available formal and informal procedures, Finance Code §11.307, which provides that the finance commission shall adopt rules applicable to each entity regulated by the department relating to consumer complaints, and Finance Code §§13.007 and 13.011, which provide that the savings and mortgage lending commissioner shall supervise and regulate the organization, operation, and liquidations of state savings associations and prepare information concerning the department’s regulatory functions and consumer complaint procedures.

Other statutes affected by the proposed amendments are found in Finance Code Title 3, Subtitle B, and also Finance Code Chapter 13.

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 16, 2019.

TRD-201902673

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Department of Savings and Mortgage Lending
Effective date: September 5, 2019
Proposal publication date: July 5, 2019
For further information, please call: (512) 475-2534

CHAPTER 76. MISCELLANEOUS
SUBCHAPTER E. HEARINGS

7 TAC §76.71

The Finance Commission of Texas (the commission), on behalf of the Department of Savings and Mortgage Lending (the department), adopts an amendment to 7 TAC §76.71, concerning hearings, without changes to the proposed text as published in the July 5, 2019, issue of the Texas Register (44 TexReg 3393). The rule will not be republished.

The Department received no comments on the proposal.

The amendment is adopted to provide consistent procedures for persons to complain about conduct of entities and individuals regulated by the Department. The amendment is adopted in response to a recommendation of the Sunset Advisory Commission that the Department update its complaint processing provisions in line with the Sunset Advisory Commission’s Licensing and Regulation Model guidelines (Sunset Model).

The Sunset Model is intended as a guide to assist in evaluating occupational licensing and regulatory agencies to see if they are efficient, effective, fair, and accountable in their mission to protect the public. Complaint filing, processing, and recordkeeping are topics covered in the Sunset Model. The adopted amendment implements the applicable recommendations contained in the Sunset Model.

The Department distributed a draft of the proposed amendment to the Office of the Governor, who had no comments. The Department then held a stakeholder meeting to which it did not receive any formal written precomments, but did receive verbal feedback. The Department appreciates the thoughtful input provided by stakeholders and believe that the participation of stakeholders in the rulemaking process is invaluable in presenting balanced proposals.

The amendment is adopted under Government Code §2001.004, which provides the authority to adopt rules of practice stating the nature and requirements of all available formal and informal procedures, Finance Code §11.307, which provides that the finance commission shall adopt rules applicable to each entity regulated by the department relating to consumer complaints, Finance Code §§13.007 and 13.011, which provide that the savings and mortgage lending commissioner shall supervise and regulate the organization, operation, and liquidations of state savings associations and prepare information concerning the department’s regulatory functions and consumer complaint procedures.

Other statutes affected by the proposed amendments are found in Finance Code Title 3, Subtitle C, and also Finance Code Chapter 13.
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 16, 2019.

TRD-201902674
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Effective date: September 5, 2019
Proposal publication date: July 5, 2019
For further information, please call: (512) 475-2534

CHAPTER 81. MORTGAGE BANKERS
AND RESIDENTIAL MORTGAGE LOAN
ORIGINATORS
SUBCHAPTER D. COMPLIANCE AND
ENFORCEMENT

7 TAC §81.301, §81.302

The Finance Commission of Texas (the commission) adopts amendments to 7 TAC §81.301, concerning complaints and investigations, and to 7 TAC §81.302, concerning hearings.

The Finance Commission adopts amended 7 TAC §81.301 and §81.302 without changes to the proposed text as published in the July 5, 2019, issue of the Texas Register (44 TexReg 3397). The rules will not be republished.

The Department received no comments on the proposal.

The amendments are adopted to provide consistent procedures for persons to complain about conduct of entities and individuals regulated by the Department. The amendments are adopted in response to a recommendation of the Sunset Advisory Commission that the Department update its complaint processing provisions in line with the Sunset Advisory Commission's Licensing and Regulation Model guidelines (Sunset Model).

The Sunset Model is intended as a guide to assist in evaluating occupational licensing and regulatory agencies to see if they are efficient, effective, fair, and accountable in their mission to protect the public. Complaint filing, processing, and recordkeeping are topics covered in the Sunset Model. The adopted amendments implement the applicable recommendations contained in the Sunset Model.

The Department distributed a draft of the proposed amendments to the Office of the Governor, who had no comments. The Department then held a stakeholder meeting to which it did not receive any formal written precomments, but did receive verbal feedback. The Department appreciates the thoughtful input provided by stakeholders and believe that the participation of stakeholders in the rulemaking process is invaluable in presenting balanced proposals.

The amendments are adopted under Government Code §2001.004, which provides the authority to adopt rules of practice stating the nature and requirements of all available formal and informal procedures, Finance Code §11.307, which provides that the finance commission shall adopt rules applicable to each entity regulated by the department relating to consumer complaints, Texas Finance Code §13.011, which provides that the savings and mortgage lending commissioner shall prepare information concerning the department's regulatory functions and consumer complaint procedures, Texas Finance Code §157.0023, which provides that the finance commission may adopt and enforce rules necessary for the intent of or to ensure compliance with Chapter 157, and Texas Finance Code §180.004, which provides that the finance commission may implement rules necessary to comply with Chapter 180.

Other statutes affected by the proposed amendments are found in Finance Code Chapter 156, 157, and 180.

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 16, 2019.

TRD-201902675
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General Counsel
Department of Savings and Mortgage Lending
Effective date: September 5, 2019
Proposal publication date: July 5, 2019
For further information, please call: (512) 475-2534

PART 5. OFFICE OF CONSUMER
CREDIT COMMISSIONER

CHAPTER 82. ADMINISTRATION

The Finance Commission of Texas (the commission) adopts new §82.4 (relating to Consumer Complaint Process), and adopts the repeal of §82.4, in 7 TAC, Chapter 82, concerning Administration.

The commission adopts the new rule with changes to the proposed text as published in the July 5, 2019, issue of the Texas Register (44 TexReg 3398). The new rule will be republished.

The commission adopts the repeal without changes to the proposed text as published in the July 5, 2019, issue of the Texas Register (44 TexReg 3398). The repeal will not be republished.

The commission received two written comments on the proposal, from the Texas Automobile Dealers Association (TADA) and the Texas Independent Automobile Dealers Association (TIADA). The commission's responses to these comments are discussed after the discussion for each subsection of adopted new §82.4.

In general, the purpose of the adopted rule changes in 7 TAC, Chapter 82 is to implement provisions related to complaints in HB 1442, the Sunset legislation for the Office of Consumer Credit Commissioner (OCCC). The Texas Legislature passed HB 1442 in the 2019 legislative session.

HB 1442 continues the OCCC’s existence as a state agency, and was passed in response to recommendations of the Texas Sunset Advisory Commission. The bill simplifies statutory provisions regarding complaint processing, in order to meet the Sunset Advisory Commission’s across-the-board requirements.

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review and then held a stakeholder meeting and webinar regarding the rule changes. Several stakeholders provided verbal feedback during the stake-
holder meeting, and the OCCC received written precomments from stakeholders. The agency believes that the participation of stakeholders in the rulemaking process is invaluable in present-

ing balanced proposals.

Section 82.4 is being repealed and replaced with a new rule, to specify procedures for complaint processing. The adopted new rule is based on Texas Finance Code, §14.062 (as amended by HB 1442), which provides that the OCCC will maintain a sys-
tem to act efficiently on complaints, will make information avail-
able describing complaint procedures, and will periodically notify complaint parties of the status of the complaint. The new rule is also adopted in response to a recommendation of the Sunset Advisory Commission, which directed the OCCC and the com-
mision to develop an updated complaint process rule. The Sunset Advisory Commission identified the following best prac-
tices that should be included in the complaint procedure rule: details on the phases of the complaint process; overall timeline goals; intervals for notifying parties of the status of the complaint; a process for providing a summary of complaint reso-
lution to the parties; information about appealing the OCCC’s resolu-
tion of a complaint; procedures governing administrative dismissal of complaints; procedures for defining, counting, and reporting types of complaints; and definitions of how the OCCC distinguishes between complaints and inquiries. Sunset Advisory Commission, Finance Agencies Staff Report with Final Re-


The commission disagrees with these proposals to limit the defi-
nition of “complaint.” The commission and the OCCC do not wish to create unnecessary barriers to filing a complaint. Consumers may not be able to articulate the exact nature of a violation or act of wrongdoing when they file a complaint. The OCCC will have to review the facts of a complaint to determine whether it is appropriate for the OCCC to act and whether the conduct is lawful. For this reason, the definition appropriately includes expressions of dissatisfaction with a transaction. Similarly, stat-
ing that the consumer must allege “actual wrongdoing” to file a complaint creates an unnecessary barrier. It is unclear how this definition would be administered in practice, because the OCCC must review the facts to determine whether the wrongdoing is actual. Finally, it is entirely appropriate to allow any person to file a complaint. The OCCC often receives complaints from a spouse or relative on behalf of the person who entered a trans-
action, as well as complaints that are referrals from other govern-
ment agencies. The OCCC also receives complaints about on-
go ing business practices that might be broader than an individual personal transaction (e.g., ongoing unlicensed activity). Limiting complaints to the complainant’s “personal financial transaction” would create an unnecessary barrier to filing a complaint. The OCCC encourages licensees to work with consumers to resolve issues before a complaint is filed. If a consumer files a complaint and the licensee believes that its actions are lawful, the licensee may be required to explain why the actions are lawful.

Adopted §82.4(b) describes the procedures by which the OCCC processes complaints. The subsection explains that it will send a summary of the complaint and supporting documentation to the person who is the subject of the complaint, and that the per-
son must respond by the deadline identified by the OCCC. The subsection explains that the OCCC will make reasonable efforts to resolve the complaint within 90 days. The subsection also de-
scribes circumstances where the OCCC may close complaints, including situations where the complaint is not supported by the evidence, is not within the OCCC’s jurisdiction, contains no viola-
tion, or is resolved to the satisfaction of the parties. The subsec-
tion describes the process for appealing a complaint determi-
nation to senior staff of the OCCC consumer protection department. In response to a precomment, subsection (b) explains that the OCCC will notify the complaint parties of a request to appeal a complaint determination.

As originally proposed, §82.4(b)(11) would have provided a 30-day period for a complainant to appeal the closure of a com-
plaint. After further consideration, the OCCC has determined that a 90-day period for complaint appeals would be more appropriate, to ensure that the complaint process provides an adequate opportunity for complainants to appeal a determi-
nation by the OCCC. For this reason, adopted §82.4(b)(11) contains a 90-day period for a complainant to appeal.

Regarding the complaint processing provisions in §82.4(b), the official comment from TADA states: “If a complaintant who files a complaint is allowed to appeal, TADA requests that the party who is complained about should also be able to appeal a disposition . . . .” TADA suggests adding language allowing a person who is forwarded a complaint to appeal a complaint.

The commission believes that this additional language is unnec-


essary. The existing complaint process allows businesses to re-
spond to complaints. If a complaint results in an enforcement
action against a business, then the business would have due process rights to appeal the enforcement action under Texas Government Code, Chapter 2001 (the Administrative Procedure Act). It would create unnecessary complications for a business to appeal a complaint against it at the same time that it is appealing an enforcement action through a separate process.

The official comment from TADA also suggests adding a new subparagraph in §82.4(b)(11) stating: "If a new allegation or information is submitted with the appeal request, a new complaint will be opened and processed."

The commission believes that this language is unnecessary. A new complaint is just one possible outcome of an appeal. Whether it is appropriate to open a new complaint might depend on whether there is actually a new issue between the complaint parties. It is unnecessary to specify by rule that a new complaint will be opened in this situation.

Regarding references to inquiries throughout §82.4(b), the official comment from TADA states: "We believe that the term 'inquiry' should not be included anywhere throughout the section titled 'complaint processing' as proposed in 82.4(b)(1)-(11). The inclusion of 'inquiry' terminology in subsections (1)-(11) appears to fall outside of the language contained in Section 14.92 of the Finance Code and otherwise creates confusion in reporting and tracking actual identified complaints."

The commission disagrees with this suggestion. The references to inquiries in §82.4(b) state that inquiries are public information, that the OCCC will determine whether an inquiry relates to an activity that the OCCC regulates, and that the OCCC will close an inquiry and refer the person making the inquiry to an appropriate regulatory entity if known. The commission does not believe that these provisions will create confusion in how complaints are tracked and reported. The term "inquiry" is defined in §82.4(a)(3) to refer to communications that are not complaints. The term is intended to capture questions received by the consumer assistance department that do not express dissatisfaction or allege wrongful conduct (e.g., "What is the maximum documentary fee?" or "Can the dealer repossess my car?"). This is consistent with the instruction from the Sunset Advisory Commission that the complaint processing rule "should clearly define how the agency differentiates between complaints and inquiries." Sunset Advisory Commission, Finance Agencies Staff Report with Final Results, p. 57. The provisions regarding inquiries are also consistent with the commission's general authority to adopt rules necessary to supervise the OCCC under Texas Finance Code, §11.304. Responding to inquiries helps the OCCC carry out its four-part philosophy of regulating fairly, educating consumers and businesses about rights and responsibilities, communicating collaboratively with consumers and businesses, and protecting consumers against abusive practices. Office of Consumer Credit Commissioner, Strategic Plan, Fiscal Years 2019 - 2023, p. 1 (June 2018).

Adopted new §82.4(c) explains that the OCCC will quarterly review certain closed complaints, that the OCCC will quarterly report complaint activity to the commission, and that the OCCC will make complaint procedure information available on its website.

In §82.4(c)(1), the official comment from TADA recommends specifying that the OCCC will maintain records of all inquiries, so that the paragraph would state: "The OCCC will maintain records of all complaints and inquiries received in accordance with its retention policy. These records will include the information required in Texas Finance Code, §14.062." The commission believes that the phrase "and inquiries" is unnecessary in this provision. Some records related to inquiries may be subject to the record retention policy (e.g., phone logs, correspondence), but these records would generally not contain information described by Texas Finance Code, §14.062, which relates to complaints. Adding "and inquiries" in this provision would incorrectly suggest that inquiry records include complaint information.

In §82.4(c)(2), the official comment from TADA recommends specifying that the consumer assistance manager will quarterly review complaints closed due to "no wrongful conduct." In response to this comment, adopted §82.4(c)(2) has been changed since the proposal to specify that the quarterly review will include complaints where there is no violation. The provision has also been amended to specify that the consumer assistance manager will review a sample of closed complaints, consistent with the Sunset Advisory Commission's instruction that the OCCC should establish "a quality control process to ensure the agency checks a sample of complaints closed" for certain reasons. Sunset Advisory Commission, Finance Agencies Staff Report with Final Results, p. 57.

In §82.4(c)(3), the official comment from TADA recommends that the periodic complaint reports to the commission include "alleged misconduct in which the agency has jurisdiction as well as a separate category for inquiries." The commission disagrees with this suggestion. This language seems to suggest that the OCCC would not report nonjurisdictional complaints, or that nonjurisdictional complaints would be considered "inquiries" and reported separately. This is inconsistent with the recommendations of the Sunset Advisory Commission, which state that the complaint processing rule "should specifically require tracking and reporting of administratively dismissed complaints, complaints closed for lack of sufficient evidence, and nonjurisdictional complaints." Sunset Advisory Commission, Finance Agencies Staff Report with Final Results, p. 57.

In §82.4(c)(4), the official comment from TADA recommends specifying that the OCCC will make available on its website information describing procedures for inquiry receipt, investigation, and closure. The commission believes that the phrase "and inquiry" is unnecessary in this provision. As proposed, §82.4 adequately distinguishes between complaints and inquiries, consistent with the purpose of the section. It is not necessary for the rule to specify a website posting requirement for inquiry-related procedures.

7 TAC §82.4

The repeal in 7 TAC, Chapter 82 is adopted under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules to administer Title 4 and Chapter 14 of the Texas Finance Code.

The statutory provisions affected by the adopted repeal are contained in Texas Finance Code, Chapters 14, 180, 342, 345, 347, 348, 351, 352, 353, 354, 393, and 394; and Texas Occupations Code, Chapter 1956.

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 16, 2019.

TRD-201902687
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Effective date: September 5, 2019
Proposal publication date: July 5, 2019
For further information, please call: (512) 936-7640

7 TAC §82.4
The rule changes in 7 TAC, Chapter 82 are adopted under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules to administer Title 4 and Chapter 14 of the Texas Finance Code.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapters 14, 180, 342, 345, 347, 348, 351, 352, 353, 354, 393, and 394; and Texas Occupations Code, Chapter 1956.

§82.4. Consumer Complaint Process.

(a) Definitions.
(1) "Complainant" means a person who files a complaint with the OCCC.
(2) "Complaint" means a communication received by the OCCC consumer assistance department that expresses dissatisfaction with a transaction or alleges wrongful conduct. For purposes of this section, the OCCC will collect the following items and information regarding a complaint, if available:
   (A) the complainant's name and contact information;
   (B) the name of the person against whom the complaint is submitted;
   (C) the date and place of the alleged misconduct, violation, or transaction;
   (D) a description of the facts or conduct alleged to violate applicable statutes or rules, and the transaction; and
   (E) any written documentation supporting the complaint.
(3) "Inquiry" means a communication received by the OCCC consumer assistance department that is not a complaint.
(4) "OCCC" means the Office of Consumer Credit Commissioner of the State of Texas.

(b) Complaint processing.
(1) Complaints and inquiries filed with the OCCC are generally considered public information, unless a specific statutory exception applies.
(2) Upon receipt of a complaint and at the request of the complainant, the OCCC will make a good faith effort to protect the complainant’s identity to the extent possible.
(3) The OCCC will determine whether the complaint or inquiry relates to an activity that the OCCC regulates.
(4) If the OCCC does not regulate the activity that is the subject of the complaint or inquiry, the OCCC will close the complaint or inquiry and refer the person making the complaint or inquiry to the appropriate regulatory entity, if known.
(5) If the OCCC regulates the activity that is the subject of a complaint, the OCCC will send a summary of the complaint and appropriate supporting documentation to the person that is the subject of the complaint.
(6) The OCCC will prioritize complaints for purposes of determining the order in which complaints are investigated, taking into account the seriousness of the allegations made in a complaint and the length of time a complaint has been pending.
(7) A person that receives a complaint forwarded by the OCCC must respond by the deadline identified by the OCCC when it forwards the complaint.
(8) The OCCC will monitor how long each complaint is open, and will make all reasonable efforts to resolve complaints within 90 days of receipt. The OCCC will notify the complainant of their complaint status at least quarterly until final disposition, unless such notice would jeopardize an ongoing complaint analysis, a field investigation, or a pending enforcement action.
(9) If the OCCC determines that the complaint is not supported by the evidence, is not within the OCCC’s jurisdiction, contains no violation, or is resolved to the satisfaction of the parties, the complaint will be closed. Upon closure, the OCCC will promptly send a closure summary outlining the results of the complaint analysis to all parties to the complaint.
(10) The OCCC will notify all parties to the complaint within 10 business days of closing the complaint.
(11) A complainant who disagrees with the disposition of a complaint may appeal by sending a written appeal request to the OCCC consumer assistance department within 90 calendar days after the date of the closure summary. Upon receipt of an appeal request, the OCCC will notify the complaint parties of the request, and a senior member of the OCCC consumer protection department will review all information and make a determination regarding the complaint. The OCCC will send a letter of its final findings to the complaint parties.

(c) Complaint review and reporting.
(1) The OCCC will maintain records of all complaints received in accordance with its retention policy. These records will include the information required in Texas Finance Code, §14.062.
(2) At least quarterly, the consumer assistance manager will review a sample of complaints closed administratively, due to lack of jurisdiction, due to lack of a violation, or due to lack of evidence.
(3) At least quarterly, the OCCC will submit to the Finance Commission a report of the sources, subjects, types, and dispositions of complaint activity during the preceding period.
(4) The OCCC will make available on its website information describing procedures for complaint receipt, investigation, and closure.
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 16, 2019.
TRD-201902686
Matthew J. Nance
Deputy General Counsel
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Effective date: September 5, 2019
Proposal publication date: July 5, 2019
For further information, please call: (512) 936-7640

ADOPTED RULES August 30, 2019 44 TexReg 4715
CHAPTER 83. REGULATED LENDERS AND CREDIT ACCESS BUSINESSES

The Finance Commission of Texas (commission) adopts amendments to §§83.309 (relating to License Inactivation or Voluntary Surrender), 83.403 (relating to License Term, Renewal, and Expiration), 83.3009 (relating to License Inactivation or Voluntary Surrender), and 83.4002 (relating to License Term, Renewal, and Expiration) in 7 TAC, Chapter 83, concerning Regulated Lenders and Credit Access Businesses.

The commission adopts the amendments without changes to the proposed text as published in the July 5, 2019, issue of the Texas Register (44 TexReg 3400). The amended rules will not be republished.

The commission received no written comments on the proposal.

In general, the purpose of the adopted amendments in 7 TAC, Chapter 83 is to implement provisions related to licensing and administration in HB 1442, the Sunset legislation for the Office of Consumer Credit Commissioner (OCCC). The Texas Legislature passed HB 1442 in the 2019 legislative session.

HB 1442 continues the OCCC's existence as a state agency, and was passed in response to recommendations of the Texas Sunset Advisory Commission. The bill authorizes the commission to set the term of each license or registration issued by the OCCC, for a period up to two years.

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review and then held a stakeholder meeting and webinar regarding the rule changes. Several stakeholders provided verbal feedback during the stakeholder meeting, and the OCCC received written precomments from stakeholders. The agency believes that the participation of stakeholders in the rulemaking process is invaluable in presenting balanced proposals.

The adopted amendments specify the license term, renewal process, and expiration date for regulated lenders and credit access businesses. These amendments implement Texas Finance Code, §14.112 (as added by HB 1442), which provides that the commission shall prescribe the licensing or registration period for licenses and registrations issued by the OCCC. In addition, the amendments modernize or remove obsolete language.

The individual purposes of the adopted amendments to Chapter 83 are provided in the following paragraphs.

In §83.309, an adopted amendment removes a subsection dealing with the date of license expiration for regulated lenders, because expiration is addressed in separate adopted amendments at §83.403. In addition, an adopted amendment changes the title of §83.309 from "License Status" to "License Inactivation or Voluntary Surrender," to provide more clarity about the subject matter of the section. Throughout §83.309 and other sections in this adoption, amendments replace the use of the word "commissioner" with the agency's acronym, "OCCC." The agency believes that the use of "OCCC" will provide better clarity to the rules when the context calls for action by the agency, as opposed to the commissioner specifically. Adopted amendments to the section also update a citation and simplify references to filing a license amendment.

In §83.403, adopted amendments specify the term, renewal process, and expiration date for a regulated lender license. The amendments maintain the current one-year term and the current December 31 expiration date. New subsection (e) also explains that an expired license may be reinstated during the 180-day period described in Texas Finance Code, Chapter 349. The OCCC received an informal precomment explaining that regulated lenders under Chapter 342, Subchapter F of the Texas Finance Code favor a one-year license period, and that this period may help avoid confusion that could occur if the OCCC used a two-year licensing period.

In §83.3009, an adopted amendment removes a subsection dealing with the date of license expiration for credit access businesses, because expiration is addressed in separate amendments at §83.4002. In addition, an adopted amendment changes the title of §83.3009 from "License Status" to "License Inactivation or Voluntary Surrender," to provide more clarity about the subject matter of the section.

In §83.4002, adopted amendments specify the term, renewal process, and expiration date for a credit access business license. The amendments maintain the current one-year term and the current December 31 expiration date.

SUBCHAPTER A. RULES FOR REGULATED LENDERS

DIVISION 3. APPLICATION PROCEDURES

7 TAC §83.309

The amendments in 7 TAC, Chapter 83, Subchapter A are adopted under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules to administer Title 4 and Chapter 14 of the Texas Finance Code. The amendments to 7 TAC, Chapter 83, Subchapter B are adopted under Texas Finance Code, §393.622, which authorizes the commission to adopt rules necessary to enforce and administer Texas Finance Code, Chapter 393, Subchapter G. In addition, the adopted amendments in §83.403 and §83.4002 are authorized under Texas Finance Code, §14.112 (as added by HB 1442), which authorizes the commission to set license and registration terms.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapters 14, 342, and 393.

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 16, 2019.

TRD-201902688

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Effective date: September 5, 2019
Proposal publication date: July 5, 2019
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DIVISION 4. LICENSE

7 TAC §83.403

The amendments in 7 TAC, Chapter 83, Subchapter A are adopted under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules to administer Title 4 and Chapter 14 of the Texas Finance Code. In addition, the adopted amendments in §83.403 are authorized under Texas Finance
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 16, 2019.

TRD-201902691
Matthew J. Nance
Deputy General Counsel
Office of Consumer Credit Commissioner
Effective date: September 5, 2019
Proposal publication date: July 5, 2019
For further information, please call: (512) 936-7640

CHAPTER 84. MOTOR VEHICLE INSTALLMENT SALES

The Finance Commission of Texas (commission) adopts amendments in §84.309 (relating to Debt Cancellation Agreements Requiring Insurance) and §84.610 (relating to License Inactivation or Voluntary Surrender) to 7 TAC, Chapter 84, concerning Motor Vehicle Installment Sales. Additionally, the commission adopts new §84.617 (relating to License Term, Renewal, and Expiration), in 7 TAC, Chapter 84, concerning Motor Vehicle Installment Sales.

The commission adopts the amendments and new rule without changes to the proposed text as published in the July 5, 2019, issue of the Texas Register (44 TexReg 3403).

The commission received two written comments on the proposal, from the Texas Automobile Dealers Association (TADA) and the Texas Independent Automobile Dealers Association (TIADA). The commission’s responses to these comments are discussed after the discussion of adopted new §84.617.

In general, the purpose of the adopted amendments and new rule in 7 TAC, Chapter 84 is to implement provisions related to licensing and administration in HB 1442, the Sunset legislation for the Office of Consumer Credit Commissioner (OCCC). The Texas Legislature passed HB 1442 in the 2019 legislative session.

HB 1442 continues the OCCC’s existence as a state agency, and was passed in response to recommendations of the Texas Sunset Advisory Commission. The bill addresses two issues that are relevant to this adoption. First, the bill authorizes the commission to set the term of each license or registration issued by the OCCC, for a period up to two years. Second, the bill removes current provisions from the Texas Finance Code stating that certain matters may be appealed to the commission, while maintaining a respondent’s opportunity for judicial review in district court under the Administrative Procedure Act.

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review and then held a stakeholder meeting and webinar regarding the rule changes. Several stakeholders provided verbal feedback during the stakeholder meeting, and the OCCC received written precomments from stakeholders. The agency believes that the participation of stakeholders in the rulemaking process is invaluable in presenting balanced proposals.

In general, this adoption is intended to fulfill two purposes. First, adopted amendments specify the license term, renewal process, and expiration date for motor vehicle sales finance licensees.
These amendments implement Texas Finance Code, §14.112 (as added by HB 1442), which provides that the commission shall prescribe the licensing or registration period for licenses and registrations issued by the OCCC. Second, an adopted amendment specifies procedures for appealing the denial of a debt cancellation agreement. In addition, the amendments modernize or remove obsolete language.

The individual purposes of the adopted amendments and new rule in Chapter 84 are provided in the following paragraphs.

In §84.309, adopted amendments specify the procedure for appealing the denial of a debt cancellation agreement in a contested case. The amendments remove references to appealing a denial to the commission. This is based on Texas Finance Code, §354.005(d) (as amended by HB 1442), which specifies that the denial of a debt cancellation agreement may be appealed to district court after an opportunity for a hearing, and removes references to appealing the denial to the commission.

In §84.610, an adopted amendment removes a subsection dealing with the date of license expiration for motor vehicle sales finance licensees, because expiration is addressed separately in new §84.617. Adopted amendments replace the use of the word "commissioner" with the agency's acronym, "OCCC." The agency believes that the use of "OCCC" will provide better clarity to the rules when the context calls for action by the agency, as opposed to the commissioner specifically. In addition, an adopted amendment changes the title of §84.610 from "License Status" to "License Inactivation or Voluntary Surrender," to provide more clarity about the subject matter of the section.

Adopted new §84.617 specifies the term, renewal process, and expiration date for a motor vehicle sales finance license. The new rule maintains the current one-year term, and changes the expiration date from July 31 to October 31. Subsections (c) and (d) explain that expiration will occur after a notice of delinquency is sent to the licensee by mail or e-mail. The language on methods of sending the notice of delinquency is substantially similar to the rule previously located at §84.610(d). Subsection (e) also explains that an expired license may be reinstated during the 180-day period described in Texas Finance Code, Chapter 349. A temporary provision explains that licenses obtained or renewed in 2019 will be effective until October 31, 2020. The OCCC has determined that the October 31 date will better align with the OCCC's fiscal year, and will better enable the operational efficiencies associated with staggering different types of license and registration renewals throughout the year.

The official comments from both TADA and TIADA express support for a two-year license term. While the OCCC is open to considering two-year renewal in the future, the OCCC has several concerns. Currently, the motor vehicle sales finance licensee population sees a large amount of yearly turnover, with many new licensees coming into business each year and many other licensees expiring. Based on this turnover, the OCCC is concerned that a two-year renewal period would create additional complex and difficult situations pertaining to communications between licensees who have experienced changes in status or location and the OCCC. The OCCC is also concerned that the process of sending notifications to different portions of the licensed population on different dates would create confusion for licensees, who are most familiar with yearly renewal occurring on a common date for each license type. In addition, the OCCC is concerned about the additional costs that would result for the agency, including costly system modifications and fundamental changes to budget structure. For these reasons, adopted §84.617 maintains the current one-year license period.

The official comment from TADA recommends that the text of §84.617 allow the OCCC to set the license term for a period up to two years. Under TADA's suggested language, the rule would state that a license "may be renewed annually or some other stated date that is no longer than two years, as provided by the agency's notice, to remain effective." The commission disagrees with this suggestion. Under Texas Finance Code, §14.112 (as added by HB 1442), the "finance commission by rule shall prescribe the licensing or registration period for licenses and registrations issued under" various chapters, including Chapter 348 of the Finance Code. Based on this statutory language, it is appropriate for the rule to specify the one-year license term.

In §84.617(c), the official comment from TADA recommends replacing "or" with "and," so that the OCCC would be required to send the notice of delinquency by both mail and e-mail at least 16 days before expiration. The commission disagrees with this suggestion. The new rule text at §84.617(c), which allows the notice to be sent by e-mail or mail, is substantially similar to the commission's previously adopted rule at §84.610(d). Currently, the OCCC sends the notice of delinquency by e-mail to those licensees that have provided an e-mail address, and by mail to licensees that have not provided an e-mail address. This is consistent with the OCCC's practice of encouraging the use of online electronic communication to make its licensing processes more efficient.

**SUBCHAPTER C. INSURANCE AND DEBT CANCELLATION AGREEMENTS**

7 TAC §84.309

The amendments in 7 TAC, Chapter 84 are adopted under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules to administer Title 4 and Chapter 14 of the Texas Finance Code. In addition, adopted new §84.617 is authorized under Texas Finance Code, §14.112 (as added by HB 1442), which authorizes the commission to set license and registration terms.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapters 14, 348, 353, and 354.

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 16, 2019.

TRD-201902692

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Effective date: September 5, 2019

Proposal publication date: July 5, 2019

For further information, please call: (512) 936-7640

SUBCHAPTER F. LICENSING

7 TAC §84.610, §84.617

The amendments and new rule in 7 TAC, Chapter 84 are adopted under Texas Finance Code, §11.304, which authorizes the Fi-
In general, the purpose of the adopted amendments to 7 TAC, Chapter 85, Subchapter A is to implement the pawnshop-related provisions of HB 1442, the Sunset legislation for the Office of Consumer Credit Commissioner (OCCC). The Texas Legislature passed HB 1442 in the 2019 legislative session.

HB 1442 continues the OCCC’s existence as a state agency, and was passed in response to recommendations of the Texas Sunset Advisory Commission. The bill's amendments to Chapter 371 relate mainly to four issues. First, the bill provides that pawnshops may, but are not required to, participate in the pawnshop employee license program. Second, the bill removes provisions stating that pawnshop and pawnshop employee license applicants must be of “good moral character.” Third, the bill authorizes the commission to set the term of pawnshop and pawnshop employee licenses for a period up to two years. Fourth, the bill authorizes the commission to set pawnshop employee license fee amounts in accordance with Texas Finance Code, §14.107, replacing current statutory provisions containing a $25 initial fee and a $15 annual renewal fee.

The OCCC distributed an early precommitment draft of proposed changes to interested stakeholders for review and then held a stakeholder meeting and webinar regarding the rule changes. The OCCC did not receive any informal written precomments on the rule text draft, although several stakeholders provided verbal feedback during the stakeholder meeting. The agency believes that the participation of stakeholders in the rulemaking process is invaluable in presenting balanced proposals.

The adopted amendments are intended to fulfill the following purposes: (1) to implement the optional pawnshop employee license program; (2) to amend pawnshop employee license fees to $50 for a new license and $25 for a renewal; (3) to clarify provisions on license term, renewal, and expiration, while maintaining the current June 30 expiration date for pawnshops and pawnshop employees; and (4) to remove references to "good moral character" as a licensing standard, while maintaining the OCCC's review of an applicant's character and fitness. In addition, the adopted amendments modernize or remove obsolete language.

The individual purposes of the adopted amendments to each section are provided in the following paragraphs.

In §85.102, an adopted amendment to the definition of "pawnbroker" removes a statement that a pawnbroker may include a pawnshop employee, and adds a reference to the statutory reference of "pawnbroker" in Texas Finance Code, §371.003(6). Another amendment in §85.102 adds a definition of the term "pawnshop employee license program," explaining that this term refers to the optional licensing program under Texas Finance Code, Chapter 371, Subchapter C.

Adopted amendments to §85.104 specify license terms and expiration dates for pawnshops and pawnshop employees. These amendments implement Texas Finance Code, §14.112, as added by HB 1442. Section 14.112 provides that the commission shall prescribe the licensing period for licenses issued under Chapter 371, not to exceed two years. The amendments to §85.104 maintain the current one-year license period, as well as the current June 30 expiration date, for pawnshops and pawnshop employees. An amendment at §85.104(c), sets the due date for the annual license fee at May 31. This is based on Texas Finance Code, §371.064 and §371.106, as amended by HB 1442, which require licensees to pay a license fee not later than the 30th day before expiration of the license. Adopted...
§85.104(e) explains that at the time of renewal, a pawnshop may provide written notification to participate in the pawnshop employee license program. This is based on Texas Finance Code, §371.101(a-1), as amended by HB 1442, which explains that a pawnbroker may provide written notification to participate at the time of renewal. In §85.104, other amendments provide additional clarity to the rule text.

In §85.202, an adopted amendment explains that a pawnshop may provide a notification to participate in the pawnshop employee license program at the time of the license application. The official comment from the Texas Association of Pawnbrokers states: "Referring to §85.104(e) and §85.202: Consider a check box utilizing the ALECS online licensing portal, rather than having a pawnshop provide written notification to participate in the pawnshop employee license program." The OCCC agrees that it is appropriate to allow pawnshops to participate in the program by selecting an option in the OCCC's online licensing system. The OCCC intends to allow online pawnshop license applicants to select a radio button (similar to a checkbox) indicating that they wish to participate. During an annual renewal and other times that the OCCC requests, the OCCC also intends to allow licensed pawnshops to indicate their participation through a drop-down menu in the online system. The OCCC intends to implement these changes by the end of calendar year 2019. Until these changes are implemented, the OCCC intends to allow pawnshops to notify the OCCC of their participation through email or mail. The commission believes that the new rule text at §85.104(e) and §85.202(a)(2)(I) appropriately provides that a pawnshop may participate by providing written notification. This language is based on the statutory text of Texas Finance Code, §371.101(a) and (a-1) (as amended by HB 1442), which describes the written notification to participate in the program. For purposes of the statute and rule, a pawnshop can provide this written notification by selecting an option in the online licensing system. For this reason, the commission believes that a change to the proposed rule text on this issue is unnecessary.

Adopted amendments to §85.206 remove references to "good moral character" as a licensing standard for pawnshops, while maintaining references to the OCCC's review of the agent's character and fitness. These amendments implement HB 1442's amendments to Texas Finance Code, §371.052, which remove provisions stating that pawnshop license applicants must be of "good moral character," while maintaining references to review of character and fitness. The statutory amendment is based on a recommendation of Sunset Advisory Commission staff, which stated that "good moral character" is a subjective standard that should be removed from the statute. An amendment at §85.206(f)(1)(A)(iv) explains that the OCCC will review an applicant's criminal history as part of its review of character and fitness. Throughout §85.206, amendments replace the use of the word "commissioner" with the agency's acronym, "OCCC." The agency believes that the use of "OCCC" will provide better clarity to the rules when the context calls for action by the agency, as opposed to the commissioner specifically.

In §85.210, an adopted amendment removes a subsection dealing with the date of license expiration, because expiration is addressed in the separate rule at §85.104. In addition, an amendment changes the title of §85.210 from "License Status" to "License Inactivation or Voluntary Surrender," to provide more clarity about the subject matter of the section.

In §85.302, an adopted amendment specifies that the requirement for a pawnshop to notify the OCCC of a pawnshop employee's termination applies if the pawnshop participates in the pawnshop employee license program.

In §85.303, an adopted amendment specifies that the requirement for a pawnshop to notify the OCCC of a pawnshop employee's hiring applies if the pawnshop participates in the pawnshop employee license program.

Adopted amendments to §85.304 remove references to "good moral character" as a licensing standard for pawnshop employees, while maintaining references to the OCCC's review of an applicant's character and fitness. These amendments implement HB 1442's amendments to Texas Finance Code, §371.102, which remove provisions stating that pawnshop employee license applicants must be of "good moral character," while maintaining references to review of character and fitness. The amendments to §85.304 are similar to the amendments to §85.206 described earlier in this adoption.

Adopted amendments to §85.306 update fee amounts for pawnshop employee licenses. For the initial investigation and annual fee, an amendment contains a $50 fee. For the annual renewal fee, an amendment contains a $25 fee. These amendments implement HB 1442's amendments to Texas Finance Code, §371.103 and §371.106, which authorize the commission to set pawnshop employee license fee amounts in accordance with Texas Finance Code, §14.107 in an amount necessary to recover the costs of administration.

The OCCC has determined that the adopted fee changes in §85.306 are necessary in order to ensure that pawnshop employee license fees appropriately fund the pawnshop employee license program. The commission is authorized to establish reasonable and necessary fees for the OCCC to carry out its functions under Chapter 371, and to set licensing fees under Chapter 371 at amounts necessary to recover the costs of administering the chapter. Tex. Fin. Code §14.107(a)-(b). As a self-directed, semi-independent agency, the OCCC is responsible for all direct and indirect costs of its operation, and is authorized to set fee amounts as necessary to carry out its functions. Tex. Fin. Code §16.003(b)-(c).

The OCCC performed an analysis of its current costs, determining how much cost should be allocated to each regulated license and registration type. This analysis showed that $285,000 of yearly costs are currently associated with licensing and regulation of pawnshop employees. The OCCC also estimates that 30% of pawnshops will opt to participate in the optional pawnshop employee license program, and therefore, as a result of HB 1442, the total number of pawnshop employees is estimated to decrease by approximately 70%. Some costs of the pawnshop employee license program will stay the same, while others will decrease. The OCCC's initial analysis suggests that annual costs for pawnshop employees will decrease to approximately $120,000. Based on this estimate, the OCCC has determined that a $50 investigation and annual fee, with a $25 annual renewal fee, would help ensure that revenues cover the cost of the pawnshop employee license program over time.

An adopted amendment at §85.306(d) specifies that a pawnshop employee must provide relocation notice to the OCCC in accordance with the OCCC's instructions.

In §85.308, adopted amendments specify that the requirement to maintain pawnshop employee records applies if the pawnshop participates in the pawnshop employee license program.
In §85.601, which describes denial, suspension, or revocation based on criminal history, adopted amendments remove references to "good moral character." As with the amendments to §§85.206 and §85.304, the amendments to §85.601 maintain references to the OCCC's review of character and fitness.

In §85.603, an adopted amendment updates a reference to §85.104 as amended by this adoption.

In §85.604, which describes enforcement actions that the OCCC may take against a pawnbroker or pawnshop employee, adopted amendments explain that the requirements imposed on pawnbrokers apply to all pawnbrokers, and the requirements imposed on pawnshop employees apply to employees of pawnbrokers that participate in the pawnshop employee license program.

In §85.701, which describes enforcement actions that the OCCC may take for failure to file a timely pawnshop employee license application, adopted amendments explain that the requirements imposed on pawnbrokers apply to all pawnbrokers, and the requirements imposed on pawnshop employees apply to employees of pawnbrokers that participate in the pawnshop employee license program.

In §85.702, which describes enforcement actions that the OCCC may take for accepting prohibited merchandise, adopted amendments explain that the requirements imposed on pawnbrokers apply to all pawnbrokers, and the requirements imposed on pawnshop employees apply to employees of pawnbrokers that participate in the pawnshop employee license program.

Regarding the effective date of these amendments, Texas Finance Code, §371.006 contains a provision requiring notice to licensees concerning rulemaking for the pawnshop industry. In order to comply with this statutory notice requirement, the delayed effective date for the changes included in this adoption will be October 1, 2019.

DIVISION 1. GENERAL PROVISIONS

7 TAC §§85.102, 85.104

These amendments are adopted under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules to administer Title 4 of the Texas Finance Code. Texas Finance Code, §371.006 also authorizes the commission to adopt rules for enforcement of Chapter 371 (the Texas Pawnshop Act). The adopted changes in §85.104 are authorized under Texas Finance Code, §14.112 (as added by HB 1442), which authorizes the commission to set license terms. The adopted fee changes in §§85.306 are authorized under Texas Finance Code, §§14.107, 371.103, and 371.106 (as amended by HB 1442), which authorize the commission to set license fees for pawnshop employee licenses.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapters 14 and 371.

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 16, 2019.
TRD-201902755

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Effective date: October 1, 2019
Proposal publication date: July 5, 2019
For further information, please call: (512) 936-7640

DIVISION 2. PAWNSHOP LICENSE

7 TAC §§85.202, 85.206, 85.210

These amendments are adopted under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules to administer Title 4 of the Texas Finance Code. Texas Finance Code, §371.006 also authorizes the commission to adopt rules for enforcement of Chapter 371 (the Texas Pawnshop Act). The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapters 14 and 371.

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 16, 2019.
TRD-201902756
Matthew J. Nance
Deputy General Counsel
Office of Consumer Credit Commissioner
Effective date: October 1, 2019
Proposal publication date: July 5, 2019
For further information, please call: (512) 936-7640

DIVISION 3. PAWNSHOP EMPLOYEE LICENSE

7 TAC §§85.302 - 85.304, 85.306, 85.308

These amendments are adopted under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules to administer Title 4 of the Texas Finance Code. Texas Finance Code, §371.006 also authorizes the commission to adopt rules for enforcement of Chapter 371 (the Texas Pawnshop Act). The adopted fee changes in §§85.306 are authorized under Texas Finance Code, §§14.107, 371.103, and 371.106 (as amended by HB 1442), which authorize the commission to set license fees for pawnshop employee licenses.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapters 14 and 371.

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 16, 2019.
TRD-201902757
DIVISION 6. LICENSE REVOCATION, SUSPENSION, AND SURRENDER

7 TAC §§85.601, 85.603, 85.604

These amendments are adopted under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules to administer Title 4 of the Texas Finance Code. Texas Finance Code, §371.006 also authorizes the commission to adopt rules for enforcement of Chapter 371 (the Texas Pawnshop Act).

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapters 14 and 371.

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 12, 2019.
TRD-201902758
Matthew J. Nance
Deputy General Counsel
Office of Consumer Credit Commissioner
Effective date: October 1, 2019
Proposal publication date: July 5, 2019
For further information, please call: (512) 936-7640

DIVISION 7. ENFORCEMENT; PENALTIES

7 TAC §§85.701, 85.702

These amendments are adopted under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules to administer Title 4 of the Texas Finance Code. Texas Finance Code, §371.006 also authorizes the commission to adopt rules for enforcement of Chapter 371 (the Texas Pawnshop Act).

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapters 14 and 371.

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 12, 2019.
TRD-201902759
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Office of Consumer Credit Commissioner
Effective date: October 1, 2019
Proposal publication date: July 5, 2019
For further information, please call: (512) 936-7640

SUBCHAPTER B. RULES FOR CRAFTED PRECIOUS METAL DEALERS
DIVISION 1. REGISTRATION PROCEDURES

7 TAC §85.1007

The Finance Commission of Texas (commission) adopts amendments to §85.1007 (relating to Registration Term, Renewal, and Expiration) in TAC, Chapter 85, concerning Pawnshops and Crafted Precious Metal Dealers.

The commission adopts the amendments without changes to the proposed text as published in the July 5, 2019, issue of the Texas Register (44 TexReg 3413). The amended rule will not be republished.

The commission received no written comments on the proposal.

In general, the purpose of the adopted amendments in 7 TAC, Chapter 85, Subchapter B is to implement provisions related to licensing and administration in HB 1442, the Sunset legislation for the Office of Consumer Credit Commissioner (OCCC). The Texas Legislature passed HB 1442 in the 2019 legislative session.

HB 1442 continues the OCCC's existence as a state agency, and was passed in response to recommendations of the Texas Sunset Advisory Commission. The bill authorizes the commission to set the term of each license or registration issued by the OCCC, for a period up to two years.

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review and then held a stakeholder meeting and webinar regarding the rule changes. The agency believes that the participation of stakeholders in the rulemaking process is invaluable in presenting balanced proposals.

The adopted amendments specify the registration term, renewal process, and expiration date for crafted precious metal dealers. These amendments implement Texas Finance Code, §14.112 (as added by HB 1442), which provides that the commission shall prescribe the licensing or registration period for licenses and registrations issued by the OCCC. In addition, the amendments modernize or remove obsolete language.

The individual purposes of the adopted amendments to Chapter 85, Subchapter B are provided in the following paragraph.

The individual purposes of the adopted amendments to Chapter 85, Subchapter B are provided in the following paragraph.

In §85.1007, adopted amendments specify the term, renewal process, and expiration date for a crafted precious metal dealer registration. The amendments maintain the current one-year term and the current December 31 expiration date. Additional amendments specify that December 31 is the due date for renewal fees, and that a registration for a temporary location is effective from the date of its issuance until it expires on December 31.

The amendments to 7 TAC, Chapter 85 are adopted under Texas Occupations Code, §1956.0611, which authorizes the commission to adopt rules necessary to implement Texas Occupations Code, Chapter 1956, Subchapter B. In addition, the adopted amendments in §85.1007 are authorized under Texas Finance Code, §14.112 (as added by HB 1442), which authorizes the commission to set license and registration terms.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 14; and Texas Occupations Code, Chapter 1956.
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 16, 2019.
TRD-201902694
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Deputy General Counsel
Office of Consumer Credit Commissioner
Effective date: September 5, 2019
Proposal publication date: July 5, 2019
For further information, please call: (512) 936-7640

CHAPTER 86. RETAIL CREDITORS
SUBCHAPTER A. REGISTRATION OF RETAIL CREDITORS

7 TAC §86.102, §86.103

The Finance Commission of Texas (commission) adopts amendments to §86.102 (relating to Fees) in 7 TAC, Chapter 86, concerning Retail Creditors. Additionally, the commission adopts new §86.103 (relating to Registration Term, Renewal, and Expiration) in 7 TAC, Chapter 86, concerning Retail Creditors.

The commission adopts the amendments and new rule without changes to the proposed text as published in the July 5, 2019, issue of the Texas Register (44 TexReg 3414). The rules will not be republished.

The commission received no written comments on the proposal.

In general, the purpose of the adopted amendments and new rule in 7 TAC, Chapter 86 is to implement provisions related to licensing and administration in HB 1442, the Sunset legislation for the Office of Consumer Credit Commissioner (OCCC). The Texas Legislature passed HB 1442 in the 2019 legislative session.

HB 1442 continues the OCCC’s existence as a state agency, and was passed in response to recommendations of the Texas Sunset Advisory Commission. The bill authorizes the commission to set the term of each license or registration issued by the OCCC, for a period up to two years.

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review and then held a stakeholder meeting and webinar regarding the rule changes. The agency believes that the participation of stakeholders in the rulemaking process is invaluable in presenting balanced proposals.

The adopted amendments specify the registration term, renewal process, and expiration date for registered creditors. These amendments implement Texas Finance Code, §14.112 (as added by HB 1442), which provides that the commission shall prescribe the licensing or registration period for licenses and registrations issued by the OCCC.

The individual purposes of the adopted amendments and new rule in Chapter 86 are provided in the following paragraphs.

In §86.102, an adopted amendment removes a paragraph stating that the registration fee must be paid within 60 days of commencing operations, while another amendment adds a statement that a person must pay a $250 late filing fee under Chapter 349 of the Texas Finance Code. These adopted amendments would ensure that the rule provides a clear reference to the statutory process for late registration under Chapter 349. Another adopted amendment removes a reference to the October 31 due date for the annual registration fee, because the due date is addressed separately in new §86.103.

Adopted new §86.103 specifies the term, renewal process, and expiration date for registered creditors. The new rule maintains the current one-year term, and specifies that registrations expire on November 30. Adopted §86.103 also specifies the process for late renewal of an expired registration.

The amendments and new rule in 7 TAC, Chapter 86 are adopted under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to administer Title 4 and Chapter 14 of the Texas Finance Code. In addition, adopted new §86.103 is authorized under Texas Finance Code, §14.112 (as added by HB 1442), which authorizes the commission to set license and registration terms.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapters 14, 345, and 347.

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 16, 2019.
TRD-201902696
Matthew J. Nance
Deputy General Counsel
Office of Consumer Credit Commissioner
Effective date: September 5, 2019
Proposal publication date: July 5, 2019
For further information, please call: (512) 936-7640

CHAPTER 87. TAX REFUND ANTICIPATION LOANS
SUBCHAPTER A. REGISTRATION PROCEDURES

7 TAC §87.107

The Finance Commission of Texas (commission) adopts amendments to §87.107 (relating to Registration Term, Renewal, and Expiration) in 7 TAC, Chapter 87, concerning Tax Refund Anticipation Loans.

The commission adopts the amendments without changes to the proposed text as published in the July 5, 2019, issue of the Texas Register (44 TexReg 3416). The amended rule will not be republished.

In general, the purpose of the adopted amendments in 7 TAC, Chapter 87 is to implement provisions related to licensing and administration in HB 1442, the Sunset legislation for the Office of Consumer Credit Commissioner (OCCC). The Texas Legislature passed HB 1442 in the 2019 legislative session.

HB 1442 continues the OCCC’s existence as a state agency, and was passed in response to recommendations of the Texas Sunset Advisory Commission. The bill authorizes the commission to set the term of each license or registration issued by the OCCC, for a period up to two years.
The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review and then held a stakeholder meeting and webinar regarding the rule changes. The agency believes that the participation of stakeholders in the rulemaking process is invaluable in presenting balanced proposals.

The adopted amendments specify the registration term, renewal process, and expiration date for tax refund anticipation loan facilitators. These amendments implement Texas Finance Code, §14.112 (as added by HB 1442), which provides that the commission shall prescribe the licensing or registration period for licenses and registrations issued by the OCCC. In addition, the amendments modernize or remove obsolete language.

The individual purposes of the adopted amendments to Chapter 87 are provided in the following paragraph.

In §87.107, adopted amendments specify the term, renewal process, and expiration date for a refund anticipation loan facilitator registration. The amendments maintain the current one-year term and the current December 31 expiration date. In addition, adopted amendments replace the use of the word "commissioner" with the agency's acronym, "OCCC." The agency believes that the use of "OCCC" will provide better clarity to the rules when the context calls for action by the agency, as opposed to the commissioner specifically.

The commission received no written comments on the proposal.

The amendments in 7 TAC, Chapter 87 are adopted under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules to administer Title 4 and Chapter 14 of the Texas Finance Code. In addition, the adopted amendments in §87.107 are authorized under Texas Finance Code, §14.112 (as added by HB 1442), which authorizes the commission to set license and registration terms.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapters 14 and 352.

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 16, 2019.

TRD-201902700
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Deputy General Counsel
Office of Consumer Credit Commissioner
Effective date: September 5, 2019
Proposal publication date: July 5, 2019
For further information, please call: (512) 936-7640

CHAPTER 88. CONSUMER DEBT MANAGEMENT SERVICES
SUBCHAPTER B. ANNUAL REQUIREMENTS

7 TAC §88.201
The Finance Commission of Texas (commission) adopts amendments to §88.201 (relating to Registration Term, Renewal, and Expiration) in 7 TAC, Chapter 88, concerning Consumer Debt Management Services.

The commission adopts the amendments without changes to the proposed text as published in the July 5, 2019, issue of the Texas Register (44 TexReg 3417). The rule will not be republished.

The commission received no written comments on the proposal.

In general, the purpose of the adopted amendments in 7 TAC, Chapter 88 is to implement provisions related to licensing and administration in HB 1442, the Sunset legislation for the Office of Consumer Credit Commissioner (OCCC). The Texas Legislature passed HB 1442 in the 2019 legislative session.

HB 1442 continues the OCCC’s existence as a state agency, and was passed in response to recommendations of the Texas Sunset Advisory Commission. The bill authorizes the commission to set the term of each license or registration issued by the OCCC, for a period up to two years.

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review and then held a stakeholder meeting and webinar regarding the rule changes. The agency believes that the participation of stakeholders in the rulemaking process is invaluable in presenting balanced proposals.

The adopted amendments specify the registration term, renewal process, and expiration date for debt management services providers. These amendments implement Texas Finance Code, §14.112 (as added by HB 1442), which provides that the commission shall prescribe the licensing or registration period for licenses and registrations issued by the OCCC.

The individual purposes of the adopted amendments are provided in the following paragraph.

In §88.201, adopted amendments specify the term, renewal process, and expiration date for a debt management services provider registration. The amendments maintain the current one-year term, and specify that a registration expires on January 31.

The amendments to 7 TAC, Chapter 88 are adopted under Texas Finance Code, §394.214, which authorizes the commission to adopt rules to carry out Texas Finance Code, Chapter 394, Subchapter C. In addition, the adopted amendments in §88.201 are authorized under Texas Finance Code, §14.112 (as added by HB 1442), which authorizes the commission to set license and registration terms.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapters 14 and 394.

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 16, 2019.

TRD-201902703
Matthew J. Nance
Deputy General Counsel
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Effective date: September 5, 2019
Proposal publication date: July 5, 2019
For further information, please call: (512) 936-7640

CHAPTER 89. PROPERTY TAX LENDERS
The Finance Commission of Texas (commission) adopts amendment to §89.309 (relating to License Inactivation or Voluntary Surrender) and §89.403 (relating to License Term, Renewal, and Expiration) in 7 TAC, Chapter 89, concerning Property Tax Lenders.

The commission adopts the amendments without changes to the proposed text as published in the July 5, 2019, issue of the Texas Register (44 TexReg 3418). The rules will not be republished.

The commission received no written comments on the proposal.

In general, the purpose of the adopted amendments in 7 TAC, Chapter 89 is to implement provisions related to licensing and administration in HB 1442, the Sunset legislation for the Office of Consumer Credit Commissioner (OCCC). The Texas Legislature passed HB 1442 in the 2019 legislative session.

HB 1442 continues the OCCC’s existence as a state agency, and was passed in response to recommendations of the Texas Sunset Advisory Commission. The bill authorizes the commission to set the term of each license or registration issued by the OCCC, for a period up to two years.

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review and then held a stakeholder meeting and webinar regarding the rule changes. The agency believes that the participation of stakeholders in the rulemaking process is invaluable in presenting balanced proposals.

The adopted amendments specify the license term, renewal process, and expiration date for property tax lenders. These amendments implement Texas Finance Code, §14.112 (as added by HB 1442), which provides that the commission shall prescribe the licensing or registration period for licenses and registrations issued by the OCCC. In addition, the amendments modernize or remove obsolete language.

The individual purposes of the adopted amendments are provided in the following paragraphs.

In §89.309, an adopted amendment removes a subsection dealing with the date of license expiration for property tax lenders, because expiration is addressed in separate amendments at §89.403. Adopted amendments replace the use of the word “commissioner” with the agency’s acronym, “OCCC.” The agency believes that the use of “OCCC” will provide better clarity to the rules when the context calls for action by the agency, as opposed to the commissioner specifically. In addition, an adopted amendment changes the title of §89.309 from “License Status” to “License Inactivation or Voluntary Surrender,” to provide more clarity about the subject matter of the section.

In §89.403, adopted amendments specify the term, renewal process, and expiration date for a property tax lender license. The amendments maintain the current one-year term and the current December 31 expiration date. New subsection (e) also explains that an expired license may be reinstated during the 180-day period described in Texas Finance Code, Chapter 349.

SUBCHAPTER C. APPLICATION PROCEDURES

7 TAC §89.309

The amendments in 7 TAC, Chapter 89 are adopted under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules to administer Title 4 and Chapter 14 of the Texas Finance Code. In addition, the adopted amendments in §89.403 are authorized under Texas Finance Code, §14.112 (as added by HB 1442), which authorizes the commission to set license and registration terms.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapters 14 and 351.

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 16, 2019.

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Effective date: September 5, 2019
Proposal publication date: July 5, 2019
For further information, please call: (512) 936-7640

SUBCHAPTER D. LICENSE

7 TAC §89.403

The amendments in 7 TAC, Chapter 89 are adopted under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules to administer Title 4 and Chapter 14 of the Texas Finance Code. In addition, the adopted amendments in §89.403 are authorized under Texas Finance Code, §14.112 (as added by HB 1442), which authorizes the commission to set license and registration terms.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapters 14 and 351.

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 16, 2019.

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Effective date: September 5, 2019
Proposal publication date: July 5, 2019
For further information, please call: (512) 936-7640

TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 130. PODIATRIC MEDICINE PROGRAM

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 130, Subchapter C, §§130.30 - 130.32; Subchapter D, §130.40; and §§130.42 - 130.44; Subchapter E, §130.51; Subchapter F, §130.60; and Subchapter G, §130.72; and adopts new rules at 16 TAC, Chapter 130, Sub-
chapter D, §130.49; Subchapter F, §130.61; and Subchapter G, §130.74, regarding the Podiatric Medicine Program, without changes to the proposed text as published in the May 17, 2019, issue of the Texas Register (44 TexReg 2433). These adopted rules will not be republished. Subchapter E, §130.58 is adopted with non-substantive changes and will be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The adopted rules under 16 TAC, Chapter 130 implement Texas Occupations Code, Chapter 202, Podiatrists. The adopted rules are necessary to implement statutory requirements, enacted legislation, and Sunset Advisory Commission recommendations.

The adopted rules implement a change from a one-year license to a two-year license term, provide for a reduction in license fees, and provide for the orderly transition between the license terms. The Sunset Advisory Commission recommended, along with the transfer of the Podiatric Medicine program from the Texas State Board of Podiatric Medical Examiners, that the Department be authorized to provide biennial license renewals. This brings the Doctor of Podiatric Medicine license term more in line with other similar health-related professions.

The adopted rules streamline and clarify certain provisions and bring the rules in line with current statutory requirements. These statutory requirements include implementing a voluntary charity care status as required by Texas Occupations Code, Chapter 112. Chapter 112 requires agencies to provide for reduced fees and continuing education requirements for certain retired health care practitioners whose only practice is voluntary charity care.

The adopted rules implement prescription monitoring guidelines for the responsible prescribing of opioids, benzodiazepines, barbiturates, or carisoprodol as required by House Bill 2561, 85th Legislature, Regular Session (2017), and Texas Health and Safety Code, Chapters 481 (Texas Controlled Substances Act) and 483 (Dangerous Drugs). House Bill 2561, the Texas State Board of Pharmacy Sunset bill, requires license holders who choose to prescribe opioids, benzodiazepines, barbiturates, or carisoprodol to access the Texas State Board of Pharmacy's Prescription Monitoring Program System, AWARxE, to review each patient's prescription history before prescribing.

The adopted rules also provide for the adoption of a penalty matrix by rule as required by House Bill 3078, 85th Legislature, Regular Session (2017), and Texas Occupations Code, Section 202.6011. This change implements another Sunset Advisory Commission recommendation from the Texas State Board of Podiatric Medical Examiners review.

SECTION-BY-SECTION SUMMARY

The adopted amendments regarding Subchapter C. Temporary Residency, §130.30 streamline provisions for Temporary Residency license requirements and applications by rewording certain provisions for clarity, adding statutory language into the rule, and creating consistency with other sections in the rule.

The adopted amendments to §130.31 allow Temporary Residency license holders to register with the U.S. Drug Enforcement Administration (DEA) to prescribe controlled substances.

The adopted amendments to §130.32 update the term currently used on the final year of residency memorandum of understanding from "Podiatry" to "Doctor of Podiatric Medicine."

The adopted amendments regarding Subchapter D. Doctor of Podiatric Medicine, §130.40 streamline the Doctor of Podiatric Medicine license requirements and applications by rewording certain provisions for clarity, adding statutory language into the rule, and creating consistency with other sections in the rule.

The adopted amendments to §130.42 change the license term for the Doctor of Podiatric Medicine license from a one-year license to a two-year license.

The adopted amendments to §130.43 streamline provisions for the Doctor of Podiatric Medicine Provisional License by rewording certain provisions for clarity, adding statutory language into the rule, and creating consistency with other sections in the rule.

The adopted amendments to §130.44 add opioid topics to the list of courses, classes, seminars, or workshops acceptable for fulfilling continuing medical education requirements, and reword certain provisions for clarity.

The adopted new §130.49 implements voluntary charity care status provisions as required by Texas Occupations Code, Chapter 112.

The adopted amendments regarding Subchapter E. Practitioner Responsibilities and Code of Ethics, §130.51 remove the prohibition on testimonials and provide clarity on terms that are not acceptable in advertisements.

The adopted new §130.58 implements specific guidelines for the responsible prescribing of controlled substances and dangerous drugs as required by Health and Safety Code, Chapters 481 and 483.

The adopted amendments regarding Subchapter F. Fees, §130.60 reduce the fee for the Doctor of Podiatric Medicine Initial and Renewal license to address the two-year license term and provide that there is no fee for voluntary charity care status.

The adopted new §130.61 provides for the orderly transition of licenses from a one-year to a two-year license term.

The adopted amendments regarding Subchapter G. Enforcement, §130.72 clarify that administrative penalties and sanctions may be instituted in accordance with the Department's enforcement plan.

The adopted new §130.74 outlines the penalty matrix as required by Texas Occupations Code, Section 202.6011.

PUBLIC COMMENTS

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the May 17, 2019, issue of the Texas Register (44 TexReg 2433). The deadline for public comments was June 17, 2019. During the 30-day public comment period the Department received two comments. The public comments received are summarized below.

Comment: One commenter expressed excitement about the changes made by the proposed rules.

Department Response: The Department appreciates the comment in support of the proposed rules. The proposed rules implement a change from a one-year license to a two-year license term, provide for a reduction in license fees, and provide for the orderly transition between the license terms.

The proposed rules streamline and clarify certain provisions and bring the rules in line with current statutory requirements, including implementing prescription monitoring guidelines as required by House Bill 2561, 85th Legislature, Regular Session (2017), and Texas Health and Safety Code, Chapters 481 (Texas Controlled Substances Act) and 483 (Texas Dangerous Drug Act).
The proposed rules also provide for the adoption of a penalty matrix by rule as required by House Bill 3078, 85th Legislature, Regular Session (2017), and Texas Occupations Code, Section 202.6011.

No change has been made to the proposed rules in response to this comment.

Comment: One commenter stated that the proposed rules appear to be onerous, difficult, unfunded and time consuming. The commenter questions what would happen if the Texas State Board of Pharmacy's Prescription Monitoring Program System were to collapse or breakdown. The commenter suggests that only fentanyl should be monitored since it is a major player in the risk of opioid related deaths.

Department Response: The Department appreciates the comment, however, for the reasons stated below, disagrees with the commenter's suggested changes. No change has been made to the proposed rules in response to this comment.

The proposed rules implement prescription monitoring guidelines for the responsible prescribing of opioids, benzodiazepines, barbiturates, and carisoprodol as required by House Bill 2561, 85th Legislature, Regular Session (2017), and Texas Health and Safety Code, Chapters 481 (Texas Controlled Substances Act) and 483 (Texas Dangerous Drug Act).

The law requires license holders who choose to prescribe opioids, benzodiazepines, barbiturates, or carisoprodol to access the Texas State Board of Pharmacy's Prescription Monitoring Program System, AWARRxE, to review each patient's prescription history before prescribing. The Prescription Monitoring Program (PMP) is funded through license fees and the legislative appropriations process. Mandatory funding provisions for the PMP are provided for in Texas Occupations Code §554.006. Additionally, House Bill 3284, 86th Legislature, Regular Session (2019) moved the mandatory compliance date for reviewing patient prescription history from September 1, 2019, to March 1, 2020, to allow all prescribers more time to prepare for this requirement.

Proposed rule §130.58(j) provides that the duty to access a patient's drug history report prior to prescribing opioids, benzodiazepines, barbiturates, or carisoprodol does not apply when the podiatrist or an employee of the podiatrist makes a good faith attempt to access the Texas State Board of Pharmacy's - Texas Prescription Monitoring Program (PMP) database but is unable to access the information because of circumstances outside the control of the podiatrist or an employee of the podiatrist and the good faith attempt and circumstances are clearly documented in the patient's medical record for prescribing a controlled substance.

For the reasons stated above, the Department disagrees with the commenter's suggested changes. No change has been made to the proposed rules in response to this comment.

ADVISORY BOARD RECOMMENDATIONS AND COMMISSION ACTION

The proposed rules were presented to and discussed by the Advisory Board at its meeting on April 15, 2019. The Advisory Board voted and recommended that the proposed rules be published in the Texas Register for public comment.

At its meeting on July 15, 2019, the Commission adopted the rules without changes as recommended by the Advisory Board.

16 TAC §§130.30 - 130.32

STATUTORY AUTHORITY

The amendments and new rules are adopted under Texas Occupations Code, Chapters 51 and 202, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51, 102, 112, and 202 and Texas Health and Safety Code, Chapters 181, 311, 481 and 483. No other statutes, articles, or codes are affected by the adoption.

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

Filed with the Office of the Secretary of State on August 12, 2019.
TRD-201902593
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Effective date: September 1, 2019
Proposal publication date: May 17, 2019
For further information, please call: (512) 463-3671

SUBCHAPTER D. DOCTOR OF PODIATRIC MEDICINE

16 TAC §§130.40, 130.42 - 130.44, 130.49

STATUTORY AUTHORITY

The amendments and new rules are adopted under Texas Occupations Code, Chapters 51 and 202, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51, 102, 112, and 202 and Texas Health and Safety Code, Chapters 181, 311, 481 and 483. No other statutes, articles, or codes are affected by the adoption.

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

Filed with the Office of the Secretary of State on August 12, 2019.
TRD-201902596
Brad Bowman
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Texas Department of Licensing and Regulation
Effective date: September 1, 2019
Proposal publication date: May 17, 2019
For further information, please call: (512) 463-3671
SUBCHAPTER E. PRACTITIONER RESPONSIBILITIES AND CODE OF ETHICS

16 TAC §130.51, §130.58

STATUTORY AUTHORITY

The amendments and new rules are adopted under Texas Occupations Code, Chapters 51 and 202, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51, 102, 112, and 202 and Texas Health and Safety Code, Chapters 181, 311, 481 and 483. No other statutes, articles, or codes are affected by the adoption.

§130.58. Standards for Prescribing Controlled Substances and Dangerous Drugs.

(a) Podiatrists shall comply with all federal and state laws and regulations relating to the ordering and prescribing of controlled substances in Texas, including but not limited to requirements set forth by the United States Drug Enforcement Administration, United States Food & Drug Administration, Texas Health & Human Services Commission, Texas Department of Public Safety, Texas State Board of Pharmacy, and the department.

(b) A podiatrist may not prescribe a controlled substance except for a valid podiatric medical purpose and in the course of podiatric practice.

(c) A podiatrist may not confer upon and may not delegate prescriptive authority (the act of prescribing or ordering a drug or device) to any other person.

(d) Responsible prescribing of controlled substances requires that a podiatrist consider certain elements prior to issuing a prescription, including, but not limited to:

   (1) reviewing the patient's Schedule II, III, IV, and V prescription drug history report by accessing the Texas State Board of Pharmacy's - Texas Prescription Monitoring Program (PMP) database;

   (2) the patient's date of birth matches with proper identification;

   (3) an initial comprehensive history and physical examination is performed;

   (4) the Schedule II prescription copy is in the chart or record found for each prescription written; and

   (5) alternative therapy (e.g. ultrasound, TENS) discussed and prescribed for the patient.

(e) Prior to prescribing opioids, benzodiazepines, barbiturates, or carisoprodol, a podiatrist shall review the patient's Schedule II, III, IV, and V prescription drug history report by accessing the Texas State Board of Pharmacy's - Texas Prescription Monitoring Program (PMP) database. Failure to do so is grounds for disciplinary action by the department.

(f) Prior to prescribing any controlled substance, a podiatrist may review the patient's Schedule II, III, IV, and V prescription drug history report by accessing the Texas State Board of Pharmacy's - Texas Prescription Monitoring Program (PMP) database.

(g) An employee of the podiatrist acting at the direction of the podiatrist may perform the function described in subsections (e) and (f) so long as that employee acts in compliance with HIPAA and only accesses information related to a particular patient of the podiatrist.

(h) A podiatrist or an employee of a podiatrist acting at the direction of the podiatrist may access the Texas State Board of Pharmacy's - Texas Prescription Monitoring Program (PMP) database to inquire about the podiatrist's own Schedule II, III, IV, and V prescription drug activity.

(i) If a podiatrist uses an electronic medical records management system (health information exchange) that integrates a patient's Schedule II, III, IV, and V prescription drug history data from the Texas State Board of Pharmacy's - Texas Prescription Monitoring Program (PMP) database, a review of the electronic medical records management system (health information exchange) with the integrated data shall be deemed compliant with the review of the Texas State Board of Pharmacy's - Texas Prescription Monitoring Program (PMP) database as required under §481.0764(a) of the Texas Health and Safety Code and these rules.

(j) The duty to access a patient's Schedule II, III, IV, and V prescription drug history report through the Texas State Board of Pharmacy's - Texas Prescription Monitoring Program (PMP) database as described in subsection (e) does not apply in the following circumstances:

   (1) it is clearly noted in the patient's medical record that the patient has a diagnosis of cancer or is in hospice care; or

   (2) the podiatrist or an employee of the podiatrist makes a good faith attempt to access the Texas State Board of Pharmacy's - Texas Prescription Monitoring Program (PMP) database but is unable to access the information because of circumstances outside the control of the podiatrist or an employee of the podiatrist and the good faith attempt and circumstances are clearly documented in the patient's medical record for prescribing a controlled substance.

(k) Information obtained from the Texas State Board of Pharmacy's - Texas Prescription Monitoring Program (PMP) database may be included in any form in the searched patient's medical record and is subject to any applicable state or federal confidentiality, privacy or security laws.

(l) In accordance with Texas Health and Safety Code Chapter 483, Subchapter E, a podiatrist may prescribe an opioid antagonist to a person at risk of experiencing an opioid-related drug overdose or to a family member, friend, or other person in a position to assist the person who is at risk of experiencing an opioid-related drug overdose. A podiatrist who prescribes an opioid antagonist shall document the basis for the prescription in the medical record of the person who is at risk of experiencing an opioid-related drug overdose.

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 12, 2019.

TRD-201902597

Brad Bowman

General Counsel

Texas Department of Licensing and Regulation

Effective date: September 1, 2019

Proposal publication date: May 17, 2019

For further information, please call: (512) 463-3671

SUBCHAPTER F. FEES

16 TAC §130.60, §130.61
CHAPTER 185. PHYSICIAN ASSISTANTS

22 TAC §§185.4, 185.6, 185.28

The Texas Medical Board (Board) adopts amendments to §185.4, concerning Procedural Rules for Licensure Applicants, §185.6, concerning Biennial Renewal of License and §185.28, concerning Retired License. The amendments to §185.4, §185.6, and §185.28 are adopted without changes to the proposed text as published in the April 19, 2019, issue of the Texas Register (44 TexReg 1957). The adopted amendments will not be republished.

The amendments to §185.4 repeal language under subsection (a) requiring that an applicant pass the jurisprudence examination within three attempts. The changes are made to align the rules with recent rule amendments repealing jurisprudence exam attempt limits for individuals applying for a medical license, made pursuant to Senate Bill 674 (85th Legislature, Regular Session). It is the Board’s interpretation of SB 674 that the legislature determined repeated attempts at passage of the jurisprudence examination has little to no weight as to competency to practice, was an unnecessary bar to licensure, and intended to eliminate unnecessary bars to licensure for all applicants applying for licensure under the Texas Medical Board and Advisory Board’s jurisdiction.

The amendments to §185.6 repeal language requiring physician assistants to inform the board of address changes within two weeks of the effective date of the address change. The language proposed for repeal conflicts with another rule found under §185.27, requiring physician assistants to report any address change to the board within 30 days after the change occurs.

The amendments to §185.28 repeal language requiring retired physician assistants who wish to return to active status to provide professional evaluations from each employment held before his or her license was placed on a retired status. As retired physician assistants are prohibited from practicing, any employment held during retirement would not relate to the physician assistant practice, and therefore have little relevancy in determining current competency at the time that the physician assistant seeks to reactive his or her license.

No comments were received on the proposed amendments.

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §204.101, which provides authority for the Board to recommend adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; enforce this subtitle; and establish rules related to licensure. The amendments are further proposed under the authority of Senate Bill 674 (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 19, 2019.
TRD-201902769
Scott Freshour
General Counsel
Texas Medical Board
Effective date: September 8, 2019
Proposal publication date: April 19, 2019
For further information, please call: (512) 305-7016
PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 461. GENERAL RULINGS

22 TAC §461.7

The Texas State Board of Examiners of Psychologists adopts the repeal of rule §461.7. License Statutes, without changes to the proposed text published in the June 21, 2019, issue of the Texas Register (44 TexReg 3058) and will not be republished.

The repealed rule is being adopted to ensure the protection and safety of the public.

The repealed rule as adopted in conjunction with the proposed new rule §461.7, is necessary to reduce the regulatory burden associated with moving a license to and from inactive status, as well as simplifying the requirements for the process.

No comments were received regarding the adoption of the repealed rule.

The repeal is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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 16, 2019.

TRD-201902695
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: September 5, 2019
Proposal publication date: June 21, 2019
For further information, please call: (512) 305-7706

22 TAC §461.11

The Texas State Board of Examiners of Psychologists adopts amendments to rule §461.11, Professional Development, without changes to the proposed text published in the June 21, 2019, issue of the Texas Register (44 TexReg 3061) and will not be republished.

The amendment is being adopted to ensure the protection and safety of the public.

The amendment as adopted in necessary to reduce the regulatory burden, improve regulatory efficiency, and comport with the changes set out in adopted rule §471.1, published in this edition of the Texas Register.

No comments were received regarding the adoption of the amended rule.

The amendment is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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 16, 2019.

TRD-201902698
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: September 5, 2019
Proposal publication date: June 21, 2019
For further information, please call: (512) 305-7706

22 TAC §461.16

The Texas State Board of Examiners of Psychologists adopts amendments to rule §461.16, Filing of False or Misleading Information with the Board without changes to the proposed text published in the June 21, 2019, issue of the Texas Register (44 TexReg 3063) and will not be republished.
The amendment is being adopted to ensure the protection and safety of the public.

The amendment as adopted will more precisely define the prohibited conduct, improve the agency’s ability to protect the public, and make the changes needed to comport with adopted rule §471.1, published in this edition of the Texas Register.

No comments were received regarding the adoption of the amended rule.

The amendment is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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 16, 2019.

TRD-201902699
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: September 5, 2019
Proposal publication date: June 21, 2019
For further information, please call: (512) 305-7706

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22 TAC §461.18

The Texas State Board of Examiners of Psychologists adopts the repeal to rule §461.18, Minimum Data Set Requirement for Online Renewals without changes to the proposed text published in the June 21, 2019, issue of the Texas Register (44 TexReg 3064) and will not be republished.

The repeal is being adopted to ensure the protection and safety of the public.

The repeal as adopted is necessary because the substance of this rule has been incorporated into the adopted rule §471.1.

No comments were received regarding the adoption of the repealed rule.

The repealed rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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 16, 2019.

TRD-201902701

Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: September 5, 2019
Proposal publication date: June 21, 2019
For further information, please call: (512) 305-7706

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CHAPTER 463. APPLICATIONS AND EXAMINATIONS

22 TAC §463.11

The Texas State Board of Examiners of Psychologists adopts an amendment to rule §463.11, Licensed Psychologists without changes to the proposed text published in the June 21, 2019, issue of the Texas Register (44 TexReg 3065) and will not be republished.

The amendment is being adopted to ensure the protection and safety of the public.

The amendment as adopted is necessary to reduce unnecessary regulatory burdens on applicants, particularly those who delay entering the workforce.

No comments were received regarding the adoption of the amended rule.

The amended rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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 16, 2019.

TRD-201902702
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: September 5, 2019
Proposal publication date: June 21, 2019
For further information, please call: (512) 305-7706

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CHAPTER 471. RENEWALS

22 TAC §471.1

The Texas State Board of Examiners of Psychologists adopts amendments to 22 TAC §471.1, Renewal of a License, without changes to the proposed text as published in the June 21, 2019, issue of the Texas Register (44 TexReg 3065). The amended rule will not be republished.

The amendment is being adopted to ensure the protection and safety of the public.

The amendment as adopted will reduce the regulatory burden on licensees and improve agency efficiency by requiring biennial renewals and increasing the level of automation used in carrying

ADOPTED RULES  August 30, 2019  44 TexReg 4731
out agency functions. Moreover, the adopted amendment will advance the Board's stated goal of expanding its use of digital services, a key component in the agency's strategic plan. Additionally, the adopted amendment is necessary due to anticipated statutory changes to §501.301 and §501.302 of the Tex. Occ. Code and newly anticipated §507.254 of the Tex. Occ. Code, as proposed in Tex. H.B. 1501 and S.B. 611, 86th Leg., R.S. (2019).

No comments were received regarding the adoption of the amended rule.

The amended rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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 16, 2019.  
TRD-201902708  
Darrel D. Spinks  
Executive Director  
Texas State Board of Examiners of Psychologists  
Effective date: September 5, 2019  
Proposal publication date: June 21, 2019  
For further information, please call: (512) 305-7706

22 TAC §471.2

The Texas State Board of Examiners of Psychologists adopts the repeal of rule §471.2, Renewal Forms, without changes to the proposed text as published in the June 21, 2019, issue of the Texas Register (44 TexReg 3070). The repeal will not be republished.

The repeal is being adopted to ensure the protection and safety of the public.

The repeal as adopted is necessary because portions of this rule have been incorporated into the proposed amendments to rule §471.1, and because the remaining substance of this rule is duplicative of the existing requirements found in rule §471.1.

No comments were received regarding the adoption of the repealed rule.

The repeal rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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 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 16, 2019.  
TRD-201902713  
Darrel D. Spinks  
Executive Director  
Texas State Board of Examiners of Psychologists  
Effective date: September 5, 2019  
Proposal publication date: June 21, 2019  
For further information, please call: (512) 305-7706

22 TAC §471.3

The Texas State Board of Examiners of Psychologists adopts new rule §471.3, Initial License Renewal Dates, without changes to the proposed text published in the June 21, 2019, issue of the Texas Register (44 TexReg 3071) and will not be republished.

The new rule is being adopted to ensure the protection and safety of the public.

The new rule as adopted is necessary to comport with the changes set out in adopted rule §471.1, published in this issue of the Texas Register, which would create a biennial license renewal requirement instead of the current annual one. This adopted new rule is necessary to define the expiration date for newly issued and reinstated licenses in the proposed biennial license renewal structure.

No comments were received regarding the adoption of the new rule.

The new rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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 16, 2019.  
TRD-201902710  
Darrel D. Spinks  
Executive Director  
Texas State Board of Examiners of Psychologists  
Effective date: September 5, 2019  
Proposal publication date: June 21, 2019  
For further information, please call: (512) 305-7706

22 TAC §471.6

The Texas State Board of Examiners of Psychologists adopts an amendment to rule §471.6, Renewal Terms Exclusive to Licensees on Active Military Duty, without changes to the proposed text published in the June 21, 2019, issue of the Texas Register (44 TexReg 3072) and will not be republished.

The amendment is being adopted to ensure the protection and safety of the public.

The amendment as adopted is necessary to comport with the changes set out in adopted rule §471.1, published in this edition of the Texas Register.
No comments were received regarding the adoption of the amended rule.

The amendment is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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 16, 2019.
TRD-201902714
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: September 5, 2019
Proposal publication date: June 21, 2019
For further information, please call: (512) 305-7706

CHAPTER 473. FEES

22 TAC §473.1

The Texas State Board of Examiners of Psychologists adopts an amendment to rule §473.1, Application Fees, without changes to the proposed text published in the June 21, 2019, issue of the Texas Register (44 TexReg 3073) and will not be republished.

The amendment is being adopted to ensure the protection and safety of the public.

The amendment as adopted is necessary to comply with §501.152 of the Psychologists’ Licensing Act, as well as newly anticipated §507.154 of the Occupations Code as proposed in Tex. H.B. 1501 and S.B. 611, 86th Leg., R.S. (2019). Currently, once an applicant becomes licensed, he or she renews his or her license after one year. Once the agency converts to biennial renewals however, the agency would lose the revenue generated from the fee for the first year renewal because the initial renewal fee would be between 18 and 30 months out from the date of licensure. Because this revenue is necessary for the agency to carry out its mission, the agency must recover this lost revenue through other means. Therefore, the agency proposes recovering this lost revenue by adding an amount equal to the annual renewal fee for a license to the application fee for that license. This would ensure the agency continues to collect the same amount of revenue without increasing the fees actually paid by applicants or licensees.

No comments were received regarding the adoption of the amended rule.

The amendment is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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 16, 2019.
TRD-201902716
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: September 5, 2019
Proposal publication date: June 21, 2019
For further information, please call: (512) 305-7706

22 TAC §473.3

The Texas State Board of Examiners of Psychologists adopts the repeal to rule §473.3, Annual Renewal Fees (Not Refundable), without changes to the proposed text published in the June 21, 2019, issue of the Texas Register (44 TexReg 3075) and will not be republished.

The repeal is being adopted to ensure the protection and safety of the public.

The repeal as adopted is necessary to comport with the changes set out in adopted rule §471.1, published in this issue of the Texas Register, and changes in fees set by outside agencies.

No comments were received regarding the adoption of the repealed rule.

The repeal is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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 16, 2019.
TRD-201902718
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: September 5, 2019
Proposal publication date: June 21, 2019
For further information, please call: (512) 305-7706

22 TAC §473.3

The Texas State Board of Examiners of Psychologists adopts new rule §473.3, Biennial Renewal Fees (Not Refundable), without changes to the proposed text published in the June 21, 2019, issue of the Texas Register (44 TexReg 3076) and will not be republished.

The new rule is being adopted to ensure the protection and safety of the public.

The new rule as adopted is necessary to comport with the changes set out in adopted rule §471.1, published in this issue of the Texas Register, and changes in fees set by outside agencies.

No comments were received regarding the adoption of the new rule.
The new rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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 16, 2019.

TRD-201902719
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: September 5, 2019
Proposal publication date: June 21, 2019
For further information, please call: (512) 305-7706

22 TAC §473.4

The Texas State Board of Examiners of Psychologists adopts the repeal of rule §473.4, Late Fees for Renewals (Not Refundable) without changes to the proposed text published in the June 21, 2019, issue of the Texas Register (44 TexReg 3078). The new rule will not be republished.

The new rule is being adopted to ensure the protection and safety of the public.

The new rule as adopted is necessary due to anticipated statutory changes to §501.302 of the Psychologists’ Licensing Act and newly anticipated §507.254 of the Occupations Code, as proposed in Tex. H.B. 1501 and S.B. 611, 86th Leg., R.S. (2019).

No comments were received regarding the adoption of the new rule.

The new rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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 16, 2019.

TRD-201902723
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: September 5, 2019
Proposal publication date: June 21, 2019
For further information, please call: (512) 305-7706

22 TAC §473.5

The Texas State Board of Examiners of Psychologists adopts amendments to §473.5, Miscellaneous Fees (Not Refundable) without changes to the proposed text as published in the June 21, 2019, issue of the Texas Register (44 TexReg 3079) and will not be republished.

The amendment is being adopted to ensure the protection and safety of the public.

The amendment as adopted is necessary to comport with the changes set out in adopted §461.7, published elsewhere in this edition of the Texas Register.

No comments were received regarding the adoption of the amended rule.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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 16, 2019.

TRD-201902724
PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 531. CANONS OF PROFESSIONAL ETHICS AND CONDUCT

22 TAC §531.3
The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §531.3, Competency, in Chapter 531, Canons of Professional Ethics and Conduct, without changes to the proposed text, as published in the May 24, 2019, issue of the Texas Register (44 TexReg 2566) and will not be republished.

The amendments to §531.3 clarify the definition of competency to conform with recent changes to §535.2, Broker Responsibility, which requires brokers to ensure their sponsored agents have geographic and property type competence.

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.

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 13, 2019.
TRD-201902630
Chelsea Buchholtz
General Counsel
Texas Real Estate Commission
Effective date: September 2, 2019
Proposal publication date: May 24, 2019
For further information, please call: (512) 936-3177

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

22 TAC §535.61, §535.65
The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §535.61, Approval of Providers of Qualifying Courses, and §535.65, Responsibilities and Operations of Providers of Qualifying Courses, in Chapter 535, General Provisions, as published in the May 24, 2019, issue of the Texas Register (44 TexReg 2568) and will not be republished.

The amendments to §535.61 add clarifying terms or timeframes for greater understanding and compliance. This will offer greater protection for students who enroll in courses near the end of a provider's approval term and give providers a way to avoid any business disruption when applying for a subsequent approval. The Education Standards Advisory Committee looked at the passage rate calculation rule and related statute as directed by the Commission and concluded that the current calculation is appropriate and able to be readily calculated. They also concluded that displaying the passage rates on the website is helpful to consumers. Therefore, no changes were made to the passage rate section except to add how many decimal points are used for the figures.

The amendments provide that a provider cannot enroll students in a course 60 days before the expiration of the provider's approval, unless they have submitted an application for a subsequent approval at least 60 days prior to the expiration of the current approval.

The amendments to §535.65 ensure that the consumers can verify the most current passage rate figures and related information for any or all providers. In addition, §535.65 was updated to reflect the changes made to §535.63 due to the Sunset Advisory Commission Report directive that instructors of courses be approved by providers and not licensed by the Commission, but retain the ability of the Commission to set qualifications and standards of instructors for TREC approved courses.

The amendments add that a provider must provide a hyperlink or URL to the TREC website when displaying exam passage rates in any advertisement. In addition, amendments to §535.65
eliminate the waiting period before retesting for students who fail a course exam, leaving the decision as to remedial course work before the retest to the 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.

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 13, 2019.

TRD-201902632
Chelsea Buchholtz
General Counsel
Texas Real Estate Commission
Effective date: September 2, 2019
Proposal publication date: May 24, 2019
For further information, please call: (512) 936-3177

SUBCHAPTER G. REQUIREMENTS FOR CONTINUING EDUCATION PROVIDERS, COURSES AND INSTRUCTORS

22 TAC §535.74

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §535.74, Qualifications for Continuing Education Instructors, in Chapter 535, General Provisions, with non-substantive changes to the proposed text, as published in the May 24, 2019, issue of the Texas Register (44 TexReg 2574). The rule will be republished.

The amendments to §535.74 are made in direct response to the Sunset Advisory Commission Report which directs the elimination of TREC’s authority to approve real estate and inspector instructors, but retains the ability to maintain qualifications and standards of instructors and TREC approved courses.

In the adopted amendments, TREC will rely on approved providers to hire qualified instructors for all continuing education courses based on criteria outlined in the proposed amendments.

No comments were received on the amendments as published.

The revisions to the adopted rules do not change the nature or scope so much that they could be deemed different rules. The adopted rules do not affect individuals other than those contemplated by the rule as proposed. The adopted rules do not impose more onerous requirements than the proposed rules.

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.

§535.74. Qualifications for Continuing Education Instructors.

(a) A provider must ensure that an instructor who teaches continuing education courses is competent in the subject matter to be taught and has the ability to teach effectively.

(b) The provider must use an instructor who possesses the following additional qualifications to teach real estate non-elective CE courses:

(1) meet the criteria to teach qualifying courses under §535.63 of this chapter;

(2) successfully complete an instructor training program authorized by the Commission for the version of the non-elective CE course to be taught; and

(3) receive a passing grade of at least 80% on the non-elective CE course final examination promulgated by the Commission.

(c) For Standards of Practice Review, or Inspector Legal and Ethics, the provider must use an instructor who has five years of active licensure as a Texas professional inspector, and has:

(1) performed a minimum of 200 real estate inspections as a Texas professional inspector; or

(2) three years of experience in teaching and/or sponsoring trainees or inspectors.

(d) An inspector is qualified to instruct a Ride-Along Course as defined in §535.218 of this title if the inspector has five years of active licensure as a Texas professional inspector, and has:

(1) performed a minimum of 200 real estate inspections as a Texas professional inspector; or
three years of experience in teaching and/or sponsoring trainees or inspectors.

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 13, 2019.

TRD-201902635
Chelsea Buchholtz
General Counsel
Texas Real Estate Commission
Effective date: September 2, 2019
Proposal publication date: May 24, 2019
For further information, please call: (512) 936-3177

§535.75. Responsibilities and Operations of Continuing Education Providers.

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §535.75, Responsibilities and Operations of Continuing Education Providers, with changes to the proposed text, as published in the May 24, 2019, issue of the Texas Register (44 TexReg 2575) and will be republished. Non-substantive changes were made to subsections (a), (b), and (c) to add relating statements when referencing subchapters. In addition, a non-substantive change was made to subsection (b) to correct capitalization.

The amendments to §535.75 are recommended by the Education Standards Advisory Committee.

The amendments reflect the changes made to §535.74 based on the Sunset Advisory Commission Report which directs the elimination of TREC's authority to approve real estate and inspector instructors but retains the ability to set qualifications and standards of instructors for TREC approved courses.

The revisions to the adopted rules do not change the nature or scope so much that they could be deemed different rules. The adopted rules do not affect individuals other than those contemplated by the rule as proposed. The adopted rules do not impose more onerous requirements than the proposed rules.

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.

§535.75. Responsibilities and Operations of Continuing Education Providers.

(a) Except as provided by this Section, CE providers must comply with the responsibilities and operations requirements of §535.65 of this title.

(b) Use of Qualified Instructor.

(1) Except as provided by this subsection, a CE provider must use an instructor that:

(A) is currently qualified under §535.74 of this title; and

(B) has expertise in the subject area of instruction and ability as an instructor;

(2) A CE instructor shall teach a course in substantially the same manner represented to the Commission in the instructor's manual or other documents filed with the application for course approval form;

(3) A CE provider may use the services of a guest instructor who is not qualified under §535.74 of this title for real estate or inspector elective CE courses provided that:

(A) the guest instructor instructs for no more than a total of 50% of the course; and

(B) a CE instructor qualified under §535.74 of this title remains in the classroom during the guest instructor's presentation.

(4) A CE provider may use the services of a guest instructor who is not qualified under §535.74 of this title for 100% of a real estate or inspector elective CE courses provided that:

(A) the CE provider is:

(i) an accredited college or university;

(ii) a professional trade association that is approved by the Commission as a CE provider under §535.71 of this subchapter; or

(iii) an entity exempt under §535.71 of this subchapter; and

(B) the course is supervised and coordinated by a CE instructor qualified under §535.74 of this title who is responsible for verifying the attendance of all who request CE credit.

(c) CE course examinations. Examinations are only required for CE courses offered through distance education delivery and must comply with the requirements in §535.72(b) of this subchapter and have a minimum of four questions per course credit hour.

(d) Course completion roster. Instead of providing a course completion certificate, upon completion of a course, a CE provider shall submit a class roster to the Commission as outlined by this subsection.

(1) Classroom:

(A) A provider shall maintain a course completion roster and submit information contained in the roster by electronic means acceptable to the Commission not sooner than the number of course credit hours has passed and not later than the 10th calendar day after the date a course is completed.

(B) A course completion roster shall include:

(i) the provider's name and license;

(ii) a list of all instructors whose services were used in the course;

(iii) the course title;

(iv) the course numbers;

(v) the number of classroom credit hours;

(vi) the course delivery method;

(vii) the dates the student started and completed the course; and

(viii) the signature of an authorized representative of the provider for whom an authorized signature is on file with the Commission.

(C) The Commission shall not accept unsigned course completion rosters.
(2) Distance Education delivery method. A provider shall maintain a Distance Education Reporting form and submit information contained in that form by electronic means acceptable to the Commission, for each student completing the course not sooner than the number of course credit hours has passed after the student starts the course and not later than the 10th calendar day after the student completed the course.

(3) A provider may withhold any official completion documentation required by this subsection from a student until the student has fulfilled all financial obligations to the provider.

(4) A provider shall maintain adequate security against forgery for official completion documentation required by this subsection.

(e) Maintenance of records. Maintenance of CE provider's records is governed by this subsection.

(1) A CE provider shall maintain records of each student enrolled in a course for a minimum of four years following completion of the course, including course and instructor evaluations and student enrollment agreements.

(2) All records may be maintained electronically but must be in a common format that is legibly and easily printed or viewed without additional manipulation or special software.

(3) A CE provider shall maintain any comments made by the provider's management relevant to instructor or course evaluations with the provider's records.

(4) Upon request, a CE provider shall produce instructor and course evaluation forms for inspection by Commission staff.

(f) Changes in Ownership or Operation of an approved CE Provider. Changes in ownership or operation of an approved CE provider are governed by this subsection.

(1) An approved provider shall obtain the approval of the Commission at least 30 days in advance of any material change in the operation of the provider, including but not limited to changes in:

(A) ownership;

(B) management; and

(C) the location of main office and any other locations where courses are offered.

(2) An approved provider requesting approval of a change in ownership shall provide a CE Provider Application including all required information and the required fee.

SUBCHAPTER N. SUSPENSION AND REVOCATION OF LICENSURE
22 TAC §535.148

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §535.148, Receiving an Undisclosed Commission or Rebate in Chapter 535, General Provisions, without changes to the proposed text as published in the May 24, 2019, issue of the Texas Register (44 TexReg 2577) and will not be republished.

The amendments provide clarity about consumer protection issues when paying or receiving funds to/from other settlement service providers.

A section was added to define settlement providers that mostly parallels the definition in the Real Estate Settlement Procedures Act (RESPA) for consistency with the federal law. Exemptions from the prohibition provisions were also clarified. TREC currently has a rule that includes these provisions for inspectors but not explicitly for other real estate license holders. The change provides parity for license types subject to TREC’s jurisdiction and ensures settlement provider independence. These amendments prohibit license holders from selling referrals or recommending settlement providers to their clients based solely on money or other valuable consideration received in order to ensure that license holders are upholding their fiduciary duty by putting their clients’ interest above their own financial gain.

Two comments were received on the amendments as published. Each comment addressed the need for change to current practices and neither requested changes to the proposed rule. As such, the Commission declined to make changes.

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.

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 13, 2019.

TRD-201902636
Chelsea Buchholtz
General Counsel
Texas Real Estate Commission
Effective date: September 2, 2019
Proposal publication date: May 24, 2019
For further information, please call: (512) 936-3177

SUBCHAPTER R. REAL ESTATE INSPECTORS
22 TAC §535.206

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §535.206, The Texas Real Estate Inspector Committee, in Chapter 535, General Provisions, without changes to the proposed text, as published in the May 24, 2019, issue of the Texas Register (44 TexReg 2578), and will not be republished.
These amendments are recommended by the Texas Real Estate Inspector Committee.

The amendments reinstate term limits for Real Estate Inspector Committee members, align term expiration dates with other advisory committees for the Commission, change the meeting month in which officers are elected from February to January to better align with the committee’s schedule, and update the Sunset date to match the new Sunset date for the Commission.

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.

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 13, 2019.

TRD-201902637
Chelsea Buchholtz
General Counsel
Texas Real Estate Commission
Effective date: September 2, 2019
Proposal publication date: May 24, 2019
For further information, please call: (512) 936-3177

22 TAC §535.218

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §535.218, Continuing Education Requirements, in Chapter 535, General Provisions, with changes to text as published in the May 24, 2019, issue of the Texas Register (44 TexReg 2579), and will be republished. A non-substantive change was made to allow additional subjects (electrical systems and appliances) to continuing education courses.

These amendments are recommended by the Texas Real Estate Inspector Committee.

The amendments to §535.218 sets out the continuing education topics required for inspectors to renew their licenses that are currently cross referenced to §535.213, which is proposed for amendment. The amendments also add the minimum requirements for receiving continuing education credit for a ride-along inspection course. Lastly, the amendments expand the ability for an inspector to receive four hours per license period of continuing education by attending any Texas Real Estate Inspector Committee meeting.

No comments were received on the amendments as published.

The revisions to the adopted rules do not change the nature or scope so much that they could be deemed different rules. The adopted rules do not affect individuals other than those contemplated by the rule as proposed. The adopted rules do not impose more onerous requirements than the proposed rules.

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.

§535.218. Continuing Education Required for Renewal.

(a) Continuing education required for renewal.

(1) Before renewal of an inspector license, a license holder must take the 32 hours of continuing education which shall include the following:

(A) 24 hours in the following subjects:

(i) Foundations;

(ii) Framing;

(iii) Building Enclosures;

(iv) Roof Systems;

(v) Plumbing Systems;

(vi) Electrical Systems;

(vii) HVAC Systems;

(viii) Appliances;

(ix) Texas Standard Report Form Writing;

(x) Other approved courses related real estate inspections; and

(B) eight hours of non-elective coursework in legal, ethics, SOPs, and report writing consisting of the following coursework:

(i) 4 hours of Standards of Practice Review; and

(ii) 4 hours of Legal and Ethics.

(2) An inspector who files an application for reinstatement of an expired license within two years of the expiration date of the previous license must provide evidence satisfactory to the Commission that the applicant has completed any continuing education that would have been otherwise required for timely renewal of the previous license had that license not expired.

(3) An inspector is not eligible to receive more than 16 hours continuing education credit for any one single subject described in subsection (a)(1) of this section.

(b) Receiving continuing education credit for ride-along inspection course.

(1) Up to eight hours of continuing education credit per two year license period may be given to a license holder for completion of a ride-along inspection course.

(2) At a minimum, a ride-along inspection course must:

(A) consist of one full residential property inspection; and

(B) review applicable standards of practice and departure provisions contained in §§535.227 - 535.233 of this title.

(3) In order to qualify for real estate inspector continuing education credit, a ride-along inspection course shall consist of no more than two students per session.

(4) The instructor of a ride-along inspection course may:

(A) review report writing; and

(B) deliver a notice regarding the ride-along session on a form approved by the Commission to the prospective buyer or seller of the home being inspected.

(c) Mandatory Standards of Practice Review course.
(1) To be approved by the Commission, the Standards of Practice Review course shall contain the topics and the units outlined in the SOP-1, CE Course Approval Form, Standards of Practice Review, hereby adopted by reference.

(2) Each Standards of Practice Review course expires on August 31 of each odd-numbered year.

(d) Continuing education credit for students.

(1) Courses submitted for inspector continuing education credit must be successfully completed during the term of the current license holder.

(2) The Commission may not grant continuing education credit twice for a course with the same course content taken by a licensee within a two year period.

(3) Unless a real estate inspection continuing education course is offered by alternative delivery methods, completion of a final examination is not required for a license holder to receive continuing education credit for a course.

(4) The commission will not grant partial credit to an inspector who attends a portion of a course.

(e) Continuing education credit for course taken outside of Texas. An inspector may receive continuing education elective credit for a course taken to satisfy the continuing education requirements of a country, territory, or state other than Texas if:

(1) the inspector licensed in Texas held an active inspector license in a country, territory, or state other than Texas at the time the course was taken;

(2) the course was approved for continuing education credit for an inspector license by a country, territory, or state other than Texas at the time the course was taken;

(3) the successful completion of the course has been evidenced by a course completion certificate, a letter from the provider or such other proof satisfactory to the Commission;

(4) the subject matter of the course was predominately devoted to a subject acceptable for continuing education credit for an inspector licensed in Texas; and

(5) the inspector licensed in Texas has filed a Continuing Education (CE) Credit Request for an Out of State Course, with the Commission.

(f) Continuing education credit for instructors.

(1) Providers may request continuing education credit be given to instructors of real estate inspection courses subject to the following guidelines:

(A) instructors may receive credit for only those portions of the course which they teach; and

(B) instructors may receive full course credit by attending all of the remainder of the course.

(2) An Instructor of a ride-along inspection course is eligible to receive continuing education credit for a ride-along inspection course conducted by the instructor if the Commission is provided a certification of course completion within one week of completion of the course, on a form approved by the Commission.

(3) Instructors of ride-along inspection course sessions may only receive up to 8 hours of continuing education credit for teaching the course per license period.

(g) Continuing education credit for attendance at a meeting of the Texas Real Estate Inspector Committee. An inspector licensed in Texas may receive up to four hours of continuing education elective credit per license period for attendance in person at any meeting of the full Texas Real Estate Inspector Committee, provided that the inspector attend the entire meeting. Partial credit will not be awarded.

(h) Continuing education credit for courses taken by persons who hold another occupational license issued by a governmental body in Texas. An inspector licensed in Texas may receive continuing education credit for a course taken to satisfy the continuing education requirements for another occupational license if:

(1) the inspector files the applicable form with the Commission;

(2) the inspector holds one of the following occupational licenses, including but not limited to:

(A) plumber;

(B) electrician;

(C) architect;

(D) professional engineer;

(E) air conditioner and refrigeration technician; or

(F) structural pest control applicator or technician;

(3) at the time the course was taken:

(A) the inspector held an active occupational license issued by a governmental body in Texas; and

(B) the course was approved for continuing education credit for the other occupational license;

(4) the inspector demonstrates successful completion of the course by submitting:

(A) a course completion certificate;

(B) a letter from the provider; or

(C) other proof satisfactory to the Commission; and

(5) the primary subject matter of the course was a subject acceptable for continuing education credit for an inspector licensed 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 13, 2019.
TRD-201902638
Chelsea Buchholtz
General Counsel
Texas Real Estate Commission
Effective date: September 2, 2019
Proposal publication date: May 24, 2019
For further information, please call: (512) 936-3177

22 TAC §535.220

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §535.220, Professional Conduct and Ethics, in Chapter 535, General Provisions, without changes to text as
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 13, 2019. TRD-201902642 Chelsea Buchholtz General Counsel Texas Real Estate Commission Effective date: September 2, 2019 Proposal publication date: May 24, 2019 For further information, please call: (512) 936-3177

**TITLE 34. PUBLIC FINANCE**

**PART 1. COMPTROLLER OF PUBLIC ACCOUNTS**

**CHAPTER 3. TAX ADMINISTRATION**

**SUBCHAPTER V. FRANCHISE TAX**

**34 TAC §3.584**

The Comptroller of Public Accounts adopts amendments to §3.584, concerning Margin: reports and payments, with changes to the proposed text as published in the June 21, 2019, issue of the *Texas Register* (44 TexReg 3081) and will be republished. The amendments add definitions of "produce" and "product" to facilitate the determination of whether an entity is primarily engaged in retail or wholesale trade; implement provisions in House Bill 2126, 85th Legislature, 2017, related to the sale of prepaid telephone calling cards and whether an entity is primarily engaged in retail or wholesale trade; implement provisions in Senate Bill 1095, 85th Legislature, 2017, related to when a determination and a decision on a petition for redetermination are final; remove language addressing the 2008 transition to the "margin" tax base, which is no longer relevant due to the passage of time; and correct a typographical error.

The comptroller amends subsection (b) to revise the definition of "primarily engaged in retail or wholesale trade" and to add definitions of the terms "produce" and "product," which appear in Tax Code, §171.002(c), but are not defined.

The comptroller amends subsection (b)(2), defining "primarily engaged in retail or wholesale trade," to more closely track the language of Tax Code, §171.002(c-1), concerning eating and drinking places.

The comptroller also amends subsection (b)(2) to remove the existing safe harbor for nominal modifications that are not considered to be "production," and incorporate this safe harbor provision into the definition of "produce" in new subsection (b)(3).

The comptroller further amends subsection (b)(2) to incorporate language from House Bill 2126. House Bill 2126 amends Tax Code, §171.002, which states that a taxable entity primarily engaged in retail or wholesale trade is ineligible for a reduced rate if it provides retail or wholesale utilities, including telecommunication services. House Bill 2126 states that, for the limited purpose of section 171.002, selling prepaid telephone calling cards is not considered to be providing telecommunications services. Although House Bill 2126 applies only to reports originally due on or after January 1, 2018, the comptroller is not adopting a
separate effective date for the incorporated language because the comptroller had been interpreting section 171.002 consistent with the language of House Bill 2126 prior to its effective date. Accordingly, as provided in subsection (a), the incorporated language applies to all franchise tax reports originally due on or after January 1, 2008. Neither House Bill 2126, nor this rule amendment affect Comptroller's Decision Nos. 111,864 - 111,869 (2016), which state that for apportionment purposes, the receipts from the sale of a telephone prepaid calling card are receipts from the sale or resale of a telecommunication service.

The comptroller amends subsection (b)(3) by adding the definition of "produce." The comptroller derives the definition of "produce" from the definition of "production" in Tax Code, §171.1012 (Determination of Cost of Goods Sold).

Subsection (b)(3) also identifies activities that the comptroller will and will not treat as producing a product. Subparagraph (A) provides that the comptroller will treat a taxable entity as the producer if it asserts a software copyright or patent right with respect to a product or component of a product. Also, the comptroller will treat a taxable entity as the producer if it produces a component of the product, or makes a modification to the product, unless the safe harbor for nominal production activities applies. Production activities are nominal if they do not increase the sales price of the product by more than 10%. Subparagraph (B) provides that the comptroller will not treat a taxable entity as the producer if it outsources the manufacturing to a third-party manufacturer, unless a provision of subparagraph (A) applies.

The comptroller received comments regarding subsection (b)(3) from the Council on State Taxation (COST), the Texas Taxpayers and Research Association (TTARA), the Software Finance and Tax Executives Council (SOFTEC), and H-E-B.

The comments variously stated that proposed subsection (b)(3) contradicts guidance previously provided, creates distinctions that are not in the statute, is more appropriate for legislative action, will cause marketplace distortions, and provides no de minimis exception when an entity is asserting a software copyright or patent right. Some of the comments urged the comptroller to delete subsection (b)(3). The comptroller has considered these comments and concluded that subsection (b)(3) is appropriate and within the agency's delegated rule-making authority.

The franchise tax statute does not define the term "produce." Therefore the comptroller concludes that a definition in the rule is appropriate to provide guidance to both taxpayers and agency personnel without waiting for legislative action.

The definition of "produce" is derived from the definition of "production" in Tax Code, §171.1012 (Determination of Cost of Goods Sold). The Legislature adopted Tax Code, §171.1012 and §171.002 in the same legislative act, Acts 2006, 79th Leg., 3rd C.S., ch. 1, sec. 2 and 5, eff. January 1, 2008. Therefore, the comptroller interprets these sections in the same manner. A taxable entity should not be able to claim the cost-of-goods-sold deduction on goods that it "produces," while simultaneously claiming it does not "produce" the same goods for purposes of determining qualification for the reduced rate.

The statutory definition of "production" is broad, and thus, the definition of "produce" in subsection (b)(3) is broad. The act of manufacturing is only one aspect of production and producing. Other aspects of production and producing include developing, improving, and creating the product. These activities are categorical rather than specific. Subsection (b)(3) then identifies specific activities within these broad categories to give additional guidance to taxpayers and tax administrators. Asserting a software copyright on the product, asserting a patent right on the product, and modifying the product are all reasonable indicators that the seller has produced the product, even if those specific activities are not listed in the statute.

Subparagraphs (A)(iii) and (B) establish safe harbors for nominal production activities conducted by a taxable entity. Subparagraph (A)(iii) provides that a taxable entity can produce a component or modify a product without being treated as the producer if the component or modification does not increase the sales price by more than 10%. Subparagraph (B) provides that a taxable entity will not be treated as the producer if an unrelated party manufactures the product. Neither of these safe harbors are articulated in the statute. However, the comptroller's rule-making authority empowers the agency to adopt "bright line" rules for the benefit of taxpayer and auditors, even though the lines may not be explicitly stated in the statute. DuPont Photomasks, Inc. v. Strayhorn, 219 S.W.3d 414, 422 (Tex. App. - Austin 2006, pet. denied).

COST requested the comptroller add a de minimis exception for products on which a taxpayer asserts a software copyright or patent. The comptroller declines to apply an additional de minimis exception to these situations.

Some comments objected that the references to software copyrights and patents contradict prior guidance. However, the agency has previously recognized through an ad hoc ruling that a taxable entity was the producer if the product contained its proprietary software. Comptroller's Decision No. 110,564 (2018). Furthermore, taxpayers have no vested right in the continuation of a safe-harbor that was originally created by rule. The agency retains its freedom to craft a better rule. See, e.g., First Am. Title Ins. Co. v. Strayhorn, 169 S.W.3d 298, 306 (Tex. App. - Austin 2005), aff'd, First Am. Title Ins. Co. v. Combs, 258 S.W.3d 627 (Tex. 2008) ("the Comptroller changed the previous interpretation.... which she may do as long as the new interpretation does not contradict either statutory language or a formally promulgated rule").

SOFTEC commented that subsection (b)(3) would create market distortions because a taxable entity that manufactures products has a tax rate disadvantage compared to taxable entities that purchase and resell products. If that is a market distortion, it is caused by the statute and not subsection (b)(3). In fact, the comptroller is fine-tuning its safe-harbor rule to prevent market distortions. When the value of a product sold by a taxable entity is based on the entity's proprietary software copyrights or patents imbedded in the product, the entity should be treated as the producer regardless of whether the product is ultimately assembled by employees or an unrelated party.

SOFTEC also commented that proposed subparagraphs (3)(A)(1)(i) and (ii), regarding taxable entities that assert copyrighted software and patent rights, would produce a null set of taxpayers because the seller neither transfers nor retains any copyright or patent rights in the material object that is conveyed. Proposed subparagraph (3)(A)(1)(i) referred to taxable entities that assert a copyright "on" a product or component, and proposed subparagraph (3)(A)(1)(ii) referred to taxable entities that assert a patent "with respect to" the product or component. The comptroller is revising the final rule to adopt the "with respect to" language for both copyrights and patents, to clarify that the assertion of these rights extends beyond the material object that is conveyed and includes the proprietary processes and content associated with the material object.
H-E-B requested the addition of a subparagraph to clarify that a retailer will not be considered a producer when the retailer designs software that facilitates sales, such as point-of-sale software and mobile applications to remind a patient to renew a prescription. The comptroller concludes that the addition is not needed. If a retailer is not selling the software or the software is not a component part of a product it sells, the fact that the retailer produced the software does not impact the rate determination.

Finally, SoFTEC commented that it would be unfair and unconstitutional for subsection (b)(3) to be applied retroactively. TTARA asked the comptroller to clarify how subsection (b)(3) would be applied prospectively, as was stated in the preamble to the proposed rule. The comptroller clarifies that the agency will apply subsection (b)(3) to reports originally due on or after the effective date of the rule amendment, to the extent that the guidance in subsection (b)(3) may be inconsistent with prior comptroller interpretations.

New subsection (b)(4) adopts a definition of "product." The comptroller derives the definition from the definitions of "goods" and "tangible personal property" in Tax Code, §171.1012. The comptroller purposefully omits "real property" from the definition of "product" for purposes of this section, although the definition of "goods" in Tax Code, §171.1012, includes both tangible personal property and real property. The sale of real property is not an activity described in Division F (Wholesale Trade) or G (Retail Trade) of the Standard Industrial Classification Manual; therefore, the sale of real property is not a factor in determining if an entity is primarily engaged in retail or wholesale trade. The comptroller renumbers subsequent paragraphs accordingly.

The comptroller amends renumbered subsection (b)(8) defining "unrelated party" to provide that the relationship between the parties at the time of a relevant transaction controls the determination.

The comptroller amends subsection (c)(5)(A) to correct a typographical error in the reference to §3.585 of this title (relating to Margin: Annual Report Extension).

The comptroller removes subsection (c)(6), which addresses the transition from using taxable capital and earned surplus as the basis for calculating the franchise tax to calculating the franchise tax based on taxable margin, and references §3.595 of this title (relating to Margin: Transition). The franchise tax report due in 2008, the year of transition, is now outside the four-year statute of limitations for assessments and refund claims, and the comptroller has repealed §3.595. The comptroller renumbers subsequent paragraphs accordingly.

The comptroller amends subsection (e)(3), regarding penalty and interest on delinquent taxes, to implement Senate Bill 1095. Senate Bill 1095 extends the amount of time a taxpayer has to file a petition for redetermination and also changes the date a decision on a petition for redetermination becomes final.

This amendment is adopted under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture), which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2 (State Taxation).

The amendment implements Tax Code, §171.002 (Rates; Computation of Tax).

§3.584. Margin: Reports and Payments.

(a) Effective date. The provisions of this section apply to franchise tax reports originally due on or after January 1, 2008, except as otherwise noted.

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

1. Beginning date--

(A) except as provided by subparagraph (B) of this paragraph:

(i) for a taxable entity chartered or organized in this state, the date on which the taxable entity's charter or organization takes effect; and

(ii) for a foreign taxable entity, the date on which the taxable entity begins doing business in this state; or

(B) for a taxable entity that qualifies as a new veteran-owned business, as defined in §3.574 of this title (relating to Margin: New Veteran-Owned Businesses), the earlier of:

(i) the fifth anniversary of the date on which the taxable entity was chartered, organized, or otherwise formed in Texas; or

(ii) the date the taxable entity ceases to qualify as a new veteran-owned business.

2. Primarily engaged in retail or wholesale trade--A taxable entity is primarily engaged in retail or wholesale trade only if:

(A) the total revenue from the taxable entity's activities in retail and wholesale trade is greater than the total revenue from its activities in trades other than retail and wholesale trade;

(B) less than 50% of the total revenue from the taxable entity's activities in retail or wholesale trade comes from the sale of products the taxable entity produces or products produced by an entity that is part of an affiliated group to which the taxable entity also belongs, except for total revenue from activities in a retail trade described by Major Group 58 (Eating and Drinking Places) of the SIC Manual; and

(C) the taxable entity does not provide retail or wholesale utilities, including telecommunications services, electricity, or gas. For purposes of this subparagraph, selling telephone prepaid calling cards is not providing telecommunications services.

3. Produce--To construct, manufacture, install during the manufacturing or construction process, develop, mine, extract, improve, create, raise, or grow either a product or a component of a product.

(A) A taxable entity produces a product that it sells if the taxable entity or an entity that is part of an affiliated group to which the taxable entity also belongs:

(i) asserts a software copyright with respect to the product or a component of the product;

(ii) asserts a patent right under Title 35 of the United States Code or comparable law of a foreign jurisdiction with respect to the product, a component of the product, or the packaging of the product; or

(iii) produces a component of the product, or acquires the product and makes a modification to the product, unless the taxable entity can demonstrate that the component or modification does not increase the sales price of the product by more than 10%.
(B) Except as provided in subparagraph (A) of this paragraph, a taxable entity does not produce a product that it sells if an unrelated party manufactures the product and all components of the product to the taxable entity's specifications.

(4) Product--Tangible personal property acquired or produced for sale.

(A) Tangible personal property--

(i) personal property that can be seen, weighed, measured, felt, or touched or that is perceptible to the senses in any other manner;

(ii) films, sound recordings, videotapes, live and prerecorded television and radio programs, books, and other similar property embodying words, ideas, concepts, images, or sound, without regard to the means or methods of distribution or the medium in which the property is embodied, for which, as costs are incurred in producing the property, it is intended or is reasonably likely that any medium in which the property is embodied will be mass-distributed by the creator or any one or more third parties in a form that is not substantially altered; and

(iii) a computer program, as defined by Tax Code, §151.0031 ("Computer Program").

(B) Tangible personal property does not include:

(i) intangible property; or

(ii) services.

(5) Retail trade--

(A) for reports originally due on or after January 1, 2008, and before January 1, 2012, the activities described in Division G of the SIC Manual;

(B) for reports originally due on or after January 1, 2012, and before January 1, 2014:

(i) the activities described in Division G of the SIC Manual; and

(ii) apparel rental activities classified as Industry 5999 or 7299 of the SIC Manual; and

(C) for reports originally due on or after January 1, 2014:

(i) the activities described in Division G of the SIC Manual;

(ii) apparel rental activities classified as Industry 5999 or 7299 of the SIC Manual;

(iii) the activities classified as Automotive Repair Shops, Industry Group 753 of the SIC Manual;

(iv) rental-purchase agreement activities regulated by Business & Commerce Code, Chapter 92;

(v) rental or leasing of tools, party and event supplies, and furniture, classified as Industry 7359 of the SIC Manual; and

(vi) heavy construction equipment rental or leasing activities, classified as Industry 7353 of the SIC Manual.


(7) Wholesale trade--The activities described in Division F of the SIC Manual.

(8) Unrelated party--With respect to a taxable entity, an entity that for any period during which the entity does not meet the requirements to be a member of the same affiliated group, as defined in §3.590(b)(1) of this title (relating to Margin: Combined Reporting), as such taxable entity.

(c) Reports and due dates.

(1) Initial report. For taxable entities with a beginning date prior to October 4, 2009, both the initial report and payment of the tax due, if any, are due no later than 89 days after the first anniversary date of the beginning date. The taxable margin computed on the initial report is based on the business done during the period beginning on the beginning date and ending on the last accounting period ending date for federal income tax purposes that is at least 60 days before the original due date of the initial report, or, if there is no such ending date, then ending on the day that is the last day of the calendar month nearest to the end of the taxable entity's first year of business. If the period used to compute business done for purposes of the initial report differs from the taxable entity's last accounting period for federal income tax purposes, then the taxable entity's total revenue for purposes of the initial report shall be computed as if the taxable entity had reported its federal taxable income on an Internal Revenue Service form covering the period used to compute business done for purposes of the initial report. The privilege period for the initial report is from the beginning date through December 31 of the year in which the initial report is originally due.

(2) First annual report. For taxable entities with a beginning date of October 4, 2009, or later, both the first annual report and payment of the tax due, if any, are due no later than May 15 of the year following the year the entity became subject to the tax (i.e., the beginning date). The taxable margin computed on the first annual report is based on the business done during the period beginning on the beginning date and ending on the last accounting period ending date for federal income tax purposes that is in the same calendar year as the beginning date. The privilege period for the first annual report is from the beginning date through December 31 of the year in which the first annual report is originally due.

(3) Annual report. The annual franchise tax report must be filed and the tax paid no later than May 15 of each year. The taxable margin computed on an annual report is based on the business done during the period beginning with the day after the last date upon which tax was computed under Tax Code, Chapter 171 on a previous report, and ending with the last accounting period ending date for federal income tax purposes ending in the calendar year before the calendar year in which the report is originally due, or, if there is no such ending date, then ending on December 31 of the calendar year before the calendar year in which the report is originally due. A taxable entity that uses a 52 - 53 week accounting year end and has an accounting year ending the first four days of January of the year in which the annual report is originally due may use the preceding December 31 as the date through which taxable margin is computed. If the period used to compute business done for purposes of the annual report differs from the taxable entity's last accounting period for federal income tax purposes, then the taxable entity's total revenue for purposes of the annual report shall be computed as if the taxable entity had reported its federal taxable income on an Internal Revenue Service form covering the period used to compute business done for purposes of the annual report. The privilege period for an annual report is January 1 through December 31 of the year in which the annual report is originally due.

(4) Final report. A final tax report and payment of the additional tax are due within 60 days after the taxable entity no longer has sufficient nexus with Texas to be subject to the franchise tax. See §3.592 of this title (relating to Margin: Additional Tax) for further
information concerning the additional tax imposed by Tax Code, §171.0011.

(5) Extensions.

(A) Annual report. See §3.585 of this title (relating to Margin: Annual Report Extension), for extensions of time to file an annual report, including the first annual report.

(B) Final report. A taxable entity will be granted a 45-day extension of time to file a final report, if the taxable entity:

(i) requests the extension on or before the filing date;

(ii) requests the extension on a form provided by the comptroller; and

(iii) remits 90% or more of the tax reported as due on the final report.

(6) Nontaxable entities. See §3.581 of this title (relating to Margin: Taxable and Nontaxable Entities) for information concerning nontaxable entities. Except for passive entities (see §3.582 of this title (relating to Margin: Passive Entities)), a nontaxable entity that has not notified the comptroller or the secretary of state that it is doing business in Texas, or that has previously notified the comptroller that it is not taxable, must notify the comptroller in writing only when the entity no longer qualifies as a nontaxable entity. If an entity receives notification in writing from the comptroller asking for information to determine if the entity is a taxable entity, the entity must reply to the comptroller within 30 days of the notice.

(7) Passive entities. See §3.582 of this title, for information concerning the reporting requirements for a passive entity.

(8) Combined reporting. Taxable entities that are part of an affiliated group engaged in a unitary business must file a combined group report in lieu of individual reports, except that a public information report or ownership information report must be filed for each member of the combined group with nexus. See §3.590 of this title for rules on filing a combined report.

(9) New veteran-owned businesses. See §3.574 of this title for information concerning the reporting requirements for a qualifying new veteran-owned business.

(10) Date of filing. See §3.13 (relating to Postmarks, Timely Filing of Reports, and Timely Payment of Taxes and Fees) for information concerning the requirements for timely filing.

(11) Receivership. It is the responsibility of a receiver to file franchise tax reports and pay the franchise tax of a taxable entity in receivership. A debtor in possession or the appointed trustee or receiver of a taxable entity in reorganization or arrangement proceedings under the Bankruptcy Act is responsible for filing franchise tax reports and paying the franchise tax pursuant to the plan of reorganization or arrangement.

(d) Calculation of tax.

(1) Margin computation. A taxable entity's margin equals the least of the following calculations, if eligible:

(A) For reports originally due on or after January 1, 2008, and before January 1, 2014:

(i) total revenue minus cost of goods sold;

(ii) total revenue minus compensation; or

(iii) 70% of total revenue.

(B) For reports originally due on or after January 1, 2014:

(i) total revenue minus cost of goods sold;

(ii) total revenue minus compensation;

(iii) 70% of total revenue; or

(iv) total revenue minus $1 million.

(2) Rate. Except as provided by paragraph (6) of this subsection:

(A) For reports originally due on or before January 1, 2008, but before January 1, 2014:

(i) a tax rate of 1.0% of taxable margin applies to most taxable entities; and

(ii) a tax rate of 0.5% of taxable margin applies to taxable entities primarily engaged in retail or wholesale trade.

(B) For reports originally due on or after January 1, 2014, but before January 1, 2015:

(i) a tax rate of 0.975% of taxable margin applies to most taxable entities; and

(ii) a tax rate of 0.4875% of taxable margin applies to taxable entities primarily engaged in retail or wholesale trade.

(C) For reports originally due on or after January 1, 2015, but before January 1, 2016:

(i) a tax rate of 0.95% of taxable margin applies to most taxable entities; and

(ii) a tax rate of 0.475% of taxable margin applies to taxable entities primarily engaged in retail or wholesale trade.

(D) For reports originally due on or after January 1, 2016:

(i) a tax rate of 0.75% of taxable margin applies to most taxable entities; and

(ii) a tax rate of 0.375% of taxable margin applies to taxable entities primarily engaged in retail or wholesale trade.

(3) Annualized Total Revenue. When the accounting period on which a report is based is more or less than 12 months, a taxable entity must annualize its total revenue to determine its eligibility for the no tax due threshold, discounts, and E-Z Computation. The amount of total revenue used in the actual tax calculations will not change as a result of annualizing revenue. To annualize total revenue, an entity will divide total revenue by the number of days in the period upon which the report is based, and then multiply the result by 365. Examples are as follows:

(A) a taxable entity's 2010 franchise tax report is based on the period September 15, 2009 through December 31, 2009 (108 days), and its total revenue for the period is $375,000. The taxable entity's annualized total revenue is $1,267,361 ($375,000 divided by 108 days multiplied by 365 days). Based on its annualized total revenue, the taxable entity does not qualify for the $1,000,000 no tax due threshold but is eligible to file using the E-Z computation. The discounts do not apply in years when the no tax due threshold is $1,000,000;

(B) a taxable entity's 2010 franchise tax report is based on the period March 1, 2008 through December 31, 2009 (671 days), and its total revenue for the period is $1,375,000. The taxable entity's annualized total revenue is $747,951 ($1,375,000 divided by 671 days multiplied by 365 days). Based on its annualized total revenue, the taxable entity qualifies for the $1,000,000 no tax due threshold and is eligible to file using the No Tax Due Information Report.
(4) No tax due. Effective September 1, 2015, No Tax Due Reports are required to be filed electronically. See §3.587(c)(8)(C) of this title (relating to Margin: Total Revenue) for the tiered partnership exception to filing No Tax Due Reports.

(A) A taxable entity owes no tax and may file a No Tax Due Report if its annualized total revenue is:

(i) for reports originally due on or after January 1, 2008, but before January 1, 2010, $300,000 or less;

(ii) for reports originally due on or after January 1, 2010, but before January 1, 2012, $1 million or less;

(iii) for reports originally due on or after January 1, 2012, but before January 1, 2014, $1,030,000 or less;

(iv) for reports originally due on or after January 1, 2014, but before January 1, 2016, $1,080,000 or less;

(v) for reports originally due on or after January 1, 2016, but before January 1, 2018, $1,110,000 or less; and

(vi) for reports originally due on or after January 1, 2018, the amount determined under Tax Code, §171.006 (Adjustment of Eligibility for No Tax Due, Discounts, and Compensation Deduction).

(B) A taxable entity that has zero Texas receipts owes no tax and may file a No Tax Due Report.

(C) A taxable entity that has tax due of less than $1,000 owes no tax; however, the entity cannot file a No Tax Due Report and must file a regular annual report or, if qualified, the E-Z Computation Report.

(5) Discount. A taxable entity is entitled to a discount of the tax imposed as follows.

(A) For reports originally due on or after January 1, 2008, but before January 1, 2010, if annualized total revenue is:

(i) greater than $300,000 and less than $400,000, the discount is 80% of tax due;

(ii) greater than or equal to $400,000 and less than $500,000, the discount is 60% of tax due;

(iii) greater than or equal to $500,000 and less than $700,000, the discount is 40% of tax due;

(iv) greater than or equal to $700,000 and less than $900,000, the discount is 20% of tax due.

(B) For reports originally due on or after January 1, 2010 there are no discounts.

(6) E-Z Computation.

(A) For reports originally due on or after January 1, 2008, and before January 1, 2016, a taxable entity with annualized total revenue of $10 million or less may choose to pay the franchise tax by using the E-Z Computation method. For this period, under the E-Z Computation, a taxable entity's tax liability is computed by applying a tax rate of 0.575% to apportioned total revenue and subtracting any applicable discount as provided by paragraph (5) of this subsection.

(B) For reports originally due on or after January 1, 2016, a taxable entity with annualized total revenue of $20 million or less may choose to pay the franchise tax by using the E-Z Computation method. For this period, under the E-Z Computation, a taxable entity's tax liability is computed by applying a tax rate of 0.331% to apportioned total revenue.

(C) No deductions to compute margin, credits, or other adjustments are allowed if a taxable entity chooses to compute its tax liability under the E-Z Computation.

(7) Tiered partnership provision. See §3.587 of this title for information concerning the tiered partnership provision.

(A) Eligibility for no tax due, discounts and the E-Z Computation. For eligible entities choosing to file under the tiered partnership provision, paragraphs (4), (5), and (6) of this subsection do not apply to an upper or lower tier entity if, before the attribution of total revenue by a lower tier entity to upper tier entities, the lower tier entity does not meet the criteria.

(B) Tiered Partnership Report. The lower tier entity must submit a report to the comptroller indicating its total revenue before attribution and the amount of total revenue that each upper tier entity must include with the upper tier entity's own total revenue. Each upper tier entity must submit a report to the comptroller indicating the lower tier entity's total revenue before attribution and the amount of the lower tier entity's total revenue that was passed to the upper tier entity and is included in the total revenue of the upper tier entity.

(e) Penalty and interest on delinquent taxes.

(1) Tax Code, §171.362 (Penalty for Failure to Pay Tax or File Report), imposes a 5.0% penalty on the amount of franchise tax due by a taxable entity that fails to report or pay the tax when due. If any part of the tax is not reported or paid within 30 days after the due date, an additional 5.0% penalty is imposed on the amount of tax unpaid. There is a minimum penalty of $1.00. Delinquent taxes accrue interest beginning 60 days after the due date. For example, if payment is made on the 61st day after the due date, one day's interest is due. The annual rate of interest on delinquent taxes is the prime rate plus one percent, as published in The Wall Street Journal on the first day of each calendar year that is not a Saturday, Sunday, or legal holiday.

(2) When a taxable entity is issued an audit assessment or other underpayment notice based on a deficiency, penalties under Tax Code, §171.362, and interest are applied as of the date that the underpaid tax was originally due, including any extensions, not from the date of the deficiency determination or date the deficiency determination is final.

(3) A deficiency determination is final 60 days after the date the notice of the determination is issued.

(A) The amount of a determination is due and payable 10 days after it becomes final. If the amount of the determination is not paid within 10 days after the day it became final, a penalty under Tax Code, §111.0081 (When Payment is Required), of 10% of the tax assessed will be added. For example, if a deficiency determination is made in the amount of $1,000 tax (plus the initial penalty and interest), but the total amount of the deficiency is not paid until the 71st day after the deficiency notice is issued, $1,200 plus interest would be due (i.e., $1,000 tax, $100 initial penalty for not paying when originally due, $100 penalty for not paying deficiency determination within 10 days after it became final, plus interest accrued to the date of payment at the applicable statutory rate).

(B) A petition for redetermination must be filed within 60 days after the date the notice of determination is issued, or the redetermination is barred.

(C) A decision on a petition for redetermination becomes final at the time a decision in a contested case is final under Government Code, Chapter 2001. The amount of a determination is due and payable 20 days after the decision is final. If the amount of the determination is not paid within 20 days after the day the decision
becomes final, a penalty under Tax Code, §111.0081, of 10% of the tax assessed will be added. Using the previous example, on the 21st day after the decision is final, $1,200 plus interest would be due (i.e., $1,000 tax, $100 initial penalty, $100 additional penalty and the applicable accrued interest).

(4) A jeopardy determination is final 20 days after the date on which the service of the notice is completed unless a petition for re-determination is filed before the determination becomes final. Service by mail is complete when the notice is deposited with the United States Postal Service. The amount of the determination is due and payable immediately. If the amount determined is not paid within 20 days from the date of service, a penalty, under Tax Code, §111.022 (Jeopardy Determination), of 10% of the amount of tax and interest assessed will be added.

(5) If the comptroller determines that a taxable entity exercised reasonable diligence to comply with the statutory filing or payment requirements, the comptroller may waive penalties or interest for the late filing of a report or for a late payment. The taxable entity requesting waiver must furnish a detailed description of the circumstances that caused the late filing or late payment and the diligence exercised by the taxable entity in attempting to comply with the statutory requirements. See §3.5 of this title (relating to Waiver of Penalty or Interest) for additional information.

(6) If a taxable entity fails to comply with Tax Code, §171.212 (Report of Changes to Federal Income Tax Return), the taxable entity is liable for a penalty of 10% of the tax that should have been reported and had not previously been reported to the comptroller under Tax Code, §171.212. This penalty is in addition to any other penalty provided by law.

(f) Amended reports. In filing an amended report, the taxable entity must type or print on the top of the report the phrase "Amended Report." The report shall be forwarded with a cover letter of explanation, with enclosures necessary to support the amendment. Applicable penalties and interest must be reported and paid along with any additional amount of tax shown to be due on the amended report.

(1) A taxable entity may file an amended report for the purpose of correcting a mathematical or other error in a report, for the purpose of supporting a claim for refund, or to change its method of computing margin or, if qualified, to use the E-Z Computation.

(2) A taxable entity that has been audited by the Internal Revenue Service must file an amended franchise tax report within 120 days after the Revenue Agent's Report (RAR) is final, if the RAR results in changes to taxable margin reported for franchise tax purposes. An RAR is final when all administrative appeals with the Internal Revenue Service have been exhausted or waived. An administrative appeal with the Internal Revenue Service does not include an action or proceeding in the United States Tax Court or any other federal court.

(3) A taxable entity whose taxable margin is changed as a result of an audit or other adjustment by a competent authority other than the Internal Revenue Service must file an amended franchise tax report within 120 days after the adjustment is final. An adjustment is final when all administrative or other appeals have been exhausted or waived. For the purposes of this section, a competent authority includes, but is not limited to, the United States Tax Court, United States District Courts, United States Courts of Appeals, and United States Supreme Court.

(4) A taxable entity must file an amended franchise tax report within 120 days after the taxable entity files an amended federal income tax return that changes the taxable entity's taxable margin. A taxable entity is considered to have filed an amended federal income tax return if the taxable entity is a member of an affiliated group during a period in which an amended consolidated federal income tax return is filed.

(5) A final determination resulting from an Internal Revenue Service administrative proceeding (including an audit), or a judicial proceeding arising from an administrative proceeding, that affects the amount of franchise tax liability must be reported to the comptroller before the expiration of 120 days after the day on which the determination becomes final. See Tax Code, §111.206 (Exception to Limitation: Determination Resulting from Administrative Proceeding).

(6) Because the 10% penalty provided for in Tax Code, §171.212 only applies to deficiencies, failure to file an amended return in which a refund would result will not cause a 10% penalty to be imposed.

(g) Comptroller audit. During the course of an audit or other examination of a taxable entity's franchise tax account, the comptroller may examine financial statements, working papers, registers, memoranda, contracts, corporate minutes, and any other business papers used in connection with its accounting system. In connection with the examination, the comptroller may also examine any of the taxable entity's officers or employees under oath.

(h) Payment of determination. The payment of a determination issued to a taxable entity for an estimated tax liability shall not satisfy the reporting requirements set forth in Tax Code, Chapter 171, Subchapter E, concerning reports and records.

(i) Information report. Each taxable entity on which the franchise tax is imposed must file an information report.

(1) Public information report. For a taxable entity legally formed as a corporation, limited liability company, limited partnership, professional association, or financial institution, a public information report as described in Tax Code, §171.203 (Public Information Report), is due at the same time each initial and annual, including the first annual, report is due. An authorized person must sign the public information report on behalf of the taxable entity under a certification that:

(A) all information contained in the report is true and correct to the best of the authorized person's knowledge; and

(B) a copy of the report has been mailed to each person named in the report who is an officer, director, or manager and who is not employed by the taxable entity or a related (at least 10% ownership) taxable entity on the date the report is filed.

(C) A report that is filed electronically complies with the signature and certification requirements of this provision.

(2) Ownership information report. Taxable entities not required to file a public information report must file an ownership information report as described in Tax Code, §171.201 (Initial Report) and §171.202 (Annual Report) is due at the same time each initial and annual, including the first annual, report is due.

(3) Failure to file or sign a public information report or ownership information report shall result in the forfeiture of corporate or business privileges as provided by Tax Code, §171.251 (Forfeiture of Corporate Privileges) and §171.2515 (Forfeiture of Right of Taxable Entity to Transact Business in this State). If the corporate or business privileges are forfeited, each officer or director of the taxable entity may be liable for each debt of the taxable entity that is created or incurred in Texas after the date on which the report is due and before the corporate or business privileges are revived, as provided by Tax Code, §171.255 (Liability of Directors and Officers).
(4) The provisions of paragraph (3) of this subsection, concerning forfeiture of corporate privileges do not apply to a banking taxable entity or a savings and loan association, as defined in Tax Code, §171.0001 (General Definitions).

(5) For purposes of this subsection:

(A) authorized person means, in the case of a corporation, an officer, director or other authorized person of the corporation;

(B) authorized person means, in the case of a limited liability company, a member, manager or other authorized person of the limited liability company;

(C) authorized person means, in the case of a limited partnership, a partner or other authorized person of the partnership;

(D) director includes a manager of a limited liability company, a general partner in a limited partnership and a general partner in a partnership registered as a limited liability partnership;

(E) authorized person also includes a paid preparer authorized to sign the report.

(6) Taxable entities that are members of a combined group and do not have nexus in Texas are not required to file an ownership information report or a public information 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 15, 2019.

TRD-201902671
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Effective date: September 4, 2019
Proposal publication date: June 21, 2019
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