

PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 1. ADMINISTRATION

PART 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 54. SPECIAL PROGRAMS

SUBCHAPTER C. HUMAN TRAFFICKING PREVENTION SIGN

1 TAC §54.80

The Office of the Attorney General (OAG) proposes a new rule, Chapter 54, Subchapter C, §54.80, concerning the posting of human trafficking prevention signs in sexually oriented businesses. The proposed rule is necessary to comply with recent changes to the Business and Commerce Code that require a sign regarding the National Human Trafficking Resource Center to be posted in each restroom of a sexually oriented business.

Gene McCleskey, Division Chief, OAG Crime Victim Services Division, has determined that for the first five-year period the proposed rule is in effect, there are no foreseeable fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. McCleskey has determined that for each of the first five years following the adoption of the proposed rule, the anticipated public benefit will be to increase awareness of resources to victims of human trafficking.

The OAG has determined the proposed rule will not impact local economies. Therefore, the OAG is not required to prepare the local employment impact statement described in Government Code §2001.022.

The OAG has determined the proposed rule will not have an adverse economic effect on small businesses, micro-businesses, or rural communities. Therefore, the OAG is not required to prepare the economic impact statement or regulatory flexibility analysis described in Government Code §2006.002.

In compliance with Government Code §2001.0221, the OAG has prepared the following government growth impact statement. During the first five years the proposed rule is in effect, the proposed rule: 1) will not create or eliminate a government program; 2) will not require the creation of new employee positions or the elimination of existing employee positions; 3) will not require an increase or decrease in future legislative appropriations to the OAG; 4) will not require an increase or decrease in fees paid to the OAG; 5) will create the new regulation that Business and Commerce Code §102.101 requires the OAG to adopt; 6) will not expand, limit, or repeal an existing regulation; 7) will not increase or decrease the number of individuals

subject to Business and Commerce Code §102.101; and 8) will not positively or adversely affect the state's economy.

Written comments on the proposal may be submitted for 30 calendar days following the publication of this notice to Kristen D. Huff, Assistant Attorney General, Crime Victim Services Division, Office of the Attorney General, at kristen.huff@oag.texas.gov.

This rule is proposed in accordance with Business and Commerce Code §102.101, which requires the OAG to adopt rules prescribing the design, content, and manner of display of the required sign.

This rule is required in order to implement legislative changes to Business and Commerce Code Subchapter C.

§54.80. Design, Content, and Manner of Display.

(a) The attached graphic prescribes the design and content of the human trafficking prevention sign required by Business and Commerce Code §102.101.

Figure: 1 TAC §54.80(a)

(b) A sexually oriented business, as defined by Local Government Code §243.002, shall conspicuously post the sign prescribed in subsection (a) of this section, which must be at least 11 inches by 17 inches in size, by the sink area in each restroom on the premises of the sexually oriented business.

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

Filed with the Office of the Secretary of State on August 24, 2018.

TRD-201803638

Amanda Crawford

General Counsel

Office of the Attorney General

Earliest possible date of adoption: October 7, 2018

For further information, please call: (512) 475-3210



TITLE 13. CULTURAL RESOURCES

PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

CHAPTER 8. TEXSHARE LIBRARY CONSORTIUM

13 TAC §§8.1, 8.3 - 8.5

The Texas State Library and Archives Commission (Commission) proposes amendments to 13 Texas Administrative Code (TAC) §8.1 and §§8.3 - 8.5, TexShare Library Consortium.

The proposed amendments to the rules provide for the increasing prevalence of information in electronic format, including:

In §8.1, changes to the definition of an institution of higher education for purposes of eligibility for participation in the TexShare program to be consistent with definitions for certain classes of institutions found in the Texas Education Code.

In §8.3, changes to the eligibility of certain types of institutions eligible to participate in TexShare as affiliate members, including public school districts, open enrollment charter schools, and nonprofit libraries.

In §8.4, a change to the date of a reporting requirement for some categories of members and affiliate members to determine continued eligibility for membership from January 15 to December 15.

In §8.5, changes to the composition of the TexShare Advisory Board to specify types of institutions represented, including public school districts which are currently not represented but which under the proposed revisions would be eligible for affiliate membership.

Elsewhere in this issue of the *Texas Register*, the Commission contemporaneously filed a notice of intent to review the rules at 13 TAC §§8.1 - 8.5, TexShare Library Consortium, in its entirety.

FISCAL NOTE. Mark Smith, State Librarian and Director for the Commission, has determined that for the first five-year period the amendments are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the amendments. As these rules pertain only to administration of the TexShare Consortium, there is no effect on local economy for the first five years that the proposed amendments are in effect; therefore, no local employment impact statement is required under Texas Government Code, §2001.022. Similarly, the proposed amendments do not impose a cost on regulated persons and, therefore, are not subject to Texas Government Code, §2001.0045.

PUBLIC BENEFIT/COST NOTE. Mr. Smith has also determined that for the first five-year period the amended rules are in effect, the public benefit anticipated as a result of enforcing the amendments will be increased participation in the TexShare Consortium, improved representation on the TexShare Advisory Board, and greater clarity in membership eligibility and reporting requirements for member institutions.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT. There are no anticipated economic costs to persons who are required to comply with the amendments to these rules, as proposed. There is no effect on local economy for the first five years that the proposed amendments are in effect; therefore, no local employment impact statement is required under Texas Government Code §2001.0045.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES. There is no direct adverse economic impact for small businesses, microbusinesses, and rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

GOVERNMENT GROWTH IMPACT STATEMENT. Staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking, as specified in Texas Government Code §2006.0221. During the first five years that the amendments would be in effect, the proposed amendments: do not create or eliminate a government program; will not result in the addition or reduction of employees; will not require an increase or decrease in future legislative appropriations; will not lead to an increase or decrease in fees paid to a state agency; do not create a new regulation; do not expand, limit, or repeal an existing regulation; and will not result in an increase or decrease in the number of individuals subject to the rule. During the first five years that the rules would be in effect, the proposed amendments will have a positive effect on the Texas economy by improving the availability of library resources in all communities and maximizing the effectiveness of library expenditures by sharing library resources in print and in electronic form.

TAKINGS IMPACT ASSESSMENT. The Commission has determined that no private real property interests are affected by this proposal and the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. Written comments on the proposed amendments may be directed to Jennifer Peters, Director, Library Development and Networking, P.O. Box 12927, Austin, Texas 78711-2927, or by fax (512) 463-2306.

STATUTORY AUTHORITY. The amendments are proposed under Texas Government Code §441.222 that allows the Commission to establish and maintain the TexShare Consortium as a resource-sharing consortium, and Texas Government Code Sections 441.225 and 441.226 that authorize the Commission to adopt rules to govern the operation of the consortium and the organization and structure of the advisory board.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Government Code §§441.221 - 441.230. No other statutes, articles, or codes are affected by these amendments.

§8.1. Definitions.

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

(1) Institution of higher education--A public junior college certified by the Texas Higher Education Coordinating Board as described [An institution of higher education as defined] by Education Code, §61.063; a general academic teaching institution as defined by Education Code, §61.003(3); a medical and dental unit as defined by Education Code, §61.003(5); a public technical institute as defined by Education Code, §61.003(7); [§61-003, and] a private or independent institution of higher education as defined by Education Code, §61.003(15); or a public state college as defined by Education Code, §61.003(16) [§61-003].

(2) TexShare Annual Report Survey--A report submitted to the commission each year by [on the member institution of higher education's participation in TexShare programs, the member library of clinical medicine's participation in] TexShare members and affiliate members. The report shall include questions concerning satisfaction with TexShare [programs, the member library of nonprofit library collective's participation, or in fulfillment of a public library's system] membership and programs. It may also be used to provide updates to institutional program participation contacts [requirements].

(3) Commission--The Texas State Library and Archives Commission.

(4) Consortium--The TexShare Library Consortium.

(5) Director and Librarian--Chief executive and administrative officer of the commission.

(6) Public Library has the meaning assigned by Government Code, §441.122.

(7) Library of clinical medicine has the meaning assigned to Non-Profit Corporation by Government Code, §441.221.

(A) Extensive library services are defined as:

(i) Library is open and staffed a minimum of 45 hours per week; and

(ii) Staff includes a minimum of one full-time equivalent professional librarian (as defined in 13 TAC §1.84, relating to Professional Librarian); and

(iii) Library employs a library director for at least 40 hours per week in library duties; and

(iv) Services include circulation of materials, reference services, use of computers to access information sources, databases, or other similar services; and

(v) An institutionally-approved collection development policy updated at least every five years.

(B) Extensive collections in the fields of clinical medicine and the history of Medicine is defined as follows:

(i) Clinical medicine is defined as materials in the "W" category of the National Library of Medicine (NLM) classification scheme (www.nlm.nih.gov/klas/index.html).

(ii) History of Medicine is defined as:

(I) Materials fitting the scope of the NLM classification scheme (www.nlm.nih.gov/klas/index.html) under WZ-History of Medicine, Misc or in the NLM classification scheme under history of a particular medical subject (e.g. history of surgery (WO 11), history of dermatology (WR 11), history of gynecology (WP 11), etc.); or

(II) Unique archival materials (print materials, historical artifacts, and other resources) related to institutional history, or reflecting historically significant contributions of persons or institutions, or history of a particular area of health care.

(iii) "Extensive collections" is defined as a minimum of 12,000 library resources in the field of clinical medicine and history of medicine, in print and in electronic formats, comprised of books, journal titles, technical reports, videos, or databases.

(8) Public school district--Any school district or open enrollment charter school accredited by the Texas Education Agency under Texas Education Code, Section 11.001. [~~Subchapter D, Accreditation Status (§§39.074 - 39.076).~~]

(9) Public school library--An organized collection of printed, audiovisual and/or computer resources in a public school or public school campus (elementary or secondary). A public school library makes resources and services available to all students, teachers, and administrators. Collections such as classroom "libraries" or collections of primarily textbooks or other similar classroom teaching materials are not public school libraries.

(10) Certified school librarian--A public school district staff member holding a current school librarian certificate issued

by the State Board for Educator Certification under the authority of Education Code, Chapter 21, Subchapter B (§§21.031 - 21.058).

(11) Certified staff member--A public school district staff member holding a current certificate, license, permit, or other credential issued by the State Board for Educator Certification under the authority of Education Code, Chapter 21, Subchapter B (§§21.031 - 21.058).

~~[(12) Internet connection--A combination of hardware, software and telecommunications services that allows a computer to communicate with any other computer on the worldwide network of networks known as the Internet, and that adheres to Internet standards documents of the Internet Engineering Steering Group, Internet Architecture Board, and the Internet community.]~~

~~(12) [(13)] Consortium membership refers to membership held by those libraries meeting the eligibility criteria specified in §8.3(a)(1) [§8.3(b)(2) or (3)] of this chapter [(relating to Consortium Membership and Affiliated Membership)]. Libraries meeting these requirements are referred to as "members" or "consortium members."~~

~~(13) [(14)] Affiliate [Affiliated] membership refers to membership held by public school districts and by eligible nonprofit [those] libraries meeting the [eligibility] criteria specified in §8.3(a)(2) [§8.3(b)(4)] of this chapter. Libraries admitted under this section are referred to as "affiliate ["affiliated] members."~~

~~(14) [(15)] Eligible nonprofit [Nonprofit] library--A library not [already] qualified for consortium membership by virtue of being a public library, library of clinical medicine, [or] library component of [affiliated with] an institution of higher education, or public school district that is:~~

~~(A) Physically located in Texas, or if physically located outside of Texas, capable of providing online library services exclusively to Texas residents.~~

~~(B) [(A)] Established as a nonprofit organization or administrative subdivision of a nonprofit organization: [~~corporation~~]~~

~~(i) under the Texas Nonprofit Corporation Law (Texas Business Organizations Code §22.001 et seq.); or~~

~~(ii) recognized as exempt from federal income tax under section 501(c)(3) of the U.S. Internal Revenue Code; or~~

~~(iii) operated by a unit of local, state, or federal government; or~~

~~(iv) a designated tribal community library.~~

~~(C) A component of one of the following:~~

~~(i) An institution holding a current certificate of authorization from the Texas Higher Education Coordinating Board as specified in §19 TAC 7.7; or~~

~~(ii) Other agency of higher education as defined by Education Code, §61.003 (6); or~~

~~(iii) A full member of the National Network of Libraries of Medicine, South Central Region; or~~

~~(iv) The National Archives and Records Administration; or~~

~~(v) A U.S. Department of Defense installation; or~~

~~(vi) A non-public school accredited by an agency recognized by the Texas Private School Accreditation Commission.~~

~~(D) Provides library services, defined as:~~

(i) Provides services including circulation of materials, reference services, and use of computers to access information sources; and

(ii) Is open and staffed a minimum of 20 hours per week; and

(iii) Employs a library director for at least 20 hours per week in library duties.

[(B) An administrative subdivision of a nonprofit corporation established under the Texas Nonprofit Corporation Law (Texas Business Organizations Code §22.001 et seq.); or]

[(C) Located in Texas and operated by a unit of local, state, or federal government; or]

[(D) Located in Texas and a designated tribal community library.]

[(16) Nonprofit library collective—Two or more nonprofit libraries that share a set of common interests and have a defined membership structure.]

§8.3. Consortium Membership and Affiliated Membership.

[(a) Nonprofit library collective petition for membership or affiliated membership status:]

[(1) A nonprofit library collective that meets the following criteria may petition the Director and Librarian for affiliated membership status. The Director and Librarian will review the petition to determine that all the following criteria are met. Based upon the findings of the review, the Director and Librarian will either grant or deny the petition.]

[(A) The nonprofit library collective's affiliation with the consortium is funded by the nonprofit libraries comprising the collective or by a sustainable funding source.]

[(B) The nonprofit library collective has a designated institution or organization authorized to petition the agency on behalf of and to speak on its behalf with regards to membership eligibility issues.]

[(C) The nonprofit library collective's affiliation will enhance resource-sharing services to the consortium members.]

[(2) A nonprofit library collective that meets the following criteria may petition the Director and Librarian for membership status in the consortia. The Director and Librarian will review the petition to determine that all the following criteria are met. Based upon the findings of the review, the Director and Librarian will either grant or deny the petition.]

[(A) The nonprofit library collective has had affiliated membership status in the consortium for a minimum of two years.]

[(B) During its affiliation with TexShare, members of the nonprofit library collective have participated in two or more TexShare programs.]

[(C) The nonprofit library collective's membership in the consortium is supported through sustainable funding.]

[(D) The nonprofit library collective's membership will enhance resource-sharing services to the consortium members.]

[(a) [(b)] Eligibility of individual institutions or libraries.[:]]

[(1) Affiliated membership is open to nonprofit libraries meeting the following requirements:]

[(A) The nonprofit library is a member of a nonprofit library collective that has successfully petitioned the Director and Librarian for affiliated membership status.]

[(B) The nonprofit library certifies that it meets the minimum standards of accreditation established for the nonprofit library collective in its petition for affiliated membership status.]

[(C) The nonprofit library certifies that it will abide by the funding requirements established for the nonprofit library collective in its petition for affiliated membership status.]

[(1) [(2)] Membership in the consortium is open to all institutions of higher education [as determined by the Texas Higher Education Coordinating Board, and realized through the libraries that serve these institutions], to libraries of clinical medicine, and to all public libraries that are members of the state library system[: as defined in Government Code, §441.127].

[(2) [(3)] Affiliate membership [Membership in the consortium] is open to public school districts and to other eligible nonprofit libraries submitting an application for affiliate membership to [meeting the following requirements:]

[(A)] [The nonprofit library is a member of a nonprofit library collective that has successfully petitioned] the Director and Librarian [for membership status].

[(B) The nonprofit library provides certification that it meets the minimum standards of accreditation established for the nonprofit library collective in its petition for membership status.]

[(b) [(e)] Agreement.

[(1) Public libraries will be members of TexShare upon becoming [Members so long as they remain] members of the state library system.

[(2) Institutions of higher education and[:] libraries of clinical medicine[: and nonprofit libraries] must file a membership agreement, signed by a duly authorized administrative official, on joining the consortium.

[(3) Eligible nonprofit [Affiliated member] libraries whose application for affiliate membership has been approved must file an affiliate [affiliated] membership agreement, signed by a duly authorized administrative official, specifying in which programs of the consortium they may participate and any limitations to participation that will apply. [Participation in specific programs of the consortium may require additional agreements and fees.]

[(4) Public school districts and open enrollment charter schools accredited by the Texas Education Agency will be affiliate members of TexShare.

[(5) Membership agreements must be approved by the Director and Librarian following review by the TexShare Advisory Board before an institution may identify itself as a member or affiliate member of TexShare.

[(6) Participation in specific programs of the consortium may require additional agreements.

[(c) [(d)] Renewal of membership. [Annual Report Survey.]

[(1) Institutions [Libraries of member institutions] of higher education, public libraries, [member] libraries of clinical medicine, and eligible [member and affiliated member libraries of] nonprofit [library collectives shall file a current and complete annual report survey for the preceding year with the commission by January 15 of each year. Public] libraries will have their membership or affiliate membership automatically renewed for each state fiscal year, provided that they continue

to meet the definition [shall file their state library system reports as] required in subsection (a) [by §1-85] of this section [title (relating to Annual Report)].

(2) Members may choose to submit updated membership agreements annually or as required by their respective administrations.

(d) [(e)] Multiple Libraries.

(1) For institutions of higher education, the unit of membership in the TexShare Library Consortium shall be the institution. Institutions of higher education, as determined by the Texas Higher Education Coordinating Board, with libraries in multiple locations shall apply as a single unit. Community colleges shall apply per their certification by the Texas Higher Education Coordinating Board, in accordance with Government Code §61.063.

(2) Public libraries with branches shall be admitted [apply] as a single unit.

(3) For libraries of clinical medicine, the unit of membership shall be the non-profit corporation; those having multiple locations shall apply as a single unit. The various locations served by a non-profit corporation must be fully governed and owned by that non-profit corporation in order to qualify under the non-profit corporation's membership. [Non-profit corporations that amalgamate other, independently-administered organizations that are not fully governed and owned by that nonprofit corporation must submit a separate membership application for each independent organization regardless of any pooled or central funding. For nonprofit library collectives, the unit of membership or affiliated membership shall be determined during the petitioning process.]

(4) For eligible nonprofit libraries, the unit of membership or affiliated membership shall be determined during the application process.

(e) [(f)] Suspension and loss of membership.

(1) TexShare Annual Report Survey. Members and affiliate members shall be asked to file a current and complete TexShare annual report survey with the commission by December 15 of each year. Following review by the TexShare Advisory Board, the Director and Librarian may suspend or revoke any institution's membership following two or more failures to submit TexShare annual report surveys. Institutions may re-join TexShare at any time provided that they continue to meet the definition in subsection (a) of this section and upon submission of a written membership or affiliate membership agreement as described in subsection (b) of this section.

[(1) Institutions of higher education, libraries of clinical medicine, and nonprofit libraries: Membership or affiliated membership will be automatically renewed for each state fiscal year, provided that the library of clinical medicine, nonprofit library, or institution of higher education continues to meet the definition required in subsection (b) of this section; and an annual report survey has been filed as required by subsection (d) of this section.]

[(2) Public libraries: Public libraries shall remain TexShare members so long as they remain members of the state library system.]

(2) [(3)] Institutions of higher education, libraries of clinical medicine, nonprofit libraries, and public libraries that no longer meet the definition in subsection (a) [(b)] of this section, or are otherwise not qualified, will have their TexShare [be suspended from] membership or affiliate [affiliated] membership revoked. Institutions[-They] may re-join TexShare at any time provided that [when] they meet the definition in subsection (a) of this section and upon submission [(b)] of a written membership or affiliate membership agreement as described in subsection (b) of this section.

(3) Upon written request of the member institution, their TexShare membership may be suspended or revoked. Institutions may re-join TexShare at any time provided that they continue to meet the definition in subsection (a) of this section and upon submission of a written membership or affiliate membership as described in subsection (b) of this section.

(f) [(g)] Members, affiliate [affiliated] members, and public school districts [libraries] may receive services or be assessed fees based on demographic, financial, or other information, as reflected in the latest statistics from the National Center for Educational Statistics, the Texas Higher Education Coordinating Board, the Independent Colleges and Universities of Texas, the Texas Education Agency, the [most current statistical data reported to the commission in the Texas academic library survey, the] Texas public library annual report [(filed as required by subsection (d) of this section)], or from statistical information received directly from the member, affiliated member, or public school library and certified by the member, affiliated member, or public school library as accurate.

(g) [(h)] Fees. Some consortium services are supported by fees paid by participants. Fees will be set by the Director and Librarian for different categories of consortium services, in consideration of the costs involved in providing these services to member libraries, affiliate [affiliated] members, and public school libraries.

(h) [(i)] Complaints regarding fee assessments, denial of membership, or denial of affiliate [affiliated] membership will be processed in accordance with procedures outlined in §2.55 of this title (relating to Protest Procedure).

§8.4. Advisory Board.

(a) The commission shall appoint an advisory board to advise the commission on matters relating to the consortium. The advisory board is charged with reviewing information on the status and plans for consortial programs and services, providing input and recommendations regarding those programs and services, and making recommendations regarding consortia membership and governance. The advisory board may recommend to the Director and Librarian that:

(1) the consortium enter [enters] into cooperative projects with entities other than public libraries, libraries of clinical medicine, or institutions of higher education; and/or

(2) the consortium admit or deny membership status or affiliate [affiliated] membership status to libraries of clinical medicine, independent institutions of higher education, and eligible nonprofit libraries [library collectives].

(b) Members of the advisory board shall be chosen to present as much variety as possible in geographic distribution and size and type of institution. At least two members must be representatives of the general public. Each of the following types of institutions must be represented by at least one member: public libraries; public junior colleges; general academic teaching institutions and private or independent institutions of higher education; and public school districts. The maximum number of members shall not exceed 11. [Composition of the board will be representative of the various types of libraries comprising the membership.] Members of the advisory board must be qualified by training and experience to advise the commission on policy.

(c) The advisory board shall meet at least twice a year regarding consortium programs and plans at the call of the advisory board's chair [chairman] or of the Director and Librarian. The advisory board reports to the agency through its meeting and meeting minutes, and/or reports or letters to the Director and Librarian.

(d) Members of the advisory board serve three-year terms beginning September 1.

(e) A member of the advisory board serves without compensation but is entitled to reimbursement for actual and necessary expenses incurred in the performance of official duties, subject to any applicable limitation on reimbursement provided by the General Appropriations Act.

(f) The advisory board shall elect a chair [~~chairman~~] and a vice chair [~~chairman~~] at the first meeting of each fiscal year.

§8.5. *Programs.*

(a) The programs of the consortium shall include activities designed to facilitate library resource sharing. Such activities may include:

(1) providing electronic networks, shared electronic resources [~~databases~~], reciprocal borrowing, delivery services, and other infrastructure necessary to enable the libraries in the consortium to share resources;

(2) negotiating and executing statewide contracts for information products and services;

(3) coordinating library planning, research and development; or

(4) training library personnel.

(b) Programs of the consortium are established and administered for the benefit of consortium members. Consortium members may sometimes enter into formal or informal agreements with other members and with non-member entities. Under these agreements, consortium members may not provide systematic access to consortium services to non-member entities or to members ineligible to participate in such services. This provision should not be construed in such a way as to limit a member institution's ability to provide on-site access to TexShare electronic resources [~~databases~~] to members of the public as permitted by contract.

(c) Public school districts [~~libraries~~] may participate in group purchasing agreements provided by the consortium if such libraries are managed by or report to a certified school librarian or other certified staff member in the public school district or public school campus.

(d) Affiliate [~~Affiliated~~] members may participate in programs of the consortium as specified in their affiliate [~~affiliated~~] membership agreement or as determined from time to time by commission staff with approval from the TexShare Advisory Board and the Director and Librarian.

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

Filed with the Office of the Secretary of State on August 23, 2018.

TRD-201803637

Jennifer Peters

Director

Texas State Library and Archives Commission

Earliest possible date of adoption: October 7, 2018

For further information, please call: (512) 463-5456



PART 2. TEXAS HISTORICAL COMMISSION

CHAPTER 12. TEXAS HISTORIC COURTHOUSE PRESERVATION PROGRAM

13 TAC §12.7, §12.9

The Texas Historical Commission (THC) proposes amendments to §12.7 related to the Grant or Loan Program, and §12.9 related to Application Requirements and Considerations of Chapter 12, Title 12, Part 2, of the Texas Administrative Code concerning the Texas Historic Courthouse Preservation Program.

Clarifications are required for §12.7 which describes applicant eligibility and match requirements. Section 12.7(d) addresses the consideration of prior capital and in-kind contributions as credit toward the local match as required by Tex. Gov't. Code, §442.0081(d)(2) but deleted in a previous rules amendment. Credit for the cost of preparing plans and specifications is not allowed (see same), and will be eliminated from the rules.

Section 12.9 describes the application requirements, process and factors considered by the commission in awarding the grants. Section 12.9(c) describes the factors for considering whether to grant an application, and it has been expanded to include a new scoring criterion for considering the local funding capacity of an applicant and now clarifies that master plans should be updated to reflect current conditions and needs. Section 12.9(d) has been modified such that emergency needs, defined as catastrophic, may be funded on an expedited basis and that updated to preservation master plans may be a purpose to which grant funds are applied.

Adoption of these amendments is proposed under §§442.0081(d)(2), 442.0081(e)(7), and 442.0083(b) of the Texas Government Code, which provide the Texas Historical Commission with the authority to promulgate rules and conditions to reasonably effect the purposes of this chapter. No other statutes, articles, or codes are affected by these sections.

Mark Wolfe, Executive Director, has determined that for each of the first five-years the proposed amendments are in effect, there will not be a fiscal impact on state or local government as a result of enforcing or administering these amendments, as proposed.

Mr. Wolfe has also determined that for the first five-year period the amended rules are in effect, the public benefit will be that program funding will be used more effectively to assist counties and municipalities.

There are no anticipated economic cost to persons who are required to comply with amendments to these rules, as proposed. There is no effect on local economy for the first five years that the proposed new section is in effect; therefore, no local employment impact statement is required under Texas Government Code, §2001.022 and §2001.024(a)(6).

The proposed new section does not impose a cost on regulated persons, including another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

Mr. Wolfe has also determined that there will be no impact on rural communities, small businesses, or micro-businesses as a result of implementing these amendments and therefore no regulatory flexibility analysis, as specified in Texas Government Code §2006.002, is required.

THC staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking, as specific in Texas Government Code, §2006.0221. During the first five years that the amendments would be in effect, the proposed amendments: will not create or eliminate a government program; will not result in the creation or elimination of employee positions; will not re-

quire and increase or decrease in future legislative appropriations; will not lead to an increase or decrease in fees paid to a state agency; will not create a new regulation; will not repeal an existing regulation; and will not result in an increase or decrease in the number of individuals subject to the rule. During the first five years that the amendments would be in effect, the proposed amendments will not positively or adversely affect the Texas economy.

THC has determined that no private real property interests are affected by this proposal and the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

Comments on the proposal may be submitted to Mark Wolfe, Executive Director, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the *Texas Register*.

These amendments are proposed under the authority of Texas Government Code §442.005(i), which allows the Commission to provide matching grants to assist the preservation of a historic structure significant in Texas or American history, architecture, archeology or culture; Texas Government Code §442.005(q), which provides the Commission with the authority to promulgate rules to reasonably affect the purposes of the Commission; Texas Government Code §442.0081(h), which requires the Commission to adopt rules for the historic courthouse preservation program.

These amendments are proposed under the authority of Texas Government Code §442.005(b), which designates the Commission as the agency responsible for the administration of the Texas Historic Courthouse Preservation Program. The proposed amendments implement §§442.0081(c), 442.0081(e)(7), and 442.0083(b) of the Texas Government Code. No other statutes, articles, or codes are affected by these amendments.

§12.7. *Grant or Loan Program.*

(a) **Property Eligibility.** In order to be eligible for grants or loans under the courthouse program, a historic courthouse owned by either a county or municipality must be determined a historic courthouse structure as defined in §12.5 of this chapter.

(b) **Master plan requirement.** In order to be eligible for funding, a county or municipality must have completed a current master preservation plan approved by the commission. The commission may require an outdated master plan be updated prior to the date of application or before a grant or loan is approved.

(c) **Types of Assistance.** The commission may provide financial assistance in the form of grants or loans. Grant or loan recipients shall be required to follow the terms and conditions of the Texas Historic Courthouse Preservation Program and other terms and conditions imposed by the commission at the time of the grant award or loan.

(d) **Match for grant or loan assistance.** Applicants eligible to receive grant or loan assistance must provide a minimum of 15% of the total project cost or other match requirements as determined by the commission. Credit toward match may be given for a county's or municipality's prior capital and in-kind contributions and prior master planning costs, ~~such as those involved with preparing an approved master plan or approved construction plans and specification for the project.~~ Not less than one half of the match must be derived from current cash match and/or planning match.

(e) Allowable use of grant or loan monies.

(1) A county or municipality that receives money under the courthouse program must use the money only for preservation, reconstruction, rehabilitation, restoration or other expenses that the commission determines eligible.

(2) All work must comply with the Secretary of the Interior's Standards for the Treatment of Historic Properties (1995 edition, or as revised).

(3) Individual grants or loans may not exceed \$6 (six) million and the cumulative total may not exceed \$6 million to any one county or municipality.

(4) The commission may grant a different amount than requested in a courthouse grant application.

(f) **Administration.** The courthouse program shall be administered by the commission.

(g) **Advisory Committee.**

(1) The commission may appoint Advisory Committees or other working groups to advise the commission on matters related to the Texas Historic Courthouse Preservation Program including courthouse maintenance.

(2) The commission should consider the following when selecting members of an advisory committee or working group:

(A) geographic diversity;

(B) population;

(C) area of expertise; and/or

(D) representation of the public interest.

(h) **Procedures.** The commission shall adopt procedures, and revise them as necessary, to implement the Texas Historic Courthouse Preservation Program.

(i) Compliance with current program grant manual and all other rules, statutes, policies, procedures and directives is mandatory for all historic courthouse projects unless written exception is provided by the commission due to unforeseen circumstances beyond the control of grantee or grantor.

(j) **Grants for Construction Plans and Specifications:**

(1) The commission may make grants for the purpose of completing construction plans and specifications for courthouse construction projects.

(2) A county or municipality receiving a grant for completing plans and specifications must apply for a construction grant from this program at the next grant program funding opportunity following commission acceptance of the complete plans and specifications. In the subsequent grant application, the county or municipality must provide at least an equal level of commitment to program components as provided in their previous funding applications. If a construction grant is awarded, the county or municipality must go forward with construction of the courthouse project so funded. If a grant is not awarded, the county or municipality must continue to apply for construction grants and make a good-faith effort to receive the grant when subsequent opportunities arise.

(3) A county or municipality that does not apply for a construction grant in accordance with this section at each grant funding opportunity during the following six years or does not complete the courthouse project by other means within these six years following the commission's acceptance of the plans and specifications will be required to repay the grant for plans and specifications to the commission

unless the commission votes to allow additional time accomplish the construction project.

(4) A county or municipality that continues to apply for construction grants and makes a good-faith effort to receive the award and does not receive a grant or is able to complete the construction project by other good faith efforts will not be required to repay the grant.

§12.9. *Application Requirements and Considerations.*

(a) A county or municipality that owns a historic courthouse may apply to the commission for a grant or loan for a historic courthouse project. The application must include:

- (1) the address of the courthouse;
- (2) a statement of the historic designations that the courthouse has or is likely to receive;
- (3) a statement of the amount of money that the county or municipality commits to contribute to the project;
- (4) a statement of previous county or municipal monies spent on planning which the county or municipality may be allowed as credit toward their match;
- (5) a statement of whether the courthouse is currently functioning as a courthouse or other public facility;
- (6) copies of any plans, including the required master preservation plan or ~~current~~ construction plans and specifications, that the county or ~~of~~ municipality may have for the project unless the commission already has these plans on file;
- (7) copies of existing deed covenants, restrictions or easements held by the commission or other preservation organizations;
- (8) statements of support from local officials and community leaders; and
- (9) the current cost estimate of the proposed project; and
- (10) any other information that the commission may require.

(b) The Texas Historic Courthouse Preservation Program will be a competitive process, with applications evaluated and grants awarded based on the factors provided in this section, including the amount of program money for grants.

- (1) Funding requests may be reduced by the commission to reflect ineligible project costs or smaller scopes or phases of work such as planning for the construction work~~;~~ ~~or for any other reason such as limited grant funding availability~~.
- (2) The commission may adjust the amount of a previously awarded grant up and/or down based on the changing conditions of the property and the program.

(c) In considering whether to grant an application, the commission will assign weights to and consider each of the following factors:

- (1) the status of the building as a functioning courthouse;
- (2) the age of the courthouse;
- (3) the degree of endangerment;
- (4) the courthouse is subject to a current conservation easement or covenant held by the commission;
- (5) the proposal is in conformance with the approved master plan and addresses the current condition and needs of the property ~~[work]~~ in proper sequence;

(6) the county or municipality agrees to place/extend a preservation easement/covenant and/or deed restriction as part of the grant process;

(7) the importance of the building within the context of an architectural style;

(8) the proposal addresses and remedies former inappropriate changes;

(9) the historic significance of the courthouse, as defined by 36 CFR §101(a)(2)(A) and (E), and NPS Bulletin 15, "How to Apply the National Register Criteria for Evaluation;"~~["~~

(10) the degree of surviving integrity of original design and materials;

(11) if a county or municipality submits completed and commission-approved construction plans and specifications for proposed work at the time of the application, provided the plans and specifications comply with the previously approved master plan;

(12) the use of the building as a courthouse after the project;

(13) the county's or municipality's provision of a match greater than 15% of the grant request;

(14) the degree to which the proposal achieves ~~[results in]~~ a fully restored county courthouse;

(15) the status of the courthouse in terms of state and local historical designations that are in place;

(16) the county or municipal government's provision of preservation incentives and support of the county historical commission and other county-wide preservation efforts;

(17) the location of the county in a region with few awarded courthouse grant applications;

(18) the existence of a plan for physically protecting county records during the restoration and afterwards, as well as an assessment of current and future space needs and public accessibility for such records, if county-owned;

(19) the existence of a strong history of compliance with the state courthouse law (Texas Government Code, §§442.0081 - 442.0083 and the Antiquities Code of Texas, Texas Natural Resources Code Chapter 191);

(20) the effort to protect and enhance surrounding historic resources; ~~[and]~~

(21) the evidence of community support and county or municipality commitment to protection;

(22) the applicant's local funding capacity as measured by the total taxable value of properties in the jurisdiction.

(d) Other Considerations.

(1) The factors noted in subsection (c) of this section, and any additional ones determined necessary by the commission, will be published prior to each individual grant round as part of the formal procedures for the round.

(2) The commission may distribute a portion of the funds available for each grant period to be used for specific purposes on and expedited basis and/or granted through different criteria than other funds. Such specific purposes may include, but are not limited to, the following:

(A) Emergency repairs necessary to address or prevent catastrophic damage to [~~or deterioration of~~] the courthouse; or

(B) Compliance with the Americans with Disabilities Act or other state or federally mandated repairs or modifications; or

(C) Previously [~~Grants to the owners of previous~~] awarded projects that require additional funding to accomplish [~~resolve unforeseen conditions that may prevent the owners from meeting~~] the intended goals of the project; or [~~program~~].

(D) Updates to approved courthouse preservation master plans.

(3) Any such distribution to a specific purpose or change in criteria must be decided by a vote of the commission and advertised to the potential grantees prior to the date for the submission of applications.

(e) As a condition for a county or municipality to receive money under the courthouse fund, the commission may require creation of a conservation easement on the property, and may require creation of other appropriate covenants in favor of the state. The highest preference will be given to counties agreeing to the above referenced easements or covenants at the time of application.

(f) The commission shall provide oversight of historic courthouse projects.

(1) The commission may make periodic inspections of the projects during construction and/or upon and following completion to ensure compliance with program rules and procedures.

(2) The commission may require periodic reports to ensure compliance with program rules and procedures and as a prerequisite to disbursement of grant or loan funds.

(3) The commission may adopt additional procedures to ensure program compliance.

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

Filed with the Office of the Secretary of State on August 22, 2018.

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Mark Wolfe

Executive Director

Texas Historical Commission

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For further information, please call: (512) 463-6094



CHAPTER 16. HISTORIC SITES

13 TAC §16.3

The Texas Historical Commission (hereafter referred to as the "Commission") proposes amendments to Rule §16.3 of Title 13, Part 2, Chapter 16 of the Texas Administrative Code concerning historic sites. These amendments are needed as part of the Commission's overall effort to clarify language in order to implement necessary updates, additions and changes to more precisely reflect the procedures of the historic sites division.

The rule amends the current two-phase process and creates a three-phase process within the updated State Historic Sites Historic Properties Collection Plan for the evaluation of a historic property. The amendments provide the criteria to be used in

preliminary staff evaluations and defines a process to more effectively evaluate properties and contain costs.

There will be no fiscal impact. The proposed revisions to the process of historic site evaluation will minimize the fiscal impact and contain costs in evaluating potential properties and be more cost effective to the state. Mark Wolfe, Executive Director, has determined that for the first five-year period the amended rules are in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the rules, as proposed.

The benefit to the public will be achieved by providing an improved and enhanced structured approach in property evaluations. The proposed new three step procedure will ensure that the process is the most effective and efficient in the deployment of state resources. Mr. Wolfe has also determined that for each year of the first five-year period the amended rules are in effect, the public benefit will be a clearer statement of the criteria to be used in evaluating potential historic sites and a more clearly defined process.

There are no anticipated economic costs to persons who are required to comply with the amendments to these rules as proposed. There is no effect on the local economy for the first five years that the proposed amendments are in effect; therefore, no local employment impact statement is required under Texas Government Code, §2001.022 and §2001.024(a)(6).

The proposed amendments do not impose a cost on regulated persons or entities; therefore, they are not subject to Texas Government Code, §2001.0045.

The proposed rule amendments provide an opportunity for the historic sites division to operate more strategically in assessing properties with a preliminary in-house first step to determine if further investment of state resources is required in any property assessment. There is no anticipated economic impact of these amendments to the rule. Mr. Wolfe has also determined that there will be no negative impact on rural communities, small or micro-businesses because of implementing these rules amendments and therefore no regulatory flexibility analysis, as specified in Texas Government Code §2006.002, is required. There are no anticipated economic costs to the public in compliance with the amendments to these rules, as proposed.

During the first five years that the amendments would be in effect, the proposed amendments: will not create or eliminate a government program; will not result in the addition or reduction of employees; will not require an increase or decrease in future legislative appropriations; will not lead to an increase or decrease in fees paid to a state agency; will not create a new regulation; will not repeal an existing regulation; and will not result in an increase or decrease in the number of individuals subject to the rule. During the first five years that the amendments would be in effect, the proposed amendments will not positively or adversely affect the Texas economy.

THC has determined that no private real property interests are affected by this proposal and the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

Comments on the proposal may be submitted to Joseph Bell, Deputy Executive Director of Historic Sites, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711. Comments

will be accepted for 30 days after publication in the *Texas Register*.

These amendments are proposed under the authority of Texas Government Code §442.005(q), which provides the Commission with the authority to promulgate rules to reasonably affect the purposes of the Commission; Texas Government Code §442.0057 and §442.0058, which allow the Commission to accept donations of land or sell or exchange land; and Texas Government Code §442.0053(a), which provides that the Commission by rule shall adopt the criteria to determine to the eligibility for the inclusion of real property into the state historic sites system.

Texas Government Code §442.0053(a) provides the Commission with the authority to adopt the criteria to determine to the eligibility for real property's inclusion into the state historic sites system and Texas Government Code §442.0056(a) provides the Commission with the authority to acquire historic sites. No other statutes, articles, or codes are affected by this new rule.

§16.3. Addition of Historic Sites to the Texas Historical Commission Historic Sites Program.

(a) Criteria. The addition of new Historic Sites will follow the "State Historic Sites Historic Properties Collection Plan" in a three-step process [~~Historic Sites Division Property Collection Plan~~] as posted on the Texas Historical Commission's website at thc.texas.gov detailing themes and subthemes in Texas history, site assessment, operational and managerial evaluations processes and the following criteria:

(1) The property must have recognized statewide or national significance based on the standards of the National Register of Historic Places.

(2) The property should be able to provide interpretation of a significant theme or event of Texas history that is not fully represented by the Commission's existing historic sites or other historic sites accessible to the public. The Commission will strive to maintain a geographic, cultural and thematic balance in its program.

(3) The property should have exceptional integrity of location (including surrounding environment), design, material, setting, feeling, and association.

(4) The property should have appropriate collections (objects, manuscript material, artifacts) associated with the historic site or necessary artifacts related to the site's history and period of significance should be identified and available.

(5) The property must be appropriate for use as an interpretive museum or historic site, have high potential to attract and accommodate diverse and new audiences, and be accessible to travelers as well as to the local community.

(6) The property must be available without restrictions that would limit the Commission's options for preservation and interpretation as a historic site (for example, a life estate retained by the grantor, restrictions against future sale or conveyance, or limits on alterations deemed appropriate by the Commission). The Commission encourages the use of easements or other restrictions to ensure the preservation of historic sites.

(7) Financial resources must be available or assured, including an endowment fund where appropriate, or sources of funding must be identified in a comprehensive funding plan to ensure the restoration, interpretation, development, long term operation and preservation of the site.

(8) The property must have the potential for strong supporting partnerships including community support.

(b) Evaluation Process. To evaluate the site against these criteria, the Commission will follow a ~~three~~[~~two~~]-step process as follows.

(1) In phase one, staff will determine if the property should be recommended to be added to the Texas Historical Commission's portfolio of State Historic Sites. The preliminary evaluation will briefly address the following issues:

(A) Where is the property located?

(B) What is the current condition of the property?

(C) What improvements would need to be made to meet THC standards for visitor access, experience, and safety?

(D) What is the importance of the property in Texas and/or American History?

(E) What is the estimation of the property's value, strategically, operationally and culturally?

(F) Are there resources such as artifact collections or endowment that accompany the property?

(G) Are there resources available to adequately interpret the property's themes and stories to the public?

(H) Are the necessary resources available to preserve and care for the property's physical infrastructure and collections?

(I) Does THC have the financial and FTE resources to operate the property?

(J) What is the property's potential for the generation of sustainable visitation and revenue?

(2) ~~[4]~~ If the property is recommended for additional study, a [A] staff committee will be [appointed] assigned in phase two to conduct a preliminary review of the property with reference to criteria noted in subsection (a) of this section. The committee will make a recommendation to the Commission whether to proceed with the development of a historic site management plan in phase three of the [second step] evaluation process.

(3) ~~[(2)]~~ Staff will obtain and use the following information in phase two:

(A) A description of the property, including land, structures and other features.

(B) A preliminary inventory of collections and equipment.

(C) A statement of significance or reference to its designation on the National Register of Historic Places/National Historic Landmark and an evaluation of the site's integrity.

(D) A statement from the current owner indicating a willingness to transfer the real and relevant personal property and the terms and conditions for such a transfer.

(E) Needed and available funding for development costs and continuing operational costs.

(F) Letters of support from interested parties, including an indication of willingness to create an appropriate support group.

(G) A statement identifying how the property would support the educational mission of the Historic Sites Program to serve a broad and diverse audience.

(H) A preliminary estimate of the visitation and costs for development and operation of the site.

(4) [(3)] Upon positive action by the Commission on the recommendation noted in paragraph (2)[(4)] of this subsection, the staff will prepare or have prepared a management plan in phase three for the site's evaluation including:

(A) Evaluation of the site, including buildings, support facilities, infrastructure (including roads, trails, utility service/water and sewer systems), landscape features, and collections.

(B) Merits of the proposed site compared to other sites in Texas that embody the same or similar historical or physical characteristics.

(C) Preservation and facility development needs.

(D) Costs and timeline for making the property available to the public.

(E) Any limitation on site development, such as environmental regulations and local restrictions (zoning, land use).

(F) Needed staffing and consultant services for development of the site.

(G) Needed staffing and services for operation of the site, including ongoing costs of preservation operation, and marketing.

(H) Business plan for the site identifying projected audience/annual visitation, sources of funds for all aspects of the program including available community support, potential to generate revenue, and endowment.

(5) [(4)]The management [This] plan will be reviewed by a panel of experts including an independent Texas historian, museum professional, and expert in heritage tourism and their recommendation will be taken into consideration by the Commission to determine whether the property should be accepted.

(6) [(5)]The decision to accept a site is within the sole discretion of the Commission, including determining whether acceptance of a property that meets all technical criteria is in the best interest of the State.

(c) A property that is adjacent to an existing THC State Historic Site that will enhance the preservation, protection or interpretation of the existing site, or a property that is needed to support the operations of the state historic sites as a program support facility may be acquired by purchase or donation by action of the Commission on recommendation of the Executive Director, without the evaluation process described in subsection (b) of this section.

(d) A right of way or easement required to allow for installation or connection of necessary utilities at a THC State Historic Site between regular meetings of the Commission, may be approved by the Executive Director with the approval of the Chairman. This action will be ratified at the next meeting of the Commission.

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

Filed with the Office of the Secretary of State on August 22, 2018.

TRD-201803625

Mark Wolfe

Executive Director

Texas Historical Commission

Earliest possible date of adoption: October 7, 2018

For further information, please call: (512) 463-7948



13 TAC §16.12

The Texas Historical Commission (hereafter referred to as the "Commission") proposes new rule §16.12, relating to the operation and leasing of state historic site concessions to Title 13, Part 2, Chapter 16 of the Texas Administrative Code. The proposed rule will establish a procedure and criteria to allow the commission to contract for vendor services to address historic site business needs.

The rule defines concession services, outlines the process for selecting and contracting for concession services in meeting the business operational needs of state historic sites, provides expanded opportunities to serve the public more effectively and efficiently and provides operational efficiencies by contracting with local businesses. The use of concessions at THC historic sites has not been fully utilized, and provides an opportunity for new services to enhance visitor experience by improving customer amenities and overall on-site services.

FISCAL NOTE. There will be no fiscal impact. The use of contracted concession services will allow operations to expand, be enhanced and achieve more efficiencies to serve the public without additional state funds or FTEs. Utilizing vendors to enhance the public enjoyment of the historic site is the main objective. There will be minimal or neutral cost associated with these new rule considering many services are not presently provided in-house and will be provided by vendors. Vendors will be required to provide furniture, fixtures, inventory and equipment to address business needs. The engagement of vendors will meet each site's business plan objectives. Mark Wolfe, Executive Director, has determined that for the first five-year period the new rule are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering these rules, as proposed.

PUBLIC BENEFIT/COST NOTE. Public benefit will be achieved by providing more robust and diverse operations that may operate more effectively in achieving public enjoyment of THC's state historic sites. Vendor services are not presently utilized at many sites and provide an opportunity to enhance the sites' business environments. Food, retail, hospitality and events services will improve public service with experts in the noted business fields providing a higher quality of service and allowing staff to focus on their educational programming mission. This is anticipated to result in a net increase to the agency's revenue, improved service level to the public and growth in its brand image. Mr. Wolfe has determined that for the first five-year period the rule is in effect, the public benefit will be to provide an enhanced visitor experience highlighting the state resources more effectively through expanded use. These measures will help attract and expand visitation to better promote the preservation and importance of these state historic resources.

COSTS TO REGULATED PERSONS. The proposed new rule does not impose a cost on regulated persons or entities, and therefore are not subject to Texas Government Code, §2001.0045.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES. The rule provides an opportunity for small businesses across the state to contract with THC's historic sites in order to enhance business operations as well as the visitor experience. Mr. Wolfe has also determined that there will be no negative impact on rural communities, small or micro-businesses because of implementing this

rule and therefore no regulatory flexibility analysis, as specified in Texas Government Code §2006.002, is required. There are no anticipated economic costs to the public in compliance with the rule, as proposed.

GOVERNMENT GROWTH IMPACT STATEMENT. During the first five years that the rule would be in effect, the proposed rule: will not create or eliminate a government program; will not result in the addition or reduction of employees; will not require an increase or decrease in future legislative appropriations; will not lead to an increase or decrease in fees paid to a state agency; will not create a new regulation; will not repeal an existing regulation; and will not result in an increase or decrease in the number of individuals subject to the rule. During the first five years that the rule would be in effect, the proposed rule will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. THC has determined that no private real property interests are affected by this proposal and the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. Comments on the proposed new rule may be submitted to Joseph Bell, Deputy Executive Director of Historic Sites, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the *Texas Register*.

STATUTORY AUTHORITY. This rule, proposed under the authority of Texas Government Code §442.005(q), provides the Commission with the authority to promulgate rules to reasonably affect the purposes of the Commission; Texas Government Code §442.106, allows the Commission to operate or grant contracts to operate concessions on the grounds of historic sites; Texas Government Code §442.072(c), allows the commission to enter into agreements; and Texas Government Code §442.101(a), §442.101(b), and §442.101(c), allow the Commission to adopt policies and procedures by rule to contract for services necessary to carry out its responsibilities regarding historic sites.

CROSS REFERENCE TO STATUTE. Texas Government Code §442.072(c), §442.101(a), §442.101(b), §442.101(c), and §442.106 allow the commission to contract for services, in this instance specifically for concessions, necessary to carry out its responsibilities regarding historic sites. No other statutes, articles, or codes are affected by this new rule.

§16.12. Operation and Leasing of State Historic Site Concessions.

(a) Definitions.

(1) State historic site: A state owned historic property under the management control of the Commission.

(2) Concessions: Those services and accommodations offered to the public at state historic sites for which charges, fees, admissions, or similar assessments are collected, excluding historic sites admissions and facilities use fees.

(3) Concessioner: Any person, partnership, or corporation granted leased concession rights or privileges at a state historic site.

(4) Franchise fee: The annual fee or percentage of gross receipts a concessioner pays to the Commission for state historic site concession rights or privileges.

(5) Leased concessions: Rights or privileges granted by the Commission to any individual, partnership, or corporation to provide

visitor services and accommodations for profit within the boundaries of a state historic site property.

(6) Visitor services: Contracted service to operate a facility, program, retail store, food service, event, rental program and any other public service to address the public's use and enjoyment.

(7) Accommodation: Contracted services to operate lodging, camping, RV park or other like overnight programming addressing the public's use and enjoyment.

(8) Incidents: Any occurrence and or site condition impacting the health and safety of the staff and public.

(b) General Requirements.

(1) Visitor services and accommodations may be operated by concessioner under contractual arrangements with the Commission. Concession services are provided for public use and enjoyment, and are in line with the mission of the Commission to meet its educational and preservation objectives.

(2) A concessioner may be permitted the use of buildings, structures, and site improvements in accordance with the terms of the contract, provided they assume full responsibility for the maintenance and repair due to wear and tear during their period of use.

(3) The executive director, subject to the provisions of commission policy, shall take such action as may be appropriate to encourage or enable the use of private funding investment to provide visitor services and accommodations necessary for the full enjoyment of state historic sites properties administered by the Commission.

(c) Concessioner Selection.

(1) The solicitation, recruitment and selection of concessioners within state historic sites shall be accomplished in a manner appropriate for the scale of the investment and term of the business opportunity ensuring that the selection process is fair, equitable, and in compliance with all applicable contracting and purchasing laws.

(2) A concessioner will be selected with great care to ensure that the concessioner can successfully operate the concession in compliance with the contract between the concessioner and the Commission.

(3) The granting, termination, amendment, transfer, assignment, and enforcement of all leased concession contract requirements and provisions of such contracts is delegated to the executive director, or his delegee.

(4) Site managers may select vendor services (food trucks, popup retail, markets, etc.) for special events and weekends to enhance public amenities during these limited periods of time in accordance with state contracting and purchasing laws. These will be approved by the director of historic sites operations and authorized utilizing a revocable temporary contract which may be executed by the deputy executive director of historic sites.

(d) Types of Concession Contracts.

(1) A long-term concession contract over a 1-year period will be used to grant major concession rights and privileges when the concessioner is required to make sizable investments over \$5,000 in merchandise inventories, equipment or furnishings, tenant finish, or maintenance or repair to state-owned facilities.

(2) A revocable short-term contract under a 1-year period shall be used to grant concession privileges when warranted by the scope and size of the concession and as allowed by state contracting and purchasing laws. Examples include merchandise vending machines, coin operated machines, equipment rental, and other miscellaneous ser-

vices or accommodations deemed appropriate for the state historic site by the deputy executive director of historic sites. An announcement concerning the availability of concession services may not be issued, with a vendor directly selected for weekend and other limited seasonal concessions where no state payment is provided or state payment to any vendor is under \$5000.

(3) A revocable temporary contract may be used when allowed by state contracting and purchasing laws and when deemed necessary to address business objectives for special event services and programs, provide interim services, or during a test period to determine the feasibility for adding a new concession to a state historic site.

(e) Contract Terms.

(1) All contracts shall be executed for a short or long-term contract commensurate with the size of the total investment required from the concessioner. The duration of the contract shall be set for a period to allow for a reasonable opportunity for the concessioner to achieve a return on their investment.

(2) The penalties and interest assessed for delinquent franchise fees shall be stated in the contract but may not exceed the penalties and interest rate established in the Texas Tax Code §111.060 and §111.061.

(3) Penalties and/or interest under this section may be waived by the executive director or designee for good cause.

(4) The rates and charges prescribed by the concessioner shall be subject to the approval of the executive director or designee. The reasonableness of the concessioner's rates and charges to the public shall be judged primarily by comparing with current charges for facilities and services of comparable character under similar conditions. Consideration shall be given to factors deemed relevant to the type of concession, location, and business conditions.

(f) Franchise Fee Rates and Charges.

(1) Franchise fee rates shall be determined by the executive director or his designee in an equitable and fair manner, considering the various types of operations, gross receipts, net profit, and capital invested. Single or multiple percentages applied to all or various kinds of gross receipts may be considered in new or amended contracts.

(2) A penalty of 5.0% of the franchise fee due shall be imposed on a leased concessionaire who fails to pay the fee as required under the signed contractual agreement, and if that person fails to pay the fee within 30 days after the day when the fee is assessed, an additional 5.0% penalty shall be imposed.

(3) Delinquent fees accrue interest beginning on the 61st day after their due date.

(4) The yearly interest on all delinquent franchise fees is the prime rate plus one per cent, as published in the Wall Street Journal on the first day of the calendar year that is not a Saturday, Sunday or a legal holiday.

(5) The penalties and interest assessed may not exceed the penalties and interest rate established in the Texas Tax Code §111.060 and §111.061.

(6) Penalties and/or interest under this section may be waived by the executive director for a good cause.

(7) The rates and charges established by the concessioner shall be subject to the approval of the executive director or his designee. The reasonableness of the concessioner's rates and charges to the public shall be judged primarily by comparing with other like businesses

and services, uniformity with other state historic sites, current market charges for facilities and services of comparable business under like conditions. Consideration shall be given to factors deemed relevant to the type of concession, location, term and business type provided.

(g) Reporting.

(1) Concessioners shall submit reports as timed and directed in the contract and keep business records in good order as to allow the executive director to audit and determine that all terms and conditions of the concession contract have been and are being faithfully performed.

(2) The state auditor, or duly authorized representative of the agency, shall, for audit and examination, have access to all records and other books, documents, statements and papers of the concessioner pertinent to the contract.

(3) All incidents occurring on a state historic site will be reported to the appropriate site manager or designated state property representative. Incident reports are required to be generated within 24 hours of the event and will be shared with the State Office of Risk Management.

(h) Bond and Insurance.

(1) The executive director may require the concessioner to furnish a bond conditioned upon the faithful performance of the contract. For construction or other impacts at state historic sites, the concessioner will be required to obtain a payment bond, in addition to other statutory bonding requirements, and may be required to take actions to ensure the protection of the interests of the commission and the public.

(2) The concessioner shall carry such liability and other required insurance as deemed appropriate by the agency and in accordance with the contract.

(3) The concessioner will name the Commission as additionally insured in all required policies and will insure they remain valid and up to date in accordance with the contract.

(i) On-site services.

(1) The commission may provide service such as utilities to the concessioner, at its discretion and as set forth in the contract.

(2) The agency may assess reasonable rates fixed by the agency to the concessioner. Where feasible, metered utilities supplied to the concessioner will be installed.

(3) In the instance that a property is leased to an operating entity, the maintenance and utilities of that property, will be the responsibility of the concessioner.

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

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Mark Wolfe

Executive Director

Texas Historical Commission

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For further information, please call: (512) 463-7984



CHAPTER 21. HISTORY PROGRAMS

SUBCHAPTER B. OFFICIAL TEXAS HISTORICAL MARKER PROGRAM

13 TAC §21.12

The Texas Historical Commission (Commission) proposes new §21.12, concerning Marker Text Requests.

To dispute the factual accuracy of Official Texas Historical Markers, new §21.12 outlines a process to request review of marker text for errors based on verifiable, historical evidence and for the Commission to administer reviews. This rule aligns with the Sunset Commission's Texas Historical Commission Staff Report with Commission Decisions, which recommends that the Commission adopt a rule to provide a process for stakeholders to challenge the accuracy of existing markers.

Mark Wolfe, Executive Director, has determined that for each of the first five-years the proposed new rule is in effect, there will not be a fiscal impact on state or local government as a result of enforcing or administering this new rule, as proposed. For successful challenges, historical marker staff will determine if the existing marker requires replacement or if it can be corrected through the installation of a supplemental marker. The cost of such correction shall be paid by the Commission, subject to the availability of funds for that purpose. Additional funds will not be expended toward replacement markers or supplemental markers cast as a result of this rule.

Mr. Wolfe has also determined that for the first five-year period the new rule is in effect, the public benefit will be increased accuracy of text on Official Texas Historical Markers, which educate the public regarding diverse topics in Texas history.

There are no anticipated economic costs to persons who are required to comply with the new rule, as proposed. There is no effect on local economy for the first five years that the proposed new section is in effect; therefore, no local employment impact statement is required under Texas Government Code, §2001.022 and §2001.024(a)(6).

The proposed new section does not impose a cost on regulated persons, including another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

Mr. Wolfe has also determined that there will be no impact on rural communities, small businesses, or micro-businesses as a result of implementing this new rule and therefore no regulatory flexibility analysis, as specified in Texas Government Code §2006.002, is required.

THC staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking, as specific in Texas Government Code, §2006.0221. During the first five years that the new rule would be in effect, the proposed new rule: will not create or eliminate a government program; will not result in the addition or reduction of employees; will not require an increase or decrease in future legislative appropriations; will lead to an increase in fees paid to a state agency; will not create a new regulation; will not repeal an existing regulation; and will not result in an increase or decrease in the number of individuals subject to the rule. During the first five years that the new rule would be in effect, the proposed new rule will not positively or adversely affect the Texas economy.

THC has determined that no private real property interests are affected by this proposal and the proposal does not restrict or limit an owner's right to his or her property that would other-

wise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

Comments on the proposed new rule may be submitted to Mark Wolfe, Executive Director, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the *Texas Register*.

This new rule is proposed under the authority of Texas Government Code §442.006, which directs the Commission to coordinate the state historical marker program; Texas Government Code §442.005(q), which provides the Commission with the authority to promulgate rules to reasonably affect the purposes of the Commission; and Texas Government Code §442.006(h), which requires the Commission to adopt rules for the historical marker program.

No other statutes, articles, or codes are affected by this new rule.

§21.12. Marker Text Requests.

(a) A request for a review of the text of any marker that is the property of the State of Texas and which falls under the jurisdiction of the Texas Historical Commission ("Commission") may be submitted to dispute the factual accuracy of the marker based on verifiable, historical evidence that the marker:

- (1) Includes the name of an individual or organization that is not spelled correctly;
- (2) Includes a date that is not historically accurate;
- (3) Includes a statement that is not historically accurate; or
- (4) Has been installed at the wrong location.

(b) A request for review of marker text shall be submitted on a form provided by the Commission for that purpose, accompanied by no more than 10 single-sided pages of supplemental material printed in a font size no smaller than 11.

(c) Marker review requests shall be submitted to the Commission at 1511 Colorado St., Austin, TX 78701; by mail to P.O. Box 12276, Austin, TX 78711; or by email to thc@thc.texas.gov. The Commission will send a copy of the request and supporting materials to the County Historical Commission (CHC) for the county in which the marker is located, return receipt requested. In the absence of a formally-established CHC, a copy will be submitted to the county judge, return receipt requested.

(d) The CHC or county judge shall have 10 days from the date of receipt of the request to submit a response to the Commission if they wish to do so. The CHC or county judge's response shall consist of not more than 10 single-sided pages of material printed in a font size no smaller than 11 and shall be signed by the chair of the CHC or by the county judge.

(e) Within 20 days of receiving the CHC or county judge's response to the request, or within 30 days of receiving the request itself if there is no CHC or county judge response, the marker staff at the Commission shall review the information submitted and respond to the requestor and to the CHC or county judge with the marker staff recommendation in writing, return receipt requested.

(f) During the period previously referred to in subsection (e) of this section, marker staff may choose to refer the request to a panel of professional historians for a recommendation.

(g) The panel will consist of three professional historians: the State Historian appointed by the Governor pursuant to Texas Government Code §3104.051; the historian appointed by the Governor to serve

on the Commission pursuant to Texas Government Code §442.002; and a professional historian selected by these two historians from the faculty of a public college or university upon receiving the request. If no professional historian has been appointed by the Governor to serve on the Commission, the Governor's appointed chair of the Commission or the chair's designee will serve on the panel in place of that individual. In reaching its decision, the panel will review the same information reviewed by the marker staff, as well as any additional information provided by marker staff, which shall be no more than 10 single-sided pages of supplemental material printed in a font size no smaller than 11. The panel shall be chaired by the State Historian who shall determine whether the panel will meet in person or deliberate through electronic or other means.

(h) The panel shall develop a written recommendation supported by at least two of its members. The written recommendation of the panel will be delivered to the marker staff no later than 30 days following the panel's receipt of the background materials as provided above. If the panel is unable to develop such a recommendation, the panel chair shall so report in writing to the Commission's marker staff within the same 30-day period. Marker staff will consider the panel's report and send their final recommendation to the requestor and to the CHC or county judge within 15 days after receiving the panel's report, return receipt requested.

(i) If the requestor, or the County Historical Commission or county judge are not satisfied with the marker staff recommendation, they may choose to file an objection with the Commission's History Programs Committee ("Committee"). Such objections must be post-marked no later than 5 days following receipt of the staff recommendation. If no such objection is filed, the marker staff or panel recommendation with accompanying marker text revisions will be placed on the next consent agenda of the Texas Historical Commission for approval.

(j) Review of objections filed with the Committee shall be based on copies of the same information as was initially provided to the panel of historians under subsection (g) of this section. If the matter was not submitted to the panel of historians, the objection shall be based on the material previously submitted by the requestor or requestors and CHC or county judge to the marker staff under subsections (b) and (d) of this section, and on any additional information provided by marker staff, which shall be no more than 10 single-sided pages of supplemental material printed in a font size no smaller than 11.

(k) The Committee shall include the objection on the agenda of its next scheduled meeting, assuming said meeting happens at least 20 days after the objection is received by the Commission. If the 20-day deadline is not met, the objection shall be on the agenda of the following meeting of the Committee.

(l) The Committee may choose to take public testimony on the objection, or not. If public testimony is invited, such testimony may be limited by the Committee chair to a period of time allocated per speaker, per side (pro and con) or both.

(m) The decision of the Committee, along with any recommendation from staff and/or the panel, shall be placed on the consent agenda of the full Commission for approval.

(n) If a request or objection is approved by the Commission, marker staff will determine if the existing marker requires replacement or if it can be corrected through the installation of a supplemental marker. The cost of such correction shall be paid by the Commission, subject to the availability of funds for that purpose.

(o) With all approved requests or objections, THC marker staff will write the replacement text. Markers will be produced by the contracted foundry and production will be subject to the foundry's schedule.

(p) The Commission will not accept subsequent requests or objections that are substantively similar to a request or objection that is already going through or has already gone through this request process. A decision not to accept a request or objection under this section may be made by the Executive Director.

(q) A request for review may only be filed against a single marker, and no individual or organization may file more than one request for review per calendar year.

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

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Mark Wolfe

Executive Director

Texas Historical Commission

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For further information, please call: (512) 463-5853



TITLE 22. EXAMINING BOARDS

PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

CHAPTER 75. LICENSES AND RENEWALS

22 TAC §75.1

The Texas Board of Chiropractic Examiners (Board) proposes amendments to 22 TAC §75.1 (Notification and Change of Address). The purpose of the amendments is to clarify the forms of contact information a licensee provides to the Board, and to make the deadlines uniform for a licensee submitting changes to that contact information. This rule-making is the result of a petition for adoption of rules made under Texas Government Code §2001.021 and 22 TAC §71.2.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the amendments as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amendments will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed amendments will be in effect that the public benefit is to provide accurate and complete licensee contact information with no economic costs to licensees.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed amendments to 22 TAC §75.1. For each year of the first five years the proposed amendments will be in effect, Mr. Fortner has determined:

- (1) The proposed amendments do not create or eliminate a government program.
- (2) Implementation of the proposed amendments does not require the creation of new employee positions or the elimination of existing employee positions.
- (3) Implementation of the proposed amendments does not require an increase or decrease in future legislative appropriations to the Board.
- (4) The proposed amendments do not require an increase or decrease in fees paid to the Board.
- (5) The proposed amendments do not create a new regulation.
- (6) The proposal amends, but does not expand or limit, an existing Board rule for an administrative process.
- (7) The proposed amendments do not increase or decrease the number of individuals subject to the rule's applicability.
- (8) The proposed amendments do not positively or adversely affect the state economy.

Comments on the proposed amendments or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: rules@tbce.state.tx.us; or fax: 512-305-6705, no later than 30 days from the date that this proposed amended rule is published in the *Texas Register*.

The amended rule is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other codes, articles, or statutes are affected by this proposal.

§75.1. Notification of [and] Change of Address, Electronic Mail Address, and Telephone Number.

(a) A licensee [Licensees] shall maintain a current physical home and business address with the Board. Additional [In addition, a different] mailing addresses [address] may be provided. A [beyond that of the home and business address. Within 30 days of a change in any of these addresses; a] licensee shall notify the Board in writing of a [the] change within 30 days [in writing via U.S. mail, electronic mail, facsimile, or other written communication]. The notification [of address change] shall clearly [and legibly] identify the licensee, the address to be changed, the license number [number(s)] associated with the address, and shall be signed [by the licensee(s)].

(b) A licensee shall maintain a current telephone number with the Board. A licensee shall notify the Board in writing of a change within 30 days. The notification must identify the licensee and include the license number.

[(b) The notification shall be signed by the licensee and must include the license number.]

(c) A licensee shall maintain a current electronic mail address with the Board [board]. A licensee shall notify the Board in writing [board, by electronic mail, of [any] change of [in the] electronic mail [mailing] address within 30 [five (5) business] days [of the change].

The notification must identify the licensee and include the license number.

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

Filed with the Office of the Secretary of State on August 27, 2018.

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Christopher Burnett

General Counsel

Texas Board of Chiropractic Examiners

Earliest possible date of adoption: October 7, 2018

For further information, please call: (512) 305-6700



PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

CHAPTER 159. RULES RELATING TO THE PROVISIONS OF THE TEXAS APPRAISAL MANAGEMENT COMPANY REGISTRATION AND REGULATION ACT

22 TAC §§159.3, 159.105, 159.108, 159.155

The Texas Appraiser Licensing and Certification Board (TALCB) proposes amendments to §159.3, Appraisal Management Company Advisory Committee; §159.105, Denial of Registration or Renewal of Registration; §159.108, Renewal; and §159.155, Periodic Review of Appraisals. The amendments to §§159.3, 159.105, 159.108, and 159.155 are proposed following a comprehensive rule review for this Chapter to better reflect current TALCB procedures and to simplify and clarify where needed and to align the rules with changes to the Uniform Standards of Professional Appraisal Practice (USPAP) adopted by the Appraisal Standards Board (ASB).

The proposed amendments to §159.3 align the rule with Texas Occupations Code §1103.159; clarify that a quorum of the AMC Advisory Committee is three members; and renew the AMC Advisory Committee through September 1, 2022, to coincide with the agency's next quadrennial rule review. The proposed amendments to §159.105 and §159.108 align these rules with other TALCB rules and processes for license or registration renewals. The proposed amendments to §159.155 reduce the percentage of required periodic reviews from five to two percent of reviews performed by an AMC in a twelve-month period; conform the rule to changes to USPAP adopted by the ASB; and align the required scope of work to perform a periodic review to the requirements for performing an appraisal review in USPAP.

Kristen Worman, General Counsel, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the proposed amendments. There is no adverse economic effect anticipated for small businesses, micro-businesses, rural communities, or local or state employment as a result of implementing the proposed amendments. There is no significant economic cost anticipated for persons who are required to comply with

the proposed amendments. Accordingly, no Economic Impact Statement or Regulatory Flexibility Analysis is required.

Ms. Worman has also determined that for each year of the first five years the amendments as proposed are in effect the public benefits anticipated as a result of enforcing the section as proposed will be requirements that are consistent with the statutes and the requirements under federal law and standards that are easier for license holders and the public to understand, apply and process.

Growth Impact Statement:

For each year of the first five years the proposed amendments are in effect the amendments will not:

- create or eliminate a government program;
- require the creation of new employee positions or the elimination of existing employee positions;
- require an increase or decrease in future legislative appropriations to the agency;
- require an increase or decrease in fees paid to the agency;
- create a new regulation;
- expand, limit or repeal an existing regulation; and
- increase or decrease the number of individuals subject to the rule's applicability.

For each year of the first five years the proposed amendments are in effect, there is no anticipated impact on the state's economy as these amendments simplify the rules; conform the rules to existing requirements under state and federal law; and provide additional clarity for license holders and the public.

Comments on the proposed amendments may be submitted to Kristen Worman, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to: general.counsel@talcb.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code §§1103.154, which authorizes TALCB to adopt rules as necessary to implement minimum written standards adopted by the ASB and USPAP; 1103.159, which authorizes TALCB to establish an advisory committee related to the regulation of AMCs; and 1104.051, which authorizes TALCB to adopt rules necessary to administer the provisions of Chapter 1104, Texas Occupations Code.

The statutes affected by these amendments are Chapters 1103 and 1104, Texas Occupations Code. No other statute, code, or article is affected by the proposed amendments.

§159.3. *Appraisal Management Company Advisory Committee.*

(a) A quorum ~~[of the committee]~~ consists of three ~~[two]~~ members of the committee.

(b) The committee may meet at the call of the chair or upon the request of a majority of its members. The committee shall meet at the request of the Board.

(c) Unless state law or Board rules require otherwise, meetings shall be conducted in accordance with Robert's Rules of Order.

(d) At the end of a term, members shall continue to serve until their successors are qualified.

(e) The committee is automatically abolished on September 1, 2022, unless the Board subsequently establishes a different date.

§159.105. *Denial of Registration or Renewal of Registration.*

(a) AMCs, persons who own any interest in an AMC, and individuals who act as the primary contact for an AMC must be honest, trustworthy, and reliable. Accordingly, such persons must satisfy the Board of their honesty, integrity, and trustworthiness before a registration may be issued and upon renewal ~~[or renewed]~~.

(b) - (k) (No change.)

§159.108. *Renewal.*

(a) The Board will send a renewal notice to the license holder's primary contact at least 90 ~~[180]~~ days prior to the expiration of the license.

(b) - (e) (No change.)

§159.155. *Periodic Review of Appraisals.*

(a) A license holder must review the work of appraisers performing appraisal services on 1-4 family unit properties collateralizing mortgage obligations by performing a review in accordance with Standards 3 and 4 ~~[Standard 3]~~ of USPAP of:

(1) one of the first five appraisals performed for the license holder by each appraiser, prior to making a sixth assignment; and

(2) a total of two ~~[five]~~ percent, randomly selected, of the appraisals performed for the AMC for each twelve-month period following the date of the AMC's registration.

(b) Appraisal reviews ~~[Appraisals]~~ performed pursuant to subsection (a)(1) of this section will be counted toward the calculation of two ~~[five]~~ percent for the purposes of subsection (a)(2) of this section.

(c) An appraisal ~~[A]~~ review pursuant to subsection (a)(1) of this section is not required if the first five appraisals by an appraiser were completed before the AMC was required by the AMC Act to be registered with the Board.

~~[(d) In addition to satisfying the requirements of §1104.153 of the AMC Act, the review appraiser must have access to appropriate data sources for the appraisal being reviewed.]~~

(d) ~~[(e)]~~ An appraiser is qualified to perform an appraisal review within the meaning of §1104.153 of the AMC Act if the appraiser conducting the review:

(1) is licensed or certified to act as an appraiser in Texas or another jurisdiction;

(2) holds the appropriate credential to have performed the appraisal being reviewed; and

(3) does not develop an opinion of value.

~~[(f) An appraiser conducting a review under §1104.155 of the AMC Act and this rule must ensure compliance with:]~~

~~[(1) USPAP; and]~~

~~[(2) §1104.154 of the AMC Act.]~~

(e) ~~[(g)]~~ To ~~[In order to]~~ satisfy the requirements ~~[of §1104.155]~~ of the AMC Act, this rule and USPAP, a license holder performing an appraisal [a] review must develop a credible opinion about the completeness, accuracy, adequacy, relevance and reasonableness of the appraisal under review and adhere to the following minimum scope of work:

(1) research and consult the appropriate data sources for the appraisal being reviewed to, at a minimum, validate the signifi-

cant characteristics of the comparables and the essential elements of the transactions including:

(A) the multiple listing service(s) or other recognized methods, techniques and data sources for the geographic area in which the appraisal under review was performed, if the appraisal under review included a sales comparison approach; and

[(B) published cost data sources and other recognized methods, techniques and data sources for the geographic area in which the appraisal under review was performed, if the appraisal under review included a cost approach;]

[(C) the comparable rental data, income and expense data, and other recognized methods, techniques and data sources for the geographic area in which the appraisal under review was performed, if the appraisal under review included an income approach; and]

(B) [(D)] the sales or listing history of the property which is the subject of the appraisal under review, if that property was sold within the three years prior to the effective date of the appraisal under review or listed for sale as of the effective date of the appraisal under review;

(2) provide a certification that complies with Standard 4 of USPAP. [state the reviewer's opinions and conclusions about the work under review for each of the approaches to value utilized in the appraisal under review, including the reason for any disagreements;]

[(3) identify if the appraisal under review omitted an approach to value, a particular piece of information, or an analysis of either that was necessary for credible assignment results; identify what was omitted and explain why it was necessary for credible assignment results;]

[(4) identify the client, any intended users and the effective date of the appraisal review;]

[(5) state that the appraisal review's intended use and purpose is to satisfy the requirements of §1104.155 of the AMC Act and this rule, including ensuring that the appraisal under review complies with the USPAP edition in effect at the time of the appraisal;]

[(6) state that the scope of work for the appraisal review is commensurate with the requirements of §1104.155 of the AMC Act, this rule and USPAP edition in effect at the time of the appraisal review and that the scope of work ensures the development of credible assignment results and that no assignment conditions impose limitations which make the results of the review not credible;]

[(7) identify the appraisal under review, including;]

[(A) any ownership interest of the appraiser or reviewer in the property that is the subject of the appraisal under review;]

[(B) the report date and effective date of the appraisal under review;]

[(C) the effective date of the opinions or conclusions in the appraisal under review;]

[(D) the physical, legal, and economic characteristics of the property, properties, property type(s), or market area in the appraisal under review; and]

[(E) the name of all appraisers who signed or provided significant professional assistance in the appraisal under review;]

[(8) state clearly and conspicuously, all extraordinary assumptions and hypothetical conditions and state that their use might have affected the review; and]

[(9) contain a certification which complies with USPAP Standards Rule 3-6.]

(f) [(h)] If [While not required by §1104.155 of the AMC Act or this rule, if] the reviewer elects to develop an opinion of value, review opinion, or real property appraisal consulting conclusion, the review must comply with the additional provisions of Standards 3 and 4 of USPAP governing the development of an opinion of value, review opinion, or real property appraisal consulting conclusion.

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

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TRD-201803593

Kristen Worman

General Counsel

Texas Appraiser Licensing and Certification Board

Earliest possible date of adoption: October 7, 2018

For further information, please call: (512) 936-3652



PART 9. TEXAS MEDICAL BOARD

CHAPTER 188. PERFUSIONISTS

22 TAC §§188.4, 188.26, 188.28

The Texas Medical Board (Board) proposes amendments to §188.4, concerning Qualifications for Licensure, §188.26, concerning Exemption from Registration Fee for Retired Perfusionists Providing Voluntary Charity Care, and §188.28, concerning Exemption from Registration Fee for Retired Perfusionists.

The amendment to §188.4 removes the jurisprudence exam attempt limit for applicants.

The amendment to §188.26 removes the language in subsection (g) that requires a licensee to submit evaluations from previous employers upon application to return to active status after being inactive and only providing charity care.

The amendment to §188.28 removes the language in subsection (c) that requires a licensee to submit evaluations from previous employers upon application to return to active status after being retired.

Scott Freshour, General Counsel for the Board, has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the proposals will be to have rules that are aligned with other rules relating to other license types and will streamline the Board's processes with regard to all license types and will streamline the Board's procedures for evaluating such requests to return to active status.

Mr. Freshour has also determined that for the first five-year period the sections are in effect there will be no effect to individuals required to comply with the rules as proposed.

Pursuant to Government Code §2006.002, the agency provides the following economic impact statement for the proposed rules and determined that for each year of the first five years the proposed amendments will be in effect:

(1) There will be no effect on small businesses, micro businesses, or rural communities.

(2) The agency has considered alternative methods of achieving the purpose of the proposed rule amendments and found none.

Pursuant to Government Code §2001.024(a)(4), Scott Freshour, General Counsel for the Board, certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years these sections, as proposed, are in effect:

(1) the additional estimated cost to the state and to local governments expected as a result of enforcing or administering the rule is none;

(2) the estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule are none;

(3) the estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the rule is none; and

(4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering the rule.

Pursuant to Government Code §2001.024(a)(6) and 2001.022, the agency has determined that for each year of the first five years the proposed amendments will be in effect, there will be no effect on local economy and no effect on local employment.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed rules. For each year of the first five years the proposed amendments will be in effect, Mr. Freshour has determined the following:

(1) The proposed rules do not create or eliminate a government program.

(2) Implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency.

(4) The proposed rules do not require an increase or decrease in fees paid to the agency.

(5) The proposed rules do not create a new regulation.

(6) The proposed rules do not expand, limit, or repeal an existing regulation.

(7) The proposed rules do not increase or decrease the number of individuals subject to the rule's applicability.

(8) The proposed rules do not positively or adversely affect this state's economy.

Comments on the proposal may be submitted to Rita Chapin, P.O. Box 2018, Austin, Texas 78768-2018, or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

The amendments are proposed under the authority of the Texas Occupations Code Annotated, §153.001 and §603.152, which provides authority for the Board to adopt rules and bylaws as necessary to: regulate the practice of Perfusion; govern its own proceedings; perform its duties; regulate the practice of medicine

in this state; enforce this subtitle; and establish rules related to licensure amend as necessary.

No other statutes, articles or codes are affected by this proposal.

§188.4. Qualifications for Licensure.

(a) Except as otherwise provided in this section, an individual applying for licensure must:

(1) submit an application on forms approved by the board;

(2) pay the appropriate application fee;

(3) certify that the applicant is mentally and physically able to function safely as a perfusionist;

(4) not have a license, certification, or registration in this state or from any other licensing authority or certifying professional organization that is currently revoked, suspended, or subject to probation or other disciplinary action for cause;

(5) have no proceedings that have been instituted against the applicant for the restriction, cancellation, suspension, or revocation of certificate, license, or authority to practice perfusion in the state, territory, Canadian province, country, or uniformed service of the United States in which it was issued;

(6) have no prosecution pending against the applicant in any state, federal, or Canadian court for any offense that under the laws of this state is a felony;

(7) be of good professional character;

(8) not have violated any provision of any federal or state statute relating to confidentiality of patient communications or records;

(9) not have been convicted of a felony or a crime involving moral turpitude;

(10) not use drugs or alcohol to an extent that affects the applicant's professional competency;

(11) not have engaged in fraud or deceit in applying for a license;

(12) pass an independently evaluated perfusionist examination approved by the board;

(13) have successfully completed an educational program as set forth in subparagraphs (A) and (B) of this paragraph;

(A) A perfusion education program that is accredited by the Commission on Accreditation of Allied Health Education Programs (CAAHEP) at the time of graduation; or ~~and~~

(B) a substantially equivalent program with requirements as stringent as those established by the Accreditation Committee for Perfusion Education (AC-PE) and approved by the board.

(i) Degrees and course work received in international countries shall be acceptable only if the degree or coursework has educational standards that are as stringent as those established by the AC-PE and approved by CAAHEP or their successors.

(ii) An international training program shall be acceptable only if it has educational standards as stringent as those established by the AC-PE and approved by the CAAHEP or their successors.

(14) submit a complete and legible set of fingerprints, on a form prescribed by the medical board, to the medical board or to the Department of Public Safety for the purpose of obtaining criminal history record information from the Department of Public Safety and

the Federal Bureau of Investigation, as required by §603.2571 of the Act.

(15) submit to the board any other information the board considers necessary to evaluate the applicant's qualifications.

(b) **Competency Examination.** An individual applying for licensure must submit proof of passage of the required perfusion examination administered by the American Board of Cardiovascular Perfusion (ABCP).

(1) If an applicant has already successfully completed the required examination administered by the ABCP, the applicant shall not be required to be reexamined, provided that the applicant furnishes the board with a copy of the test results indicating that the applicant passed the examination and proof that he or she has been certified by the ABCP for some time period within three years immediately preceding date of application.

(2) An applicant who fails the required competency examination administered by the ABCP four times may not reapply as a provisional licensed perfusionist.

(3) The board shall waive the examination requirement for an applicant who, at the time of application:

(A) is licensed or certified by another state that has licensing or certification requirements that the board determines to be substantially equivalent to the requirements of this chapter; or

(B) holds a certificate as a certified clinical perfusionist issued by the ABCP before January 1, 1994, authorizing the holder to practice perfusion in a state that does not license or certify perfusionists.

(c) **Jurisprudence Examination.** Applicants for licensure must pass a jurisprudence examination ("JP exam"), which shall be conducted on the licensing requirements and other laws, rules, or regulations applicable to the perfusionist profession in this state. The jurisprudence examination shall be developed and administered as follows:

(1) Questions for the JP Exam shall be prepared by agency staff with input from the Advisory Committee and board and the agency staff shall make arrangements for a facility by which applicants can take the examination.

(2) Applicants must pass the JP exam with a score of 75 or better [within three attempts, unless the board allows an additional attempt based upon a showing of good cause. An applicant who is unable to pass the JP exam within three attempts must appear before the Licensure Committee of the board to address the applicant's inability to pass the examination and to re-evaluate the applicant's eligibility for licensure. It is at the discretion of the committee to allow an applicant additional attempts to take the JP exam].

(3) An examinee shall not be permitted to bring books, compends, notes, journals, calculators or other help into the examination room, nor be allowed to communicate by word or sign with another examinee while the examination is in progress without permission of the presiding examiner, nor be allowed to leave the examination room except when so permitted by the presiding examiner.

(4) Irregularities during an examination such as giving or obtaining unauthorized information or aid as evidenced by observation or subsequent statistical analysis of answer sheets, shall be sufficient cause to terminate an applicant's participation in an examination, invalidate the applicant's examination results, or take other appropriate action.

(5) A person who has passed the JP Exam shall not be required to retake the Exam for another or similar license, except as a specific requirement of the board.

(6) The JP examination must be taken and passed no more than two years prior to the date of the application for licensure.

(d) **Alternative License Procedures for Military Service Members, Military Veterans, and Military Spouses.**

(1) An applicant who is a military service member, military veteran, or military spouse may be eligible for alternative demonstrations of competency for certain licensure requirements. Unless specifically allowed in this subsection, an applicant must meet the requirements for licensure as specified in this chapter.

(2) To be eligible, an applicant must be a military service member, military veteran, or military spouse and meet one of the following requirements:

(A) holds an active unrestricted perfusionist license issued by another state that has licensing requirements that are substantially equivalent to the requirements for a Texas perfusionist license; or

(B) within the five years preceding the application date held a perfusionist license in this state.

(3) The executive director may waive any prerequisite to obtaining a license for an applicant described by this subsection after reviewing the applicant's credentials.

(4) Applications for licensure from applicants qualifying under this section, shall be expedited by the board's licensure division. Such applicants shall be notified, in writing or by electronic means, as soon as practicable, of the requirements and process for renewal of the license.

(5) **Alternative Demonstrations of Competency Allowed.** Applicants qualifying under this section, notwithstanding:

(A) the one year expiration in §188.5 of this chapter (relating to Procedural Rules for Licensure Applicants), are allowed an additional six months to complete the application prior to it becoming inactive; and

(B) the requirement to produce a copy of a valid and current certificate demonstrating completion of an educational program as described in this section and required in §188.6 of this chapter (relating to Licensure Documentation), may substitute certification from the ABCP if it is made on a valid examination transcript.

(e) **Applicants with Military Experience.**

(1) The board shall, with respect to an applicant who is a military service member or military veteran as defined in §188.2 of this chapter (relating to Definitions), credit verified military service, training, or education toward the licensing requirements, other than an examination requirement, for a license issued by the board.

(2) This section does not apply to an applicant who:

(A) has had a perfusionist license suspended or revoked by another state, territory, Canadian province or country;

(B) holds a perfusionist license issued by another state, territory, Canadian province or country that is subject to a restriction, disciplinary order, or probationary order; or

(C) has an unacceptable criminal history.

§188.26. Exemption from Registration Fee for Retired Perfusionists Providing Voluntary Charity Care.

(a) A retired perfusionist licensed by the board whose only practice is the provision of voluntary charity care shall be exempt from the registration fee.

(b) As used in this section:

(1) "voluntary charity care" means perfusion services provided for no compensation to:

- (A) indigent populations;
- (B) in medically underserved areas; or
- (C) for a disaster relief organization.

(2) "compensation" means direct or indirect payment of anything of monetary value, except payment or reimbursement of reasonable, necessary, and actual travel and related expenses.

(c) To qualify for and obtain such an exemption, a perfusionist must truthfully certify under oath, on a form approved by the board that the following information is correct:

(1) the perfusionist's practice of perfusion does not include the provision of perfusion services for either direct or indirect compensation which has monetary value of any kind;

(2) the perfusionist's practice is limited to voluntary charity care for which the perfusionist receives no direct or indirect compensation of any kind for perfusion services rendered; and

(3) the perfusionist's practice does not include the provision of perfusion services to members of the perfusionist's family.

(d) A perfusionist who qualifies for and obtains an exemption from the registration fee authorized under this section shall obtain and report continuing education as required under the Act and §188.24 of this chapter (relating to Continuing Education), except that the number of credits of CE required shall be equal to two-thirds of the number of continuing education hours required for renewal for a licensed perfusionist.

(e) A retired perfusionist who has obtained an exemption from the registration fee as provided for under this section, may be subject to disciplinary action under the Act based on unprofessional or dishonorable conduct likely to deceive, defraud, or injure the public if the perfusionist engages in the compensated practice of perfusion or the provision of perfusion services to members of the perfusionist's family.

(f) A perfusionist who attempts to obtain an exemption from the registration fee under this section by submitting false or misleading statements to the board shall be subject to disciplinary action pursuant to the Act in addition to any civil or criminal actions provided for by state or federal law.

(g) A perfusionist may return to active status by applying to the board, paying an application fee equal to an application fee for a perfusionist license, complying with the requirements for license renewal under the Act, and [~~submitting professional evaluations from each employment held before the license was placed on retired status;~~] demonstrate any formal or informal continuing education obtained during the period of retired status, provide a description of all voluntary charity care provided during the period of retired status, and complying with subsection (h) of this section.

(h) The request of a perfusionist seeking a return to active status whose license has been placed on official retired status for two years or longer shall be submitted to the Licensure Committee of the board for consideration and a recommendation to the full board for approval or denial of the request. After consideration of the request and the recommendation of the Licensure Committee, the board shall grant or

deny the request. If the request is granted, it may be granted without conditions or subject to such conditions which the board determines are necessary to adequately protect the public including but not limited to:

(1) completion of specified continuing education hours approved for Category 1 credits by a CE sponsor approved by the ABCP;

(2) limitation and/or exclusion of the practice of the applicant to specified activities of the practice as a perfusionist;

(3) remedial education; and/or

(4) such other remedial or restrictive conditions or requirements which, in the discretion of the board are necessary to ensure protection of the public and minimal competency of the applicant to safely practice as a perfusionist.

(i) The request of a perfusionist seeking a return to active status whose license has been placed on retired status providing voluntary charity care for less than two years may be approved by the executive director of the board or submitted by the executive director to the Licensure Committee for consideration and a recommendation to the full board for approval or denial of the request. In those instances in which the executive director submits the request to the Licensure Committee of the board, the Licensure Committee shall make a recommendation to the full board for approval or denial. After consideration of the request and the recommendation of the Licensure Committee, the board shall grant or deny the request subject to such conditions which the board determines are necessary to adequately protect the public including, but not limited to, those options provided in subsection (h) of this section.

(j) In evaluating a request of a perfusionist seeking a return to active status whose license has been placed on retired status providing voluntary charity care, the Licensure Committee or the full board may require a personal appearance by the requesting perfusionist at the offices of the board, and may also require a physical or mental examination by one or more perfusionists or other health care providers approved in advance in writing by the executive director, the secretary-treasurer, the Licensure committee, or other designee(s) determined by majority vote of the board.

§188.28. Exemption from Registration Fee for Retired Perfusionists.

(a) The registration fee shall not apply to retired perfusionists. To become exempt from the registration fee due to retirement:

(1) the perfusionist's current license must not be under an investigation or order with the board or otherwise have a restricted license; and

(2) the perfusionist must request in writing on a form prescribed by the board for his or her license to be placed on official retired status.

(b) The following restrictions shall apply to perfusionists whose licenses are on official retired status:

(1) the perfusionist must not engage in clinical activities or practice perfusion in any state; and

(2) the perfusionist's license may not be endorsed to any other state.

(c) A perfusionist may return to active status by applying to the board, paying an application fee equal to an application fee for a perfusionist license, complying with the requirements for license renewal under the Act, and [~~submitting professional evaluations from each employment held before the license was placed on retired status;~~] demonstrate any formal or informal continuing education obtained during the period of retired status and complying with subsection (d) of this section.

(d) The request of a perfusionist seeking a return to active status whose license has been placed on official retired status for two years or longer shall be submitted to the Licensure Committee of the board for consideration and a recommendation to the full board for approval or denial of the request. After consideration of the request and the recommendation of the Licensure Committee, the board shall grant or deny the request. If the request is granted, it may be granted without conditions or subject to such conditions which the board determines are necessary to adequately protect the public including but not limited to:

- (1) completion of specified continuing education hours approved for Category 1 credits by a CE sponsor approved by the ABCP;
- (2) limitation and/or exclusion of the practice of the applicant to specified activities of the practice as a perfusionist;
- (3) remedial education; and/or
- (4) such other remedial or restrictive conditions or requirements which, in the discretion of the board are necessary to ensure protection of the public and minimal competency of the applicant to safely practice as a perfusionist.

(e) The request of a perfusionist seeking a return to active status whose license has been placed on official retired status for less than two years may be approved by the executive director of the board or submitted by the executive director to the Licensure Committee for consideration and a recommendation to the full board for approval or denial of the request. In those instances in which the executive director submits the request to the Licensure Committee of the board, the Licensure Committee shall make a recommendation to the full board for approval or denial. After consideration of the request and the recommendation of the Licensure Committee, the board shall grant or deny the request subject to such conditions which the board determines are necessary to adequately protect the public including but not limited to those options provided in subsection (d)(1) - (4) of this section.

(f) In evaluating a request to return to active status, the Licensure Committee or the full board may require a personal appearance by the requesting perfusionist at the offices of the board, and may also require a physical or mental examination by one or more physicians or other health care providers approved in advance in writing by the executive director, the secretary-treasurer, the Licensure Committee, or other designee(s) determined by majority vote of the board.

(g) A perfusionist applying for retired status under subsections (a) and (b) of this section may be approved for emeritus retired status, a subgroup of "official retired status," provided that the perfusionist has:

- (1) never received a remedial plan or been the subject of disciplinary action by the Texas Medical Board;
- (2) no criminal history, including pending charges, indictment, conviction and/or deferred adjudication in Texas; and
- (3) never held a license, registration or certification that has been restricted for cause, canceled for cause, suspended for cause, revoked or subject to another form of discipline in a state, or territory of the United States, a province of Canada, a uniformed service of the United States or other regulatory agency.

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

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Stephen "Brint" Carlton
Executive Director
Texas Medical Board

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For further information, please call: (512) 305-7016



PART 16. TEXAS BOARD OF PHYSICAL THERAPY EXAMINERS

CHAPTER 322. PRACTICE

22 TAC §322.5

The Texas Board of Physical Therapy Examiners proposes the addition of §322.5, Telehealth to Chapter 322, Practice.

The new section is proposed in order to establish rules for the safe delivery of physical therapy through telehealth in compliance with Tex. Occupations Code Chapter 111, Telemedicine and Telehealth as amended during the 85th Legislative Session.

Fiscal Note

John P. Maline, Executive Director, has determined that for the first five-year period this new rule is in effect there will be no impact on costs or revenue to state or local governments as a result of enforcing or administering this amendment.

Public Benefits and Costs

Mr. Maline has also determined that for the first five-year period this new rule is in effect the public benefit of the new rule will be improved access to physical therapy especially in underserved areas.

Local Employment Economic Impact Statement

The rule is not anticipated to impact a local economy, so a local employment economic impact statement is not required. Mr. Maline anticipates no economic cost to physical therapist and physical therapist assistant licensees as a result of enforcing or administering this new rule.

Small and Micro-Businesses and Rural Communities Impact

Mr. Maline has determined that there will be no costs or adverse economic effects to small or micro-businesses or rural communities, therefore an economic impact statement or regulatory flexibility analysis is not required.

Government Growth Impact Statement

The proposed rule's impact on government growth is as follows: does not create or eliminate a government program; does not require the creation of new employee positions or the elimination of existing employee positions; does not require an increase or decrease in future legislative appropriations to the agency; does not require an increase or decrease in fees paid to the agency; does not increase or decrease the number of individuals subject to the rule's applicability; and neither positively nor adversely affects this state's economy. The proposed rule does add a new section to existing Chapter 322, Practice.

Takings Impact Assessment

The proposed rule would not impact private real property as defined by Tex. Gov't Code §2007.003, so a takings impact assessment under Tex. Gov't Code §2001.043 is not required.

Requirement for Rule Increasing Costs to Regulated Persons

Tex. Gov't Code §2001.0045, Requirement for Rule Increasing Costs to Regulated Persons, does not apply to this proposed rule because the rule clarifies the delivery of physical therapy in compliance with amended legislation and there is no anticipation of economic cost to regulated persons.

Comments on the proposed new rule may be submitted to Karen Gordon, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701; email: karen@ptot.texas.gov. Comments must be received no later than 30 days from the date this proposed rule is published in the *Texas Register*.

Statutory Authority

The new rule is proposed under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Texas Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Cross-reference to Statute: The proposed amendment implements Government Code Chapter 453, §453.005.

§322.5. Telehealth.

(a) When used in the rules of the Texas Board of Physical Therapy Examiners, telehealth is the use of telecommunications or information technology to provide physical therapy services to a patient who is physically located at a site in Texas other than the site where the physical therapist is located, whether or not in Texas.

(b) Physical therapy telehealth services must be provided by a physical therapist who possesses a current:

- (1) unrestricted Texas license; or
- (2) Compact Privilege to practice in Texas.

(c) The provision of physical therapy services via telehealth requires synchronous audiovisual or audio interaction between the physical therapist and the patient/client, which may be accompanied by the use of asynchronous store and forward technology.

(d) Standard of Care. A physical therapist that provides telehealth services:

- (1) is subject to the same standard of care that would apply to the provision of the same physical therapy service in an in-person setting; and
- (2) is responsible for determining whether an evaluation or intervention may be conducted via telehealth or must be conducted in an in-person setting.

(e) Informed Consent. A physical therapist that provides telehealth services must obtain and maintain the informed consent of the patient, or of another individual authorized to make health care treatment decisions for the patient, prior to the provision of telehealth services.

(f) Confidentiality. A physical therapist that provides telehealth services must ensure that the privacy and confidentiality of the patient's medical information is maintained during and following the provision of telehealth services, including compliance with HIPAA regulations and other federal and state law.

(g) The failure of a physical therapist to comply with this section shall constitute detrimental practice and could subject the licensee to disciplinary action by the Board.

(h) A physical therapist assistant may not provide telehealth services but may be present at the same location as the patient to assist the physical therapist in providing telehealth services.

(i) Telehealth is a mode for providing one-on-one physical therapy services to a patient/client and is not a means for supervision of physical therapist assistants or physical therapy aides.

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

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John P. Maline

Executive Director

Texas Board of Physical Therapy Examiners

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For further information, please call: (512) 305-6900



CHAPTER 329. LICENSING PROCEDURE

22 TAC §329.1

The Texas Board of Physical Therapy Examiners proposes amending §329.1, General Licensure Requirements and Procedures, pursuant to Senate Bill (SB) 317 amendments to Sec. 453.215 of the Occupations Code during the 85th Legislative Session.

The amendment is proposed in order to add criminal background checks through the Department of Public Safety and the Federal Bureau of Investigation obtained through fingerprinting to the requirements for initial licensure.

Fiscal Note.

John P. Maline, Executive Director, has determined that for the first five-year period this amendment is in effect there will be no impact on costs or revenue to state or local governments as a result of enforcing or administering this amendment. Mr. Maline anticipates an economic cost to applicants for physical therapist and physical therapist assistant licensure as they will be required to bear the cost of fingerprinting.

Public Benefits and Costs.

Mr. Maline has also determined that for the first five-year period this amendment is in effect the public benefit of the amendment will be to conduct a criminal history record check prior to issuance of a license as a public safety measure. There is a probable economic cost to applicants for physical therapist and physical therapist assistant licensure as they will be required to bear the cost of fingerprinting.

Local Employment Economic Impact Statement.

The rule is not anticipated to impact a local economy, so a local employment economic impact statement is not required. There is an anticipated economic cost to applicants for licensure who will be required to bear the cost of fingerprinting.

Small and Micro-Businesses and Rural Communities Impact.

Mr. Maline has determined that there will be no costs or adverse economic effects to small or micro businesses or rural communities, therefore an economic impact statement or regulatory flexibility analysis is not required.

Government Growth Impact Statement.

The proposed rule's impact on government growth is as follows: does not create or eliminate a government program; does not require the creation of new employee positions or the elimination of existing employee positions; does not require an increase or decrease in future legislative appropriations to the agency; does not require an increase or decrease in fees paid to the agency; does not increase or decrease the number of individuals subject to the rule's applicability; and neither positively nor adversely affects this state's economy. The proposed rule does expand an existing regulation by adding fingerprinting as an additional requirement for licensure.

Takings Impact Assessment.

The proposed rule would not impact private real property as defined by Tex. Gov't Code §2007.003, so a takings impact assessment under Tex. Gov't Code §2001.043 is not required.

Requirement for Rule Increasing Costs to Regulated Persons.

Tex. Gov't Code §2001.0045, Requirement for Rule Increasing Costs to Regulated Persons, does not apply to this proposed rule because the rule is necessary to implement legislation. Section 453.215 of the Physical Therapy Practice Act, adopted by the 85th Legislature, requires the board to obtain applicants' criminal history record information.

Comments on the proposed amendment may be submitted to Karen Gordon, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701; email: karen@ptot.texas.gov. Comments must be received no later than 30 days from the date this proposed amendment is published in the *Texas Register*.

The amendment is proposed under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Texas Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Government Code, §453.215. Cross-reference to Statute: Chapter 453.

§329.1. General Licensure Requirements and Procedures.

(a) Requirements. All applications for licensure shall include:

(1) - (4) (No change.)

(5) a criminal history record report from the Department of Public Safety and the Federal Bureau of Investigation obtained through fingerprinting.

(b) - (i) (No change.)

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

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John P. Maline

Executive Director

Texas Board of Physical Therapy Examiners

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CHAPTER 341. LICENSE RENEWAL

22 TAC §§341.1, 341.6, 341.8, 341.9

The Texas Board of Physical Therapy Examiners proposes amending sections of Chapter 341, License Renewal, specifically §341.1, Requirements for Renewal, §341.6, License Restoration, §341.8, Inactive Status, and §341.9, Retired Status, Performing Voluntary Charity Care, pursuant to SB 317 amendments to Sec. 453.255, Occupations Code during the 85th Legislative Session.

The amendments are proposed in order to add criminal background checks through the Department of Public Safety and the Federal Bureau of Investigation obtained through fingerprinting to the requirements for renewing or restoring a physical therapist or physical therapist assistant license unless the licensee has previously submitted fingerprints for initial issuance of licensure or for a prior license renewal or restoration.

Fiscal Note

John P. Maline, Executive Director, has determined that for the first five-year period these amendments are in effect there will be no impact on costs or revenue to state or local governments as a result of enforcing or administering this amendment. Mr. Maline anticipates an economic cost to licensees who are renewing or restoring their physical therapist or physical therapist assistant license as they will be required to bear the cost of fingerprinting.

Public Benefits and Costs

Mr. Maline has also determined that for the first five-year period these amendments are in effect the public benefit of the amendment will be to conduct a criminal history record check as a public safety measure prior to renewing or restoring a physical therapist or physical therapist assistant license. There is a probable economic cost to applicants for renewal or restoration of their physical therapist or physical therapist assistant license as they will be required to bear the cost of fingerprinting.

Local Employment Economic Impact Statement

The rules are not anticipated to impact a local economy, so a local employment economic impact statement is not required. There is an anticipated economic cost to applicants for renewal or restoration who will be required to bear the cost of fingerprinting.

Small and Micro-Businesses and Rural Communities Impact

Mr. Maline has determined that there will be no costs or adverse economic effects to small or micro-businesses or rural communities, therefore an economic impact statement or regulatory flexibility analysis is not required.

Government Growth Impact Statement

The proposed rules' impact on government growth is as follows: do not create or eliminate a government program; do not require the creation of new employee positions or the elimination of existing employee positions; do not require an increase or decrease in future legislative appropriations to the agency; do not require an increase or decrease in fees paid to the agency; do not increase or decrease the number of individuals subject to the rule's applicability; and neither positively nor adversely affects this state's economy. The proposed rules do expand existing regulations by adding fingerprinting as an additional requirement for renewal or restoration of licensure unless the licensee has previously submitted fingerprints for initial issuance of licensure or for a prior license renewal or restoration.

Takings Impact Assessment

The proposed rules would not impact private real property as defined by Tex. Gov't Code §2007.003, so a takings impact assessment under Tex. Gov't Code §2001.043 is not required.

Requirement for Rule Increasing Costs to Regulated Persons

Tex. Gov't Code §2001.0045, Requirement for Rule Increasing Costs to Regulated Persons, does not apply to these proposed rules because the rules are necessary to implement legislation. Section 453.255 of the Physical Therapy Practice Act, adopted by the 85th Legislature, requires the board to obtain criminal history record information for renewal or restoration of licensure unless the licensee has previously submitted fingerprints for initial issuance of licensure or for a prior license renewal or restoration.

Comments on the proposed amendments may be submitted to Karen Gordon, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701; email: karen@ptot.texas.gov. Comments must be received no later than 30 days from the date this proposed amendment is published in the *Texas Register*.

The amendments are proposed under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Texas Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

The proposed amendment implements Government Code Chapter 453.

§341.1. Requirements for Renewal.

(a) - (b) (No change.)

(c) General requirements. The renewal application is not complete until all required items are received by the board. The components required for license renewal are:

(1) a completed renewal application documenting completion of board-approved continuing competence activities, as described in §341.2 of this title (relating to Continuing Competence Requirements);

(2) the renewal fee, and any late fees which may be due; ~~and~~

(3) a passing score on the jurisprudence examination; ~~and~~ [-]

(4) a criminal history record report from the Department of Public Safety and the Federal Bureau of Investigation obtained through fingerprinting. A licensee is not required to submit fingerprints for the renewal of the license if the licensee has previously submitted fingerprints under:

(A) Section 329.1, for the initial issuance of the license;
or

(B) Chapter 341, License Renewal as part of a prior license renewal or restoration.

(d) - (f) (No change.)

§341.6. License Restoration.

(a) - (b) (No change.)

(c) Persons who are currently licensed in good standing in another state, district, or territory of the U.S. The requirements for restoration are:

(1) a completed restoration application form;

(2) a passing score on the jurisprudence examination;

(3) verification of Licensure from all states in which the applicant holds or has held a license; ~~and~~

(4) the restoration fee; ~~and~~ [-]

(5) a criminal history record report from the Department of Public Safety and the Federal Bureau of Investigation obtained through fingerprinting. A licensee is not required to submit fingerprints for the renewal of the license if the licensee has previously submitted fingerprints under:

(A) Section 329.1, for the initial issuance of the license;
or

(B) Chapter 341, License Renewal as part of a prior license renewal or restoration.

(d) Persons who are not currently licensed in another state or territory of the U.S.

(1) A licensee whose Texas license is expired for one to five years. The requirements for restoration are:

(A) - (C) (No change.)

(D) verification of Licensure from all states in which the applicant has held a license; ~~and~~

(E) a criminal history record report from the Department of Public Safety and the Federal Bureau of Investigation obtained through fingerprinting. A licensee is not required to submit fingerprints for the renewal of the license if the licensee has previously submitted fingerprints under:

(i) Section 329.1, for the initial issuance of the license; or

(ii) Chapter 341, License Renewal as part of a prior license renewal or restoration.

(F) ~~[(E)]~~ demonstration of competency. Competency may be demonstrated in one of the following ways:

(i) - (iii) (No change.)

(2) A licensee whose Texas license is expired for five years or more may not restore the license but may obtain a new license by taking the national examination again and getting a new license by relicensure. The requirements for relicensure are:

(A) - (B) (No change.)

(C) the application fee; ~~and~~

(D) a passing score on the national exam, reported directly to the board by the Federation of State Boards of Physical Therapy; ~~and~~ [-]

(E) a criminal history record report from the Department of Public Safety and the Federal Bureau of Investigation obtained through fingerprinting. A licensee is not required to submit fingerprints for the renewal of the license if the licensee has previously submitted fingerprints under:

(i) Section 329.1, for the initial issuance of the license; or

(ii) Chapter 341, License Renewal as part of a prior license renewal or restoration.

§341.8. Inactive Status.

(a) - (c) (No change.)

(d) Requirements for reinstatement of active status. A licensee on inactive status may request a return to active status at any time. The components required to return to active status are:

(1) a signed renewal application form, documenting completion of board-approved continuing competence activities for the current renewal period, as described in §341.2 of this title;

(2) the renewal fee, and any late fees which may be due; [and]

(3) a passing score on the jurisprudence exam; and [-]

(4) a criminal history record report from the Department of Public Safety and the Federal Bureau of Investigation obtained through fingerprinting. A licensee is not required to submit fingerprints for the renewal of the license if the licensee has previously submitted fingerprints under:

(A) Section 329.1, for the initial issuance of the license;

or

(B) Chapter 341, License Renewal as part of a prior license renewal or restoration.

(e) (No change.)

§341.9. Retired Status; Performing Voluntary Charity Care.

(a) - (c) (No change.)

(d) Requirements for initiation of retired status. The components required to put a license on retired status are:

(1) - (2) (No change.)

(3) the retired status fee and any late fees which may be due; [and]

(4) a passing score on the jurisprudence exam; and [-]

(5) a criminal history record report from the Department of Public Safety and the Federal Bureau of Investigation obtained through fingerprinting. A licensee is not required to submit fingerprints for the renewal of the license if the licensee has previously submitted fingerprints under:

(A) Section 329.1, for the initial issuance of the license;

or

(B) Chapter 341, License Renewal as part of a prior license renewal or restoration.

(e) Requirements for renewal of retired status. A licensee on retired status must renew the retired status every two years on his/her license renewal date. The components required to renew the retired status are:

(1) - (2) (No change.)

(3) the retired status renewal fee, and any late fees which may be due; [and]

(4) a passing score on the jurisprudence exam; and [-]

(5) a criminal history record report from the Department of Public Safety and the Federal Bureau of Investigation obtained through fingerprinting. A licensee is not required to submit fingerprints for the renewal of the license if the licensee has previously submitted fingerprints under:

(A) Section 329.1, for the initial issuance of the license;

or

(B) Chapter 341, License Renewal as part of a prior license renewal or restoration.

(f) Requirements for reinstatement of active status. A licensee on retired status may request a return to active status at any time. The components required to return to active status are:

(1) a signed renewal application form, documenting completion of board-approved continuing competence activities for the current renewal period, as described in §341.2 of this title, 30 CCUs for PTs and 20 CCUs for PTAs;

(A) proof of voluntary charity care as defined in (b)(1) of this section can count toward up to one-half (1/2) of the continuing competence requirement;

(B) ten (10) hours of voluntary charity care equals 1 CCU.

(2) the renewal fee, and any late fees which may be due; [and]

(3) a passing score on the jurisprudence exam; and [-]

(4) a criminal history record report from the Department of Public Safety and the Federal Bureau of Investigation obtained through fingerprinting. A licensee is not required to submit fingerprints for the renewal of the license if the licensee has previously submitted fingerprints under:

(A) Section 329.1, for the initial issuance of the license;

or

(B) Chapter 341, License Renewal as part of a prior license renewal or restoration.

(g) - (j) (No change.)

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

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TRD-201803661

John P. Maline

Executive Director

Texas Board of Physical Therapy Examiners

Earliest possible date of adoption: October 7, 2018

For further information, please call: (512) 305-6900



22 TAC §341.2

The Texas Board of Physical Therapy Examiners proposes the amendment of §341.2, Continuing Competence Requirements. The amendment is proposed in order to delete references to the Texas Physical Therapy Association (TPTA) as a board approved organization for evaluating and approving continuing competence activities. Pursuant to Senate Bill (SB) 317 amendments to Sec. 453.254 of the Occupations Code during the 85th Legislative Session, the board is required to develop a process for selecting an appropriate organization to approve continuing competence activities that includes a request for proposal (RFP) and bidding process. Previously, the addition of §323.4, Request for Proposals for Outsourced Services was adopted to be effective November 27, 2016, and the board voted to approve an RFP for continuing competence approvers on July 27, 2018.

Fiscal Note

John P. Maline, Executive Director, has determined that for the first five-year period this amendment is in effect there will be no

impact on costs or revenue to state or local governments as a result of enforcing or administering this amendment.

Public Benefits and Costs

Mr. Maline has also determined that for the first five-year period this amendment is in effect the public benefit of the amendment will be transparency in the process for selecting an approved organization that will evaluate and approve continuing competence activities for the renewal requirements of physical therapists and physical therapist assistants. Mr. Maline anticipates no economic cost to physical therapist and physical therapist assistant licensees as a result of enforcing or administering this amendment.

Local Employment Economic Impact Statement

The rule is not anticipated to impact a local economy, so a local employment economic impact statement is not required.

Small and Micro-Businesses and Rural Communities Impact

Mr. Maline has determined that there will be no costs or adverse economic effects to small or micro-businesses or rural communities, therefore an economic impact statement or regulatory flexibility analysis is not required.

Government Growth Impact Statement

The proposed rule's impact on government growth is as follows: does not create or eliminate a government program; does not require the creation of new employee positions or the elimination of existing employee positions; does not require an increase or decrease in future legislative appropriations to the agency; does not require an increase or decrease in fees paid to the agency; does not increase or decrease the number of individuals subject to the rule's applicability; and neither positively nor adversely affects this state's economy. The proposed rule does delete a portion of an existing continuing competence rule establishing TPTA as a board approved organization to approve continuing competence activities, and this amendment does not increase cost to regulated persons.

Takings Impact Assessment

The proposed rule would not impact private real property as defined by Tex. Gov't Code §2007.003, so a takings impact assessment under Tex. Gov't Code §2001.043 is not required.

Requirement for Rule Increasing Costs to Regulated Persons

Tex. Gov't Code §2001.0045, Requirement for Rule Increasing Costs to Regulated Persons, does not apply to this proposed rule because the rule is necessary to implement legislation. Section 453.254 of the Physical Therapy Practice Act, adopted by the 85th Legislature, requires the board to develop a process for selecting an appropriate organization that includes a request for proposal and bidding process.

Comments on the proposed amendment may be submitted to Karen Gordon, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701; email: karen@ptof.texas.gov. Comments must be received no later than 30 days from the date this proposed amendment is published in the *Texas Register*.

Statutory Authority

The amendment is proposed under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Texas Occupations Code, which provides the Texas Board of Physical Therapy Ex-

aminers with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Cross-reference to Statute: The proposed amendment implements Government Code Chapter 453, §453.254.

§341.2. Continuing Competence Requirements.

(a) - (h) (No change.)

[(i) Pursuant to a Memorandum of Understanding (MOU) with the board, the Texas Physical Therapy Association (TPTA) shall act as a board-approved organization and shall be authorized to accredit providers and to evaluate and approve continuing competence activities for purposes of compliance with mandatory CC requirements as set by the board. This authority shall include authority to give, deny, withdraw and limit accreditation of providers and approval of competence activities, and to charge and collect fees as set forth in the MOU and in the statute and rules governing the board and the practice of physical therapy in Texas.]

[(1) A program may be approved before or after the licensee attends it, but must be approved prior to license renewal.]

[(2) To apply for continuing competence review, the licensee or sponsor/provider must submit a fee as approved by the board with the CC review application and any additional documentation as specified in this section to the TPTA. Interested parties may contact the TPTA in Austin, Texas, (512) 477-1818, www.tpta.org.]

[(A) Accredited providers and course sponsors are authorized to use the following statements to notify licensees of approval.]

[(i) Sponsors of approved activities.]

[(I) The following statement is authorized for use in publicity: "This activity has been approved by the Texas Board of Physical Therapy Examiners for ____ CCUs for PTs and PTAs."]

[(II) The following statement is authorized for use on certificates of completion only: "This activity has been approved by the Texas Board of Physical Therapy Examiners March 2018 21 Physical Therapy Examiners, approval #____, for ____ CCUs for PTs and PTAs."]

[(ii) Accredited providers.]

[(I) The following statement is authorized for use in publicity: "This activity is offered by the Texas Board of Physical Therapy Examiners Accredited Provider #____ and provides ____ CCUs for PTs and PTAs licensed in Texas."]

[(II) The following statement is authorized for use on certificates of completion only: "This activity is offered by the Texas Board of Physical Therapy Examiners Accredited Provider #____ and provides ____ CCUs for PTs and PTAs licensed in Texas."]

[(B) Sponsors of activities that have not received an approval number from the TPTA are not authorized to include a statement implying pending or future approval of that activity by the board.]

[(C) A course is approved only for the accredited provider offering the course or the sponsor submitting it for approval. Course approval may not be transferred from one provider or sponsor to another.]

[(3) Interested parties may contact the TPTA to inquire if a particular activity is approved. A list of approved activities is available on the TPTA web site.]

(4) Pursuant to the MOU, the TPTA shall provide quarterly reports to the board of its activities. Additionally, the TPTA shall report to the board the results of periodic quality assurance follow-up or review of a representative sample of approved continuing competence activities. In the event of sponsor/provider noncompliance, results will be reported to the board in writing for further investigation and direction.]

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

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TRD-201803663

John P. Maline

Executive Director

Texas Board of Physical Therapy Examiners

Earliest possible date of adoption: October 7, 2018

For further information, please call: (512) 305-6900



CHAPTER 344. ADMINISTRATIVE FINES AND PENALTIES

22 TAC §344.1

The Texas Board of Physical Therapy Examiners proposes amending §344.1, Administrative Fines and Penalties, pursuant to SB 317 amendments to Sec. 453.3525 and Sec.453.402(b), Occupations Code during the 85th Legislative Session.

The amendment is proposed in order to establish a Schedule of Sanctions and factors for consideration in conjunction with the Schedule of Sanctions when determining the appropriate penalty/sanction in disciplinary matters.

Fiscal Note.

John P. Maline, Executive Director, has determined that for the first five-year period this amendment is in effect there will be no impact on costs or revenue to state or local governments as a result of enforcing or administering this amendment.

Public Benefits and Costs.

Mr. Maline has also determined that for the first five-year period this amendment is in effect the public benefit of the amendment will be to provide transparency in the disciplinary process through the uniform application of discipline. Mr. Maline anticipates no economic cost to physical therapist and physical therapist assistant licensees as a result of enforcing or administering this amendment.

Local Employment Economic Impact Statement.

The rule, which adopts a Schedule of Sanctions, is not anticipated to impact a local economy, so a local employment economic impact statement is not required.

Small and Micro-Businesses and Rural Communities Impact.

Mr. Maline has determined that there will be no costs or adverse economic effects to small or micro businesses or rural communities as a result of the Board adopting a Schedule of Sanctions, therefore an economic impact statement or regulatory flexibility analysis is not required.

Government Growth Impact Statement.

The proposed rule's impact on government growth is as follows: does not create or eliminate a government program; does not require the creation of new employee positions or the elimination of existing employee positions; does not require an increase or decrease in future legislative appropriations to the agency; does not require an increase or decrease in fees paid to the agency; does not increase or decrease the number of individuals subject to the rule's applicability; and neither positively nor adversely affects this state's economy. The proposed rule does expand an existing regulation by establish a Schedule of Sanctions and factors for consideration in conjunction with the Schedule of Sanctions when determining the appropriate penalty/sanction in disciplinary matters.

Takings Impact Assessment.

The proposed rule would not impact private real property as defined by Tex. Gov't Code §2007.003, so a takings impact assessment under Tex. Gov't Code §2001.043 is not required.

Requirement for Rule Increasing Costs to Regulated Persons.

Tex. Gov't Code §2001.0045, Requirement for Rule Increasing Costs to Regulated Persons, does not apply to this proposed rule because the rule is necessary to implement legislation. Section 453.3525 and Sec.453.402(b) of the Physical Therapy Practice Act, adopted by the 85th Legislature, requires the board to develop a Schedule of Sanctions and factors for consideration in conjunction with the Schedule of Sanctions when determining the appropriate penalty/sanction in disciplinary matters. Further, the rule merely adopts a schedule of sanctions and does not increase costs to regulated persons.

Comments on the proposed amendment may be submitted to Karen Gordon, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701; email: karen@ptot.texas.gov. Comments must be received no later than 30 days from the date this proposed amendment is published in the *Texas Register*.

The amendment is proposed under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Texas Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

§344.1. *Administrative Fines and Penalties.*

(a) - (b) (No change.)

(c) The Board shall utilize the following Schedule of Sanctions in all disciplinary matters.
Figure: 22 TAC §344.1(c)

(d) [(e)] Assessment of the penalties will follow procedures as established in §343.41 of this title (relating to Agreed Orders). The Board shall consider the following factors in conjunction with the Schedule of Sanctions when determining the appropriate penalty/sanction in disciplinary matters: [The nature and amount of the penalty shall be based on:]

(1) the seriousness of the violation, including:

(A) the nature, circumstances, extent, and gravity of the violation; and

(B) the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the history of previous violations;

(3) the amount necessary to deter future violations;

- (4) efforts to correct the violation;
- (5) the economic harm to the public interest or public confidence caused by the violation;
- (6) whether the violation was intentional; and
- (7) any other matter that justice may require.
- {(1) the seriousness of the violation, including nature, circumstances, extent, and gravity of any prohibited act, and hazard or potential hazard created to the health, safety, or economic welfare of the public;}
- {(2) the economic harm to property or the environment caused by the violation;}
- {(3) the history of previous violations;}
- {(4) the amount necessary to deter future violations;}
- {(5) efforts to correct the violation; and}
- {(6) any other matter that justice may require.}

(e) [(d)] The provisions of subsections (a)-(d) [(a)-(e)] of this section shall not be construed so as to prohibit other appropriate civil or criminal action and remedy and enforcement under other laws.

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

Filed with the Office of the Secretary of State on August 27, 2018.

TRD-201803668

John P. Maline
Executive Director

Texas Board of Physical Therapy Examiners

Earliest possible date of adoption: October 7, 2018

For further information, please call: (512) 305-6900



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

CHAPTER 159. SPECIAL PROGRAMS

37 TAC §159.15

The Texas Board of Criminal Justice proposes amendments to §159.15, concerning the GO KIDS initiative. The amendments are proposed in conjunction with a proposed rule review of §159.15 as published in other sections of the *Texas Register*. The proposed amendments are necessary to make grammatical and formatting updates.

Jerry McGinty, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for each year of the first five years the rule will be in effect, enforcing or administering the rule will not have foreseeable implications related to costs or revenues for state or local government.

Mr. McGinty has also determined that for each year of the first five year period, there will not be an economic impact on persons required to comply with the rule. There will not be an adverse economic impact on small or micro businesses or on rural communities. Therefore, no regulatory flexibility analysis is required.

The anticipated public benefit, as a result of enforcing the rule, will be to simplify the rule and make it easier to read and use. No cost will be imposed on regulated persons.

The rule will have no impact on government growth; no creation or elimination of employee positions; no increase or decrease in fees paid to the TDCJ; no new regulation and no effect on an existing regulation; no increase or decrease in the number of individuals subject to the rule; and no effect upon the economy.

Comments should be directed to Sharon Felfe Howell, General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342, Sharon.Howell@tdcj.texas.gov. Written comments from the general public must be received within 30 days of the publication of this rule in the *Texas Register*.

The amendments are proposed under Texas Government Code §§492.001, 492.013.

§159.15. GO KIDS Initiative.

(a) The Texas Department of Criminal Justice (TDCJ) Giving Offenders' Kids Incentive and Direction to Succeed (GO KIDS) initiative identifies programs within the TDCJ and resources at local, state, and national levels to help the children of those persons under criminal justice supervision in Texas.

(b) A [resource] directory[,] identifying these programs and resources [services,] is available on the TDCJ website (www.TDCJ.texas.gov) in the "offender information" section. In addition, direct links to selected GO KIDS collaborators are included.

(c) A TDCJ GO KIDS coordinator is available to answer inquiries on the initiative. Inquiries should be addressed to the GO KIDS coordinator, TDCJ Rehabilitation Programs Division, P.O. Box 99, Huntsville, Texas 77342-0099.

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

Filed with the Office of the Secretary of State on August 24, 2018.

TRD-201803650

Sharon Howell
General Counsel

Texas Department of Criminal Justice

Earliest possible date of adoption: October 7, 2018

For further information, please call: (936) 437-6700



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 12. TEXAS BOARD OF OCCUPATIONAL THERAPY EXAMINERS

CHAPTER 364. REQUIREMENTS FOR LICENSURE

40 TAC §364.1

The Texas Board of Occupational Therapy Examiners proposes amendments to §364.1, concerning requirements for licensure. The amendments are proposed to cleanup and clarify the section and to add provisions to the section regarding the Board obtaining applicants' criminal history record information.

Cleanups and clarifications pertain to provisions regarding application requirements for initial Texas licensure. Provisions concerning educational requirements for initial Texas licensure have been revised in accordance with changes to the Occupational Therapy Practice Act, Tex. Occ. Code Chapter 454, pursuant to SB 317 from the 85th Legislative Session (Regular). The Legislature changed §454.203 of the Act, removing requirements for applicants to complete a specific number of weeks of supervised field work experience, and instead requiring the completion of field work experience requirements of an educational program in occupational therapy recognized by the Board. In the proposal, consequently, language referring to specified weeks of field work has been removed and replaced with a provision that refers to the relevant section of the Act. In addition, language referring to the completion of an accredited OT/OTA program in §364.1 has been replaced with language referring to academic requirements for applicants as specified in §454.203 of the Act. In the proposal, language has also been added referencing §454.205 of the Act, wherein academic and supervised field work requirements for foreign-trained applicants are described.

Further cleanups in the proposed amendments include removing provisions that appear elsewhere in the OT Rules from the section and replacing such with a provision noting that "Applicants and new licensees shall refer to Chapter 369 of this title for provisions regarding information changes and verification of temporary or regular license issuance and current licensure." Further cleanups and clarifications appear in the proposal.

The proposed amendments include adding a provision requiring an applicant's submission of fingerprints. Such changes are proposed pursuant to the addition to the Act of §454.217, adopted by the 85th Legislature, requiring an applicant to submit fingerprints to the Department of Public Safety for the purpose of the Board obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation.

Regarding criminal history record information, proposed amendments to §370.1, concerning license renewal; §370.3, concerning license restoration; §371.1, concerning inactive status; and §371.2, concerning retired status, have also been submitted to the *Texas Register* for publication.

FISCAL NOTE

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the proposed amendments would be effect, there would be no fiscal implications for state or local government as a result of enforcing or administering the rule. Applicants would be responsible for submitting the fee for fingerprinting. The other proposed changes to this section would not add additional costs for applicants.

LOCAL EMPLOYMENT IMPACT

Mr. Maline has determined that the rule would not impact a local economy; therefore, a local employment impact statement is not required. Applicants would be responsible for submitting the fee for fingerprinting. The other proposed changes to this section would not add additional costs for applicants.

PUBLIC BENEFITS AND PROBABLE ECONOMIC COST

Mr. Maline has also determined that for each of the first five years the proposed amendments would be in effect, the public benefit anticipated as a result of enforcing the rule would be the clarification of occupational therapy regulations and enhanced

board access to information concerning an applicant's possible criminal history. There would be an anticipated economic cost to persons required to comply with the proposed rule as applicants would be responsible for submitting the fee for fingerprinting.

SMALL AND MICRO-BUSINESSES AND RURAL COMMUNITIES IMPACT

There would be no costs or adverse economic effects on small or micro-businesses or rural communities as applicants themselves would be responsible for submitting the fee for fingerprinting and further proposed amendments would not add a fee; therefore, an economic impact statement or regulatory flexibility analysis is not required for the amendments.

TAKINGS IMPACT ASSESSMENT

The proposed rule would not impact private real property as defined by Tex. Gov't Code §2007.003, so a takings impact assessment under Tex. Gov't Code §2001.043 is not required.

GOVERNMENT GROWTH IMPACT STATEMENT

The proposed amendments' impact on government growth during the first five years the rule would be in effect is as follows: would not create or eliminate a government program; would not require the creation of new employee positions or the elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency as fees will be paid to the Department of Public Safety; would create a new regulation regarding fingerprinting; would not expand, limit, or repeal an existing regulation; would not increase or decrease the number of individuals subject to the rule's applicability; and would neither positively nor adversely affect this state's economy.

REQUIREMENT FOR RULE INCREASING COSTS TO REGULATED PERSONS

Tex. Gov't Code §2001.0045, Requirement for Rule Increasing Costs to Regulated Persons, does not apply to this proposed rule because the rule is necessary to implement legislation. Section 454.217 of the Act, adopted by the 85th Legislature, requires the Board to obtain applicants' criminal history record information.

PUBLIC COMMENT

Comments on the proposed amendments may be submitted to Lea Weiss, Occupational Therapy Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701-3942 or to lea@ptot.texas.gov no later than 30 days from the date that the proposed amendments are published in the *Texas Register*.

STATUTORY AUTHORITY

The amendments are proposed under the Occupational Therapy Practice Act, Title 3, Subtitle H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 454 of the Occupations Code is affected by this proposal.

§364.1. Requirements for Licensure.

(a) All applicants for initial Texas licensure shall:

(1) submit a complete application form as prescribed by the Board and non-refundable application fee as set by the Executive Council;

(2) submit a current photograph that meets the requirements for a U.S. passport;

~~[(1) submit a complete Board application form or online Board application with a recent passport-type color photograph of the applicant;]~~

~~[(2) submit a non-refundable application fee as set by the Executive Council;]~~

(3) submit a successfully completed Board jurisprudence examination on the Act and Rules;

(4) have completed academic and supervised field work requirements of an accredited educational program in occupational therapy as per §454.203 of the Act (relating to Qualifications for Occupational Therapist or Occupational Therapy Assistant License) or if foreign-trained, have met substantially equivalent academic and supervised field work requirements as per §454.205 of the Act (relating to Foreign-Trained Applicants);

~~[(4) have completed an accredited OT/OTA program;]~~

(5) submit a complete and legible set of fingerprints on a form prescribed by the Board to the Department of Public Safety for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation; and

~~[(5) have completed supervised fieldwork experience, a minimum of 6 months for OT and 2 months for OTA; and]~~

(6) either meet the requirements in §364.2 of this title (relating to Initial License by Examination) and apply by examination or meet the requirements in §364.4 of this title (relating to Licensure by Endorsement) and apply by endorsement.

(b) The applicant must also meet the requirements in §364.2 of this title and apply by examination if the applicant:

(1) has not passed the NBCOT certification examination; or

(2) has passed the NBCOT certification examination and

(A) is not currently licensed as an occupational therapist or occupational therapy assistant in another state or territory of the U.S.; or

(B) if not currently licensed in another state or territory of the U.S., is applying from the U.S. military or a non-licensing state or territory of the U.S. and cannot substantiate occupational therapy employment for at least two years immediately preceding application for a Texas license.

(c) The applicant must also meet the requirements in §364.4 of this title and apply by endorsement if the applicant has passed the NBCOT certification examination and:

(1) is currently licensed as an occupational therapist or occupational therapy assistant in another state or territory of the U.S.; or

(2) if not currently licensed in another state or territory of the U.S., is applying from the U.S. military or a non-licensing state or territory of the U.S. and can substantiate occupational therapy employment for at least two years immediately preceding application for a Texas license.

(d) Applicants who are military service members, military veterans, and military spouses:

(1) The Board shall credit verified military service, training, or education toward the licensing requirements, other than an ex-

amination requirement, with respect to an applicant who is a military service member or military veteran.

(2) The Board shall waive the application fees for a military service member or military veteran who is applying for a license by examination as per §364.2 of this title (relating to Initial License by Examination). In order to request a waiver of application fees, the military service member or military veteran must submit a copy of the Uniformed Services Military ID card or other appropriate official documentation evidencing current or former military affiliation and notify the Board of his or her military affiliation.

(3) The Board shall waive the application fees and will expedite the issuance of a license for a military service member, military veteran, or military spouse who is applying for licensure by endorsement as per §364.4 of this title (relating to Initial Licensure by Endorsement). In order to request a waiver of application fees and expedited services, the military service member, military veteran, or military spouse must submit a copy of the Uniformed Services Military ID card or other appropriate official documentation evidencing current or former military affiliation and notify the Board of his or her military affiliation.

(4) In this section, "military service member," "military veteran," and "military spouse" have the meaning as defined in Chapter 55, Occupations Code, §5.001.

(e) An application for license is valid for one year after the date it is received by the Board. At the end of the year, the application fee must be paid to continue the application process for the second year. ~~[The process will then continue under the terms of the original application.]~~

(f) An applicant who submits an application containing false information may be denied a license by the Board.

(g) Should the Board reject an application for license, the reasons for the rejection will be communicated in writing to the applicant. The applicant may submit additional information and request reconsideration by the Board. If the applicant remains dissatisfied, a hearing may be requested as specified in the Act.

(h) Applicants and new licensees shall refer to Chapter 369 of this title for provisions regarding information changes and verification of temporary or regular license issuance and current licensure.

~~[(h) Applicants and licensees must notify the Board in writing of changes in name, residential address, work address, mailing address, email address, and/or supervising occupational therapist within 30 days of the change. A copy of the legal document (e.g., a marriage license, court decree, or divorce decree) evidencing the name change must be submitted by the licensee or applicant with any written notification of a change in name.]~~

(i) The address of record is the information provided to the public. Until applicants and licensees select an address of record, the work address will be used as the default. If no work address is available, the mailing address will be used. If no alternate address is available, the home address will be used. Applicants and licensees may update this information at any time.

~~[(j) The Board may issue a copy of a license to replace one lost or destroyed upon receipt from the licensee of a written request on a form prescribed by the Board and the appropriate, non-refundable fee as set by the Executive Council. The Board may issue a replacement copy of a license to reflect a name change upon receipt from the licensee of a written request on a form prescribed by the Board, the appropriate, non-refundable fee as set by the Executive Council, and a~~

copy of the legal document (e.g., a marriage license, court decree, or divorce decree) evidencing the name change.}

(j) ~~[(k)]~~ The first regular license is valid from the date of issuance until the last day of the applicant's birth month, with a duration of at least two years.

~~[(l)] A new licensee with a regular or temporary license may provide occupational therapy services according to the terms of the license upon online verification of current licensure and license expiration date from the Board's license verification web page. The Board will maintain a secure resource for verification of license status and expiration date on its website.]~~

~~[(m) Licensees will follow the rules for continuing education, as described in Chapter 367 of this title (relating to Continuing Education).]~~

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

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John P. Maline

Executive Director

Texas Board of Occupational Therapy Examiners

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For further information, please call: (512) 305-6900



CHAPTER 370. LICENSE RENEWAL

40 TAC §370.1, §370.3

The Texas Board of Occupational Therapy Examiners proposes amendments to §370.1, concerning license renewal, and §370.3, concerning license restoration. The amendments are proposed to clean up and clarify the sections and to add provisions to the sections regarding the Board obtaining licensees' criminal history record information.

Cleanups and clarifications pertain to provisions regarding application requirements for the renewal of a Texas occupational therapy license. Such changes include removing "online" from provisions in §370.1 and §370.3 concerning the jurisprudence examination, as such is defined in §362.1 of the OT Rules, concerning definitions, as an online examination. In the proposed amendments to §370.1, references to a paper or online application have also been replaced with language referring to an application form as prescribed by the Board and with references to further requirements licensees must meet in additional sections of the OT Rules. Further cleanups and clarifications appear in the proposal.

The proposed amendments include adding provisions requiring a licensee's submission of fingerprints. Such changes are proposed pursuant to the addition to the Act of §454.255, adopted by the 85th Legislature, requiring a licensee to submit fingerprints to the Department of Public Safety for the purpose of the Board obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation.

Regarding criminal history record information, proposed amendments to §364.1, concerning requirements for licensure; §371.1, concerning inactive status; and §371.2, concerning retired sta-

tus, have also been submitted to the *Texas Register* for publication.

FISCAL NOTE

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the proposed amendments would be effect, there would be no fiscal implications for state or local government as a result of enforcing or administering the rules. Licensees would be responsible for submitting the fee for fingerprinting. The other proposed changes to this section would not add additional costs for licensees.

LOCAL EMPLOYMENT IMPACT

Mr. Maline has determined that the rules would not impact a local economy; therefore, a local employment impact statement is not required. Licensees would be responsible for submitting the fee for fingerprinting. The other proposed changes to this section would not add additional costs for licensees.

PUBLIC BENEFITS AND PROBABLE ECONOMIC COST

Mr. Maline has also determined that for each of the first five years the proposed amendments would be in effect, the public benefit anticipated as a result of enforcing the rules would be the clarification of occupational therapy regulations and enhanced board access to information concerning a licensee's possible criminal history. There would be an anticipated economic cost to persons required to comply with the proposed rules as licensees would be responsible for submitting the fee for fingerprinting.

SMALL AND MICRO-BUSINESSES AND RURAL COMMUNITIES IMPACT

There would be no costs or adverse economic effects on small or micro-businesses or rural communities as licensees themselves would be responsible for submitting the fee for fingerprinting and further proposed amendments would not add a fee; therefore, an economic impact statement or regulatory flexibility analysis is not required for the amendments.

TAKINGS IMPACT ASSESSMENT

The proposed rules would not impact private real property as defined by Tex. Gov't Code §2007.003, so a takings impact assessment under Tex. Gov't Code §2001.043 is not required.

GOVERNMENT GROWTH IMPACT STATEMENT

The proposed amendments' impact on government growth during the first five years the rules would be in effect is as follows: would not create or eliminate a government program; would not require the creation of new employee positions or the elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency as fees will be paid to the Department of Public Safety; would create a new regulation regarding fingerprinting; would not expand, limit, or repeal an existing regulation; would not increase or decrease the number of individuals subject to the rules' applicability; and would neither positively nor adversely affect this state's economy.

REQUIREMENT FOR RULE INCREASING COSTS TO REGULATED PERSONS

Tex. Gov't Code §2001.0045, Requirement for Rule Increasing Costs to Regulated Persons, does not apply to the proposed rules because the rules are necessary to implement legislation.

Section 454.255 of the Act, adopted by the 85th Legislature, requires the Board to obtain licensees' criminal history record information.

PUBLIC COMMENT

Comments on the proposed amendments may be submitted to Lea Weiss, Occupational Therapy Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701-3942 or to lea@ptot.texas.gov no later than 30 days from the date that the proposed amendments are published in the *Texas Register*.

STATUTORY AUTHORITY

The amendments are proposed under the Occupational Therapy Practice Act, Title 3, Subtitle H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 454 of the Occupations Code is affected by this proposal.

§370.1. License Renewal.

(a) Licensee Renewal. Licensees are required to renew their licenses every two years by the end of their birth month. A licensee may not provide occupational therapy services without a current license. Licenses and license expiration dates should be verified on the Board's license verification web page. ~~[The Board will maintain a secure resource for verification of license status and expiration date on its website.]~~

(1) General Requirements. The renewal application is not complete until the Board receives all required items. The components required for license renewal are:

(A) a complete ~~[signed Board]~~ renewal application form as prescribed by the Board ~~[or online equivalent]~~ verifying completion of 30 hours of continuing education, as per Chapter 367 of this title (relating to Continuing Education);

(B) the renewal fee and any late fees as set by the Executive Council that may be due;

(C) a passing score on the ~~[online]~~ jurisprudence examination ~~[exam]~~; ~~[and]~~

(D) the licensee's physical address, any work address, other mailing address, email address, and a chosen address of record. The address of record is the address that will be shared with the public. Until licensees select an address of record, the work address will be used as the default. If no work address is available, the mailing address will be used. If no alternate address is available, the home address will be used; ~~and [-]~~

(E) a complete and legible set of fingerprints on a form prescribed by the Board submitted to the Department of Public Safety for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation. The licensee is not required to submit fingerprints under this section if the licensee holder has previously submitted fingerprints under:

(i) Chapter 364 of this title (relating to Requirements for Licensure) for the initial issuance of the license;

(ii) Chapter 370 of this title (relating to License Renewal) as part of a prior license renewal; or

(iii) Chapter 371 of this title (relating to Inactive and Retired Status) as part of a prior license renewal or change of license status.

(2) The licensee is responsible for ensuring that the license is renewed, whether receiving a renewal notice or not.

(3) The renewal process is not complete until the Board's license verification web page ~~[website verification]~~ reflects that the license has been renewed by displaying the new renewal date.

~~[(4) Licensees who do not have a social security number on file will be unable to renew online.]~~

~~[(5) Licensees who are on inactive status or who wish to change their current status must renew with a paper application before the expiration date of the license.]~~

~~[(6) Licensees who wish to change their name on their license must submit a written request on a form prescribed by the Board with the appropriate, non-refundable fee as set by the Executive Council and a copy of the legal document (e.g., a marriage license, court decree, or divorce decree) evidencing the name change.]~~

(4) ~~[(7)]~~ Renewal fees and late fees are non-refundable.

(5) Licensees electing to change their status or renewing a license on inactive or retired status must meet further requirements as per Chapter 371 of this title (relating to Inactive and Retired Status).

(6) Licensees renewing a license expired one year or more must meet further requirements as per §370.3 of this title (relating to Restoration of a Texas License).

(b) Restrictions to Renewal~~[/Restoration]~~.

(1) The Board will not renew a license if a licensee has defaulted with the Texas Guaranteed Student Loan Corporation (TGSLC). Upon notice from TGSLC that a repayment agreement has been established, the license shall be renewed if all other renewal requirements have been met.

(2) The Board will not renew a license if the licensee has defaulted on a court or Attorney General's notice of child support. Upon receipt that repayment has been established, the license shall be renewed if all other renewal requirements have been met.

§370.3. Restoration of a Texas License.

(a) Restoration of a license expired one year or more to a person with a current license or occupational therapy employment:

(1) The Board may restore a license to a person whose Texas license has been expired one year or more if the person:

(A) is currently licensed in another state or territory of the U.S. and that license has not been suspended, revoked, cancelled, surrendered or otherwise restricted for any reason; or

(B) if not currently licensed in another state or territory of the U.S., is applying from the U.S. military or a non-licensing state or territory of the U.S. and can substantiate occupational therapy employment for at least two years immediately preceding application for a Texas license.

(2) The person shall meet the following requirements:

(A) submit a completed restoration application form as prescribed by the Board, which includes a current photograph that meets the requirements for a U.S. passport~~[recent passport-type photo]~~;

(B) submit to the Board a verification of license from each state or territory of the U.S. in which the applicant is currently licensed or previously held a license. This must be an original verification sent directly to the Board by the licensing board in that state or territory. Any disciplinary actions must be reported to the Board. If not currently licensed in another state or territory of the U.S. and

applying from the U.S. military or a non-licensing state or territory of the U.S., the person must submit a Verification of Employment form substantiating occupational therapy employment for at least two years immediately preceding application for a Texas license;

(C) pass the ~~[online]~~ jurisprudence examination; ~~[exam; and]~~

(D) pay the restoration fee; and [-]

(E) submit a complete and legible set of fingerprints on a form prescribed by the Board to the Department of Public Safety for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation. The licensee is not required to submit fingerprints under this section if the license holder has previously submitted fingerprints under:

(i) Chapter 364 of this title (relating to Requirements for Licensure) for the initial issuance of the license;

(ii) Chapter 370 of this title (relating to License Renewal) as part of a prior license renewal; or

(iii) Chapter 371 of this title (relating to Inactive and Retired Status) as part of a prior license renewal or change of license status.

(b) Restoration of a license expired at least one year but less than two years to a person without a current license or occupational therapy employment:

(1) The Board may restore a license expired at least one year but less than two years to a person who was licensed in Texas and:

(A) is not currently licensed in another state or territory of the U.S.; or

(B) if not currently licensed in another state or territory of the U.S., is applying from the U.S. military or a non-licensing state or territory of the U.S. and cannot substantiate occupational therapy employment for at least two years immediately preceding application for a Texas license.

(2) The person shall meet the following requirements:

(A) submit a completed restoration application form as prescribed by the Board, which includes a current photograph that meets the requirements for a U.S. passport ~~[recent passport-type photo]~~;

(B) submit copies of the completed continuing education showing 45 hours of continuing education as per Chapter 367 of this title (relating to Continuing Education);

(C) submit to the Board a verification of license from each state or territory of the U.S. in which the applicant is currently licensed or previously held a license. This must be an original verification sent directly to the Board by the licensing board in that state or territory. Any disciplinary actions must be reported to the Board;

(D) pass the ~~[online]~~ jurisprudence examination; ~~[and]~~

(E) pay the restoration fee; and [-]

(F) submit a complete and legible set of fingerprints on a form prescribed by the Board to the Department of Public Safety for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation. The licensee is not required to submit fingerprints under this section if the license holder has previously submitted fingerprints under:

(i) Chapter 364 of this title (relating to Requirements for Licensure) for the initial issuance of the license;

(ii) Chapter 370 of this title (relating to License Renewal) as part of a prior license renewal; or

(iii) Chapter 371 of this title (relating to Inactive and Retired Status) as part of a prior license renewal or change of license status.

(c) Restoration of a license expired two years or more to a person without a current license or occupational therapy employment:

(1) The Board may restore a license expired two years or more to a person who was licensed in Texas and:

(A) is not currently licensed in another state or territory of the U.S.; or

(B) if not currently licensed in another state or territory of the U.S., is applying from the U.S. military or a non-licensing state or territory of the U.S. and cannot substantiate occupational therapy employment for at least two years immediately preceding application for a Texas license.

(2) The person shall meet the following requirements:

(A) submit a completed restoration application form as prescribed by the Board, which includes a current photograph that meets the requirements for a U.S. passport ~~[recent passport-type photo]~~;

(B) submit to the Board a verification of license from each state or territory of the U.S. in which the applicant is currently licensed or previously held a license. This must be an original verification sent directly to the Board by the licensing board in that state or territory. Any disciplinary actions must be reported to the Board;

(C) pass the ~~[online]~~ jurisprudence examination ~~[exam]~~;

(D) pay the restoration fee; ~~[and]~~

(E) submit a complete and legible set of fingerprints on a form prescribed by the Board to the Department of Public Safety for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation. The licensee is not required to submit fingerprints under this section if the license holder has previously submitted fingerprints under:

(i) Chapter 364 of this title (relating to Requirements for Licensure) for the initial issuance of the license;

(ii) Chapter 370 of this title (relating to License Renewal) as part of a prior license renewal; or

(iii) Chapter 371 of this title (relating to Inactive and Retired Status) as part of a prior license renewal or change of license status; and

(F) ~~[(E)]~~ satisfy one of the following:

(i) complete a re-entry course through an accredited college or university and submit the certificate of completion or transcript to the Board;

(ii) obtain an advanced or post-professional occupational therapy degree, with an official transcript sent to the Board; or

(iii) take and pass the NBCOT examination for licensure purposes only (after requesting Board approval to take the examination) and have the passing score reported to the Board directly by NBCOT.

(d) The Board shall expedite the restoration of a license to a military service member, military veteran, or military spouse. To request expedited services, the military service member, military veteran,

or military spouse must submit a copy of the Uniformed Services Military ID card or other appropriate official documentation evidencing current or former military affiliation and notify the Board of his or her military affiliation. In this section, "military service member," "military veteran," and "military spouse" have the meaning as defined in Chapter 55, Occupations Code, §55.001.

(e) The licensee whose license has been restored shall refer to Chapter 369 of this title (relating to Display of Licenses) for provisions regarding verification of current licensure.

~~[(e) The licensee whose license has been restored may provide occupational therapy services according to the terms of the license upon online verification of current licensure and license expiration date from the Board's license verification web page. The Board will maintain a secure resource for verification of license status and expiration date on its website.]~~

(f) The restoration fee as set by the Executive Council is non-refundable.

(g) Restoration requirements must be met within one year of the Board's receipt of the application. Restoration requirements are based on the length of time the license has been expired and whether the individual has a current license or occupational therapy employment as specified in this section at the time of the license's restoration.

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

Filed with the Office of the Secretary of State on August 27, 2018.

TRD-201803665

John P. Maline

Executive Director

Texas Board of Occupational Therapy Examiners

Earliest possible date of adoption: October 7, 2018

For further information, please call: (512) 305-6900



CHAPTER 371. INACTIVE AND RETIRED STATUS

40 TAC §371.1, §371.2

The Texas Board of Occupational Therapy Examiners proposes amendments to §371.1, concerning inactive status; and §371.2, concerning retired status. The amendments are proposed to cleanup and clarify the sections and to add provisions to the sections regarding the Board obtaining licensees' criminal history record information.

Cleanups and clarifications pertain to removing "online" from provisions concerning the jurisprudence examination, as such is defined in §362.1 of the OT Rules, concerning definitions, as an online examination. Further clarifications and cleanups appear in the proposal, including removing a reference in §371.2 to verification of current licensure, as provisions concerning verification of current licensure already appear elsewhere in the OT Rules.

The proposed amendments include adding provisions requiring a licensee's submission of fingerprints. Such changes are proposed pursuant to the addition to the Act of §454.255, adopted by the 85th Legislature, requiring a licensee to submit fingerprints to the Department of Public Safety for the purpose of the Board ob-

taining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation.

Regarding criminal history record information, proposed amendments to §364.1, concerning requirements for licensure; §370.1, concerning license renewal; and §370.3, concerning license restoration, have also been submitted to the *Texas Register* for publication.

FISCAL NOTE

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the proposed amendments would be effect, there would be no fiscal implications for state or local government as a result of enforcing or administering the rules. Licensees would be responsible for submitting the fee for fingerprinting. The other proposed changes to this section would not add additional costs for licensees.

LOCAL EMPLOYMENT IMPACT

Mr. Maline has determined that the rules would not impact a local economy; therefore, a local employment impact statement is not required. Licensees would be responsible for submitting the fee for fingerprinting. The other proposed changes to this section would not add additional costs for licensees.

PUBLIC BENEFITS AND PROBABLE ECONOMIC COST

Mr. Maline has also determined that for each of the first five years the proposed amendments would be in effect, the public benefit anticipated as a result of enforcing the rules would be the clarification of occupational therapy regulations and enhanced board access to information concerning a licensee's possible criminal history. There would be an anticipated economic cost to persons required to comply with the proposed rules as licensees would be responsible for submitting the fee for fingerprinting.

SMALL AND MICRO-BUSINESSES AND RURAL COMMUNITIES IMPACT

There would be no costs or adverse economic effects on small or micro-businesses or rural communities as licensees themselves would be responsible for submitting the fee for fingerprinting and further proposed amendments would not add a fee; therefore, an economic impact statement or regulatory flexibility analysis is not required for the amendments.

TAKINGS IMPACT ASSESSMENT

The proposed rules would not impact private real property as defined by Tex. Gov't Code §2007.003, so a takings impact assessment under Tex. Gov't Code §2001.043 is not required.

GOVERNMENT GROWTH IMPACT STATEMENT

The proposed amendments' impact on government growth during the first five years the rules would be in effect is as follows: would not create or eliminate a government program; would not require the creation of new employee positions or the elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency as fees will be paid to the Department of Public Safety; would create a new regulation regarding fingerprinting; would not expand, limit, or repeal an existing regulation; would not increase or decrease the number of individuals subject to the rules' applicability; and would neither positively nor adversely affect this state's economy.

REQUIREMENT FOR RULE INCREASING COSTS TO REGULATED PERSONS

Tex. Gov't Code §2001.0045, Requirement for Rule Increasing Costs to Regulated Persons, does not apply to the proposed rules because the rules are necessary to implement legislation. Section 454.255 of the Act, adopted by the 85th Legislature, requires the Board to obtain licensees' criminal history record information.

PUBLIC COMMENT

Comments on the proposed amendments may be submitted to Lea Weiss, Occupational Therapy Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701-3942 or to lea@ptot.texas.gov no later than 30 days from the date that the proposed amendments are published in the *Texas Register*.

STATUTORY AUTHORITY

The amendments are proposed under the Occupational Therapy Practice Act, Title 3, Subtitle H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 454 of the Occupations Code is affected by this proposal.

§371.1. *Inactive Status.*

(a) Inactive status indicates the voluntary termination of the right to practice occupational therapy by a licensee in good standing with the Board. The Board may allow an individual who is not actively engaged in the practice of occupational therapy to put an active license on inactive status at the time of renewal. A licensee may remain on inactive status for no more than three renewals or six consecutive years and may not represent himself or herself as an occupational therapist or occupational therapy assistant.

(b) Required components to put a license on inactive status are:

(1) a completed renewal application form as prescribed by the Board documenting completion of the required continuing education as described in Chapter 367 of this title (relating to Continuing Education);

(2) the inactive status fee and any late fees that may be due; and

(3) a passing score on the [online] jurisprudence examination [exam].

(c) Requirements for renewal of inactive status. An inactive licensee must renew the inactive status every 2 years. The components required to maintain the inactive status are:

(1) a completed renewal application form as prescribed by the Board documenting completion of the required continuing education as described in Chapter 367 of this title (relating to Continuing Education);

(2) the inactive status renewal fee and any late fees that may be due; and

(3) a passing score on the [online] jurisprudence examination [exam].

(d) Requirements for reinstatement to active status. A licensee on inactive status may request to return to active status at any time. The components required to return to active status are:

(1) a completed renewal application form as prescribed by the Board;

(2) the renewal fee and any late fees that may be due;

(3) a passing score on the [online] jurisprudence examination; [exam; and]

(4) proof of the required continuing education, if required; and[-]

(5) a complete and legible set of fingerprints on a form prescribed by the Board submitted to the Department of Public Safety for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation. The licensee is not required to submit fingerprints under this section if the license holder has previously submitted fingerprints under:

(A) Chapter 364 of this title (relating to Requirements for Licensure) for the initial issuance of the license;

(B) Chapter 370 of this title (relating to License Renewal) as part of a prior license renewal; or

(C) Chapter 371 of this title (relating to Inactive and Retired Status) as part of a prior license renewal or change of license status.

(e) If the inactive status license has been expired one year or more, in order to return to active status, the individual must follow the procedures to restore the license according to §370.3 of this title (relating to Restoration of a Texas License).

(f) The inactive status fees and any late fees as set by the Executive Council are nonrefundable.

(g) Licensees on inactive status are subject to the audit of continuing education as described in §367.3 of this title (relating to Continuing Education Audit).

§371.2. *Retired Status.*

(a) The Retired Status is available for an occupational therapy practitioner whose only practice is the provision of voluntary charity care without monetary compensation.

(1) "voluntary charity care" means occupational therapy services provided as a volunteer with no compensation, for a charitable organization as defined in §84.003 of the Texas Civil Practice and Remedies Code. This includes any bona fide charitable, religious, prevention of cruelty to children or animals, youth sports and youth recreational, neighborhood crime prevention or patrol, or educational organization (excluding fraternities, sororities, and secret societies), or other organization organized and operated exclusively for the promotion of social welfare by being primarily engaged in promoting the common good and general welfare of the people in the community, including these type of organizations with a Section 501(c)(3) or (4) exemption from federal income tax, some Chambers of commerce, and volunteer centers certified by the Department of Public Safety.

(2) "compensation" means direct or indirect payment of anything of monetary value.

(3) The designation used by the retired status licensee is Occupational Therapist Registered, Retired (OTR, Ret) or Occupational Therapist, Retired (OT, Ret), or Certified Occupational Therapy Assistant, Retired (COTA, Ret) or Occupational Therapy Assistant, Retired (OTA, Ret).

(b) To be eligible for retired status, a licensee must hold a current license on active or inactive status or an active or inactive license that has been expired less than one year.

(c) Requirements for initial retired status are:

(1) a completed retired status application form as prescribed by the Board;

(2) a passing score on the [online] jurisprudence examination [exam];

(3) the completed continuing education for the current renewal period; [and]

(4) the retired status application fee and any late fees that may be due; and[-]

(5) a complete and legible set of fingerprints on a form prescribed by the Board submitted to the Department of Public Safety for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation. The licensee is not required to submit fingerprints under this section if the license holder has previously submitted fingerprints under:

(A) Chapter 364 of this title (relating to Requirements for Licensure) for the initial issuance of the license;

(B) Chapter 370 of this title (relating to License Renewal) as part of a prior license renewal; or

(C) Chapter 371 of this title (relating to Inactive and Retired Status) as part of a prior license renewal or change of license status.

(d) Requirements for renewal of retired status. A licensee on retired status must renew every two years before the expiration date. The retired occupational therapy practitioner shall submit:

(1) a completed retired status renewal form as prescribed by the Board;

(2) a passing score on the [online] jurisprudence examination [exam];

(3) the retired status renewal fee and any late fees that may be due; [and]

(4) completion of 6 hours of continuing education each license renewal period, as described in Chapter 367 of this title (relating to Continuing Education); and[-]

(5) a complete and legible set of fingerprints on a form prescribed by the Board submitted to the Department of Public Safety for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation. The licensee is not required to submit fingerprints under this section if the license holder has previously submitted fingerprints under:

(A) Chapter 364 of this title (relating to Requirements for Licensure) for the initial issuance of the license;

(B) Chapter 370 of this title (relating to License Renewal) as part of a prior license renewal; or

(C) Chapter 371 of this title (relating to Inactive and Retired Status) as part of a prior license renewal or change of license status.

(e) Requirements for return to active status. A licensee who has been on retired status less than one year must submit the regular license renewal fee and the late fee as described in §370.1 of this title (relating to License Renewal). A licensee who has been on retired status for one year or more must follow the procedures for §370.3 of this title (relating to Restoration of Texas License).

(f) The occupational therapy practitioner may continue to renew the retired status license indefinitely.

(g) Licensees on retired status are subject to the audit of continuing education as described in §367.3 of this title (relating to Continuing Education Audit).

(h) A retired occupational therapy practitioner is subject to disciplinary action under the OT Practice Act.

~~[(i) Licensees on retired status may provide occupational therapy services according to the terms of the license upon online verification of current licensure and license expiration date from the Board's license verification web page. The Board will maintain a secure resource for verification of license status and expiration date on its website.]~~

~~(i) [(j)] The retired status fees and any late fees as set by the Executive Council are nonrefundable.~~

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

Filed with the Office of the Secretary of State on August 27, 2018.

TRD-201803666

John P. Maline

Executive Director

Texas Board of Occupational Therapy Examiners

Earliest possible date of adoption: October 7, 2018

For further information, please call: (512) 305-6900



CHAPTER 374. DISCIPLINARY ACTIONS/DETRIMENTAL PRACTICE/COMPLAINT PROCESS/CODE OF ETHICS/LICENSURE OF PERSONS WITH CRIMINAL CONVICTIONS

40 TAC §374.1

The Texas Board of Occupational Therapy Examiners proposes amendments to §374.1, concerning disciplinary actions. The amendments are proposed to add information concerning a schedule of sanctions to the chapter in order to comply with a recent statutory amendment to the Occupational Therapy Practice Act, Tex. Occ. Code Chapter 454.

The proposed amendments would add a schedule of sanctions to the section and information regarding factors considered in conjunction with the schedule of sanctions when determining the appropriate penalty/sanction in disciplinary matters. The amendments are proposed pursuant to the addition to the Act of §454.3025, adopted by the 85th Legislature, requiring the Board to adopt a schedule of sanctions.

FISCAL NOTE

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the proposed amendments would be effect, there would be no fiscal implications for state or local government as a result of enforcing or administering the rule. The rule adopts a schedule of sanctions that will not impact state or local governments.

LOCAL EMPLOYMENT IMPACT

Mr. Maline has determined that the rule would not impact a local economy because it adopts a schedule of sanctions that will not

apply to local economies; therefore, a local employment impact statement is not required.

PUBLIC BENEFITS AND PROBABLE ECONOMIC COST

Mr. Maline has also determined that for each of the first five years the proposed amendments would be in effect, the public benefit anticipated as a result of enforcing the rule would be the clarification of occupational therapy regulations by putting into rule the Board's schedule of sanctions. There would not be an additional anticipated economic cost to persons required to comply with the proposed rule because the rule adopts a schedule of disciplinary sanctions and does not impose new regulatory requirements.

SMALL AND MICRO-BUSINESSES AND RURAL COMMUNITIES IMPACT

There would be no costs or adverse economic effects on small or micro-businesses or rural communities. These amendments adopt the Board's schedule of disciplinary sanctions and have no effect on small or micro-businesses or rural communities. Therefore, an economic impact statement or regulatory flexibility analysis is not required for the amendments.

TAKINGS IMPACT ASSESSMENT

The proposed rule would not impact private real property as defined by Tex. Gov't Code §2007.003, so a takings impact assessment under Tex. Gov't Code §2001.043 is not required.

GOVERNMENT GROWTH IMPACT STATEMENT

The proposed amendments' impact on government growth during the first five years the rule would be in effect is as follows: would not create or eliminate a government program; would not require the creation of new employee positions or the elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency as fees will be paid to the Department of Public Safety; would not create a new regulation; would not limit or repeal an existing regulation; would expand an existing regulation to include language referring to a schedule of sanctions; would not increase or decrease the number of individuals subject to the rule's applicability; and would neither positively nor adversely affect this state's economy.

REQUIREMENT FOR RULE INCREASING COSTS TO REGULATED PERSONS

Tex. Gov't Code §2001.0045, Requirement for Rule Increasing Costs to Regulated Persons, does not apply to the proposed rule because the rule is necessary to implement legislation. Section 454.3025 of the Act, adopted by the 85th Legislature, requires the Board to adopt a schedule of sanctions. Further, the rule merely adopts a schedule of sanctions and does not increase costs to regulated persons.

PUBLIC COMMENT

Comments on the proposed amendments may be submitted to Lea Weiss, Occupational Therapy Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701-3942 or to lea@ptot.texas.gov no later than 30 days from the date that the proposed amendments are published in the *Texas Register*.

STATUTORY AUTHORITY

The amendments are proposed under the Occupational Therapy Practice Act, Title 3, Subtitle H, Chapter 454, Occupations

Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 454 of the Occupations Code is affected by this proposal.

§374.1. Disciplinary Actions.

(a) The board, in accordance with the Administrative Procedure Act, may deny, revoke, suspend, or refuse to renew or issue a license, or may reprimand or impose probationary conditions, if the licensee or applicant for licensure has been found in violation of the rules or the Act. The board will adhere to procedures for such action as stated in the Act, §§454.301, 454.302, 454.303, and 454.304.

(b) The board recognizes four levels of disciplinary action for its licensees.

(1) Level I: Order and/or Letter of Reprimand or Other Appropriate Disciplinary Action (including but not limited to community service hours).

(2) Level II: Probation--The licensee may continue to practice while on probation. The board orders the probationary status which may include but is not limited to restrictions on practice and continued monitoring by the board during the specified time period.

(3) Level III: Suspension--A specified period of time that the licensee may not practice as an occupational therapist or occupational therapy assistant. Upon the successful completion of the suspension period, the license will be reinstated upon the licensee successfully meeting all requirements.

(4) Level IV: Revocation--A determination that the licensee may not practice as an occupational therapist or occupational therapy assistant. Upon passage of 180 days, from the date the revocation order becomes final, the former licensee may petition the board for re-issuance of a license. The former licensee may be required to re-take the Examination.

(c) The board shall utilize the following schedule of sanctions in all disciplinary matters.

Figure: 40 TAC §374.1(c)

(d) The board shall consider the following factors in conjunction with the schedule of sanctions when determining the appropriate penalty/sanction in disciplinary matters:

(1) the seriousness of the violation, including:

(A) the nature, circumstances, extent, and gravity of the violation; and

(B) the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the history of previous violations;

(3) the amount necessary to deter future violations;

(4) efforts to correct the violation;

(5) the economic harm to the public interest or public confidence caused by the violation;

(6) whether the violation was intentional; and

(7) any other matter that justice requires.

(e) [(e)] Licensees and facilities which provide occupational therapy services are responsible for understanding and complying with Chapter 454 of the Occupations Code (the Occupational Therapy Practice Act), and the Texas Board of Occupational Therapy Examiners' rules.

(f) [(d)] Final disciplinary actions taken by the board will be routinely published as to the names and offenses of the licensees or facilities.

(g) [(e)] A licensee who is ordered by the board to perform certain act(s) will be monitored by the board to ensure that the required act(s) are completed per the order of the board.

(h) [(f)] A licensee or applicant is required to report to the board a felony of which he/she is convicted within 60 days after the conviction occurs.

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

Filed with the Office of the Secretary of State on August 27, 2018.

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John P. Maline

Executive Director

Texas Board of Occupational Therapy Examiners

Earliest possible date of adoption: October 7, 2018

For further information, please call: (512) 305-6900

