PROPOSED RULES

The 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 strike-through] 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

The Office of the Attorney General (OAG) proposes amendments to the existing rules at 1 Texas Administrative Code (TAC), Chapter 54, Subchapter C, §§54.80 and 54.81, and Subchapter D, §54.90; proposes new rules at 1 TAC, Chapter 54, new Subchapter E, §§54.100, 54.101, 54.103, and 54.104; and proposes to repeal of §§54.91 in Subchapter D. These proposed changes are referred to as the "proposed rules." The proposed rules address posting, training, and collection of human trafficking information.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 1 TAC Chapter 54 address special programs at the OAG.

The proposed rules are necessary to implement Senate Bill 800, Senate Bill 1831, House Bill 390, and House Bill 3721 passed by the 87th Texas Legislature, Regular Session (2021), which address special programs related to human trafficking prevention.

Senate Bill 800 provides that certain entities must report to the attorney general certain human trafficking information in a form and manner prescribed by the attorney general.

Senate Bill 1831 provides that certain entities must post human trafficking information signs. The bill requires the OAG to develop and prescribe the design and content of the human trafficking informational sign. Senate Bill 1831 also provides the OAG with enforcement authority to ensure compliance with posting of signs.

House Bill 390 requires the OAG to establish requirements for human trafficking training and create and make available human trafficking informational signs for commercial lodging establishments.

House Bill 3721 requires the inclusion of information related to reporting suspicious activity to the Department of Public Safety on certain human trafficking signs.

To develop the proposed rules, the OAG consulted with the Human Trafficking Prevention Coordinating Council and Human Trafficking Prevention Task Force.

SECTION-BY-SECTION SUMMARY

The proposed rules amend §54.80 by adding all the entities that must comply with the human trafficking sign posting requirements and establishing the minimum information required on these signs.

The proposed rules amend §54.81 by outlining the OAG enforcement authority for requirements that address posting of human trafficking signs by certain entities.

The proposed rules amend §54.90 by establishing the form and manner by which certain entities must report human trafficking information to the OAG.

The proposed rules create new Subchapter E relating to human trafficking training and sign requirements for commercial lodging establishments.

The proposed rules create new §54.100 to establish the human trafficking training requirements for commercial lodging establishments.

The proposed rules create new §54.101 to establish the training compliance for commercial lodging establishments.

The proposed rules create new §54.102 to establish the human trafficking prevention sign requirements for commercial lodging establishments.

The proposed rules create new §54.103 to outline OAG enforcement authority for training and sign requirements.

OAG also proposes to repeal current §54.91. House Bill 3800, 86th Legislature, Regular Session (2019), provided for a phased implementation of human trafficking cases reporting requirements by population. By August 11, 2021, all persons required to report are fully participating. Therefore, §54.91 is moot as there is no need for the rule phasing in reporting persons by population.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Ms. Cara Foos Pierce, Chief of the Human Trafficking and Transitional/Organized Crime Division has determined that for each year of the first five years the proposed rules are in effect, there are no foreseeable additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rules.

Ms. Pierce has determined that for each of the first five years the proposed rules are in effect, there are no foreseeable increases or losses in revenue to the state or local government as a result of enforcing or administering the proposed rules.

The proposed rules do not have any foreseeable fiscal impact on the amount of resources or personnel needed by the OAG to develop and provide signs and develop or approve training on human trafficking because OAG can use existing resources. In addition, reporting certain human trafficking information to the OAG is already required by law. The proposed rules provide the manner and form prescribed by the OAG for reporting the required information. These signs will be made available to state
and local governments, in addition to being publicly available on the OAG website.

LOCAL EMPLOYMENT OR ECONOMY IMPACT
Ms. Pierce has determined that the proposed rules do not have an impact on local employment or economies. Therefore, no local employment or economy impact statement is required under Tex. Gov't Code §2001.022.

The proposed rules require the OAG to develop and provide signs and develop or approve training on human trafficking for certain entities. There will not be an impact on local employment or economies required to comply with these sign-postings and training requirements because the OAG will make the necessary materials available on the OAG website.

PUBLIC BENEFITS
Ms. Pierce has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will result from increased information provided to the public on how to identify and report human trafficking through the posting of signs and training. The state will also benefit from more uniform reporting and centralized collection of information regarding human trafficking cases in Texas.

Additionally, it has been reported that the commercial lodging industry is one of the top venues for human trafficking in Texas. The proposed rules seek to provide additional training opportunities for employees of commercial lodging establishments on how to recognize and report human trafficking.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL
Ms. Pierce has determined that for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules. The proposed rules require the OAG to develop and provide signs and develop or approve training on human trafficking for certain entities, and the OAG will make the necessary materials available on the OAG website.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES
Ms. Pierce has determined that for each of the first five-year period the proposed rules are in effect, there will be no foreseeable adverse fiscal impact on small business, micro-businesses, or rural communities as a result of the proposed rules. The proposed rules require certain entities to post signs and for commercial lodging establishments' employees to receive training. However, the proposed rules require the OAG to develop and provide signs and develop or approve training on human trafficking for these entities. The OAG will make the necessary materials available on the OAG website.

Since the OAG has determined that the proposed rules will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, is not required.

GOVERNMENT GROWTH IMPACT STATEMENT
Pursuant to Texas Government Code §2001.0221, the OAG provides the following Government Growth Impact Statement for the proposed rules. For each year of the first five years the proposed rules will be in effect, the OAG 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 OAG.
4. The proposed rules do not require an increase or decrease in fees paid to the OAG.
5. The proposed rules do create a new regulation. The proposed rules implement Senate Bill 1831, House Bill 390 and House Bill 3721 by requiring certain entities post human trafficking information signs. Additionally, the proposed rules implement a training requirement for commercial lodging establishments' employees.
6. The proposed rules do not expand or limit an existing regulation. The proposed rules repeal a regulation.
7. The proposed rules do increase the number of individuals or entities subject to the rules' applicability. The proposed rules implement Senate Bill 800, Senate Bill 1831, House Bill 390, and House Bill 3721, which require certain entities post human trafficking information signs. Additionally, the proposed rules implement a training requirement for commercial lodging establishments' employees. Some entities affected by these proposed rules are already required to post human trafficking information and complete training.
8. The proposed rules do not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT
The OAG has determined that no private real property interests are affected by the proposed rules and the proposed rules do not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, the proposed rules do not constitute a taking or require a takings impact assessment under Texas Gov't Code §2007.043.

PUBLIC COMMENTS
Written comments on the proposed rules may be submitted electronically to the Human Trafficking and Transnational/Organized Crime Section by email at humantrafficking@oag.texas.gov or by mail to Human Trafficking and Transnational/Organized Crime Section, Office of the Attorney General, P.O. Box 12548, Austin, Texas 78711-2548. The OAG will consider any written comments on the proposal that are received by OAG no later than 5:00 p.m., central time, on October 11, 2021.

To request a public hearing on the proposal, submit a request before the end of the comment period by email to humantrafficking@oag.texas.gov or by mail to Human Trafficking and Transnational/Organized Crime Section, Office of the Attorney General, P.O. Box 12548, Austin, Texas 78711-2548.

SUBCHAPTER C. HUMAN TRAFFICKING PREVENTION SIGNS
1 TAC §54.80, §54.81

STATUTORY AUTHORITY. These rules are proposed under the following statutes that authorize the OAG to adopt rules as necessary to implement these statutes: Texas Code of Criminal
§54.80.  Required Posting of Human Trafficking Signs by Certain Entities [Sexually Oriented Business Sign Design, Content, and Manner of Display].

(a) A person who operates any of the following entities must post at the entity a sign as prescribed by this subchapter or, if applicable, similar signs or notices as prescribed by other state law: [The attached graphic prescribes the design and content of the human trafficking prevention sign required by Business and Commerce Code §102.101.]

   [Figure: 4 TAC §54.80(a)]

   1. an entity permitted or licensed under Chapter 25, 26, 28, 32, 69, or 71, Alcoholic Beverage Code, other than an entity holding a food and beverage certificate;
   2. a cosmetology facility;
   3. a hospital;
   4. a massage establishment;
   5. a massage school;
   6. a sexually oriented business;
   7. a tattoo studio;
   8. a transportation hub; or
   9. a state park and other recreational site under the Parks and Wildlife Department’s jurisdiction.

(b) A sign required to be posted under Texas Government Code §402.0351 must at a minimum: [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.]

   (1) contain information regarding services and assistance to victims of human trafficking;
   (2) be in both English and Spanish; and
   (3) include:
      (A) a toll-free telephone number and Internet website for accessing human trafficking resources;
      (B) the contact information for reporting suspicious activity to the Department of Public Safety; and
      (C) the key indicators that a person is a victim of human trafficking.

(c) A sign required under this subchapter must be clearly legible and posted in a conspicuous place that is either:

   (1) near the public entrance; or
   (2) in clear view of the public and employees and near the location similar notices are currently posted.

(d) The Office of the Attorney General, in consultation with the Texas Human Trafficking Prevention Coordination Council or Human Trafficking Prevention Task Force, must:

   (1) develop best practices and outline any exceptions to posting requirements for each entity required to post human trafficking signs in accordance with this section;
   (2) develop signs that comply with the requirements of this subchapter; and
   (3) make the signs, best practices, and any exceptions available on the agency’s Internet website to persons required to post a sign in accordance with Texas Government Code §402.0351 and the public.

§54.81.  Enforcement of Required Posting of Human Trafficking Signs by Certain Entities [Transportation Hub Sign Design, Content, and Manner of Display].

(a) If the Office of the Attorney General becomes aware that a person is in violation or may be in violation of a law enforced by any other state agency that requires the posting of a sign or notice relating to human trafficking, the Office of the Attorney General may notify the appropriate state agency of the violation or potential violation. [The attached graphic prescribes the design and content of the human trafficking prevention sign required by Government Code §402.0351.]

   [Figure: 4 TAC §54.81(a)]

(b) The Office of the Attorney General must issue a warning to a person described by §54.80(a) of this title (relating to Required Posting of Human Trafficking Signs by Certain Entities) for a first violation of this subchapter. [A transportation hub, as defined by Government Code §402.0351, will post the sign prescribed in subsection (b) of this section on the premises of the transportation hub. The transportation hub will post the sign:

   (1) in a place near its public entrance or in another location in clear view of the public; and
   (2) in each public restroom or shower facility.]

(c) For each subsequent violation of this subchapter, a person described by §54.80(a) of this title is subject to a civil penalty in the amount of $200 for each violation. Each day a violation continues is considered a separate violation. [The sign posted at a transportation hub must be at least 8 1/2 inches by 11 inches in size.]

(d) The Office of the Attorney General shall post the sign on its website and shall distribute the sign electronically to transportation hubs.

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 30, 2021.
TRD-202103405
Austin Kinghorn
General Counsel
Office of the Attorney General
Earliest possible date of adoption: October 10, 2021
For further information, please call: (512) 936-1381
SUBCHAPTER D. REPORTS CONCERNING HUMAN TRAFFICKING CASES

1 TAC §54.90

STATUTORY AUTHORITY. These rules are proposed under the following statutes that authorize the OAG to adopt rules as necessary to implement these statutes: Texas Code of Criminal Procedure Art. 2.305, as amended by Senate Bill 800, 87th Legislature, Regular Session (2021); Texas Government Code §402.0351 as amended by Senate Bill 1831, 87th Legislature, Regular Session (2021); and Texas Business and Commerce Code §102.101 as amended by House Bill 3721, 87th Legislature, Regular Session (2021), and §114.0002, created by House Bill 390, 87th Legislature, Regular Session (2021).

CROSS-REFERENCE TO STATUTE. Amendments to §§54.80, 54.81, 54.90 and proposed new rules §§54.100, 54.101, 54.103, and 54.104 implement Texas Code of Criminal Procedure Art. 2.305, as amended by Senate Bill 800, 87th Legislature, Regular Session (2021); Texas Government Code §402.0351 as amended by Senate Bill 1831, 87th Legislature, Regular Session (2021); and Texas Business and Commerce Code §102.101 as amended by House Bill 3721, 87th Legislature, Regular Session (2021), and §114.0002, created by House Bill 390, 87th Legislature, Regular Session (2021).

Subchapter D. Reports Concerning Human Trafficking Cases.

§54.90. Reporting Human Trafficking Cases [Department of Public Safety; Counties Larger than 500,000].

(a) This section applies to:

(1) the Department of Public Safety; and

(2) a municipal police department, sheriff's department, constable's office, county attorney's office, district attorney's office, and criminal district attorney’s office, as applicable, in a county with a population of more than 50,000. [an entity, other than the Department of Public Safety, described by Code of Criminal Procedure Article 2.305(a) and located in a county with a population of more than 500,000.]

(b) An entity described by subsection (a) of this section that investigates the alleged commission of an offense under Chapter 20A of the Penal Code, or the alleged commission of an offense under Chapter 43 of the Penal Code, which may involve human trafficking, must submit to the Office of the Attorney General information required under Article 2.305 of the Code of Criminal Procedure.

(c) An entity described by subsection (a) of this section must submit the required information on a form provided by the Office of the Attorney General at least biannually. [Effective August 1, 2020, the Department of Public Safety and an entity described by subsection (a)(2) of this section shall submit reports concerning human trafficking cases using the reporting system designated by the Office of the Attorney General on its website.]

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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Austin Kinghorn
General Counsel
Office of the Attorney General
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For further information, please call: (512) 936-1381

1 TAC §54.91

STATUTORY AUTHORITY. Section 54.91 is being repealed under Texas Code of Criminal Procedure Art. 2.305.

CROSS-REFERENCE TO STATUTE. Section 54.91 is being repealed under Texas Code of Criminal Procedure Art. 2.305.

§54.91. Counties of 500,000 or Less.
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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SUBCHAPTER E. PREVENTION TRAINING AND SIGNS FOR COMMERCIAL LODGING ESTABLISHMENTS

1 TAC §§54.100 - 54.104

STATUTORY AUTHORITY. These rules are proposed under the following statutes that authorize the OAG to adopt rules as necessary to implement these statutes: Texas Code of Criminal Procedure Art. 2.305, as amended by Senate Bill 800, 87th Legislature, Regular Session (2021); Texas Government Code §402.0351 as amended by Senate Bill 1831, 87th Legislature, Regular Session (2021); and Texas Business and Commerce Code §102.101 as amended by House Bill 3721, 87th Legislature, Regular Session (2021), and §114.0002, created by House Bill 390, 87th Legislature, Regular Session (2021).

CROSS-REFERENCE TO STATUTE. Amendments to §§54.80, 54.81, 54.90 and proposed new rules §§54.100, 54.101, 54.103, and 54.104 implement Texas Code of Criminal Procedure Art. 2.305, as amended by Senate Bill 800, 87th Legislature, Regular Session (2021); Texas Government Code §402.0351 as amended by Senate Bill 1831, 87th Legislature, Regular Session (2021); and Texas Business and Commerce Code §102.101 as amended by House Bill 3721, 87th Legislature, Regular Session (2021), and §114.0002, created by House Bill 390, 87th Legislature, Regular Session (2021).

§54.100. Human Trafficking Prevention Training for Commercial Lodging Establishments.

(a) The operator of a commercial lodging establishment, as defined by Texas Business and Commerce Code Chapter 114, must require each employee who is directly employed by the establishment to complete an annual human trafficking awareness and prevention training program. New employees must complete this training no later than the 90th day after the date the employee was hired.
(b) The Office of the Attorney General must approve all training programs and must publish a list of approved and preapproved training programs on the agency’s Internet website.

(c) All training programs required under this subchapter must:

(1) be at least 20 minutes in duration;

(2) include:

(A) an overview of human trafficking, including a description of:

(i) the experience of human trafficking victims;

(ii) how and why human trafficking takes place in the hospitality industry; and

(iii) how human trafficking is defined;

(B) guidance on how to identify individuals who are most at risk for human trafficking;

(C) information on the difference between labor and sex trafficking as that relates to identification of human trafficking in the hospitality industry;

(D) guidance on the role of an employee in reporting and responding to human trafficking; and

(E) the contact information of appropriate entities for reporting human trafficking, including:

(i) the National Human Trafficking Hotline toll-free telephone number and text line;

(ii) appropriate law enforcement agencies; and

(iii) a telephone number for reporting suspected human trafficking.

(3) provide a certificate of completion.

(d) Training programs may be online or in person. Online training must include a pacing mechanism that requires the employee to read all course materials, view all videos, complete all coursework, and certify that the employee has completed all coursework before issuing a certificate of completion.


(a) The operator of a commercial lodging establishment must maintain all documentation and certificates of completion for all current and former employees of the establishment.

(b) At a minimum, records maintained in accordance with subsection (a) of this section must include:

(1) the employee’s name

(2) date the employee was hired;

(3) name of the approved training course;

(4) date the employee completed the approved training course; and

(5) the certificate of completion generated after the employee completed the training course.

(c) The operator of a commercial lodging establishment must make records described in subsection (a) of this section available to the Office of the Attorney General within 72 hours after request.

(d) Records maintained under this section may be in physical or electronic format and must be retained for at least two years after the date of completion of the training course.

§54.102. Effect on Municipal Ordinances.

If a municipal ordinance, rule, or other regulation related to human trafficking conflicts with a provision of Texas Business and Commerce Code Chapter 114 or a rule adopted under that chapter, the more stringent regulation controls to the extent of the conflict.

§54.103. Human Trafficking Prevention Signs for Commercial Lodging Establishments.

(a) The operator of a commercial lodging establishment must display a sign at the establishment that includes:

(1) a statement that employees of the commercial lodging establishment are required to receive annual human trafficking training and may not be disciplined, retaliated against, or otherwise discriminated against for making a good faith report of a suspected act of human trafficking;

(2) information on how to recognize and report human trafficking, including a list of indicators of human trafficking;

(3) a phone number for reporting a suspected act of human trafficking or a violation of this chapter;

(4) contact information for reporting suspicious activity to the Department of Public Safety;

(b) The sign must, at a minimum, be:

(1) at least 11 inches by 17 inches in size and written in at least a 16-point font;

(2) posted separately in English, Spanish, and any other primary language spoken by 10 percent or more of the establishment’s employees; and

(3) posted in a location that is easily visible to all employees.


(a) If the Office of the Attorney General has reason to believe an operator of a commercial lodging establishment has violated this subchapter, the Office of the Attorney General must provide notice to the operator that:

(1) identifies the operator’s violation;

(2) states that the commercial lodging establishment may be liable for a civil penalty if the operator does not cure the violation before the 30th day after the date the operator receives the notice; and

(3) includes the maximum potential civil penalty that may be imposed for the violation.

(b) The Office of the Attorney General may bring an action in the name of the state:

(1) to recover a civil penalty in accordance with the Texas Business and Commerce Code Chapter 114; or

(2) for injunctive relief to require compliance with this rule and the Texas Business and Commerce Code Chapter 114.

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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PART 10. DEPARTMENT OF INFORMATION RESOURCES

CHAPTER 202. INFORMATION SECURITY STANDARDS

The Texas Department of Information Resources (department) proposes amendments to 1 Texas Administrative Code Chapter 202, §§202.1 - 202.4, 202.20 - 202.26, and 202.70 - 202.76, concerning Information Security Standards. The proposed changes include, but are not limited to, the addition of new definitions and modifications of certain existing definitions in §202.1 and §202.3; amendments to clarify the responsibilities of the State's Chief Information Security Officer in §202.4, the agency head in §202.20 and §202.70, the Information Security Officer in §202.21 and §202.71, and various other governmental entity staff in §202.22 and §202.72; amendments to expand security reporting requirements in §202.23 and §202.74; and amendments to update procedures regarding security risks and risk assessments in §202.25 and §202.76. In addition, the department proposes two new subsections, §202.27 and §202.77, that address the legislative requirements of Senate Bill 475 (87th Session (Regular)) to create rules administering the Texas Risk and Authorization Management Program. The proposed amendments are the result of the department's statutory quadrennial rule review of 1 Texas Administrative Code Chapter 202 in addition to expanded rulemaking authority granted by the 87th Legislature. The notice of rule review was published in the May 17, 2019, issue of the Texas Register (44 TexReg 2473).


In §202.2, the department proposes adding the following definitions because of new or revised content in Chapter 202: "Application"; "Cloud Computing Service"; "FedRAMP"; "Nonconfidential Data"; "Program Manual"; "Residual Risk"; "Security Assessment"; "State-controlled data"; "StateRAMP"; "Statewide Technology Centers"; and "TX-RAMP."


The department proposes amending the definition of "Institution of Higher Education" found in §202.2 to reflect current statutory requirement in Texas Government Code § 2054.0075 stating that public junior colleges shall follow information security standards established by the department.

The department further proposes amending the definition of "state agency" found in §202.3 for clarity.

In §202.4, the department proposes clarifying the responsibilities of the State's Chief Information Security Officer (Chief Information Security Officer) to extract currently-existing Chief Information Security Officer duties for which individual state agency and institution of higher education staff are already responsible under 1 Texas Administrative Code Chapter 202; extend authority of this role over the coordination of certain policies, standards, and guidelines of entities operating or exercising control over State-controlled data; and task the Chief Information Security Officer with providing strategic direction to the Statewide Technology Centers in addition to other currently existing duties of this role.

In §202.20, for state agencies, and §202.70, for institutions of higher education, the department proposes amending the section to task the state agency and institutions of higher education heads with ultimate responsibility for information security while permitting the agency or institution of higher education head to designate specific operational responsibilities to a designated representative, if they so choose.

In §202.21, for state agencies, and §202.71, for institutions of higher education, the department proposes incorporating by reference the Texas Government Code section addressing requirements for and responsibilities of a designated Information Security Officer and removing the list of Information Security Officer responsibilities that are enumerated at the statutory reference. Further, the department proposes clarifying the role of the Information Security Officer in risk and security assessments and expand their participation in the development of organizational policies necessary to protect the security of information and information resources against unauthorized access or exposure. In addition, the department proposes removing language that only requires security verification and risk mitigation prior to the purchase of new high impact computer applications and replacing this language to require the implementation of security verification and risk mitigation plans prior to acquisitions of new information systems or the deployment of internally-developed information systems.

In §202.22, for state agencies, and §202.72, for institutions of higher education, the department proposes amendments to clarify staff responsibilities for Information Security Owners and Information Custodians.

In §202.23, for state agencies, and §202.73, for institutions of higher education, the department proposes amending annual reporting requirement to require an Information Security Officer provide an annual security report directly to the agency head. The department further proposes to expand incident reporting requirements to the department. The department further removes criticality analysis in reporting requirements and amends the language to consider the nature of the incident when determining how to report.

In §202.24, for state agencies, and §202.74, for institutions of higher education, the department proposes amending agency information security program requirements to include periodic assessments in alignment with minimum legal reporting requirements and expand such assessments to include applications. The department further proposes that the program requirements expand to include a plan for providing information security for applications. The department further proposes to include specific Texas Government Code citations regarding required security awareness education programs.
In §202.25, for state agencies, and §202.75, for institutions of higher education, the department proposes to amend risk assessments to include the ranking of risks and impacts and remove language regarding inherent risks. The department further proposes clarifying the timeline by which risk assessments shall be conducted. The department further proposes that agency head responsibilities include the approval of security risk acceptance, transference, or mitigation decisions for all high residual risk systems.

In §202.26, for state agencies, and §202.76, for institutions of higher education, the department proposes amending mandatory security controls to include minimum information security requirements for applications and that such minimum standards shall use risk categorizations, rather than levels, to determine the level of information security required. The department further proposes removing requirements to use performance-based standards and guidelines that permit the use of off-the-shelf commercially developed products and amends the language to require the use of flexible standards and guidance that permit the use of commercial off-the-shelf products. The department further proposes permitting a state agency or institution of higher education head to employ more stringent security standards for applications. In §202.76, the department proposes amending language to include the Information Technology Council for Higher Education in the process to review the mandatory security controls to align 1 Texas Administrative Code §202.76 with 1 Texas Administrative Code §202.26.

DIR also proposes the creation of two new subsections, §202.27, for state agencies, and §202.27, for institutions of higher education, concerning the Texas Risk and Authorization Management Program (TX-RAMP). The Texas Legislature passed Senate Bill 475 (SB 475) in the 87th Regular Session. SB 475 created the TX-RAMP program, which would provide a standardized approach for security assessment, authorization, and continuous monitoring of cloud computing services, and tasked the department with adopting rules administering certain aspects of TX-RAMP. In these two new subsections, the department addresses the requirements of Senate Bill 475 (87th Session (Regular)) and establishes a Program Manual document published by the department that provides minimum baseline standards for cloud computing security products, and establishes the responsibilities of cloud computing service vendors, governmental entities that will be using such products, and the department in administering the TX-RAMP. It also provides for certain other Risk and Authorization Management Program certifications to satisfy the TX-RAMP requirements.

There is no economic impact on rural communities or small businesses as a result of enforcing or administering the amended rule as proposed.

The changes to the chapter apply to state agencies and institutions of higher education.

The assessment of the impact of the proposed changes on institutions of higher education was prepared in consultation with the Information Technology Council for Higher Education (ITCHE) in compliance with Texas Government Code § 2054.121(c). DIR submitted the proposed amendments to the Information Technology Council of Higher Education for their review and impact assessment. ITCHE determined that there was no direct impact on institutions of higher education as a result of the proposed rule. Regarding the new §202.77, ITCHE will be consulted, in compliance with §202.77, to determine any potential impacts as a result of the program manual; specific ITCHE discussion points raised during the impact analysis, such as efficient processes, timing of such processes, and procedures, will be addressed by the program manual. ITCHE will be involved in such discussions.

Nancy Rainosek, Chief Information Security Officer for the State of Texas, has determined that during the first five-year period following the adoption of the new 1 TAC Chapter 202, there will be no fiscal impact on state agencies, institutions of higher education, and local governments. The clarification of terms, definitions, specific information security standards and organizational responsibilities, security reporting requirements, and security control standards highlighted in the rules increase the effectiveness of the chapter and do not result in a fiscal impact. The creation of rules administering the Texas Risk and Authorization Management Program is in compliance with the department’s specific rulemaking authority granted by Senate Bill 475 (87th Regular Session) and addresses the statutory requirements for the department to administer a robust and standardized security assessment program for cloud computing service providers but does not result in a fiscal impact to state agencies, institutions of higher education, and local government. Ms. Rainosek has further determined that for each year of the first five years following the adoption of new 1 TAC Chapter 202, there are no anticipated additional economic costs to persons or small businesses required to comply with the amendments and proposed new rules.

Pursuant to Government Code § 2001.0221, the agency provides the following Governmental Growth Impact Statement for the proposed amendment. The agency has determined the following:

1. The proposed rules create the Texas Risk and Authorization Management Program in compliance with the requirements of Senate Bill 475 (87th Session (Regular)). This program was created by statute; the department is tasked with the operation of the Risk and Authorization Management Program and ordered to create rules administering such a program. The proposed rules do not eliminate a government program.

2. Implementation of the proposed rules does not require the creation or elimination of employee positions. There are no additional employees required nor employees eliminated to implement the rule as amended.

3. Implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency. There is no fiscal impact as implementing the rule does not require an increase or decrease in future legislative appropriations.

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

5. The proposed rules create new subsection of the rules that govern the Texas Risk and Authorization Management Program.

6. The proposed rules do not repeal an existing regulation.

7. The proposed rules do not increase or decrease the number of individuals subject to the rule’s applicability. The department has neither expanded nor reduced the overall applicability of these rules and, as such, the amount of individual subject to the rule has not changed. The definition of institution of higher education now includes public junior colleges without requiring the assent of the Higher Education Coordinating Board; however, this amendment is resultant of a statutory amendment and brings the rule into alignment with statute.
8. The proposed rules do not positively or adversely affect the state’s economy. The Texas Risk and Authorization Management Program, created by Senate Bill 475 (87th Session (Regular)) and administered by the department, would increase the security and reliability of cloud computing service products used by governmental entities.

Written comments on the proposed rules may be submitted to Christi Koenig Brisky, Assistant General Counsel, 300 West 15th Street, Suite 1300, Austin, Texas 78701, or to rules.review@dir.texas.gov. Comments will be accepted for 30 days after publication in the Texas Register.

SUBCHAPTER A. DEFINITIONS

1 TAC §§202.1 - 202.4

The amendments are proposed pursuant to Texas Government Code § 2054.052(a), which authorizes the department to adopt rules as necessary to implement its responsibilities under Texas Government Code Chapter 2054; Texas Government Code § 2059.053, which authorizes the department to adopt rules related to network security; and Senate Bill 475 (87(R)), which orders the department to adopt rules necessary to implement and administer the Texas Risk and Management Authorization Program.


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

(1) Access--The physical or logical capability to view, interact with, or otherwise make use of information resources.

(2) Agency Head--The top-most senior executive with operational accountability for an agency, department, commission, board, office, council, authority, or other agency in the executive or judicial branch of state government, that is created by the constitution or a statute of the state; or institutions of higher education, as defined in Texas Education Code § 61.003 [§61.003, Education Code].

(3) Application--As defined in Texas Government Code § 2054.003(1).

(4) Availability--The security objective of ensuring timely and reliable access to and use of information.

(5) Cloud Computing--Has the same meaning as "Advanced Internet-Based Computing Service" as defined in Texas Government Code § 2157.007(2) [Texas Government Code].

(6) Cloud Computing Service--the meaning assigned by Special Publication 800-145 issued by the United States Department of Commerce National Institute of Standards and Technology, as the definition existed on January 1, 2015.

(7) Confidential Information--Information that must be protected from unauthorized disclosure or public release based on state or federal law or other legal agreement.

(8) Confidentiality--The security objective of preserving authorized restrictions on information access and disclosure, including means for protecting personal privacy and proprietary information.

(9) Control--A safeguard or countermeasure [protective action], including devices [device], policies [policy], procedures [procedure] techniques [technique], or other measures, [measure] that are prescribed to meet security requirements of an information system or organization to preserve [i.e., confidentiality, integrity, and availability] that may be specified for a set of information resources. Controls may include security features, management constraints, personnel security, and security of physical structures, areas, and devices.

(10) Control Standards Catalog--The document that provides state agencies and higher education institutions state specific implementation guidance for alignment with the National Institute of Standards and Technology (NIST) SP (Special Publication) 800-53 security controls.

(11) Custodian--See information custodian.

(12) Department--The Department of Information Resources.

(13) Destruction--The result of actions taken to ensure that physical and digital media cannot be reused as originally intended and that information is technologically impossible [to recover] or prohibitively expensive to recover.

(14) Electronic Communication--A process used to convey a message or exchange information via electronic media. It includes the use of electronic mail (email), Internet access, Instant Messaging (IM), Short Message Service (SMS), facsimile transmission, and other paperless means of communication.

(15) Encryption (encrypt or encipher)--The conversion of plaintext information into a code or cipher text using a variable called a "key" and processing those items through a fixed algorithm to create the encrypted text that conceals the data's original meaning.


(17) Guideline--Recommended, non-mandatory controls that help support standards or serve as a reference when no applicable standard is in place.

(18) High Impact Information Resources--Information Resources whose loss of confidentiality, integrity, or availability could be expected to have a severe or catastrophic adverse effect on organizational operations, organizational assets, or individuals. Such an event could:

(A) cause a severe degradation in or loss of mission capability to an extent and duration that the organization is not able to perform one or more of its primary functions;

(B) result in major damage to organizational assets;

(C) result in major financial loss; or

(D) result in severe or catastrophic harm to individuals involving loss of life or serious life-threatening [life threatening] injuries.

(19) Information--Any communication or representation of knowledge such as facts, data, or opinions in any medium or form, including textual, numerical, graphic, cartographic, narrative, electronic, or audiovisual forms. [Data as processed, stored, or transmitted by a computer.]

(20) Information Custodian--A department, agency, or third-party service provider responsible for implementing the information owner-defined controls and access to an information resource.

(21) Information Owner(s)--A person(s) with statutory or operational authority for specified information and responsibility for establishing the controls for its generation, collection, processing, dissemination, and disposal. [or information resources].

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(22) [49a] Information Resources--As defined in Texas Government Code § 2054.003(7) [§2054.003(7), Texas Government Code].

(23) [49b] Information Resources Manager--As defined in Texas Government Code § 2054.071 [§2054.071, Texas Government Code].

(24) [49c] Information Security Program--The policies, standards, procedures, elements, structure, strategies, objectives, plans, metrics, reports, services, and resources that establish an information resources security function within an institution of higher education or state agency.

(25) [22a] Information System--A discrete [An interconnected] set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information. [under the same direct management control that shares common functionality.] An Information System normally includes, but is not limited to, hardware, software, network infrastructure [Infrastructure], information, applications, communications, and people.

(26) [22b] Integrity--The security objective of guarding against improper information modification or destruction, including ensuring information non-repudiation and authenticity.

(27) [22c] ITCHE--Information Technology Council for Higher Education.

(28) [22d] Low Impact Information Resources--Information resources whose loss of confidentiality, integrity, or availability could be expected to have a limited adverse effect on organizational operations, organizational assets, or individuals. Such an event could:

(A) cause a degradation in mission capability to an extent and duration that the organization is able to perform its primary functions, but the effectiveness of the functions is noticeably reduced;

(B) result in minor damage to organizational assets;

(C) result in minor financial loss; or

(D) result in minor harm to individuals.

(29) [22e] Moderate Impact Information Resources--Information Resources whose loss of confidentiality, integrity, or availability could be expected to have a serious adverse effect on organizational operations, organizational assets, or individuals. Such an event could:

(A) cause a significant degradation in mission capability to an extent and duration that the organization is able to perform its primary functions, but the effectiveness of the functions is significantly reduced;

(B) result in significant damage to organizational assets;

(C) result in significant financial loss; or

(D) result in significant harm to individuals that does not involve loss of life or serious life-threatening injuries.


(31) Nonconfidential Data--Information that is not required to be or may not be protected from unauthorized disclosure or public release based on state or federal law or other legal agreement.

(32) [22g] Personal Identifying Information (PII)--A category of personal identity information as defined by Texas Business and Commerce Code § 521.002(a)(1)[(1)] [§521.002(a)(1), Business and Commerce Code].

(33) [22h] Procedure--Instructions to assist information security staff, custodians, and users in implementing policies, standards, and guidelines.

(34) Program Manual--Program manual for the Texas risk and authorization management program.

(35) [22i] Residual Risk--The risk that remains after security measures [control] have been applied.

(36) [22j] Risk--The effect on the entity's missions, functions, image, reputation, assets, or constituencies considering the probability that a threat will exploit a vulnerability, the safeguards already in place, and the resulting impact. Risk outcomes are a consequence of impact levels defined in this section.

(37) [22k] Risk Assessment--The process of identifying, evaluating, and documenting the probability and level of impact on an organization's mission, functions, image, reputation, assets, or individuals that may result from the operation of information systems. Risk Assessment incorporates threat and vulnerability analyses and considers mitigations provided by planned or in-place security controls.

(38) [22l] Risk Management--The process of aligning information resources risk exposure with the organization's risk tolerance by either accepting, transferring, or mitigating risk exposures.

(39) Security Assessment--The testing or evaluation of security controls to determine the extent to which the controls are implemented correctly, operating as intended, and producing the desired outcome with respect to meeting the security requirements for an information system or organization.

(40) [22m] Security Incident--An event that [which] results in the accidental or deliberate unauthorized access, loss, disclosure, modification, disruption, exposure, or destruction of information or information resources.

(41) [22n] Sensitive Personal Information--A category of personal identity information as defined by Texas Business and Commerce Code § 521.002(a)(2) [§521.002(a)(2), Business and Commerce Code].

(42) Standards--Specific mandatory controls that help enforce and support the information security policy.

(43) State-controlled data--Any and all data that is created, processed, or stored by a state agency.

(44) StateRAMP--The risk and authorization management program, built upon the National Institute of Standards and Technology Special Publication 800-53 and modeled after the FedRAMP program, that provides state and local governments a common method for verification of cloud security.

(45) Statewide Technology Centers--As defined in Texas Government Code § 2054.375(2).

(46) Threat--Any circumstance or event with the potential to adversely impact organizational operations (including mission, functions, image, or reputation), organizational assets, or individuals by the unauthorized access, destruction, disclosure, modification of information, and/or denial of service.

(47) TX-RAMP--the Texas risk and authorization management program.
The amendments are proposed pursuant to Texas Government Code § 2054.052(a), which authorizes the department to adopt rules as necessary to implement its responsibilities under Texas Government Code Chapter 2054; Texas Government Code § 2059.053, which authorizes the department to adopt rules related to network security; and Senate Bill 475 (87(R)), which orders the department to adopt rules necessary to implement and administer the Texas Risk and Management Authorization Program.

No other code, article, or statute is affected by this proposal.

§202.20. Responsibilities of the Agency Head.

(a) The agency head of each state agency is ultimately responsible for the agency's information resources.

(b) The agency head or their designated representative [of each state agency or his/her designated representative(s)] shall:

(1) designate an Information Security Officer who has the explicit authority and the duty to administer the information security requirements of this chapter agency wide;

(2) allocate resources for ongoing information security remediation, implementation, and compliance activities that reduce risk to a level acceptable to the agency head;

(3) ensure that senior agency officials and information-owners, in collaboration with the Information Resources Manager and Information Security Officer, support the provision of information security for the information systems that support the operations and assets under their direct or indirect (e.g., cloud computing or outsourced) control;

(4) ensure that the state agency has trained personnel to assist the agency in complying with the requirements of this chapter and related policies;

(5) ensure that senior agency officials support the state agency Information Security Officer in developing, at least annually, a report on the state agency information security program[,] as specified in §202.21(b)(10) and §202.23(a) of this chapter;

(6) approve high residual [level] risk management decisions as required by §202.25(4) of this chapter;

(7) review and approve at least annually the agency information security program required under §202.24 of this chapter; and

(8) ensure that information security management processes are integrated with state agency strategic and operational planning processes.


(a) Each state agency shall have a designated Information Security Officer [ISO] in accordance with Texas Government Code § 2054.136. The Information Security Officer shall report to executive level management, has explicit authority for information security for the entire state agency, and complies with all other requirements of Texas Government Code § 2054.136[,] and shall provide that its Information Security Officer:

[(1) reports to executive level management ]

[(2) has authority for information security for the entire agency;]

[(3) possesses training and experience required to administer the functions described under this chapter; and]

[(4) whenever possible, has information security duties as that official's primary duty.]
(b) The Information Security Officer shall be responsible for:

1. developing and maintaining an agency-wide information security plan as required by Texas Government Code §2054.133 (§2054.133, Texas Government Code);
2. developing and maintaining information security policies and procedures that address the requirements of this chapter and the agency's information security risks;
3. working with the business and technical resources to ensure that controls are utilized to address all applicable requirements of this chapter and the agency's information security risks;
4. providing for training and direction of personnel with significant responsibilities for information security with respect to such responsibilities;
5. providing guidance and assistance to senior agency officials, information-owners, information custodians, and end users concerning their responsibilities under this chapter;
6. ensuring that: annual information security risk assessments are performed and documented by information-owners]
   (A) risk assessments are performed by the information owners and supported by the information-custodians at least biennially for systems containing confidential data and periodically for systems containing agency sensitive or public data; and
   (B) security assessments are conducted biennially for systems containing confidential data and periodically for systems containing agency sensitive or public data
7. reviewing the agency's inventory of information systems and related ownership and responsibilities;
8. [developing and] recommending and collaborating to establish policies, [and establishing] procedures, and practices, in cooperation with the agency Information Resources Manager, information-owners, and custodians, necessary to ensure the security of information and information resources against unauthorized or accidental modification, destruction, access, exposure, or disclosure;
9. coordinating the review of [data] security requirements and[-] specifications, and verifying that security requirements are identified and risk mitigation plans are developed and contracted and obligated prior to the acquisition of new information systems and/or related services and applications; [if applicable, third-party risk assessment of any new computer applications or services that receive, maintain, and/or share confidential data;]
10. verifying that security requirements are identified and risk mitigation plans are developed and implemented prior to the deployment of internally-developed information systems and/or related applications or services;
11. reporting, at least annually, directly to the [state] agency head the status and effectiveness of the security program and its controls [controls]; and
12. informing any relevant [the] parties in the event of noncompliance with this chapter and/or with the [state] agency's information security policies; and [c]

(13) all other duties required by Texas Government Code § 2054.136.

(c) The Information Security Officer, with the approval of the [state] agency head, may issue exceptions to information security requirements or controls in this chapter. Any such exceptions shall be justified, documented, and communicated [as part of the risk assessment process].

§202.22. Staff Responsibilities.

(a) Information owners, custodians, and users of information resources shall, in consultation with the state agency Information Resources Manager [IRM] and Information Security Officer [ISO], be identified[7] and their responsibilities defined and documented by the state agency. The following distinctions among owner, custodian, and user responsibilities should guide determination of these roles:

1. Information Owner Responsibilities. The owner or their [his or her] designated representative(s) are responsible for:
   (A) classifying information under their authority or responsibility, with the concurrence of the [state] agency head or their [his or her] designated representative(s), in accordance with the state agency's established information classification categories;
   (B) approving access to information resources and periodically reviewing [review] access lists based on documented risk management decisions;
   (C) formally assigning custody of information or an information resource;
   (D) coordinating data security control requirements with the Information Security Officer [ISO];
   (E) conveying data security control requirements to custodians;
   (F) providing authority to custodians to implement security controls and procedures;
   (G) justifying, documenting, and being accountable for exceptions to security controls issued by the Information Security Officer for the information for which the Information Owner is responsible;
   (H) coordinating and obtaining approval for exceptions to security controls with the state agency Information Security Officer; and
   (I) performing [participating in] risk assessments as provided under §202.25 of this chapter.
   (J) Information owners, in coordination with the information custodian, shall ensure that information resources provide a clear and conspicuous prohibition against unauthorized access or use as detailed by Texas Penal Code § 33.02(b-1).

(2) Information Custodian Responsibilities. Custodians of information resources, including third party entities providing outsourced information services to state agencies shall:

1. implement controls required to protect information and information resources required by this chapter based on the classification and risks specified by the information owner(s) or as specified by the policies, procedures, and standards defined by the state agency information security program;
   (A) provide owners with information to evaluate the cost-effectiveness of controls and monitoring;
(C) adhere to monitoring techniques and procedures, approved by the Information Security Officer [ISO], for detecting, reporting, and investigating incidents;

(D) supply any [provide] information and/or documents necessary to provide appropriate information security training to employees; and

(E) ensure information is recoverable in accordance with risk management decisions.

3 User Responsibilities. The user of [an] information resource has the responsibility to:

(A) use the resource only for the purpose specified by the agency or information owner [information-owner];

(B) comply with information security controls and agency policies to prevent unauthorized or accidental disclosure, modification, or destruction of information and information resources; and

(C) formally acknowledge that they will comply with the security policies and procedures in a method determined by the agency head or his or her designated representative.

4 State agency [Agency] information resources designated for use by the public shall be configured to enforce security policies and procedures without requiring user participation or intervention. Information resources must require the acceptance of a banner or notice prior to use.

(b)(4) State agency [Agency] information resources designated for use by the public shall be configured to enforce security policies and procedures without requiring user participation or intervention. Information resources must require the acceptance of a banner or notice prior to use.


(a) Agency Reporting. Each Information Security Officer shall directly report[1] to the agency head, at least annually, on the adequacy and effectiveness of information security policies, procedures, [and] practices, [and] compliance with the requirements of this chapter, and:

1. effectiveness of current information security program and status of key initiatives;

2. residual risks identified by the state agency risk management process; and

3. state agency information security requirements and requests.

(b) Report to the Department.

1. Urgent Incident Report.

(A) Each state agency shall assess the significance of a security incident based on the business impact on the affected resources and the current and potential technical effect of the incident (e.g., loss of revenue, productivity, access to services, reputation, unauthorized disclosure of confidential information, or propagation to other networks). Security incidents shall be promptly reported to immediate supervisors and the agency Information Security Officer. Confirmed or suspected security [Security] incidents shall be [promptly]reported to the department within 48 hours of discovery in the form and manner specified by the department where the security incident is assessed to:

(i) propagate to other state systems;

(ii) result in criminal violations that shall be reported to law enforcement in accordance with state or federal information security or privacy laws; [or]

(iii) involve the unauthorized disclosure or modification of confidential information, e.g., sensitive personal information as defined in Texas Business and Commerce Code § 521.002(a)(2) [§521.002(a)(2), Business and Commerce Code] and other applicable laws that may require public notification; or [or]

(iv) be an event that compromises, destroys, or alters information systems or applications in any way.

(B) If the security incident is assessed to involve suspected criminal activity (e.g., violations of Texas Penal Code Chapter [Chapters] 33[1], Penal Code (Computer Crimes) or Texas Penal Code Chapter 33A[1], Penal Code (Telecommunications Crimes)), the state agency shall contact law enforcement, as required, and the security incident shall be investigated, reported, and documented in accordance with the legal requirements for handling of evidence.

(C) Depending on the nature [criticality] of the incident, it will not always be feasible to gather all the information prior to reporting. In such cases, incident response teams shall [should] continue to report information to the department as it is collected. The department shall instruct state agencies as to the manner in which they shall report such information to the department. Supporting vendors or other third parties that report security incident information to an agency shall submit such reports to the agency in the form and manner specified by the department, unless otherwise directed by the agency. Agencies shall ensure that compliant reporting requirements are included in any contract where incident reporting may be necessary.

(2) Monthly Incident Report. Summary reports of security-related events shall be sent to the department on a monthly basis no later than nine (9) calendar days after the end of the month. State agencies[Agencies] shall submit summary security incident reports in the form and manner specified by the department. Supporting vendors or other third parties that report security incident information to a state agency [an agency] shall submit such reports to the agency in the form and manner specified by the department, unless otherwise directed by the agency.


§202.24 Agency Information Security Program.

(a) [Agency Program.] Each state agency shall develop, document, and implement an agency-wide information security program, approved by the agency head under §202.20 of this chapter, that includes protections[,] based on risk[,] for all information and information resources owned, leased, or under the custodianship of any department, operating unit, or employee of the state agency including outsourced resources to another state agency, contractor, or other source (e.g., cloud computing). The program shall include:

1. periodic assessments in alignment with minimum legal reporting requirements of the risk and impact that could result from the unauthorized access, use, disclosure, disruption, modification, or destruction of information, [and] information systems, and applications that support the operations and assets of the agency;

2. policies, controls, standards, and procedures that:

(A) are based on the risk assessments required by §202.25 of this chapter;
(B) cost-effectively reduce information security risks to a level acceptable to the agency head;  

(C) ensure that information security is addressed throughout the lifecycle of [each] agency information resources [resource]; and  

(D) ensure compliance with:  

(i) the requirements of this subchapter;  

(ii) minimally acceptable system configuration requirements[,] as determined by the state agency; and  

(iii) the control catalog published by the department[,]  

(3) strategies to address risk to high impact [High-Impact] information resources;  

(4) plans for providing information security for networks, facilities, and systems or groups of information systems and applications[,] based on risk;  

(5) a process for planning, implementing, evaluating, and documenting remedial action to address any deficiencies in the information security policies, procedures, and practices of the agency; and  

(6) a process to justify, grant, and document any exceptions to specific program requirements in accordance with requirements and processes defined in this chapter.  

(b) State agencies are responsible for:  

(1) defining all information classification categories except the Confidential Information category, which is defined in Subchapter A of this chapter, and establishing the controls for each;  

(2) administering an ongoing information security awareness education program in compliance with the requirements of Texas Government Code § 2054.5191 - .5192 for all users; and  

(3) introducing information security awareness and informing [inform] new employees of information security policies and procedures during the onboarding process.  

A risk assessment of the agencies' information and information systems shall be performed and documented.  

(1) [The inherent] Risks and impacts will be ranked, at a minimum, as either "High," "Moderate," or "Low."[:]  

(2) The [frequency] schedule of the future risk assessments will be documented.  

(3) Risk assessment results, vulnerability reports, and similar information shall be documented and presented to the Information Security Officer or their [his or her] designated representative(s).  

(4) Approval of the security risk acceptance, transferance, or mitigation decision shall be the responsibility of:  

(A) the Information Security Officer [information security officer] or their [his or her] designee(s), in coordination with the information owner, for systems identified with a Low or Moderate residual risk.  

(B) The [state] agency head for all systems identified with a [residual] High residual risk [Risk].  

(a) Mandatory Requirements. Mandatory security controls shall be defined by the department in a Control Standards document published on the department's website.  

(b) Minimum Requirements for Security Controls. The controls required by subsection (a) of this section shall include:  

(1) minimum information security requirements for all State information, [and] information systems, and applications; and  

(2) standards to be used by all agencies to provide levels of information security according to risk categorizations [levels].  

(c) A review of the agency's information security program for compliance with these standards will be performed at least biennially, based on business risk management decisions, by individual(s) independent of the information security program and designated by the agency head or their [his or her] designated representative(s).  

(d) Development of Control Standards. Prior to publishing new or revised standards as required by subsections (a) and (b) of this section, the department shall:  

(1) solicit comment through the department's electronic communications channels for proposed standards from the Information Resources Managers, ITCE, and Information Security Officers of agencies and institutions [institutes] of higher education at least 30 days prior to publication of proposed standards;  

(2) after reviewing comments provided in paragraph (1) of this subsection, present proposed standards to the department's Board and obtain approval from the Board for publication; and  

(3) minimize the impact to an affected agency[,] to the extent possible by:  

(A) ensuring that such standards and guidelines do not require the use or procurement of specific products, including any specific hardware or software;  

(B) ensuring that such standards provide for flexibility to permit alternative solutions to provide equivalent levels of protection for identified information security risks; and  

(C) using flexible[, performance-based] standards and guidelines that permit the use of commercial off-the-shelf [commercially] developed information security products.  

(4) New standards required by the department will have an effective date, not to exceed 18 months from the date of adoption, after which agencies are required to adhere to the new standard.  

(e) Application of More Stringent Standards. The agency head [of an agency] may employ standards for the cost-effective information security of information, [and] information resources, and applications within or under the supervision of that state agency that are more stringent than the standards the department prescribes under this section if the more stringent standards:  

(1) contain at least the applicable standards issued by the department; and/or  

(2) are consistent with applicable federal law, policies, and guidelines issued under state rule, industry standards, best practices, or deemed necessary to adequately protect the information held by the state agency.  

§202.27 Texas Risk and Authorization Management Program for State Agencies  
(a) Mandatory Standards. Mandatory standards for Texas cloud computing services identified by subsection (b)(1) of this section shall be defined by the department in the program manual published on the department's website. Revisions to such document will be executed in compliance with subsection (d) of this section.
(b) Cloud Computing Standards Subject to the Texas Risk and Authorization Management Program. The standards required by subsection (a) of this section shall include the below stated baseline standards:

(1) TX-RAMP Public Controls Baseline (TX-RAMP Level 1)--This baseline is required for cloud computing services that:
(A) store, process, or transmit nonconfidential data of a state agency; or
(B) host low impact information resources.
(2) TX-RAMP Confidential Controls Baseline (TX-RAMP Level 2)--This baseline is required for cloud computing services that:
(A) store, process, or transmit confidential data of a state agency; and
(B) host moderate impact information resources or high impact information resources.

(c) Responsibilities of Cloud Computing Service Vendors:
(1) To be certified under the TX-RAMP program, a cloud computing service vendor shall:
(A) Provide evidence of compliance for information they are storing, processing, or transmitting as detailed by the program manual; and
(B) Demonstrate continuous compliance in accordance with the program manual.
(2) Primary contracting vendors, including resellers, who provide or sell cloud computing services to state agencies shall present evidence of certification of the cloud computing service being sold in accordance with the program manual. Such certification is required for all cloud computing services being provided through the contract or in furtherance of the contract, including services provided through subcontractors or third-party providers.
(3) Subcontractors or third-party providers responsible solely for servicing or supporting a cloud computing service provided by another vendor shall not be required to provide evidence of certification.

(d) Responsibilities of the Department.
(1) Responsibilities of the Department in Developing Updates to the Program Manual. Prior to publishing new or revised program standards as required by subsections (a) - (d) of this section, the department shall:
(A) solicit comment through the department's electronic communications channels for proposed standards from the Information Resources Managers, ITCHE, and Information Security Officers of agencies and institutions of higher education at least 30 days prior to publication of proposed program manual; and
(B) after reviewing comments provided during the comment period described by paragraph (1)(A) of this subsection, present the proposed program manual to the department's Board and obtain approval from the Board for publication.
(2) Responsibilities of the Department for Certifying Vendor's Cloud Computing Products and Services. The department shall:
(A) perform reviews to certify cloud computing services provided by cloud computing vendors; and
(B) publish on the department's Internet website the list of cloud computing products certified under TX-RAMP.

(e) Responsibilities of a State Agency Contracting for Cloud Computing Services. A state agency contracting for cloud computing services that store, process, or transmit data of the state agency shall:
(1) confirm that vendors contracting with the state agency to provide cloud computing services for the state agency are certified through TX-RAMP prior to entering or renewing a cloud computing services contract or after January 1, 2022; and
(2) require a vendor contracting with the state agency to provide cloud computing services for the state agency that are subject to the state risk and authorization management program to maintain TX-RAMP compliance and certification throughout the term of the contract.

(f) Acceptance of Other RAMP Certifications
(1) FedRAMP and StateRAMP certifications shall be accepted in satisfaction of the above baselines once demonstrated by the vendor.
(2) At the department's discretion, another state's risk and authorization management program certification may be accepted in satisfaction of the above baselines once certification is demonstrated by the vendor in alignment with program manual standards.

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 26, 2021.
TRD-202103365
Katherine Rozier Fite
General Counsel
Department of Information Resources
Earliest possible date of adoption: October 10, 2021
For further information, please call: (512) 475-4552

SUBCHAPTER C. INFORMATION SECURITY STANDARDS FOR INSTITUTIONS OF HIGHER EDUCATION

1 TAC §§202.70 - 202.77
Statutory authority The amendments are proposed pursuant to Texas Government Code § 2054.052(a), which authorizes the department to adopt rules as necessary to implement its responsibilities under Texas Government Code Chapter 2054; Texas Government Code § 2059.053, which authorizes the department to adopt rules related to network security; and Senate Bill 475 (87(R)), which orders the department to adopt rules necessary to implement and administer the Texas Risk and Management Authorization Program.

No other code, article, or statute is affected by this proposal.

§202.70. Responsibilities of the Institution Head.
(a) The agency head of each state institution of higher education is ultimately responsible for the security of state information resources.
(b) The agency head or their designated representative [of each state institution of higher education or his/her designated representative(s)], shall:
(1) designate an Information Security Officer who has the explicit authority and the duty to administer the information security requirements of this chapter institution wide;

(2) allocate resources for ongoing information security remediation, implementation, and compliance activities that reduce risk to a level acceptable to the institution head;

(3) ensure that senior institution of higher education officials and information-owners, in collaboration with the Information Resources Manager [information resources manager] and Information Security Officer [information security officer], support the provision of information security for the information systems that support the operations and assets under their direct or indirect (e.g., cloud computing or outsourced) control;

(4) ensure that the institution of higher education has trained personnel to assist the institution of higher education in complying with the requirements of this chapter and related policies;

(5) ensure that senior institution of higher education officials support the institution of higher education Information Security Officer in developing, at least annually, a report on institution of higher education information security program, as specified in §202.71(b)(10) and §202.73(a) of this chapter;

(6) approve high residual [level] risk management decisions as required by §202.75(4) of this chapter;

(7) review and approve at least annually institution of higher education information security program required under §202.74 of this chapter; and

(8) ensure that information security management processes are part of the institution of higher education strategic planning and operational processes.


(a) Each institution of higher education shall have a designated Information Security Officer [ISO] in accordance with Texas Government Code § 2054.136. The Information Security Officer shall report to executive level management, has explicit authority for information security for the entire agency, and complies with all other requirements of Texas Government Code § 2054.136. [7 and shall provide that its Information Security Officer:]

[(4) reports to executive level management;]
[(5) has authority for information security for the entire institution;]
[(6) possesses training and experience required to administer the functions described under this chapter; and]
[(7) whenever possible, has information security duties as that official's primary duty.]

(b) The Information Security Officer shall be responsible for:

(1) developing and maintaining an institution-wide information security plan as required by Texas Government Code § 2054.133 [§2054.133, Texas Government Code];

(2) developing and maintaining information security policies and procedures that address the requirements of this chapter and the institution's information security risks;

(3) working with the business and technical resources to ensure that controls are utilized to address all applicable requirements of this chapter and the institution's information security risks;

(4) providing for training and direction of personnel with significant responsibilities for information security with respect to such responsibilities;

(5) providing guidance and assistance to senior institution of higher education officials, information owners, information custodians, and end users concerning their responsibilities under this chapter;

(6) ensuring that: [annual information security risk assessments are performed and documented by information-owners;]

(A) risk assessments are performed by the information-owners and supported by the information-custodians at least biennially for systems containing confidential data and periodically for systems containing institution of higher education sensitive or public data; and

(B) security assessments are conducted biennially for systems containing confidential data and periodically for systems containing institution of higher education sensitive or public data;

(7) reviewing the institution's inventory of information systems and related ownership and responsibilities;

(8) [developing and] recommending and collaborating to establish policies, [and establishing] procedures, and practices, in cooperation with the institution Information Resources Manager, information-owners and custodians, necessary to ensure the security of information and information resources against unauthorized or accidental modification, destruction, or disclosure;

(9) verifying that security requirements are identified and risk mitigation plans are developed and contractually agreed and obligated prior to the acquisition of new information systems and/or related services and applications; [if applicable, third-party risk assessment of any new computer applications or services that receipt, maintain, and/or share confidential data;]

(10) verifying that security requirements are identified and risk mitigation plans are developed and implemented prior to the deployment of internally-developed information systems and/or related applications or services;

[(10) verifying that security requirements are identified and risk mitigation plans are developed and contractually agreed and obligated prior to the purchase of information technology hardware, software, and systems development services for any new high impact computer applications or computer applications or services that receive, maintain, and/or share confidential data;]

(11) reporting, at least annually, to the agency head [state institution of higher education head] the status and effectiveness of the security program and its controls; [and]

(12) informing any relevant [the] parties in the event of noncompliance with this chapter and/or with the institution's security policies; and[;]

(13) all other duties required by Texas Government Code § 2054.136.

(c) The Information Security Officer, with the approval of the agency head [state institution of higher education head], may issue exceptions to information security requirements or controls in this chapter. Any such exceptions shall be justified, documented and communicated [as part of the risk assessment process].

§202.72. Staff Responsibilities.

(a) Information owners, custodians, and users of information resources shall, in consultation with the institution Information Resources Managers [IRM] and Information Security Officer [ISO], be identified[;] and their responsibilities defined and documented by the
state institution of higher education. The following distinctions among owner, custodian, and user responsibilities should guide determination of these roles:

(1) Information Owner Responsibilities. The owner or their [his or her] designated representative(s) are responsible for:

(A) classifying information under their authority or responsibility [ ]; with the concurrence of the agency head [state institution of higher education head] or their [his or her] designated representative(s), in accordance with the institution of higher education's established information classification categories;

(B) approving access to information resources and periodically reviewing [review] access lists based on documented risk management decisions;

(C) formally assigning custody of information or an information resource;

(D) coordinating data security control requirements with the Information Security Officer [ISO];

(E) conveying data security control requirements to custodians;

(F) providing authority to custodians to implement security controls and procedures;

(G) justifying, documenting, and being accountable for exceptions to security controls issued by the Information Security Officer for the information for which the Information Owner is responsible: [The information owner shall coordinate and obtain approval for exceptions to security controls with the institution of higher education information security officer; and]

(H) coordinating and obtaining approval for exceptions to security controls with the agency Information Security Officer; and

(I) [44] performing [participating in] risk assessments as provided under 1 Texas Administrative Code §202.75 [of this chapter].

(2) Information Custodian Responsibilities. Custodians of information resources, including third party entities providing outsourced information resources services to state institutions of higher education shall:

(A) implement controls required to protect information and information resources required by this chapter based on the classification and risks specified by the information owner(s) or as specified by the policies, procedures, and standards defined by the institution of higher education information security program;

(B) provide owners with information to evaluate the cost-effectiveness of controls and monitoring;

(C) adhere to monitoring techniques and procedures, approved by the Information Security Officer [ISO], for detecting, reporting, and investigating incidents;

(D) supply any [provide] information and/or documents necessary to provide appropriate information security training to employees; and

(E) ensure information is recoverable in accordance with risk management decisions.

(3) User Responsibilities. The user of [an] information resources [resource] has the responsibility to:

(A) use the resource only for the purpose specified by the institution or information [-] owner;

(B) comply with information security controls and institutional policies to prevent unauthorized or accidental disclosure, modification, or destruction of information and information resources; and

(C) formally acknowledge that they will comply with the security policies and procedures in a method determined by the institution head or his or her designated representative.

(b) [44] Institution information resources designated for use by the public shall be configured to enforce security policies and procedures without requiring user participation or intervention. Information resources must require the acceptance of a banner or notice prior to use.

§202.73. Security Reporting.

(a) Institution Reporting. Each Information Security Officer shall directly report[, at least annually,] to the agency [institution of higher education] head, at least annually, on the adequacy and effectiveness of information security policies, procedures, [and] practices, [and] compliance with the requirements of this chapter, and:

(1) effectiveness of current information security program and status of key initiatives;

(2) residual risks identified by the institution of higher education risk management process; and

(3) institution of higher education information security requirements and requests.

(b) Report to the Department.

(1) Urgent Incident Report.

(A) Each state institution of higher education shall assess the significance of a security incident based on the business impact on the affected resources and the current and potential technical effect of the incident (e.g., loss of revenue, productivity, access to services, reputation, unauthorized disclosure of confidential information, or propagation to other networks). Confirmed or suspected [Security] incidents shall be [promptly] reported to immediate supervisors and the institution of higher education Information Security Officer. Confirmed or suspected security [Security] incidents shall be [promptly] reported to the department within 48 hours of discovery in the form and manner specified by the department where the security incident is assessed to:

(i) propagate to other state systems;

(ii) result in criminal violations that shall be reported to law enforcement in accordance with state or federal information security or privacy laws; [or]

(iii) involve the unauthorized disclosure or modification of confidential information, e.g., sensitive personal information as defined in Texas Business and Commerce Code §521.002(a)(2) [Business and Commerce Code,] and other applicable laws that may require public notification; or[s]

(iv) be an event that compromises, destroys, or alters information systems or applications in any way.

(B) If the security incident is assessed to involve suspected criminal activity (e.g., violations of Texas Penal Code Chapters 33[3, Penal Code (Computer Crimes)] or [Chapter] 33A[3, Penal
Code (Telecommunications Crimes]], the institution of higher education shall contact law enforcement, as required, and the security incident shall be investigated, reported, and documented in accordance with the legal requirements for handling of evidence.

(C) Depending on the nature [criticality] of the incident, it will not always be feasible to gather all the information prior to reporting. In such cases, incident response teams shall [should] continue to report information to the department as it is collected. The department shall instruct state institutions of higher education as to the manner in which they shall report such information to the department. Supporting vendors or other third parties that report security incident information to an institution of higher education shall submit such reports to the institution of higher education in the form and manner specified by the department, unless otherwise directed by the institution of higher education. Institutions of higher education shall ensure that compliant reporting requirements are included in any contract where incident reporting may be necessary.

(2) Monthly Incident Report. Summary reports of security-related events shall be sent to the department on a monthly basis no later than nine (9) calendar days after the end of the month. Institutions of higher education shall submit summary security incident reports in the form and manner specified by the department. Supporting vendors or other third parties that report security incident information to an institution of higher education shall submit such reports to the institution of higher education in the form and manner specified by the department, unless otherwise directed by the institution of higher education.


§202.74. Institution Information Security Program.

(a) [Institution of Higher Education Programs.] Each institution of higher education shall develop, document, and implement an institution of higher education-wide information security program, approved by the agency [institution of higher education] head or delegate under 1 Texas Administrative Code §202.70 [of this chapter], that includes protections based on risk for all information and information resources owned, leased, or under the custodianship of any department, operating unit, or employee of the institution of higher education including outsourced resources to another institution of higher education, contractor, or other source (e.g., cloud computing). The program shall include:

1. periodic assessments in alignment with minimum legal reporting requirements of the risk and impact that could result from the unauthorized access, use, disclosure, disruption, modification, or destruction of information, and applications that support the operations and assets of the institution of higher education;

2. policies, controls, standards, and procedures that:
   A. are based on the risk assessments required by 1 Texas Administrative Code §202.75 [of this chapter];
   B. cost-effectively reduce information security risks to a level acceptable to the institution head;
   C. ensure that information security is addressed throughout the lifecycle of each institution of higher education information resources; and
   D. ensure compliance with:
      i. the requirements of 1 Texas Administrative Code Chapter 202 Subchapter C [this subchapter]; and

(ii) minimally acceptable system configuration requirements, as determined by the institution of higher education; and

(3) strategies to address risk to high impact [High-Impact] information resources;

(4) plans for providing information security for networks, facilities, and systems or groups of information systems and applications based on risk;

(5) a process for planning, implementing, evaluating, and documenting remedial action to address any deficiencies in the information security policies, procedures, and practices of the institution of higher education; and

(6) a process to justify, grant and document any exceptions to specific program requirements in accordance with requirements and processes defined in this chapter.

(b) State institutions of higher education are responsible for:

1. defining all classification categories except the Confidential Information category, which is defined in Subchapter A of this chapter, and establishing the controls for each;

2. administering an ongoing information security awareness education program in compliance with the requirements of Texas Government Code § 2054.5191 - .5192 for all users; and

3. introducing information security awareness and informing new employees of information security policies and procedures during the onboarding process.


A risk assessment of the institution's information, and information systems, and applications shall be performed and documented.

1. Risks and impact impacts [impact] will be ranked, at a minimum, as either "High," "Moderate," or "Low." [1]

2. The schedule [frequency] of the future risk assessments will be documented.

3. Risk assessment results, vulnerability reports, and similar information shall be documented and presented to the Information Security Officer or their [his or her] designated representative(s).

4. Approval of the security risk acceptance, transference, or mitigation decisions shall be the responsibility of:

   A. the Information Security Officer [information security officer] or their [his or her] designee(s), in coordination with the information owner, for systems identified with Low or Moderate residual risk.

   B. The [state] institution of higher education head for all systems identified with a High residual risk [Risk].

§202.76. Security Control Standards Catalog.

(a) Mandatory Requirements. Mandatory security controls shall be defined by the department in a Control Standards document published on the department's website.

(b) Minimum Requirements for Security Controls. The controls required by subsection (a) of this section shall include:

1. minimum information security requirements for all institution [State] information, and information systems, and applications; and

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(2) standards to be used by all institutions of higher education to provide levels of information security according to risk categorizations [levels].

(c) A review of the institution's information security program for compliance with these standards will be performed at least biennially, based on business risk management decisions, by individual(s) independent of the information security program and designated by the institution of higher education head or their [his or her] designated representative(s).

(d) Development of Control Standards. Prior to publishing new or revised standards as required by subsections (a) and (b) of this section, the department shall:

(1) solicit comment through the department's electronic communications channels for proposed standards from the Information Resources Managers, ITCHE, and Information Security Officers of agencies and institutions [institutes] of higher education at least 30 days prior to publication of proposed standards;

(2) after reviewing comments provided in paragraph (1) of this subsection, present proposed standards to the department's Board and obtain approval from the Board for publication; and

(3) minimize the impact to an affected institution of higher education[s] to the extent possible by:

(A) ensuring that such standards and guidelines do not require the use or procurement of specific products, including any specific hardware or software;

(B) ensuring that such standards provide for flexibility to permit alternative solutions to provide equivalent levels of protection for identified information security risks; and

(C) using flexible[, performance-based] standards and guidelines that permit the use of commercial off-the-shelf [commercially] developed information security products.

(4) New standards required by the department will have an effective date, not to exceed 18 months from the date of adoption, after which institutions of higher education are required to adhere to the new standard.

(e) Application of More Stringent Standards. The agency head [of an institution of higher education] may employ standards for the cost-effective information security of information, [and] information resources, and applications within or under the supervision of that institution of higher education that are more stringent than the standards the department prescribes under this section if the more stringent standards:

(1) contain at least the applicable standards issued by the department; and/or

(2) are consistent with applicable federal law, policies and guidelines issued under state rule, industry standards, best practices, or deemed necessary to adequately protect the information held by the institution of higher education.


(a) Mandatory Standards. Mandatory standards for Texas cloud computing services identified by subsection (b)(1) of this section shall be defined by the department in the program manual published on the department's website. Revisions to such document will be executed in compliance with subsection (d) of this section.

(b) Cloud Computing Standards Subject to the Texas Risk and Authorization Management Program. The standards required by sub-section (a) of this section shall include the below stated baseline standards for:

(1) TX-RAMP Public Controls Baseline (TX-RAMP Level 1)—This baseline is required for cloud computing services that:

(A) store, process, or transmit nonconfidential data of an institution of higher education; or

(B) host low impact information resources.

(2) TX-RAMP Confidential Controls Baseline (TX-RAMP Level 2)—This baseline is required for cloud computing services that:

(A) store, process, or transmit confidential data of an institution of higher education; and

(B) host moderate impact information resources or high impact information resources.

(c) Responsibilities of Cloud Computing Service Vendors.

(1) To be certified under the TX-RAMP program, a cloud computing service vendor shall:

(A) provide evidence of compliance for information they are storing, processing, or transmitting as detailed by the program manual; and

(B) demonstrate continuous compliance in accordance with the program manual.

(2) Primary contracting vendors, including resellers, who provide or sell cloud computing services to institutions of higher education shall present evidence of certification of the cloud computing service being sold in accordance with the program manual. Such certification is required for all cloud computing services being provided through the contract or in furtherance of the contract, including services provided through subcontractors or third-party providers.

(3) Subcontractors or third-party providers responsible solely for servicing or supporting a cloud computing service provided by another vendor shall not be required to provide evidence of certification.

(d) Responsibilities of the Department.

(1) Responsibilities of the Department in Developing Updates to the Program Manual. Prior to publishing new or revised program standards as required by subsections (a) - (d) of this section, the department shall:

(A) solicit comment through the department's electronic communications channels for proposed standards from the Information Resources Managers, ITCHE, and Information Security Officers of agencies and institutions of higher education at least 30 days prior to publication of proposed program manual; and

(B) after reviewing comments provided during the comment period described by section (1)(A) of this subsection, present the proposed program manual to the department's Board and obtain approval from the Board for publication.

(e) Responsibilities of an Institution of Higher Education Contracting for Cloud Computing Services. An institution of higher education contracting for cloud computing services that store, process, or transmit data of the institution of higher education shall:

(1) confirm that vendors contracting with the institution of higher education to provide cloud computing services for the institution of higher education are certified through TX-RAMP prior to entering or renewing a cloud computing services contract on or after January 1, 2022; and

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require a vendor contracting with the institution of higher education to provide cloud computing services for the institution of higher education that are subject to the state risk and authorization management program to maintain program compliance and certification throughout the term of the contract.

(f) Acceptance of Other RAMP Certifications.

(1) FedRAMP and StateRAMP certifications shall be accepted in satisfaction of the above baselines once demonstrated by the vendor.

(2) At the department’s discretion, another state’s risk and authorization management program certification may be accepted in satisfaction of the above baselines once certification is demonstrated by the vendor in alignment with program manual requirements.

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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Katherine Rozier Fite
General Counsel
Department of Information Resources

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For further information, please call: (512) 475-4552

TITLE 7. BANKING AND SECURITIES

PART 4. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 76. MISCELLANEOUS

SUBCHAPTER F. FEES AND CHARGES

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), proposes to repeal 7 Texas Administrative Code (TAC) Chapter 76, Subchapter F, §76.95 and further proposes a new rule concerning the same or similar subject matter in 7 TAC Chapter 76, Subchapter F, §76.95. This proposal and the rules as repealed or added as a new rule by this proposal are referred to collectively as the “proposed rules.”

Explanation of and Justification for the Rules

The existing rules under 7 TAC Chapter 76 partially implement Finance Code Subtitle C, the Texas Savings Bank Act.

Changes Concerning Special Examination Fees

Existing §76.95 (relating to Fee for Special Examination or Audit) establishes a fee for examination of a savings bank outside of a savings bank’s regular periodic examination (special examination). During the 87th Legislature (Regular Session), Senate Bill 1900 (SB 1900) was enacted into law (eff. September 1, 2021) which, among other things, amended Finance Code Chapter 96 to provide to the department’s commissioner (commissioner) examination authority over savings bank affiliates and third-party service providers. The Finance Code, as amended by SB 1900 (Tex. Fin. Code §96.0551(c)), authorizes the commissioner to collect a fee for conducting examinations on savings bank affiliates and third-party service providers. Proposed new §76.95, if adopted, would (i) clarify the commissioner’s existing authority to perform examinations of savings bank holding companies, affiliates, and third-party service providers; (ii) classify the examination of a savings bank holding company, affiliate, or third-party service provider as a special examination subject to the rule; and (iii) change the calculation for the fee assessed for a special examination from a daily fee ($325) to an hourly fee ($75). The department asserts an hourly fee more accurately reflects the actual work performed by the department's examiner and will result in fees that are more equitable and will better reflect the true cost of regulation. The existing daily fee of $325 has been in place since the rule was originally adopted on January 5, 2012. Existing §76.95 is also patterned after a previous rule adopted by the Department (at that time, the Texas Savings and Loan Department) effective September 23, 1993 (18 TexReg 4808; 1993 rule) which was repealed and replaced by existing §76.95. The 1993 rule similarly imposed a daily fee of $325 to conduct a special examination. Assuming a standard workday of eight hours, this $325 daily figure amounts to an hourly fee of approximately $42.63. According to an inflation calculator provided by the United States Bureau of Labor Statistics on its website, based on the consumer price inflation index, an hourly fee of $42.63 in September of 1993 would equate to a fee of $76.44 in July of 2021 (more than the $75 proposed by the proposed rule). As a result, the increased rate as proposed in the proposed rules is likely in keeping with the requirements of the original rule in 1993.

Other Modernization and Update Changes

The proposed rules, if adopted, would make changes to modernize and update the rules including: (i) adding and replacing language to improve clarity and readability; (ii) removing unnecessary or duplicative provisions; (iii) and updating terminology.

Fiscal Impact on State and Local Government

Antonia Antov, Director of Operations for the department, has determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs to the state or local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there will be no foreseeable losses or increases in revenue to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect, there will be no foreseeable losses or increases in revenue to the state overall and that would impact the state’s general revenue fund as a result of enforcing or administering the proposed rules. Implementation of the proposed rules will not require an increase or decrease in future legislative appropriations to the department because the department is a self-directed, semi-independent agency that does not receive legislative appropriations. Depending on the number and extent of special examinations conducted by the commissioner, implementation of the proposed rules may result in an increase or decrease in fees paid to the department in the form of special examination fees by savings banks subject to a special examination. However, any estimate as to such potential increase or decrease in such fees paid to the department would be: inherently speculative; unreliable for budgetary planning purposes; directly attributable to (and will offset) the actual costs borne by the department and allocable to the entity being examined; and, will not actually function as additional revenue to the department.

Public Benefits

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Stephany Trotti, acting commissioner and Director of Thrift for the department, has determined that for each of the first five years the proposed rules are in effect the public benefit anticipated as a result of enforcing the proposed rules will be to have a rule that is easier to read and understand.

Probable Economic Costs to Persons Required to Comply with the Proposed Rules

Stephany Trotti, acting commissioner and Director of Thrift for the department, has determined that, with respect to savings bank holding companies, affiliates, and third-party service providers, for the first five years the proposed rules are in effect there are no substantial economic costs anticipated to such persons required to comply with the proposed rules that are directly caused by the proposed rules for purposes of the cost note required contemplated by Government Code §2001.024(a)(5) (direct costs). With respect to savings bank affiliates and third-party service providers, the requirement for an affiliate or third-party service provider to pay an examination fee (subject to the commissioner's discretion) is imposed by the requirements of SB 1900 and Tex. Fin. Code §96.0551(c), and not the proposed rules. With respect to savings bank holding companies, Tex. Fin. Code §97.006 requires that a savings bank holding company pay for the cost of its examination, and not the proposed rules. With respect to savings banks, the proposed rules have the effect of increasing the hourly rate a savings bank must pay for a special examination under existing §76.95 by using an hourly fee of $75 in lieu of a $325 fee per day, resulting in a new effective daily rate of $600 compared to the requirements of existing §76.95, thereby resulting in potential costs to savings banks subject to a special examination. The length of time for a special examination varies widely depending on the size and complexity of the savings bank's operations, and the purpose for and scope for the special examination. It is also difficult to predict which savings banks will require special examination, if any, and any estimate as to such potential costs would be inherently speculative and unreliable to determine such costs. However, it is not anticipated that any additional costs for conducting a special examination will be substantial. Moreover, according to department records, in the five years prior to this proposal, the commissioner has not actually collected a fee under existing §76.95.

One-for-One Rule Analysis

Pursuant to Finance Code §16.002, the department is a self-directed and semi-independent agency and thus not subject to the requirements of Government Code §2001.0045.

Government Growth Impact Statement

For each of the first five years the proposed rules are in effect, the department 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 create a new regulation (rule requirement). The proposed rules create a new requirement for savings bank holding companies, affiliates, and third-party service providers to pay a fee to compensate the department for the cost of their examination. However, as related above, such requirement is not imposed by the proposed rules but by the existing requirements of Tex. Fin. Code §96.0551(c) and §97.006; the proposed rules do not expand, limit, or repeal an existing regulation (rule requirement). While existing §76.95 is proposed for repeal by the proposed rules, it is being immediately replaced with a new §76.95 which contains substantially equivalent subject matter and requirements; (7) the proposed rules do not increase or decrease the number of individuals subject to the rules' applicability; and (8) the proposed rules do not positively or adversely affect this state's economy.

Local Employment Impact Statement

No local economies are substantially affected by the proposed rules. As a result, preparation of a local employment impact statement pursuant to Government Code §2001.022 is not required.

Fiscal Impact on Small and Micro-Businesses, and Rural Communities

The proposed rules will not have an adverse effect on small or micro-businesses, because none of the savings banks regulated by the department constitutes a small or micro-business for purposes of Government Code Chapter 2006, as defined by Government Code §2006.001. To minimize any potential adverse impact on savings banks whose asset size and scope of operations may be among the smaller of the savings banks, the proposed rules provide authority for the commissioner to waive or reduce any fees required by new §76.95, including to address any adverse impact on small or micro-businesses. The proposed rules will not have an adverse effect on rural communities as defined by Government Code §2006.001 (rural community). There are many savings banks regulated by the department having a main office or a branch office located in a rural community. Of the twenty-four savings banks regulated by the department (in addition to the department's federal counterparts), fifteen have a main office located within a municipality constituting a rural community. However, one such rural community (Westlake, Texas) is located within the major metropolitan area of Austin, Texas and thus does not comport with traditional notions of what is a rural community. The municipalities where several other savings banks have their main office in a rural community encompass a larger population within the municipality's extraterritorial jurisdiction than is captured by the definition of rural community provided by Government Code §2006.001 and may similarly be at odds with traditional notions of what is a rural community. Moreover, a savings bank possesses banking authority to transact business both statewide and nationwide. As a result, the operations of savings banks are diffused throughout Texas and the United States, and are not necessarily concentrated in and would have an impact on a particular rural community in Texas. Furthermore, any potential adverse impact on a rural community as a result of the proposed rules would likely take the form of increased fees to savings bank customers, or reduced distributions or dividends to an owner or a shareholder of a savings bank, and would affect a rural community only indirectly. Any such fees or reduced earnings would also be borne by and similarly affect a savings bank's customers or owners/shareholders residing other than in a rural community. As a result, any such increased fees or reduced earnings would also be diffuse and has the tendency to minimize any potential adverse impact on rural communities. To minimize any potential adverse impact on rural communities the proposed rules provide authority for the commissioner to waive or reduce any fees required by new §76.95, including to address any adverse impact on rural communities.

Takings Impact Assessment
§76.95. Fee for Special Examination.

(a) A special examination is one that is conducted outside the context of a savings bank's annual examination and includes, but is not limited to, examinations of a savings bank holding company, interstate branches of savings banks in Texas as the host state, and a savings bank's affiliates and third-party service providers. The savings bank or other regulated entity that is the subject of the special examination is subject to a fee and liable for the Department's costs as provided by this section in order to recoup the salary expense of the examiner(s) plus a proportionate share of Department overhead allocable to the special examination, and the actual costs by the examiner in conducting the special examination.

(b) The fee for a special examination under this section will be calculated at a rate not to exceed $75 per examiner per hour. The entity that is the subject of the examination must also pay to the Department an amount for actual travel expenses and costs incurred by the Department's examiner(s), including mileage, public transportation, food, and lodging. The Commissioner, in his or her sole discretion, may lower the applicable rate for the examination fee or waive in whole or in part, any fees or costs chargeable in accordance with this section.

(c) In connection with an examination under this section, the regulated entity or other legally responsible party (including the savings bank, with respect to affiliates and third-party service providers) must pay the examination fee and costs incurred as provided by this section.

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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Iain A. Berry
Associate General Counsel
Department of Savings and Mortgage Lending
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For further information, please call: (512) 475-1535

7 TAC §76.95
Statutory Authority

This proposal is made under the authority of Finance Code §11.302(a) which authorizes the commission to adopt rules applicable to state savings banks. This proposal is also made under the authority of Finance Code §96.002(a) which authorizes the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks. This proposal is also made under the authority of Finance Code §96.0551(c) which authorizes the commissioner to collect a fee for conducting examinations on savings bank affiliates and third-party service providers. This proposal is also made under the authority of Finance Code §97.001(3) which authorizes the commission to adopt rules concerning the regulation of saving bank holding companies under Finance Code, Subtitle C, Subchapter A. This proposal is also made under the authority of Finance Code §97.006 which authorizes the commissioner to exam a savings bank holding company and requires the holding company to pay for the cost of examination.

This proposal affects the statutes contained in Finance Code, Subtitle C, the Texas State Savings Bank Act.

CHAPTER 80. TEXAS RESIDENTIAL MORTGAGE LOAN COMPANIES
SUBCHAPTER B. LICENSING

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), proposes to repeal the following rules in 7 Texas Administrative Code (TAC) Chapter 80, Subchapter B: §§80.102 - 80.104 and 80.107. The commission further proposes new rules concerning the same or similar subject matter in 7 TAC Chapter 80, Subchapter B: §§80.101, 80.102, 80.105, and 80.107. The commission further proposes amendments to existing rules in 7 TAC Chapter 80, Subchapter B as follows: §80.106. This proposal and the rules as repealed, amended, or added as new rules by this proposal are referred to collectively as the "proposed rules."

Explanation of and Justification for the Rules

The existing rules under 7 TAC Chapter 80 implement Finance Code Chapter 156, Residential Mortgage Loan Companies (Chapter 156). The proposed rules were identified during the department's periodic review of 7 TAC Chapter 80 conducted pursuant to Government Code §2001.039.
Changes Concerning Licensing Procedures

The department licenses residential mortgage loan companies (for purposes of the proposed rules, a "residential mortgage loan company" has the meaning assigned by Finance Code §156.002; mortgage company). The department utilizes the Nationwide Mortgage Licensing System & Registry (NMLS), owned and operated by a company that is a wholly-owned subsidiary of the Conference of State Bank Supervisors (CSBS), as its licensing database system. The proposed rules, if adopted, would make various changes to clarify and set forth in rule various procedures utilized by the department in licensing mortgage companies. The proposed rules, among other things: (i) clarify how a mortgage company goes about sponsoring individual residential mortgage loan originators and its responsibility for supervising such originators; (ii) clarify the role of the individual residential mortgage loan originator appointed as the qualifying individual for purposes of Finance Code §156.002, including requiring the consent of such individual to be appointed; and (iii) clarify the commissioner's authority to approve a license renewal or reinstatement application with a deficiency so as to enable the licensed mortgage company to conduct regulated activities while the deficiency is resolved.

Changes Concerning License Records

The proposed rules, if adopted, would make various changes concerning: the license records the department maintains with respect to each licensee in NMLS; responsibility for a licensed mortgage company to update such records; and the department's procedures for contacting a licensed mortgage company using the contact information derived from such records. The proposed rules, among other things: (i) expand existing requirements concerning a mortgage company updating and keeping current in the NMLS system various information associated with its license (contact information, information concerning its owners, etc.) by requiring that the mortgage company update such records within ten days after a material change occurs in such information; (ii) set forth in rule an existing requirement prohibiting a licensed mortgage company from allowing an individual residential mortgage loan originator to act on its behalf prior to becoming sponsored of record by such mortgage company in the NMLS system; (iii) set forth in rule procedures for the department to contact a mortgage company utilizing the contact information designated by the licensed mortgage company; and (iv) impose a new requirement providing that a licensed mortgage company must monitor the email address it has designated in its NMLS system for purposes of receiving correspondence or other notices from the department.

Other Modernization and Update Changes

The proposed rules, if adopted, would make changes to modernize and update the rules including: adding and replacing language to improve clarity and readability; removing unnecessary or duplicative provisions; updating terminology; and reorganizing the rules sections by subject matter and to align more closely with similar subject matter in 7 TAC Chapter 81, Mortgage Bankers and Residential Mortgage Loan Originators.

Fiscal Impact on State and Local Government

Antonia Antov, Director of Operations for the department, has determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs to the state or local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect, there will be no foreseeable losses or increases in revenue to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect, there will be no foreseeable losses or increases in revenue to the state as a result of enforcing or administering the proposed rules.

Public Benefits

William Purce, Director of Mortgage Regulation for the department, has determined that for each of the first five years the proposed rules are in effect the public benefit anticipated as a result of enforcing the proposed rules will be to have rules that are easier to read and understand.

Probable Economic Costs to Persons Required to Comply with the Proposed Rules

William Purce, Director of Mortgage Regulation for the department, has determined that for the first five years the proposed rules are in effect there are no substantial economic costs anticipated to persons required to comply with the proposed rules.

One-for-One Rule Analysis

Pursuant to Finance Code §16.002, the department is a self-directed and semi-independent agency and thus not subject to the requirements of Government Code §2001.0045.

Government Growth Impact Statement

For each of the first five years the proposed rules are in effect, the department 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 create a new regulation (rule requirement). The proposed rules related to Changes Concerning License Records create a new rule requirement requiring a licensed mortgage company to monitor the email address it has designated in its NMLS license records. The proposed rules do expand, limit, or repeal an existing regulation (rule requirement). The proposed rules related to Changes Concerning License Records expand an existing rule requirement by expanding the types of information a change in which requires the licensee to update its license records in NMLS, including imposing a time period of ten days following a material change in such information to make such changes; (7) the proposed rules do not increase or decrease the number of individuals subject to the rules’ applicability; and (8) the proposed rules do not positively or adversely affect this state's economy.

Local Employment Impact Statement

No local economies are substantially affected by the proposed rules. As a result, preparation of a local employment impact statement pursuant to Government Code §2001.022 is not required.

Fiscal Impact on Small and Micro-Businesses, and Rural Communities

The proposed rules will not have an adverse effect on small or micro-businesses, or rural communities because there are no substantial economic costs anticipated to persons required to comply with the proposed rules. As a result, preparation of an
This proposed rule amends the regulations for the Texas Mortgage Finance Commission to provide increased flexibility in the relationship between the mortgage company and the originator, allowing for more personal representation. The amendments to Chapter 156, the Residential Mortgage Loan Company Licensing and Registration Act, modify the requirements for sponsorship of an originator.

The amendments allow for the appointment of more than one originator to serve as the mortgage company's qualifying individual. The amendments also provide for the appointment of a qualified individual by the sponsoring company to act as an originator. The amendments further provide for the appointment of a qualified individual by the sponsoring company to act as an originator.

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disciplinary action against the licensee, including suspension or revocation of the license [Renewal of a license may be denied for reasons provided in Finance Code, §156.208].

(c) Supplemental Information. The Commissioner may require such additional, clarifying, or supplemental information from any applicant for the renewal of any license issued pursuant to Finance Code[§] Chapter 156 as is deemed by the Commissioner to be necessary or advisable to determine compliance with the requirements of Finance Code[§] Chapter 156.

(d) Reinstatement. The provisions of this section also apply to a person seeking reinstatement of a recently-expired license, as provided by Tex. Fin. Code §156.2081, and should be construed accordingly.

§80.107. NMLS License Records; Notice to Licensee.

(a) Amendments to License Records Required. Unless Tex. Fin. Code §156.211 applies and requires additional notice, a mortgage company must amend its NMLS license records (MU1 filing) within 10 days after any material change occurs affecting any aspect of the MU1 filing, including but not limited to:

(1) name (which must be accompanied by supporting documentation submitted to the Department establishing the name change);

(2) the addition or elimination of an assumed name (a/k/a trade name or "doing business as" name; which must be accompanied by a certificate of assumed business name or other documentation establishing or abandoning the assumed name);

(3) the contact information for the mortgage company listed in the MU1 under "Identifying Information":

(A) principal address (main address);

(B) mailing address;

(C) phone number;

(D) fax number; and

(E) email address;

(4) the contact information listed under "Resident/Registered Agent";

(5) the contact information listed under "Contact Employee Information;" and

(6) answers to disclosure questions (which must be accompanied by explanations for each such disclosure, together with supporting documentation concerning such disclosure).

(b) Amendments to MU2 Associations Required. A mortgage company must cause the individuals who are required to register an association with the mortgage company (MU2 filing) to do so within the NMLS system and ensure such associations are amended within 10 days after any material change occurs affecting such associations.

(c) Branch Office License Required. A mortgage company must apply for and obtain a branch office license for each office constituting a branch office of the mortgage company for purposes of §80.206 of this title (relating to Office Locations; Remote Work), which must be licensed prior to conducting operations at such office. The application must be submitted through NMLS and must be made on the appropriate form prescribed by NMLS (MU3 filing). A mortgage company must amend its MU3 filing to surrender the branch office license within 10 days after closing a branch office.

(d) Notice to Licensee. Service of any correspondence, notification, alert, message, official notice or other written communication issued by the Department will be served on the licensee in accordance with this subsection utilizing the licensee's current contact information of record in NMLS unless another method is prescribed by other applicable law (notice to the originator in a matter referred to the State Office of Administrative Hearings for an adjudicative hearing will be performed in accordance with 1 Texas Administrative Code §155.105).

(1) Service by Email. Service by email will be made utilizing the email address the mortgage company has designated in its MU1 filing listed under "Identifying Information." Service by email is complete on transmission of the email by the Department to the mortgage company's email service provider; provided, the Department does not receive a "bounce back" notification, or similar, from the email service provider indicating that delivery was not effective. The mortgage company has an ongoing duty and a continuing obligation to monitor such email account including to ensure that correspondence from the Department is not lost in a "spam" or similar folder, or undelivered due to intervention by a "spam filter" or similar service. A mortgage company is deemed to have constructive notice of any email correspondence or NMLS system notifications sent to the email address it has designated in its MU1 filing listed under "Identifying Information."

(2) Service by Mail. Service by mail is complete on deposit of the document, postpaid and properly addressed, in the mail or with a commercial delivery service. If service is made on the originator by mail and the document communicates a deadline by or a time during which the originator must perform some act, such deadline or time period for action is extended by three days. However, if service was made by another method prescribed by this subsection, such deadline or time period will be calculated based on the earliest possible deadline or shortest applicable time period.

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 25, 2021.

TRD-202103357
Iain A. Berry
Associate General Counsel
Department of Savings and Mortgage Lending
Earliest possible date of adoption: October 10, 2021
For further information, please call: (512) 475-1535

7 TAC §§80.102 - 80.104, 80.107
Statutory Authority
This proposal is made under the authority of Finance Code §156.102, which authorizes the commission to adopt rules necessary for the intent of or to ensure compliance with Finance Code Chapter 156, and as required to carry out the intentions of the Federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (federal SAFE Act).

This proposal affects the statutes contained in Finance Code Chapter 156, the Residential Mortgage Loan Company Licensing and Registration Act.

§80.102. Sponsorship and Termination Thereof.
§80.103. License Record Changes.
§80.104. Background Checks.
§80.107. Fees.

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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CHAPTER 81. MORTGAGE BANKERS AND RESIDENTIAL MORTGAGE LOAN ORIGINATORS

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), proposes to repeal the following rules in 7 Texas Administrative Code (TAC) Chapter 81, Subchapter B: §§81.102 - 81.104, and 81.106 - 81.110. The commission further proposes new rules concerning the same or similar subject matter in 7 TAC Chapter 81, Subchapter B: §§81.102 - 81.104, and 81.106 - 81.111. The commission further proposes amendments to existing rules in 7 TAC Chapter 81 as follows: Subchapter B, §§81.101 and §81.105. This proposal and the rules as repealed, amended, or added as new rules by this proposal are referred to collectively as the "proposed rules."

Explanation of and Justification for the Rules

The existing rules under 7 TAC Chapter 81 implement Finance Code Chapter 157, Mortgage Bankers and Residential Mortgage Loan Originators (Chapter 157), and Chapter 180, Residential Mortgage Loan Originators (Texas SAFE Act), with respect to persons regulated under Chapter 157. The proposed rules were identified during the department's periodic review of 7 TAC Chapter 80 conducted pursuant to Government Code §2001.039.

Criminal Conviction Guidelines

The department licenses individuals to act as residential mortgage loan originators. Pursuant to Occupations Code §53.025, the department, as a licensing authority for an occupational license, is required to issue guidelines relating to the department's administration of Occupations Code Chapter 53, including stating the reasons a particular crime is considered to relate the duties and responsibilities of the license and any other criterion that affects the decisions of the department in administering Occupations Code Chapter 53. The proposed rules, if adopted would implement Occupations Code §53.025 by adopting comprehensive criminal conviction guidelines in rule. The authority for denial of an application for licensure based on an individual's criminal history under the Occupations Code is in addition to and augments that arising from the Finance Code. The proposed rules, if adopted, would further outline the commissioner's authority for denial of an application for licensure under the Finance Code based on criminal history, including outlining certain offenses deemed by rule to be grounds for denial under the Finance Code.

Changes Concerning Licensing Procedures

The department licenses individuals to act as residential mortgage loan originators. The department utilizes the Nationwide Mortgage Licensing System & Registry (NMLS), owned and operated by a company that is a wholly-owned subsidiary of the Conference of State Bank Supervisors (CSBS), as its licensing database system. The proposed rules, if adopted, would make various changes to clarify and set forth in rule various procedures utilized by the department in licensing residential mortgage loan originators. The proposed rules, among other things: (i) clarify how a residential mortgage loan originator goes about being sponsored by a mortgage company or mortgage banker so as to engage in regulated activities with the license; (ii) clarify how an individual licensed in another jurisdiction or by a different licensing authority as a residential mortgage loan originator, or is a "registered mortgage loan originator" (as defined by Finance Code §180.002(16)) may engage in regulated activities under temporary authority while he or she seeks licensure by the department; (iii) with respect to an applicant for licensure who is a military service member or military veteran, clarify that his or her military service, training, or education cannot constitute grounds for waiving the pre-licensing examination required by Finance Code §180.057, the pre-licensing education training and coursework required by Finance Code §180.056, or the continuing education training and coursework required by Finance Code §180.060; (iv) with respect to a military spouse seeking temporary authority to act as a residential mortgage loan originator in Texas must do in conformity with Finance Code §180.0511; (v) with respect to pre-licensing education, expand an existing requirement by requiring that such pre-licensing education lapses if the individual does not achieve licensure by limiting the applicable time period from four years to three years; (vi) with respect to pre-licensing education taken in another jurisdiction, impose a new requirement that any portion of such training and coursework which was specific to such jurisdiction does not count towards the minimum hours of required pre-licensing education; (vii) clarify the commissioner's authority to approve a license renewal or reinstatement application with a deficiency so as to enable the individual to conduct regulated activities while the deficiency is resolved; (viii) clarify the commissioner's authority to conduct background checks other than through the NMLS system; and (ix) set forth in rule procedures for conducting background checks by the department.

Changes Concerning License Records

The proposed rules, if adopted, would make various changes concerning: the license records the department maintains with respect to each licensee in NMLS; responsibility for a licensed residential mortgage loan originator to update such records; and the department's procedures for contacting a residential mortgage loan originator using the contact information derived from such records. The proposed rules, among other things: (i) expand existing requirements concerning a residential mortgage loan originator updating and keeping current in the NMLS system various information associated with his or her license (contact information, disclosures concerning criminal history and financial background, etc.) by requiring that the originator update such records within ten days after a material change occurs in such information; (ii) set forth in rule an existing requirement prohibiting a residential mortgage loan originator from engaging in regulated activities prior to becoming sponsored of record in the NMLS system by a mortgage company or mortgage banker; (iii) set forth in rule procedures for the department to contact a residential mortgage loan originator utilizing the contact information designated by the residential mortgage loan originator in his or her NMLS license records; and (iv) impose a new requirement requiring a residential mortgage loan originator to monitor the email address he or she has designated in the NMLS system to manage their account with NMLS and receive system-generated messages from NMLS, for purposes of receiving correspondence or other notices from the department.
**Other Modernization and Update Changes**

The proposed rules, if adopted, would make changes to modernize and update the rules including: adding and replacing language to improve clarity and readability; removing unnecessary or duplicative provisions; updating terminology; and reorganizing the rules sections by subject matter and to align more closely with similar subject matter in 7 TAC Chapter 80, Texas Residential Mortgage Loan Companies.

**Fiscal Impact on State and Local Government**

Antonia Antov, Director of Operations for the department, has determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs to the state or local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there will be no foreseeable losses or increases in revenue to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect, there will be no foreseeable losses or increases in revenue to the state as a result of enforcing or administering the proposed rules.

**Public Benefits**

William Purce, Director of Mortgage Regulation for the department, has determined that for each of the first five years the proposed rules are in effect the public benefit anticipated as a result of enforcing the proposed rules will be to have rules that are easier to read and understand.

**Probable Economic Costs to Persons Required to Comply with the Proposed Rules**

William Purce, Director of Mortgage Regulation for the department, has determined that for the first five years the proposed rules are in effect there are no substantial economic costs anticipated to persons required to comply with the proposed rules.

**One-for-One Rule Analysis**

Pursuant to Finance Code §16.002, the department is a self-directed and semi-independent agency and thus not subject to the requirements of Government Code §2001.0045.

**Government Growth Impact Statement**

For each of the first five years the proposed rules are in effect, the department 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 create a new regulation (rule requirement). The proposed rules related to Changes Concerning Licensing Records create a new rule requirement requiring a licensee to monitor the email address he or she has designated in its NMLS license records. The proposed rules do expand, limit, or repeal an existing regulation (rule requirement). The proposed rules related to Changes Concerning License Records expand an existing rule by expanding the types of information a change in which requires the licensee to update its license records in NMLS, including imposing a time period of ten days following a material change in such information to make such changes; (7) the proposed rules do not increase or decrease the number of individuals subject to the rules’ applicability; and (8) the proposed rules not positively or adversely affect this state’s economy.

**Local Employment Impact Statement**

No local economies are substantially affected by the proposed rules. As a result, preparation of a local employment impact statement pursuant to Government Code §2001.022 is not required.

**Fiscal Impact on Small and Micro-Businesses, and Rural Communities**

The proposed rules will not have an adverse effect on small or micro-businesses, or rural communities because there are no substantial economic costs anticipated to persons required to comply with the proposed rules. As a result, preparation of an economic impact statement and a regulatory flexibility analysis as provided by Government Code §2006.002 are not required.

**Takeoffs Impact Assessment**

There are no private real property interests affected by the proposed rules. As a result, preparation of a takings impact assessment as provided by Government Code §2007.043 is not required.

**Public Comments**

Written comments regarding the proposed rules may be submitted by mail to Iain A. Berry, Associate General Counsel, at 2601 North Lamar Blvd., Suite 201, Austin, Texas 78705-4294, or by email to rules.comments@smi.texas.gov. All comments must be received within 30 days of publication of this proposal.

**SUBCHAPTER B. LICENSING OF INDIVIDUAL ORIGINATORS**

7 TAC §§81.101 - 81.111

**Statutory Authority**

This proposal is made under the authority of Finance Code §157.0023, which authorizes the commission to adopt rules necessary to implement or fulfill the purposes of Finance Code Chapter 157, and as required to carry out the intentions of the Federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (federal SAFE Act). 7 TAC §81.103 is also proposed under the authority of, and to implement, Occupations Code Chapter 55. 7 TAC §81.108 is also proposed under the authority of Government Code §411.1385. 7 TAC §81.110 is also proposed under the authority of, and to implement, Occupations Code §53.025. 7 TAC §81.111 is also proposed under the authority of, and to implement, Occupations Code Chapter 53, Subchapter D.

This proposal affects the statutes contained in Finance Code Chapter 157, The Mortgage Banker Registration and Residential Mortgage Loan Originator License Act, and Chapter 180, the Texas Secure and Fair Enforcement for Mortgage Licensing Act of 2009.

§81.101. Sponsorship of Originator [and Termination Thereof].

(a) Sponsorship Required. In order to act in the capacity of an originator an [An] originator's license must be sponsored in NMLS [the Nationwide Mortgage Licensing System and Registry] by a mortgage company licensed under Finance Code Chapter 156 or a mortgage banker registered under Finance Code Chapter 157. In order to establish sponsorship by a mortgage company or a mortgage banker the originator must amend his or her NMLS license record (MU4
filing) to reflect employment by such mortgage company or mortgage banker and grant such mortgage company or mortgage banker access to his or her license records in order to allow the mortgage company or mortgage banker to register a relationship with the originator in NMLS. The mortgage company or mortgage banker must make corresponding license record amendments in NMLS in order to establish such sponsorship as provided by this section, including a request to establish such sponsorship. Sponsorship is not effective until the mortgage company's or mortgage banker's sponsorship request has been reviewed and approved by the Department. A licensee must not act or attempt to act in the capacity of an originator on behalf of a mortgage company or mortgage banker until sponsorship with such mortgage company or mortgage banker has been established and is effective.

(b) Termination of Sponsorship. Sponsorship may be terminated [removed] by [either] the sponsoring mortgage company or mortgage banker, or the originator. If sponsorship is terminated, the party terminating the sponsorship must immediately make a license record amendment in NMLS notifying the Department [shall notify the Commissioner through the Nationwide Mortgage Licensing System and Registry] that the sponsorship has been terminated, as provided by Tex. Fin. Code §156.211 and §157.019.

(c) Lapsing of Sponsorship; Inactive Status. Failure by an originator to maintain sponsorship will result in the license automatically reverting to an inactive status, during which time the licensee must not act or attempt to act in the capacity of an originator.

§81.102. Temporary Authority.

(a) Purpose and Applicability. The purpose of this section is to specify how an individual licensed in another jurisdiction or by a different licensing authority as an originator, or is a "registered mortgage loan originator" (as defined by Finance Code §180.002(16)), may avail himself or herself of the ability to act in the capacity of an originator in Texas temporarily while he or she seeks licensure by the Department, as provided by Tex. Fin. Code §180.0511.

(b) Application Required. An individual seeking to act under temporary authority must comply with the requirements of Tex. Fin. Code §180.0511. Among other requirements, Tex. Fin. Code §180.0511 requires that the individual file an application with the Department seeking licensure in order to be recognized as having temporary authority. An individual must not act or attempt to act in the capacity of an originator until such application has been filed and the individual has been assigned an NMLS license status code by the Department recognizing such temporary authority. Several status codes reflect and recognize such temporary authority. An individual may confirm his or her temporary authority by reviewing his or her status on the NMLS Consumer Access website (nmlsconsumeraccess.org).

(c) Incomplete Applications. The requirements of §81.100(h) (relating to Licensing - General), providing for the deemed withdrawal of an application that is not complete, are inapplicable to an application for which temporary authority is conferred.

§81.103. Licensing of Military Service Members, Military Veterans, and Military Spouses.

(a) Purpose and Applicability. The purpose of this section is to specify licensing requirements for military service members, military veterans, and military spouses, in accordance with Occupations Code Chapter 55.

(b) Definitions. In this section, the terms "military service member," "military spouse," and "military veteran" have the meanings assigned by Tex. Occ. Code §55.001.

(c) Late Renewal (Reinstatement). As provided by Tex. Occ. Code §55.002, an individual is exempt from any increased fee or other penalty for failing to renew his or her originator license in a timely manner if the individual establishes to the satisfaction of the Commissioner that the individual failed to timely renew the license because the individual was serving as a military service member. A military service member who fails to timely renew his or her originator license must seek reinstatement of the license within the time prescribed by Tex. Fin. Code §157.0062; otherwise, the individual must obtain a new license, including complying with the requirements and procedures then in existence for obtaining an original license.

(d) Expedited License Procedure. As provided by Tex. Occ. Code §55.004 and §55.005, the Department will process a license application as soon as practicable and issue a license to a qualifying applicant who is a military service member, military veteran, or military spouse, if the applicant:

1. holds a current license in another jurisdiction as a residential mortgage loan originator in accordance with the S.A.F.E. Mortgage Licensing Act, 12 U.S.C. §§5101-5117; or

2. held a residential mortgage loan originator license in Texas within the five years preceding the date of the application.

(e) Temporary Authority for Military Spouse. Tex. Occ. Code §55.0041 provides that a military spouse may engage in a business or occupation for which a license is required without obtaining the applicable license if the spouse is currently licensed in good standing in another jurisdiction with substantially similar licensing requirements. However, federal law imposes specific, comprehensive requirements governing when and under what circumstances an individual sanctioned to act as an originator in another jurisdiction may act under temporary authority in this state (12 U.S.C. §5117 relating to Employ- ment Transition of Loan Originators)). Tex. Occ. Code §55.0041(f) further requires that a military spouse "comply with all other laws and regulations applicable to the business or occupation." As a result, a military spouse seeking to avoid himself or herself of the temporary authority conferred by Tex. Occ. Code §55.0041 must apply for and seek temporary authority in accordance with Tex. Fin. Code §180.0511 and §81.102 of this title (relating to Temporary Authority).

§81.104. Required Education.

(a) Pre-Licensing Education. As provided by Finance Code Chapter 180, an individual applying for licensure must complete the pre-licensing education and coursework prescribed by the federal S.A.F.E. Mortgage Licensing Act (federal SAFE Act) and approved by NMLS. Such education and coursework must include three hours of instruction relating to the applicable laws, rules and practice considerations governing residential mortgage loan origination in Texas.

(b) Lapping of Pre-Licensing Education. An individual applying for licensure other than a current license holder seeking renewal or the holder of a recently-expired license seeking reinstatement as provided by Tex. Fin. Code §157.016 (an individual seeking an original license) must have completed the required pre-licensing education and coursework described by subsection (a) within the three years preceding the date of application; otherwise, such individual must retake the pre-licensing education and coursework approved and offered at the time of the application.

(c) Recognition of Pre-Licensing Education Taken in Another Jurisdiction. As provided by Tex. Fin. Code §180.056, the Department will recognize pre-licensing education coursework taken in another jurisdiction subject to the requirements of the federal SAFE Act; provided, it is approved by NMLS for that purpose and otherwise meets the applicable requirements of the federal SAFE Act, and Finance Code Chapter 180. However, the Department will not recognize those hours
of pre-licensing education taken in another jurisdiction the content of which was dedicated to education specific to that jurisdiction and that comprised the twelve-hour undefined electives portion of such pre-licensing education program and coursework. An individual may take coursework that is of limited duration and limited in scope to the applicable laws, rules and practice considerations governing residential mortgage loan origination in Texas in order to supplement and remedy a shortfall in hours derived from non-recognition of pre-licensing education taken in another jurisdiction as provided by this section.

(d) Continuing Education. As provided by Tex. Fin. Code §180.060 and §81.106 of this title (relating to Renewals), a licensee must complete, on an annual basis, continuing education and coursework approved by NMLS in order to renew the license.

§81.105. Fees.
(a) Fees relating to a license or registration will [shall] be established by the Commissioner in accordance with Finance Code, Chapter 157. The amount of the fees may be modified upon not less than 30 days' [days] advance notice posted on the Department's [department's] website.

(b) All fees are nonrefundable and nontransferable.

(c) The Commissioner may, in addition to any disciplinary action, collect a fee in an amount not to exceed $50 for any returned check or credit card chargeback.

(d) For examinations that are conducted outside of Texas [out of state], the Commissioner may collect reimbursement of actual expenses. Actual expenses incurred will be in compliance with the Department's [department's] policies and procedures.

§81.106. Renewals.
(a) A license may be renewed upon:

1. submission of a completed application for renewal through NMLS together with payment of the applicable renewal application fee;
2. a determination that the applicant continues to meet the minimum requirements for licensure; and
3. satisfactory evidence provided to the Department that the license holder has completed the continuing education requirements of Finance Code §180.060.

(b) Commissioner's Discretion to Approve with a Deficiency. The Commissioner may, in her or her sole discretion, approve a renewal application with a deficiency the Commissioner deems to be minor in nature so as to allow the licensee to continue conducting licensed activity while the deficiency is resolved. An application approved by the Commissioner with a pending deficiency will be assigned in NMLS the license status code "Approved - Deficient." Approval of the application by this method does not relieve the licensee of the obligation to resolve the deficiency noted. Failure to resolve such deficiency is grounds for the Commissioner to take disciplinary action against the licensee, including suspension or revocation of the license.

(c) Supplemental Information. The Commissioner may require such additional, clarifying, or supplemental information from any applicant for the renewal of any license pursuant to Finance Code Chapters 157 and 180 as is deemed by the Commissioner to be necessary or advisable to determine compliance with the requirements of Finance Code Chapters 157 and 180.

(d) Reinstatement. The provisions of this section also apply to an individual seeking reinstatement of a recently-expired license, as provided by Tex. Fin. Code §157.016, and should be construed accordingly.

§81.107. NMLS Records: Notice to Licensee.
(a) Amendments to License Records Required. Unless Tex. Fin. Code §157.019 applies and requires additional notice, an originator licensed by the Department must amend his or her NMLS license record (MU4 filing) within 10 days after any material change occurs affecting any aspect of the MU4 filing, including, but not limited to:

1. name (which must be accompanied by supporting documentation submitted to the Department establishing the name change);
2. phone number;
3. email address (including his or her NMLS account email address, as provided by subsection (d) of this section);
4. mailing address;
5. residential history;
6. employment history; and
7. answers to disclosure questions (which must be accompanied by explanations for each such disclosure, together with supporting documentation concerning such disclosure).

(b) Amendments Requiring New Credit History Check. An originator amending his or her MU4 filing to make a financial disclosure is deemed to have authorized the Department to retrieve a current copy of his or her credit report, as provided by Tex. Fin. Code §157.0132 and §81.108 of this title (relating to Background Checks), and the originator must further amend his or her MU4 filing to formally consent to and request such credit report within the NMLS system.

(c) Amendments Requiring New Criminal Background Check. An originator amending his or her MU4 filing to make a criminal disclosure is deemed to have authorized the Department to perform an additional criminal background check in accordance with Tex. Fin. Code §157.0132 and §81.108 of this title (relating to Background Checks) and the originator must further amend his or her MU4 filing to formally consent to and request such criminal background check within the NMLS system.

(d) Notice to Licensee. Service of any correspondence, notification, alert, message, official notice or other written communication issued by the Department will be served on the licensee in accordance with this subsection utilizing the licensee's current contact information of record in NMLS unless another method is prescribed by other applicable law (notice to the originator in a matter referred to the State Office of Administrative Hearings for an adjudicative hearing will be performed in accordance with 1 Texas Administrative Code §155.105.)

1. Service by Email. Service by email will be made utilizing the email address the originator has designated for use with his or her NMLS account (a/k/a the "NMLS account email address" or "individual account email address"). The NMLS account email address is the same email address to which NMLS-generated notifications are sent. Service by email is complete on transmission of the email by the Department to the originator's email service provider; provided, the Department does not receive a "bounce back" notification, or similar, from the email service provider indicating that delivery was not effective. The originator has an ongoing duty and a continuing obligation to monitor the email account designated as their NMLS account email address including to ensure that correspondence from the Department or system notifications from NMLS are not lost in a "spam" or similar folder, or undelivered due to intervention by a "spam filter" or similar service. An originator is deemed to have constructive notice of any email correspondence or NMLS system notifications sent to the email address he or she has designated as his or her NMLS account email address.
§81.108. Background Checks.

(a) NMLS Background Check; Fingerprint. An individual applying for an originator's license must provide authorization and fingerprints as prescribed by NMLS in order to conduct a criminal background history check through the Federal Bureau of Investigation.

(b) Background Checks by the Commissioner. Pursuant to Tex. Fin. Code §157.0132 and Tex. Gov't Code §411.1385, the Commissioner is authorized to separately conduct a criminal background history check through the Texas Department of Public Safety (DPS) as determined in the sole discretion of the Commissioner, and may require the applicant to provide fingerprints in order to conduct a fingerprint-based criminal background history check administered by DPS and to pay any applicable fees to DPS or its designated third-party fingerprint processor.

(c) NMLS Credit Check. An individual applying for an originator's license must provide authorization in the NMLS system for the Department to obtain a copy of the applicant's credit report concerning the applicant's credit history from a credit reporting agency (credit bureau).

(d) Supplemental Information. An individual applying for an originator's license must provide to the Department, through NMLS, information related to any administrative, civil, or criminal findings or proceedings by a governmental jurisdiction, including any information required by §81.109 of this title (relating to Procedures for Review of Background Checks).


(a) Purpose and Applicability. This section establishes procedures utilized by the Commissioner and Department staff in performing background checks and reviewing an individual's criminal background and credit history to determine his or her fitness and eligibility for licensure in accordance with Tex. Fin. Code §157.0132.

(b) Supporting Information/Documentation for Criminal Background Check. In order to facilitate his or her review by the Department, an individual with a criminal history seeking to be licensed by the Department, when requested by Department staff, must provide the following in support of his or her application for each conviction or other criminal proceeding identified by Department staff:

(1) a detailed explanation, in writing, of the events and circumstances for each conviction or other criminal proceeding required to be self-disclosed in his or her application, signed and dated by the individual seeking licensure; and

(2) copies of court records or other documentation reflecting:

(A) the nature of the criminal offense (including the statutory provisions violated, and the severity or classification of the offense);

(B) the individual's plea (including any terms or other arrangements for the plea);

(C) the conviction (judgment or court order);

(D) the sentence imposed;

(E) any probation or community supervision imposed (including evidence of compliance), and

(F) any other action in the proceeding causing final disposition of the case to be deferred.

(c) Supporting Information/Documentation for Credit History Check. In order to facilitate his or her review by the Department, an individual seeking to be licensed by the Department, when requested by Department staff, must provide the following for each financial disclosure made in his or her application for licensure and each credit account on his or her credit report identified by Department staff:

(1) a detailed explanation, in writing, of the background and circumstances surrounding each financial disclosure made or credit account identified, signed and dated by the individual seeking licensure;

(2) if a bankruptcy proceeding is disclosed, a copy of the order of discharge from such proceeding, or if the proceeding is ongoing, the current bankruptcy petition, together with the financial schedules filed in the proceeding;

(3) if a judgment or lien is disclosed, a copy of such judgment or lien filing; and

(4) if delinquent child support is disclosed, a copy of the most recent statement of account or other documentation reflecting the current amount due, and if the individual is in a payment plan or has otherwise entered into terms for repayment, a copy of such plan or terms.

(d) Effect of Providing Supporting Documentation. By providing documentation to the Department in accordance with subsections (b) and (c) of this section, the individual certifies that he or she has a good faith belief that such documents are true and correct copies of documents issued by the person that originally created the document that the Department may rely on in making a decision on the application. By providing such supporting documentation, the individual consents to such documentation being admissible at an adjudicative hearing if the Commissioner seeks to deny the individual's application for licensure resulting in a contested case, and the individual waives any objections concerning the admissibility of such documentation into the administrative record at such adjudicative hearing.

(e) Certified Documents. Notwithstanding subsection (d) of this section, an individual seeking to be licensed by the Department must obtain and provide the Department with certified or exemplified copies of any documents described in subsections (b) and (c) of this section upon written request by Department staff.

§81.110. Criminal Conviction Guidelines.

(a) Purpose and Applicability. This section establishes the criteria utilized by the Commissioner and Department staff in reviewing individuals with a criminal history to determine his or her fitness to be licensed by the Department as an originator. This section implements the requirements of Tex. Occ. Code §53.025, requiring the Department to establish guidelines related to such reviews, including designating particular crimes and offenses which the Department considers to be directly related to the duties and responsibilities of acting as an originator, and that may constitute grounds for denial of licensure. The authority for denial of a license based on an individual's criminal history under the Occupations Code is in addition to and augments that arising from the Finance Code. This section also describes the Commissioner's other statutory authority arising from the Finance Code for denial of licensure based on an individual's criminal history, including...
outlining certain offenses deemed by this section to be grounds for denial under the Finance Code.

(b) Ineligibility by Operation of Law. The following individuals are ineligible for licensure as an originator by operation of law due to his or her criminal history:

(1) an individual who, within the seven years preceding the date of the application, has been convicted of, or pled guilty to or nolo contendere to a felony in a court of this state, another state or territory of the United States, a federal court of the United States, or other foreign, or military court, in accordance with Tex. Fin. Code § 810.055(a); and

(2) an individual who, at any time, has been convicted of, or pled guilty to or nolo contendere to a felony offense involving an act of fraud, dishonesty, breach of trust, or money laundering, in accordance with Tex. Fin. Code § 810.055(a).

(c) Schedule of Criminal Offenses Determined to be Directly Related. The Finance Commission of Texas and the Department's Commissioner has determined the criminal offenses in the following schedule are directly related to the duties and responsibilities of an individual licensed by the Department to act as an originator. The schedule includes those criminal offenses most likely to be encountered by the Department and is made from the perspective of the criminal laws of the State of Texas and the United States federal government. However, the schedule is not an exhaustive review of all offenses, and does not limit the Department from considering a criminal offense not specifically listed in the schedule. The schedule should be construed to include the substantially similar or functionally equivalent crimes of any state or territory of the United States, violations of the Texas Code of Military Justice (Government Code Chapter 432), violations of the Uniform Code of Military Justice, or crimes of a foreign country or governmental subdivision thereof. In determining whether a criminal offense of another jurisdiction is substantially similar or functionally equivalent, an inquiry will be made comparing the subject offense with an offense on the schedule to determine whether the subject offense has similar elements, including intent and classification of punishment, and whether the crime would have been punishable had the acts been committed in Texas.

Figure: 7 TAC § 81.110(c)

(d) Duties and Responsibilities of a Residential Mortgage Loan Originator. An originator acts as an intermediary between the consumer seeking a residential mortgage loan and the underwriter who ultimately determines whether the consumer qualifies for the loan. The originator may assist the consumer in reviewing his or her income, expenses and credit worthiness to determine whether he or she will qualify for a loan, and on what terms they might qualify. The originator may assist the consumer in making the loan application, and sometimes directs the consumer to present his or her financial information in the manner to which the lender or underwriter is accustomed. A residential mortgage loan often takes place in the context of a real estate transaction, and as a result, an originator sometimes advises the consumer of his or her financial ability to purchase residential real estate, including securing prequalification documents to establish their purchasing power while shopping in the marketplace. Once the loan has entered the underwriting process, the originator may assist the consumer in resolving any outstanding conditions of the underwriter to qualify for the loan and obtain approval, including addressing items of concern on a consumer's credit report, immigration/residency status, available cash-on-hand for the transaction, and income which may not be readily established by documentary evidence, such as that of an independent contractor. The originator communicates to the consumer the ever-changing loan terms as prevailing rates and terms in the marketplace fluctuate, and is often a key figure in advising the consumer of when and how he or she may "lock" the loan in advance of closing and solidify the loan terms. The originator may serve as communications liaison between the consumer and various parties to the transaction, including the lender, the underwriting department or a third-party underwriter, real estate brokers and sales agents, appraisers, insurance providers, closing/settlement agents, and representatives of various taxing authorities. In performing his or her duties, an originator is entrusted with, and has access to, sensitive information of the consumer, including his or her social security number, date of birth, immigration/residency status, and all the personal financial details of the consumer, including employment, income, assets, and expenses.

(e) Categories of Offenses Related to Residential Mortgage Loan Origination. The Finance Commission and the Department's Commissioner has determined the following categories of criminal offenses are directly related to the duties and responsibilities of acting as an originator:

(1) criminal offenses involving fraud, falsification, dishonesty, deception, and breach of trust;

(2) criminal offenses involving theft or embezzlement; and

(3) criminal offenses involving intoxication by drugs or alcohol.

(f) Factors. Unless the individual is ineligible for licensure by operation of law as provided by subsection (b) of this section, in determining whether a criminal offense is directly related to the duties and responsibilities of an individual licensed by the Department to act as an originator, the Commissioner will consider:

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the purposes for requiring a license to act as an originator;

(3) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the individual had previously been involved;

(4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the license sought by the individual; and

(5) any correlation between the elements of the crime and the duties and responsibilities of an individual licensed by the Department to act as an originator.

(g) In addition to the factors listed in subsection (f) of this section, the Commissioner, in determining whether an individual who has been convicted of a crime (as determined by Tex. Fin. Code § 157.0131 and subsection (h) of this section) is unfit and should be disqualified from being licensed by the Department, will consider:

(1) the extent and nature of the individual's past criminal activity;

(2) the age of the individual when the crime was committed;

(3) the amount of time that has elapsed since the individual's last criminal activity;

(4) the amount of time that has elapsed since the individual's release from incarceration;

(5) the conduct and work activity of the individual before and after the criminal activity;

(6) evidence of the individual's rehabilitation or rehabilitative efforts while incarcerated or after release.
(7) letters of recommendation, signed and dated, by a current employer, if the individual is employed, or by a previous employer, stating that the employer has specific and complete knowledge of the individual's criminal history and stating the reasons that the employer is recommending that the individual be considered fit to be licensed by the Department; and

(8) any other letters of recommendation, signed and dated, by an individual familiar with the applicant and their character and fitness, with specific and complete knowledge of the individual's criminal history, and able to offer competent information about the nature and extent of the applicant's rehabilitative efforts.

(h) Convictions Considered. The determination of whether a criminal proceeding is considered to have resulted in a conviction for purposes of this section will be made in accordance with Tex. Fin. Code §157.0131, which states that an individual is considered to have been convicted of a criminal offense if:

(1) a sentence is imposed on the individual;

(2) the individual received probation or community supervision, including deferred adjudication or community service; or

(3) the court deferred final disposition of the individual's case.

(i) Consideration of Disciplinary Actions. Unless the individual is ineligible for licensure by operation of law as provided by subsection (b) of this section, in addition to the individual's criminal convictions, the Commissioner may consider the individual's past history of disciplinary actions with the Department, or another regulatory body or official of another jurisdiction regulating residential mortgage loan origination or other financial services, which may serve as separate grounds for license ineligibility, or as an aggravating factor in favor of disqualifying the individual for licensure.

(j) Consideration of General Fitness. Unless the individual is ineligible for licensure by operation of law as provided by subsection (b) of this section, in addition to the individual's criminal convictions, the Commissioner may consider the individual's past history of disciplinary actions with the Department, or another regulatory body or official of another jurisdiction regulating residential mortgage loan origination or other financial services, which may serve as separate grounds for license ineligibility, or as an aggravating factor in favor of disqualifying the individual for licensure.

(k) Offenses Deemed to Involve Fraud or Dishonesty. Any felony criminal offense listed in the schedule contained in subsection (c) of this section which has a nexus to residential mortgage loan origination arising from subsection (c)(1) or (2) of this section (concerning crimes involving fraud, falsification, dishonesty, deception and breach of trust, and theft or embezzlement, respectively) is deemed to constitute a crime involving an act of fraud, dishonesty, breach of trust, or money laundering for purposes of Tex. Fin. Code §180.055(a), and will result in ineligibility by operation of law, as provided by subsection (b) of this section.

§81.111. Request for Criminal History Eligibility Determination.

(a) Purpose and Applicability. This section establishes the procedures by which an individual may seek a preliminary review of his or her eligibility to be licensed by the Department with respect to his or her criminal history prior to formally applying with the Department for licensure, as authorized by Occupations Code Chapter 53. Pursuant to Tex. Occ. Code §53.102, the evaluation contemplated by this section is available to an individual who has reason to believe he or she is ineligible to be licensed by the Department due to a conviction or deferred adjudication for a felony or misdemeanor offense, and who is enrolled or is planning to enroll in an educational program that prepares an individual to be licensed by the Department. The Commissioner will not offer advisory opinions concerning criminal convictions or sentences that have not actually occurred.

(b) Request for Preliminary Eligibility Determination: Supporting Documentation. The request must be made on the form prescribed by the Commissioner and published on the Department's website. The fee to make a request under this section is $75.

(c) Review of Request for Preliminary Evaluation. A request made under this section will be reviewed by the Commissioner and Department staff to determine the requestor's eligibility utilizing the same procedures for review of an individual's criminal history when making an application for licensure, and is subject to the Department's criminal conviction guidelines set forth in §81.110 of this title (relating to Criminal Conviction Guidelines). As a result, the requestor must list all offenses that actually resulted in a criminal conviction, or that otherwise constitute a criminal conviction for purposes of Tex. Fin. Code §157.0131 and §81.110 of this title (relating to Criminal Conviction Guidelines). The requestor's incarcerated status that would render the individual ineligible for licensure pursuant to Tex. Occ. Code §53.021(b) will be disregarded; however, the Department will consider the implications of the requestor's anticipated release from incarceration in making its determination.

(d) Determination of Eligibility. Within 90 days of receipt of the fully-completed request, the Department will notify the requestor of his or her eligibility to receive a license issued under Finance Code Chapters 157 and 180.

(e) Effect of Determination. In the absence of new evidence known but not disclosed by the requestor, or not reasonably available to the Department in consideration of the disclosures made by the requestor, the Commissioner's decision regarding eligibility of the requestor concerning his or her criminal history will be determinative for purposes of reviewing a subsequent application for licensure from the requestor. However, the Commissioner's decision regarding eligibility will not be determinative to the extent the request for preliminary eligibility determination contained fraudulent or misleading information or supporting documentation or otherwise failed to list a criminal conviction of the requestor that was not otherwise discovered by the Department in investigating the request, regardless of whether or not the requestor was aware of the conviction at the time of the request, and including any subsequent conviction received by the requestor. A decision that the requestor is eligible will not be determinative if the requestor is determined to be ineligible for licensure by operation of law as provided by Tex. Fin. Code §180.055(a) and §81.110 of this title (relating to Criminal Conviction Guidelines).

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 25, 2021.

Iain A. Berry
Associate General Counsel
Department of Savings and Mortgage Lending
Earliest possible date of adoption: October 10, 2021
For further information, please call: (512) 475-1535
SUBCHAPTER B. LICENSING
7 TAC §§81.102 - 81.104, 81.106 - 81.110

Statutory Authority

This proposal is made under the authority of Finance Code §157.0023, which authorizes the commission to adopt rules necessary to implement or fulfill the purposes of Finance Code Chapter 157, and as required to carry out the intentions of the Federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (federal SAFE Act).

This proposal affects the statutes contained in Finance Code Chapter 157, the Mortgage Banker Registration and Residential Mortgage Loan Originator License Act, and Chapter 180, the Texas Secure and Fair Enforcement for Mortgage Licensing Act of 2009.

§81.102. Recovery Fund.
§81.103. Request for Criminal History Eligibility Determination.
§81.104. Renewals.
§81.106. Education Program.
§81.107. License Record Changes.
§81.108. Background.
§81.109. Pre-licensing Education.
§81.110. Licensing of Military Service members, Military Veterans, and Military Spouses.

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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PART 8. JOINT FINANCIAL REGULATORY AGENCIES

CHAPTER 153. HOME EQUITY LENDING

The Finance Commission of Texas and the Texas Credit Union Commission ("commissions") propose amendments to §153.1 (relating to Definitions), §153.5 (relating to Two Percent Fee Limitation: Section 50(a)(6)(E)), §153.12 (relating to Closing Date: Section 50(a)(6)(M)(ii)), §153.13 (relating to Preclosing Disclosures: Section 50(a)(6)(M)(iii)), §153.17 (relating to Authorized Lenders: Section 50(a)(6)(P)), §153.22 (relating to Copies of Documents: Section 50(a)(6)(Q)(v)), §153.26 (relating to Acknowledgment of Fair Market Value: Section 50(a)(6)(Q)(ix)), §153.45 (relating to Refinance of an Equity Loan: Section 50(f)), and §153.51 (Consumer Disclosure: Section 50(g)) in 7 TAC, Chapter 153, concerning Home Equity Lending.

7 TAC Chapter 153 contains the commissions' interpretations of the home equity lending provisions of Texas Constitution, Article XVI, Section 50 ("Section 50"). In general, the purposes of the proposed rule changes to 7 TAC Chapter 153 are: (1) to specify requirements for electronic disclosures, and (2) to describe Section 50's applicability to out-of-state financial institutions.

The interpretations in 7 TAC Chapter 153 are administered by the Joint Financial Regulatory Agencies ("agencies"), consisting of the Texas Department of Banking, Department of Savings and Mortgage Lending, Office of Consumer Credit Commissioner, and Texas Credit Union Department. The agencies distributed an early precomment draft of proposed changes to interested stakeholders for review, and then held an online webinar regarding the proposed changes. The agencies received one informal precomment on the rule text draft. The agencies appreciate the thoughtful input provided by stakeholders.

Proposed amendments to §153.1 add definitions and statutory citations for the terms "E-Sign Act" (referring to the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. §§7001-7006) and "UETA" (referring to the Texas Uniform Electronic Transactions Act, Texas Business & Commerce Code, Chapter 322). The terms "E-Sign Act" and "UETA" provide a concise way to refer to these two statutes, and are used throughout this proposal in connection with electronic disclosures. Proposed amendments throughout §153.1 would also rename other definitions accordingly.

Proposed amendments to §153.5 would revise the title to this section to conform to letter case conventions used in other rules. In addition, citations to the definition of "interest" in §153.1 would be updated to reflect the renumbering described in the previous paragraph.

Proposed amendments to §153.12 relate to oral and electronic loan applications. Section 50(a)(6)(M)(i) provides that a home equity loan closing must occur at least 12 days after the owner "submits a loan application to the lender." Proposed new §153.12(3) would explain that a loan application may be submitted electronically in accordance with state and federal law governing electronic disclosures, with references to the UETA and the E-Sign Act. These amendments respond to an informal precomment recommending amendments to §153.12 on electronic disclosures. A proposed amendment to §153.12(2) would also replace the word "given" with "submitted," to be consistent with Section 50(a)(6)(M)(i).

A proposed amendment to §153.13 describes requirements for providing an electronic copy of the preclosing disclosure. Section 50(a)(6)(M)(ii) of the Texas Constitution requires the lender to provide the owner with a copy of the loan application and a final itemized disclosure of amounts that will be charged at closing. The current interpretation at §153.13 refers to these items as the "preclosing disclosure." Proposed new §153.13(4) would explain that the lender may provide the preclosing disclosure electronically in accordance with state and federal law governing electronic signatures and delivery of electronic documents, and would include references to the UETA and the E-Sign Act.

The amendment to §153.13 responds to a request that the commissions receive in September 2020, while the commissions were conducting a rule review of Chapter 153. As a result of the rule review, the commissions amended §153.22 to specify that
the lender may provide signed documents electronically in accordance with state and federal law. In an official comment, a stakeholder recommended either: (1) adopting a new section to specify that the lender may electronically deliver all notices, disclosures, and documents to the property owner, or (2) amending Chapter 153’s individual sections on required disclosures to specify that the lender may electronically deliver each disclosure. Although the commissions and the agencies generally do not object to the use of electronic disclosures, the commissions received this suggestion too late in the rulemaking process to include the proposed changes in the October 2020 adoption of rule review amendments. The commissions indicated that the agencies would revisit this issue in the future. After reviewing the request, the commissions believe that it is appropriate to amend each section of Chapter 153 requiring disclosures individually. This will help ensure that Chapter 153 remains clear with respect to which constitutional provision is interpreted by each section of Chapter 153.

In addition, an informal precomment recommended that §153.13 (and other sections in this proposal) consistently refer to both electronic signatures and delivery of electronic documents, when describing requirements under state and federal law. In response to this precomment, the proposed new text throughout this proposal refers to both of these sets of requirements.

A proposed amendment to §153.17 describes Section 50’s applicability to out-of-state financial institutions. Section 50(a)(6)(P) of the Texas Constitution lists the entities that are authorized to make home equity loans, and includes "a bank, savings and loan association, savings bank, or credit union doing business under the laws of this state or the United States." Proposed new §153.17(2) specifies that for purposes of Section 50(a)(6)(P), a "bank, savings and loan association, savings bank, or credit union doing business under the laws of this state or the United States" includes a financial institution described by Texas Finance Code, §201.101(1)(A)-(D) that is chartered under the laws of another state and does business in Texas in accordance with applicable state law, including the requirements of Texas Finance Code, §201.102. The financial institutions described by Texas Finance Code, §201.101(1)(A) - (D) are banks (including savings banks), savings and loan associations, and credit unions.

The amendment to §153.17 responds to a request that the agencies received from an out-of-state bank in March 2021. The request asks whether a bank organized under the laws of another state may make a home equity loan under the Texas Constitution. The commissions believe that proposed new §153.17(2) appropriately answers this question by referring to provisions of the Texas Finance Code that govern out-of-state financial institutions in Texas.

In an informal precomment, a stakeholder recommended deleting the phrase "or the United States" and adding an exception for institutions doing business under the laws of the United States. The stakeholder argued that the proposed text creates an inconsistency because institutions doing business under the laws of the United States are not chartered under the laws of a state. The commissions do not believe that the proposed amendment to §153.17 creates an inconsistency. The proposed amendment uses the word "includes," and does not suggest that the listed state-chartered institutions are the entire population of financial institutions encompassed by Section 50(a)(6)(P). The commissions do not believe that the stakeholder’s recommended change would clarify the text, and have not included it in the current proposal. However, for clarity, the proposed amendment to §153.17 includes the phrase "state-chartered" before "financial institution."

A proposed amendment to §153.22 would revise references to the UETA and the E-Sign Act, to refer to these statutes consistently with other sections in this proposal.

A proposed amendment to §153.26 describes requirements for electronically signing the acknowledgment of fair market value. Section 50(a)(6)(Q)(ix) of the Texas Constitution requires the lender and the owner to sign a written acknowledgment of the fair market value of the homestead property. Proposed new §153.26(4) would explain that the owner and lender may sign the written acknowledgment electronically in accordance with state and federal law governing electronic signatures and delivery of electronic documents. This amendment responds to the same September 2020 stakeholder request on electronic disclosures described earlier in this proposal.

A proposed amendment to §153.45 describes requirements for providing an electronic copy of the refinance disclosure. Section 50(f)(2)(D) of the Texas Constitution requires the lender to provide a refinance disclosure to the owner if the owner applies for a refinance of a home equity loan to a non-home-equity loan. Proposed new §153.45(4)(E) would explain that the lender may provide the refinance disclosure electronically in accordance with state and federal law governing electronic signatures and delivery of electronic documents. This amendment responds to the same September 2020 stakeholder request on electronic disclosures described earlier in this proposal.

A proposed amendment to §153.51 describes requirements for providing an electronic copy of the consumer disclosure. Section 50(g) of the Texas Constitution requires the lender to provide a consumer disclosure to the owner at least 12 days before closing a home equity loan. Proposed new §153.51(2) would explain that the lender may provide the consumer disclosure electronically in accordance with state and federal law governing electronic signatures and delivery of electronic documents. This amendment responds to the same September 2020 stakeholder request on electronic disclosures described earlier in this proposal.

The commissions invite stakeholder comments on whether the proposed amendments appropriately refer to both the UETA and the E-Sign Act. The commissions’ general understanding is that both of these statutes contain requirements relating to electronic delivery and signatures, and that prudent lenders will comply with both statutes in providing and executing electronic documents. If any stakeholders have a different understanding of the applicability of these statutes and recommend a different approach to the proposed amendments, then the commissions would be interested in receiving comments on this issue, along with any suggested alternative text.

Dan Frasier (Director of Bank and Trust Supervision, Texas Department of Banking), Antonia Antov (Director of Operations, Department of Savings and Mortgage Lending), Mirand Diamond (Director of Licensing and Registration, Office of Consumer Credit Commissioner), and John Kolhoff (Commissioner, Texas Credit Union Department) have determined that for the first five-year period the proposed rule changes are in effect, there will be no fiscal implications for state or local government as a result of administering the rule changes.

Dan Frasier (Director of Bank and Trust Supervision, Texas Department of Banking), William Purce (Director of Mortgage
Regulation, Department of Savings and Mortgage Lending), Huffman Lewis (Director of Consumer Protection, Office of Consumer Credit Commissioner), and John Kolhoff (Commissioner, Texas Credit Union Department) have determined that for each year of the first five years the proposed rule changes are in effect, the public benefits anticipated as a result of the changes will be that the commissions’ rules will be more easily understood by stakeholders, and will provide clearer guidance to ensure that lenders comply with Section 50.

There is no anticipated cost to persons who are required to comply with the amendments as proposed. There will be no adverse economic effect on small businesses, micro-businesses, or rural communities.

During the first five years the proposed rule changes will be in effect, the rules will not create or eliminate a government program. Implementation of the rule changes will not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the rule changes will not require an increase or decrease in future legislative appropriations to the agencies, because the agencies are self-directed, semi-independent agencies that do not receive legislative appropriations. The proposed rule changes do not require an increase or decrease in fees paid to the agencies. The proposal would not create a new regulation. The proposal would expand current §153.1, §153.12, §153.13, §153.17, §153.26, §153.45, and §153.51 to provide additional guidance to lenders. The proposal would not limit or repeal an existing regulation. The proposed rule changes do not increase or decrease the number of individuals subject to the rules’ applicability. The agencies do not anticipate that the proposed rule changes will have an effect on the state’s economy.

Comments on the proposal may be submitted in writing to Matthew Nance, Deputy General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705 or by email to rule.comments@occc.texas.gov. To be considered, a written comment must be received on or before 5:00 p.m. central time on the 31st day after the date the proposal is published in the Texas Register. At the conclusion of business on the 31st day after the proposal is published in the Texas Register, no further written comments will be considered or accepted by the commissions.

The rule changes are proposed under Texas Finance Code, §11.308 and §15.413, which authorize the commissions to issue interpretations of Texas Constitution, Article XVI, §50(a)(5) - (7), (e) - (p), (t), and (u), subject to Texas Government Code, Chapter 2001.

The constitutional provisions affected by the proposal are contained in Texas Constitution, Article XVI, §50. No statute is affected by this proposal.

§153.1. Definitions.

Any reference to Section 50 in this interpretation refers to Article XVI, Texas Constitution, unless otherwise noted. These words and terms have the following meanings when used in this chapter, unless the context indicates otherwise:

(1) - (6) (No change.)


(8) Equity loan--An extension of credit as defined and authorized under the provisions of Section 50(a)(6).
zone determination, tax certificate, inspection, or appraisal management services.

(9) Charges to Maintain. Charges paid by an owner or an owner's spouse to maintain an equity loan that are not interest under §153.1(12) [§153.1(11)] of this title are fees subject to the two percent limitation if the charges are paid at the inception of the loan, or if the charges are customarily paid at the inception of an equity loan but are deferred for later payment after closing.

(10) - (11) (No change.)

(12) Charges to Service. Charges paid by an owner or an owner's spouse for a party to service an equity loan that are not interest under §153.1(12) [§153.1(11)] of this title are fees subject to the two percent limitation if the charges are paid at the inception of the loan, or if the charges are customarily paid at the inception of an equity loan but are deferred for later payment after closing.

(13) - (20) (No change.)


An equity loan may not be closed before the 12th calendar day after the later of the date that the owner submits an application for the loan to the lender or the date that the lender provides the owner a copy of the required consumer disclosure. One copy of the required consumer disclosure may be provided to married owners. For purposes of determining the earliest permitted closing date, the next succeeding calendar day after the later of the date that the owner submits an application for the loan to the lender or the date that the lender provides the owner a copy of the required consumer disclosure is the first day of the 12-day waiting period. The equity loan may be closed at any time on or after the 12th calendar day after the later of the date that the owner submits an application for the loan to the lender or the date that the lender provides the owner a copy of the required consumer disclosure.

(1) (No change.)

(2) A loan application may be submitted [given] orally [or electronically].

(3) A loan application may be submitted electronically in accordance with state and federal law governing electronic signatures and delivery of electronic documents. The UETA and the E-Sign Act include requirements for electronic signatures and delivery.

§153.13. Preclosing Disclosures: Section 50(a)(6)(M)(ii)

An equity loan may not be closed before one business day after the date that the owner of the homestead receives a copy of the loan application, if not previously provided, and a final itemized disclosure of the actual fees, points, interest, costs, and charges that will be charged at closing. If a bona fide emergency or another good cause exists and the lender obtains the written consent of the owner, the lender may provide the preclosing disclosure to the owner or the lender may modify the previously provided preclosing disclosure on the date of closing.

(1) - (3) (No change.)

(4) The lender may provide the preclosing disclosure electronically in accordance with state and federal law governing electronic signatures and delivery of electronic documents. The UETA and the E-Sign Act include requirements for electronic signatures and delivery.

(5) [45] Bona fide emergency.

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

(6) [45] Good cause. An owner may consent to receive the preclosing disclosure or a modification of the preclosing disclosure on the date of closing if another good cause exists.

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

(7) [46] An equity loan may be closed at any time during normal business hours on the next business day following the calendar day on which the owner receives the preclosing disclosure or any calendar day thereafter.

(8) [47] The owner maintains the right of rescission under Section 50(a)(6)(Q)(vii) even if the owner exercises an emergency or good cause modification of the preclosing disclosure.


An equity loan must be made by one of the following that has not been found by a federal regulatory agency to have engaged in the practice of refusing to make loans because the applicants for the loans reside or the property proposed to secure the loans is located in a certain area: a bank, savings and loan association, savings bank, or credit union doing business under the laws of this state or the United States, including a subsidiary of a bank, savings and loan association, savings bank, or credit union described by this section; a federally chartered lending instrumentality or a person approved as a mortgagee by the United States government to make federally insured loans; a person licensed to make regulated loans, as provided by statute of this state; a person who sold the homestead property to the current owner and who provided all or part of the financing for the purchase; a person who is related to the homestead owner within the second degree of affinity and consanguinity; or a person regulated by this state as a mortgage banker or mortgage company.

(1) An authorized lender under Texas Finance Code, Chapter 341 must meet both constitutional and statutory qualifications to make an equity loan.

(2) For purposes of Section 50(a)(6)(P), a "bank, savings and loan association, savings bank, or credit union doing business under the laws of this state or the United States" includes a state-chartered financial institution described by Texas Finance Code, §201.101(1)(A)-(D) that:

(A) is chartered under the laws of another state; and
(B) does business in Texas in accordance with applicable state law, including the requirements of Texas Finance Code, §201.102.

(3) [48] A HUD-approved mortgagee is a person approved as a mortgagee by the United States government to make federally insured loans for purposes of Section 50(a)(6)(P)(ii). Loan correspondents to a HUD-approved mortgagee are not authorized lenders of equity loans unless qualifying under another provision of Section 50(a)(6)(P).

(4) [49] A person who is licensed under Texas Finance Code, Chapter 156 is a person regulated by this state as a mortgage company for purposes of Section 50(a)(6)(P)(vi). A person who is registered under Texas Finance Code, Chapter 157 is a person regulated by this state as a mortgage banker for purposes of Section 50(a)(6)(P)(vi).

(5) [44] A person who is licensed under Texas Finance Code, Chapter 342 is a person licensed to make regulated loans for purposes of Section 50(a)(6)(P)(iii). If a person is not described by Section 50(a)(6)(P)(i), (ii), (iv), (v), or (vi), then the person must obtain a license under Texas Finance Code, Chapter 342 in order to be authorized to make an equity loan under Section 50(a)(6)(P)(iii).


At closing, the lender must provide the owner with a copy of the final loan application and all executed documents that are signed by the owner at closing in connection with the equity loan.

The owner of the homestead and the lender must sign a written acknowledgment as to the fair market value of the homestead property on the date the extension of credit is made.

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


§153.45. Refinance of an Equity Loan: Section 50(f).

A refinance of debt secured by the homestead, any portion of which is an extension of credit described by Subsection (a)(6) of Section 50, may not be secured by a valid lien against the homestead unless either the refinance of the debt is an extension of credit described by Subsection (a)(6) or (a)(7) of Section 50, or all of the conditions in Section 50(f)(2) are met.

(1) - (3) (No change.)

(4) Refinance Disclosure. To meet the condition in Section 50(f)(2)(D), the lender must provide the refinance disclosure described in Section 50(f)(2)(D) to the owner on a separate document not later than the third business day after the date the owner submits the loan application to the lender and at least 12 days before the date the refinance of the extension of credit is closed.

(A) - (D) (No change.)

(E) The lender may provide the refinance disclosure electronically in accordance with state and federal law governing electronic signatures and delivery of electronic documents. The UETA and the E-Sign Act include requirements for electronic signatures and delivery.

(F) [44] One copy of the required refinance disclosure may be provided to married owners.

(G) [44] The refinance disclosure is only a summary of the owner's rights, which are governed by the substantive terms of the constitution. The substantive requirements prevail regarding a lender's responsibilities in an equity loan or refinance. A lender may supplement the refinance disclosure to clarify any discrepancies or inconsistencies.

(H) [44] A lender may rely on an established system of verifiable procedures to evidence compliance with this paragraph.

(I) [44] The Finance Commission will publish a Spanish translation of the refinance disclosure on its website. A lender whose discussions with the owner are conducted primarily in Spanish may provide the Finance Commission's Spanish translation to the owner, although the Spanish translation is not required by Section 50(f)(2).

§153.51. Consumer Disclosure: Section 50(g).

An equity loan may not be closed before the 12th day after the lender provides the owner with the consumer disclosure on a separate instrument.

(1) (No change.)

(2) The lender may provide the consumer disclosure electronically in accordance with state and federal law governing electronic signatures and delivery of electronic documents. The UETA and the E-Sign Act include requirements for electronic signatures and delivery.

(3) [42] Certain provisions of the consumer disclosure do not contain the exact identical language concerning requirements of the equity loan that have been used to create the substantive requirements of the loan. The consumer notice is only a summary of the owner's rights, which are governed by the substantive terms of the constitution. The substantive requirements prevail regarding a lender's responsibilities in an equity loan transaction. A lender may supplement the consumer disclosure to clarify any discrepancies or inconsistencies.

(4) [44] A lender may rely on an established system of verifiable procedures to evidence compliance with this section.

(5) [44] A lender whose discussions with the borrower are conducted primarily in Spanish for a closed-end loan may rely on the translation of the consumer notice developed under the requirements of Texas Finance Code, §341.502. Such notice shall be made available to the public through publication on the Finance Commission's webpage.

(6) [44] If the owner has executed a power of attorney described by §153.15(2) of this title (relating to Location of Closing: Section 50(a)(6)(N)), then the lender may provide the consumer disclosure to the attorney-in-fact instead of providing it to the owner.

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, 2021.
TRD-202103382
Matthew Nance
Deputy General Counsel, Office of Consumer Credit Commissioner
Joint Financial Regulatory Agencies
Earliest possible date of adoption: October 10, 2021
For further information, please call: (512) 936-7660

TITLE 16. ECONOMIC REGULATION
PART 2. PUBLIC UTILITY COMMISSION OF TEXAS
CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS
SUBCHAPTER C. INFRASTRUCTURE AND RELIABILITY
16 TAC §25.55

The Public Utility Commission of Texas (commission) proposes new 16 Texas Administrative Code (TAC) §25.55, relating to weather emergency preparedness, to implement weather emergency preparedness measures for generation entities and trans-
mission service providers in the Electric Reliability Council of Texas (ERCOT) power region, as required by Senate Bill 3 (SB 3), 87th Legislature Session (Regular Session).

Proposed §25.55 represents the first of two phases in the commission’s development of robust weather emergency preparedness reliability standards. It is the intent of the commission that the primary objective of implementing phase one weather emergency preparedness reliability standards is to ensure that the electric industry is prepared to provide continuous reliable electric service throughout this upcoming winter season and to comply with the statutory deadline for the adoption of weather emergency preparedness reliability standards set forth in SB 3. Specifically, the proposal requires generators to implement the winter weather readiness actions identified in the 2012 Quanta Technology Report on Extreme Weather Preparedness Best Practices and to fix any known, acute issues that arose during the 2020 - 2021 winter weather season. Similarly, the commission requires transmission service providers to implement key recommendations contained in the 2011 Report on Outages and Curtailments During the Southwest Cold Weather Event on February 1-5, 2011, jointly prepared by the Federal Energy Regulatory Commission and the North American Electric Reliability Corporation. Further, the proposal requires a notarized attestation from the highest-ranking representative, official, or official with binding authority over each of the above entities attesting to the completion of all required activities.

The commission will develop phase two of the weather emergency preparedness reliability standards in a future project. The phase two weather emergency preparedness reliability standards will consist of a more comprehensive, year-round set of weather emergency preparedness reliability standards that will be informed by a robust weather study that is currently being conducted by ERCOT in consultation with the Office of the Texas State Climatologist.

Growth Impact Statement

The agency provides the following governmental growth impact statement for the proposed rule, as required by Texas Government Code §2001.0221. The agency has determined that for each year of the first five years that the proposed rule is in effect, the following statements will apply:

1) the proposed rule will not create a government program and will not eliminate a government program;
2) implementation of the proposed rule will not require the creation of new employee positions and will not require the elimination of existing employee positions;
3) implementation of the proposed rule will not require an increase and will not require a decrease in future legislative appropriations to the agency;
4) the proposed rule will not require an increase and will not require a decrease in fees paid to the agency;
5) the proposed rule will create a new regulation;
6) the proposed rule will not expand, limit, or repeal an existing regulation;
7) the proposed rule will not change the number of individuals subject to the rule’s applicability; and
8) the proposed rule will positively affect this state’s economy by reducing the risk of widespread involuntary load shed events that result in economic harm to residents and businesses.

Fiscal Impact on Small and Micro-Businesses and Rural Communities

There is no adverse economic effect anticipated for small businesses, micro-businesses, or rural communities as a result of implementing the proposed rule. Accordingly, no economic impact statement or regulatory flexibility analysis is required under Texas Government Code §2006.002(c).

Takings Impact Analysis

The commission has determined that the proposed rule will not be a taking of private property as defined in chapter 2007 of the Texas Government Code.

Fiscal Impact on State and Local Government

Kristin Abbott, Project Manager, has determined that, for the first five-year period the proposed rule is in effect, there will be no fiscal implications for the state or for units of local government under Texas Government Code §2001.024(a)(4) as a result of enforcing or administering the sections.

Public Benefits

Ms. Abbott has also determined that, for each year of the first five years the proposed rule and amendments are in effect, the anticipated public benefit expected as a result of the adoption of the proposed amendments will be alignment of commission rules with the requirements of PURA §35.0021 and §38.075. Ms. Abbott has determined that the economic costs to persons required to comply with the rule under Texas Government Code §2001.024(a)(5) will vary on an individual basis, depending on the current weather preparation readiness of the facilities and generation resources to which the rule is applicable.

Local Employment Impact Statement

For each year of the first five years the proposed rule is in effect, there should be no effect on a local economy; therefore, no local employment impact statement is required under Texas Government Code §2001.022.

Costs to Regulated Persons

Texas Government Code §2001.0045(b) does not apply to this rulemaking because the commission is expressly excluded under subsection §2001.0045(c)(7).

Public Hearing

The commission staff will conduct a public hearing on this rulemaking on September 20, 2021, at 9:30 a.m. in the Commissioners’ Hearing Room, 7th floor, William B. Travis Building, if requested in accordance with Texas Government Code §2001.029. The request for a public hearing must be received by September 16, 2021. If no request for public hearing is received and the commission staff cancels the hearing, it will file in this project a notification of the cancellation of the hearing prior to the scheduled date for the hearing.

Public Comments

Interested persons may file comments electronically through the interchange on the commission’s website. Comments must be filed by September 16, 2021. No reply comments are requested. Comments should be organized in a manner consistent with the organization of the proposed rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed rule. The commission will consider the costs and benefits in deciding whether to modify the proposed rule on adoption. Commis-
sion staff strongly encourages commenters to include a bulleted executive summary to assist commission staff in reviewing the filed comments in a timely fashion. All comments should refer to Project Number 51840.

Statutory Authority

The new rule is proposed under the following provision of PURA: §14.001, which provides the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by PURA that is necessary and convenient to the exercise of that power and jurisdiction; §14.002, which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; §35.0021, which requires the commission to adopt rules that require each provider of electric generation service in the ERCOT power region to implement measures to prepare the provider's generation assets to provide adequate electric generation service during a weather emergency; and §38.075, which requires the commission to adopt rules that require each electric cooperative, municipally owned utility, and transmission and distribution utility providing transmission service in the ERCOT power region to implement measures to prepare its facilities to maintain service quality and reliability during a weather emergency.


(a) Application. This section applies to the Electric Reliability Council of Texas, Inc. (ERCOT) and to generation entities and transmission service providers in the ERCOT power region.

(b) Definitions. In this section, the following definitions apply unless the context indicates otherwise:

(1) Cold weather critical component--Any component that is susceptible to freezing, the occurrence of which is likely to lead to unit trip, derate, or failure to start.

(2) Energy storage resource--An energy storage system registered with ERCOT for the purpose of providing energy or ancillary services to the ERCOT grid and associated facilities behind the system's point of interconnection necessary for the operation of the system.

(3) Generation entity--An ERCOT-registered resource entity acting on behalf of an ERCOT-registered generation resource or energy storage resource.

(4) Generation resource--A generator capable of providing energy or ancillary services to the ERCOT grid and that is registered with ERCOT as a generation resource, as well as associated facilities behind the generator's point of interconnection necessary for the operation of the generator.

(5) Inspection--The activities that ERCOT engages in to determine whether a generation entity is in compliance with subsection (c) of this section or whether a transmission service provider is in compliance with subsection (f) of this section. An inspection may include site visits; assessments of procedures; interviews; and review of information provided by a generation entity or transmission service provider in response to a request by ERCOT, including review of evaluations conducted by the generation entity or transmission service provider or its contractor. ERCOT will determine, in consultation with the commission, the number, extent, and content of inspections and may conduct inspections using both employees and contractors.

(6) Resource--A generation resource or energy storage resource.

(7) Weather emergency preparation measures--Measures that a generation entity or transmission service provider takes to support the function of a facility in extreme weather conditions, including weatherization, fuel security, staffing plans, operational readiness, and structural preparations.

(c) Phase one weather emergency preparedness reliability standards for a generation entity:

(1) By December 1, 2021, a generation entity must complete the following winter weather emergency preparations for each resource under its control:

(A) All preparations necessary to ensure the sustained operation of all cold weather critical components during winter weather conditions, such as chemicals, auxiliary fuels, and other materials, and personnel required to operate the resource;

(B) Installation of adequate wind breaks for resources susceptible to outages or derates caused by wind; enclosure of sensors for cold weather critical components; inspection of thermal insulation for damage or degradation and repair of any damaged or degraded insulation; confirmation of the operability of instrument air moisture prevention systems; maintenance of freeze protection components for all equipment, including fuel delivery systems, the failure of which could cause an outage or derate, and establishment of a schedule for testing of such freeze protection components on an ongoing monthly basis; and the installation of monitoring systems for cold weather critical components, including circuitry providing freeze protection or preventing instrument air moisture;

(C) All actions necessary to prevent a reoccurrence of any cold weather critical component failure that occurred in the period between November 30, 2020, and March 1, 2021;

(D) Provision of training on winter weather preparations to operational personnel, and

(E) Determination of minimum design temperature, minimum operating temperature, and other operating limitations based on temperature, precipitation, humidity, wind speed, and wind direction.

(2) By December 1, 2021, a generation entity must submit to the commission and ERCOT, on a form prescribed by ERCOT and developed in consultation with commission staff, a winter weather readiness report that:

(A) Describes all activities taken by the generation entity to complete the requirements of paragraph (1) of this subsection; and

(B) Includes, a notarized attestation sworn to by the generation entity's highest-ranking representative, official, or officer with binding authority over the generation entity, attesting to the completion of all activities described in paragraph (1) of this subsection and the accuracy and veracity of the information described in subparagraph (A) of this paragraph.

(3) Based on the requirements of paragraph (1) of this subsection, ERCOT must develop a comprehensive checklist form that includes checking systems and subsystems containing cold weather critical components and file it with the commission no later than December 10, 2021. In addition, ERCOT must use a generation entity's winter weather readiness report submitted under paragraph (2) of this subsection to adapt the checklist to the inspections of the generation entity's resources.
(4) No later than December 10, 2021, ERCOT must file with the commission a summary report of the winter weather readiness inspections filed under paragraph (2) of this subsection, including a summary of compliance with the requirements of paragraph (1) and (2) of this subsection and a spreadsheet that delineates compliance with the requirements of paragraph (1) of this subsection for all resources subject to those requirements.

(5) A generation entity that timely submits to ERCOT the winter weather readiness report required by paragraph (2) of this subsection is exempt, for the 2021 calendar year, from the requirement in Section 3.21(3) of the ERCOT Protocols that requires a generation entity to submit the Declaration of Completion of Generation Resource Winter Weatherization Preparations no earlier than November 1 and no later than December 1 of each year.

(6) Good cause exception. A generation entity may submit a request for a good cause exception with the commission to specific requirements listed in paragraph (1) of this subsection.

(A) A generation entity's request must include:

(i) A detailed explanation and supporting documentation of the generation entity's inability to comply with a specific requirement of paragraph (1) of this subsection;

(ii) A detailed description and supporting documentation of the generation entity's efforts that have been made to comply with paragraph (1) of this subsection;

(iii) A plan, including a schedule and supporting documentation, to comply with the specific requirement of paragraph (1) of this subsection for which the good cause exception is being requested from the commission, including a proposed deadline or deadlines for filing updates with the commission on the status of the generation entity's compliance with the specific requirement of paragraph (1) of this subsection and expected compliance date;

(iv) Evidence that notice of the request has been provided to ERCOT; and

(v) A notarized attestation sworn to by the generation entity's highest-ranking representative, official, or officer with binding authority over the generation entity attesting to the accuracy and veracity of the information in the request.

(B) ERCOT is a required party in the proceeding in which a generation entity requests a good cause exception from the commission. ERCOT must make a recommendation to the commission on the request by the deadline set forth by the presiding officer in the proceeding.

(d) Inspections for a generation entity.

(1) ERCOT inspections. ERCOT must conduct inspections of resources for the 2021 - 2022 winter season and must prioritize its inspection schedule based on risk level. ERCOT may prioritize inspections based on factors such as whether a generation resource is critical for electric grid reliability; has experienced a forced outage, forced derate, or failure to start related to extreme weather conditions; or has other vulnerabilities related to extreme weather conditions.

(2) ERCOT inspection report. ERCOT must provide a report on its inspection of a resource to the generation entity. The inspection report must address whether the resource has complied with the requirements in subsection (c) that ERCOT reviewed for the resource and, if the resource has not complied, ERCOT must provide the generation entity a reasonable period to cure the identified deficiencies. The cure period determined by ERCOT must consider what weather emergency preparation measures the generation entity may be reasonably expected to have taken before ERCOT's inspection, the reliability risk of the resource's noncompliance, and the complexity of the measures needed to cure the deficiency.

(e) Weather-related failures by a generation entity to provide service. For a generation entity with a resource that experiences repeated or major weather-related forced interruptions of service, including forced outages, derates, or maintenance-related outages, the generation entity must contract with a qualified professional engineer who is not an employee of the generation entity or its affiliate and who has not participated in previous assessments for the resource to assess its weather emergency preparation measures, plans, procedures, and operations. The generation entity must submit the qualified professional engineer's assessment to the commission and ERCOT. ERCOT must adopt rules that specify the circumstances for which this requirement applies and specify the scope and contents of the assessment. A generation entity to which this subsection applies may be subject to additional inspections by ERCOT. ERCOT must refer to the commission for enforcement any generation entity that violates this rule and fails to cure the identified deficiencies within a reasonable period of time.

(f) Weather emergency preparedness reliability standards for a transmission service provider.

(1) By December 1, 2021, a transmission service provider must complete the following winter weather preparations for its systems and facilities:

(A) All preparations necessary to ensure the sustained operation of all cold weather critical components during winter weather conditions, including ensuring availability of supplies, such as chemicals, auxiliary fuels, and other materials, and personnel required to operate the transmission system and facilities;

(B) Confirmation of the ability of all systems and subsystems containing cold weather critical components required to operate each of the transmission service provider's substations to ensure operation of each substation within the design and operating limitations addressed in subparagraph (H) of this paragraph;

(C) All actions necessary to prevent a reoccurrence of any cold weather critical component failure that occurred in the period between November 30, 2020 and March 1, 2021;

(D) Provision of training on winter weather preparations to operational personnel;

(E) Confirmation that the sulfur hexafluoride gas in breakers and metering and other electrical equipment is at the correct pressure and temperature to operate safely during extreme cold weather, and performance of annual maintenance that tests sulfur hexafluoride breaker heaters by supporting circuitry to assure that they are functional;

(F) Confirmation of the operability of power transformers in extreme cold temperatures by:

(i) Checking heaters in the control cabinets;

(ii) Verifying that main tank oil levels are appropriate for actual oil temperature;

(iii) Checking bushing oil levels; and

(iv) Checking the nitrogen pressure if necessary.

(G) Determination of the ambient temperature to which the transmission service provider's equipment, such as fire protection systems, are protected, including accounting for the accelerated cooling effect of wind, and confirmation that temperature requirements are met during operations; and
(H) Determination of minimum design temperatures, minimum operating temperatures, and other operating limitations based on temperature, precipitation, humidity, wind speed, and wind direction for substations containing cold weather critical components.

(2) By December 1, 2021, a transmission service provider must submit to the commission and ERCOT, on a form prescribed by ERCOT and developed in consultation with commission staff, a winter-weather readiness report that:

(A) Describes all activities taken by a transmission service provider to complete the requirements of paragraph (1) of this subsection; and

(B) Includes a notarized attestation sworn to by the transmission service provider's highest-ranking representative, official, or officer with binding authority over the transmission service provider, attesting to the completion of all activities described in paragraph (1) of this subsection and the accuracy and veracity of the information described in paragraph (2)(A) of this subsection.

(3) No later than December 10, 2021, ERCOT must file with the commission a summary report of the winter weather readiness reports filed under paragraph (2) of this subsection, including a summary of compliance with the requirements of paragraph (1) and (2) of this subsection and a spreadsheet that delineates compliance with the requirements of paragraph (1) of this subsection for all facilities subject to the requirements.

(4) Good cause exception. A transmission service provider may submit a request for a good cause exception with the commission to specific requirements listed in paragraph (1) of this subsection.

(A) The request must include:

(i) A detailed explanation and supporting documentation of the inability of the transmission service provider to comply with a specific requirement of paragraph (1) of this subsection;

(ii) A detailed description and supporting documentation of the efforts that have been made to comply with paragraph (1) of this subsection;

(iii) A plan, including a schedule and supporting documentation, to comply with the specific requirement of paragraph (1) of this subsection for which the good cause exception is being requested from the commission, including a proposed deadline or deadlines to file updates with the commission on the status of the transmission service provider's compliance and expected compliance date;

(iv) Evidence that notice of the request has been provided to ERCOT; and

(v) A notarized attestation sworn to by the transmission service provider's highest-ranking representative, official, or officer with binding authority over the transmission service provider attesting to the accuracy and veracity of the information in the request.

(B) ERCOT is a required party to the proceeding in which a transmission service provider requests a good cause exception from the commission. ERCOT must make a recommendation to the commission on the request by the deadline set forth by the presiding officer in the proceeding.

(g) Inspections for a transmission service provider.

(1) ERCOT inspections. ERCOT must conduct inspections of transmission systems and facilities for the 2021-2022 winter season and must prioritize its inspection schedule based on risk level. ERCOT may prioritize inspections based on factors such as whether a transmission system or facility is critical for electric grid reliability; has experienced a forced outage or other failure related to extreme weather conditions; or has other vulnerabilities related to extreme weather conditions.

(2) ERCOT inspection report. ERCOT must provide a report on its inspection of a transmission system and facilities to the transmission service provider. The inspection report must address whether the system and facilities have complied with the requirements in subsection (f) of this section that ERCOT reviewed for the transmission service provider, and, if the transmission service provider has not complied, provide the transmission service provider a reasonable period to cure the identified deficiencies. The cure period determined by ERCOT must consider what weather emergency preparation measures the transmission service provider may be reasonably expected to have taken before ERCOT's inspection, the reliability risk of the transmission service provider's noncompliance, and the complexity of the measures needed to cure the identified deficiencies.

(h) Weather-related failures by a transmission service provider to provide service. For a transmission service provider with a transmission system or facility that experiences repeated or major weather-related forced interruptions of service, including forced outages, derates, or maintenance-related outages, the transmission service provider must contract with a qualified professional engineer who is not an employee of the transmission service provider or its affiliate and who has not participated in previous assessments for this system or facility to assess its weather emergency preparation measures, plans, procedures, and operations and submit the assessment to the commission and ERCOT. ERCOT must adopt rules that specify the circumstances for which this requirement applies and specify the scope and contents of the assessment. A transmission service provider to which this subsection applies may be subject to additional inspections by ERCOT. ERCOT must refer to the commission for enforcement any transmission service provider that violates this rule and fails to cure the identified system or facility deficiencies within a reasonable period of time.

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 26, 2021.

Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: October 10, 2021
For further information, please call: (512) 936-7244

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 111. SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS

The Texas Department of Licensing and Regulation (Department) proposes amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 111, Subchapter A, §§111.2; Subchapter E, §§111.41; Subchapter F, §§111.50 and §§111.51; Subchapter J, §§111.91 and §§111.92; and Subchapter V, §§111.210 and §§111.211; proposes a new rule at Subchapter V, §§111.212; and proposes the repeal of existing rules at Subchapter V, §§111.212 - 111.216, and Subchapter X, §§111.230 - 111.232.
EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC Chapter 111 implement Texas Occupations Code, Chapter 401, Speech-Language Pathologists and Audiologists; Chapter 51, the enabling statute of the Texas Commission of Licensing and Regulation (Commission) and the Department; and Chapter 111, Telemedicine and Telehealth.

The proposed rules implement the telehealth emergency rules on a permanent basis; implement SB 40, 87th Legislature, Regular Session (2021); and include changes as a result of the four-year rule review related to telehealth and remote supervision (tele-supervision). The proposed rules also reorganize the current provisions and eliminate duplicative provisions.

Telehealth Emergency Rules

The Commission adopted emergency rules to ensure that services to clients and supervision of certain licensees may continue to be provided through telehealth as was allowed under the waivers that were granted by the Governor during the COVID-19 pandemic. The emergency rules also reflected the change in the statutory authority regarding telehealth. The emergency rules were necessary to protect the public health, safety, and welfare. (Emergency Rules, 46 TexReg 5313, August 27, 2021).

The telehealth emergency rules were effective September 1, 2021. Emergency rules are only effective for 120 days, with one 60-day extension, for a total of 180 days. The current proposed rules implement the emergency rules on a permanent basis.

Implementation of SB 40

Senate Bill (SB) 40, 87th Legislature, Regular Session (2021) added new telehealth provisions and rulemaking authority to Texas Occupations Code, Chapter 51, and repealed the provisions regarding joint rules for fitting and dispensing hearing instruments by telepractice in Texas Occupations Code, Chapters 401 and 402. The joint rules were with the Hearing Instrument Fitters and Dispensers program. These changes became effective immediately.

The proposed rules implement SB 40 as it relates to telehealth, tele-supervision, and the repeal of the statutory requirements for joint rules for fitting and dispensing hearing instruments by telepractice. Because SB 40 was effective immediately, the necessary changes related to statutory authority for telehealth were included in the emergency rules (discussed above).

Four-Year Rule Review Changes

The proposed rules include changes as a result of the four-year rule review related to telehealth and tele-supervision. The Department conducted the required four-year rule review of the rules under 16 TAC Chapter 111, and the Commission readopted the rule chapter in its entirety and in its current form. (Proposed Rule Reviews, 45 TexReg 7281, October 9, 2020. Adopted Rule Reviews, 46 TexReg 2050, March 26, 2021).

In response to the Notice of Intent to Review that was published, the Department received 106 public comments regarding 16 TAC Chapter 111. Most of the comments requested rule changes that would make permanent the expanded use of telehealth and tele-supervision for interns and assistants, as was allowed under the Governor’s waivers that were issued pursuant to the COVID-19 disaster declaration. These suggested changes are part of the emergency rules and are part of the current proposed rules. The proposed rules also include changes based on the Department's review of the rules during the rule review process related to telehealth and tele-supervision.

Reorganization Changes

The proposed rules consolidate the existing rules, reorganize the existing provisions by subject matter, and eliminate duplicative provisions, as recommended by Department staff.

Advisory Board Recommendation

The proposed rules were presented to and discussed by the Speech-Language Pathologists and Audiologists Advisory Board at its meeting on August 20, 2021. The Advisory Board removed the proposed changes to §111.154, regarding supervisor residency requirements. Those changes are not included in this proposal. Changes were also recommended to §111.210(8) and (9) regarding audiology assistants and the fitting and dispensing of hearing instruments by telehealth. The Advisory Board voted and recommended that the proposed rules with changes be published in the Texas Register for public comment.

Subsequent to the Advisory Board meeting, the recommended changes regarding audiology assistants and the fitting and dispensing of hearing instruments by telehealth were reviewed. Those recommended changes were not included in this proposal, since they conflict with the statute and with other existing rules. In addition, minor clean-up changes were made to the proposal.

SECTION-BY-SECTION SUMMARY

Subchapter A

The proposed rules amend Subchapter A. General Provisions.

Subchapter E

The proposed rules amend Subchapter E. Requirements for Intern in Speech-Language Pathology License.

Subchapter F

The proposed rules amend Subchapter F. Requirements for Assistant in Speech-Language Pathology License.
The proposed rules amend §111.51, Assistant in Speech-Language Pathology License—Supervision Requirements. Subsection (e) is amended to allow supervision to be performed through tele-supervision and not require in-person supervision. Subsection (g) is amended to eliminate any caps or limits on the number of hours that can be supervised through tele-supervision and to allow direct and indirect supervision to be provided through tele-supervision.

Subchapter J
The proposed rules amend Subchapter J. Requirements for Assistant in Audiology License.

The proposed rules amend §111.91, Assistant in Audiology License—Supervision Requirements. Subsection (f) is amended to eliminate restrictions on the duties that can be supervised by tele-supervision and to allow direct and indirect supervision to be provided through tele-supervision.

The proposed rules amend §111.92, Assistant in Audiology License—Practice and Duties of Assistants. Subsection (c) is amended to allow the assigned duties under paragraphs (1)-(3) to be directly supervised through tele-supervision and not require in-person supervision. Paragraph (4) is amended to remove the requirement for direct supervision of this duty.

Subchapter V
The proposed rules amend Subchapter V. Telehealth.

The proposed rules amend §111.210, Definitions Relating to Telehealth. The section has been updated to consolidate definitions from §111.210 and §111.231 into one section and to eliminate duplicative provisions. Other definitions are found in current §111.2.

The proposed rules make clean-up changes to the definition of "client site." The proposed rules remove the definition of "consultant" and the references and provisions in the rules regarding consultants. The definition of "provider" has been expanded to include speech-language pathology interns, speech-language pathology assistants, and audiology assistants. This change will allow additional licensees to provide telehealth services. The definitions of "facilitator" and "provider site" have been updated to reference "provider" and to make clean-up changes. The definition of "telecommunications technology" is updated to include a smart phone, or any audio-visual, real-time, or two-way interactive communication system.

The proposed rules update the definition of "telehealth" to include assessments, interventions, or consultations regarding a client. For audiologists and audiology interns, the definition has been updated to include the use of telecommunications technology for the fitting and dispensing of hearing instruments.

The proposed rules update the definition of "telehealth services" to include the rendering of audiology and/or speech-language pathology services through telehealth to a client who is physically located at a site other than the site where the provider is located. For audiologists and audiology interns, the definition has been updated to include the fitting and dispensing of hearing instruments through telehealth to a client who is physically located at a site other than the site where the provider is located.

The proposed rules remove the definitions of "telepractice" and "telepractice services." These terms are duplicative with the terms "telehealth" and "telehealth services," which is the terminology used in Occupations Code Chapter 51, as amended by SB 40, and Chapter 111.

The proposed rules amend §111.211, Service Delivery Models of Speech-Language Pathologists. The title of the section has been changed to "Service Delivery Models" to apply to all telehealth providers. The proposed rules remove references to "consultant" and replace references to "telepractice" with "telehealth service."

The proposed rules add a new §111.212, Requirements for Providing Telehealth Services and Using Telehealth. This new section consolidates the separate telehealth rules for speech-language pathologists and audiologists into one new rule. The new rule consolidates the provisions from existing rules §§111.211, 111.214, 111.215, and 111.232; reorganizes the provisions by subject matter; eliminates duplicative provisions; and updates the terminology to use the terms "telehealth" and "telehealth services."

New §111.212(a) addresses the applicability of the subchapter. Except where noted, the subchapter applies to speech-language pathologists, speech-language pathology interns, speech-language pathology assistants, audiologists, audiology interns, audiology assistants, and dual speech-language pathology and audiology license holders, as authorized under this subchapter. This subsection also addresses the applicability of other laws.

New §111.212(b) addresses licensure and scope of practice requirements related to providing telehealth services. This subsection also specifies that speech-language pathology assistants and audiology assistants may provide services through telehealth, as directed by their supervisors, according to the specified requirements.

New §111.212(c) addresses competence and standard of practice. The subsection includes provisions regarding provider competence in the services being provided and the methodology and equipment being used; the standard of practice being the same for services provided via telehealth as services provided in-person; and the responsibility of a provider to determine whether a particular service or procedure is appropriate to be provided via telehealth.

New §111.212(d) addresses the use of facilitators to assist a provider in providing telehealth services. This subsection includes provisions regarding the facilitator’s qualifications, training, and competence, as appropriate; the tasks that may be performed; the responsibilities of the provider; and the required documentation.

New §111.212(e) addresses technology and equipment. This subsection includes provisions regarding using telecommunications technology and other equipment that the provider is competent to use, and only providing telehealth services if the telecommunications technology and equipment are appropriate for the services to be provided; are properly calibrated, if appropriate, and in good working order; and are of sufficient quality to deliver equivalent service and quality to the client as if those services were provided in-person.

New §111.212(f) addresses client contacts and communications. This subsection provides that the initial contact between a provider and a client may be at the same physical location or through telehealth, as determined appropriate by the provider. For a speech-language pathology assistant, the initial contact with a client must be made by the assistant’s supervisor. This subsection requires consideration of certain factors in determining the appropriateness of providing services via telehealth and requires a notification of telehealth services be provided to a client.
New §111.212(g) addresses records and billing. This subsection includes provisions regarding maintenance of client records; documentation of telehealth services; and reimbursement of telehealth services.

New §111.212(h) addresses hearing instruments. This subsection includes a provision regarding digital adjustments of hearing instruments through telecommunication technology by a provider who is an audiologist or an audiologist intern.

The proposed rules repeal existing §111.212, Requirements for the Use of Telehealth by Speech-Language Pathologists.

The proposed rules repeal existing §111.213, Limitations on the Use of Telecommunications Technology by Speech-Language Pathologists.

The proposed rules repeal existing §111.214, Requirements for Providing Telehealth Services in Speech-Language Pathology.

The proposed rules repeal existing §111.215, Requirements for Providing Telepractice Services in Audiology.

The proposed rules repeal existing §111.216, Limitations on the Use Telecommunications Technology by Audiologists.

Subchapter X

The proposed rules repeal Subchapter X, Joint Rules for Fitting and Dispensing of Hearing Instruments by Telepractice.

The proposed rules repeal existing §111.230, Purpose. The statutory requirements for joint rules for fitting and dispensing hearing instruments by telepractice were repealed by SB 40, effective immediately.

The proposed rules repeal existing §111.231, Definitions. The definitions under §111.231 are included in §111.2 and §111.210, as necessary.

The proposed rules repeal existing §111.232, Requirements for Providing Telehealth Services for the Fitting and Dispensing of Hearing Instruments. The provisions in §111.232 have been consolidated with the provisions in existing §§111.212, 111.214, and 111.215 to create new §111.212 under Subchapter V. Telehealth.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rules are in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rules.

Mr. Couvillon has determined that for each year of the first five years the proposed rules are in effect, there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed rules.

Mr. Couvillon has determined that for each year of the first five years the proposed rules are in effect, enforcing or administering the proposed rules does not have foreseeable implications relating to costs or revenues of state governments or local governments.

LOCAL EMPLOYMENT IMPACT STATEMENT

Mr. Couvillon has determined that the proposed rules will not affect the local economy, so the agency is not required to prepare a local employment impact statement under Government Code §2001.022.

PUBLIC BENEFITS

Mr. Couvillon also has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be expanded access to services; an increase in the number of providers who may provide telehealth services; an increase in the number of clients who may receive services; additional flexibility for supervisors and supervisees; a reduction in travel costs; a reduction in the number of office visits; and additional technologies to expand the availability of telehealth.

For those services which may be provided at the same level of quality via telehealth as in-person, a provider could provide services to a larger number of clients living in rural areas or clients with mobility concerns, who may not currently have access to services due to the distance to the nearest provider or difficulty getting to a nearby provider’s office.

The proposed rules allow speech-language pathology interns, speech-language pathology assistants, and audiologist assistants to be providers of telehealth, under their supervisor’s license, which will increase the number of providers and increase the number of clients who may be served through telehealth. The proposed rules lift restrictions on the amount of supervision which may be conducted through tele-supervision, which will provide flexibility to supervisors and supervisees.

For those speech-language pathology or audiology services which may be performed through telehealth, there may be a decrease or elimination of travel costs for the client associated with an in-person office visit versus receiving that same service without the need to travel to a physical office location. There may also be a reduction in travel time and costs for providers, who travel to provide services to their clients. The authorization for providers to use telecommunication technology to remotely digitally program hearing instruments will reduce the number of office visits needed by some clients for those services, as well as travel time and costs.

The inclusion of smartphones in the definition of telecommunications technology expands the availability of telehealth to those who may not have access to computers or Wi-Fi.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, there are no significant economic costs to persons who are required to comply with the proposed rules. The rules do not impose additional fees upon licensees, nor do they create requirements that would cause licensees to expend funds for equipment, technology, staff, supplies, or infrastructure. A provider who wishes to expand services through the use of telehealth, or expand supervision of assistants and interns through tele-supervision, might need new or additional telecommunications technology, but this would be a discretionary cost and not required by the rule changes. Costs to establish telehealth and/or tele-supervision capability are relatively inexpensive, with teleconferencing applications available for free or for prices as low as less than $15 per month, and computer cameras and other hardware are available also at low costs.
micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, are not required.

**ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT**

The proposed rules do not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the agency is not required to take any further action under Government Code §2001.0045.

**GOVERNMENT GROWTH IMPACT STATEMENT**

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 rules will be in effect, the agency has determined the following:

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

2. The proposed rules do not create or eliminate a government program.

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

4. The proposed rules do not create or eliminate a government program.

5. The proposed rules do create a new regulation.

6. The proposed rules do expand, limit, or repeal an existing regulation.

7. The proposed rules do increase or decrease the number of individuals subject to the rules' applicability.

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

Existing rules for fitting and dispensing hearing instruments by telepractice are being proposed for repeal and new rules for telehealth services and tele-supervision are being proposed for adoption as part of the updating and clarification of the existing telehealth rules. Rule changes are proposed to implement SB 40, to update current telehealth rules based on the four-year rule review, and to make emergency rules permanent. The proposed rules expand the definitions for telehealth and telecommunication technology. The definition of telehealth provider is also expanded to include speech-language pathology interns, speech-language pathology assistants, and audiologist assistants who are providing telehealth services under their supervisor's license, thereby increasing the number of individuals subject to the rules' applicability.

**TAKINGS IMPACT ASSESSMENT**

The Department has determined that no private real property interests are affected by the proposed rules and the proposed rules do not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, the proposed rules do not constitute a taking or require a takings impact assessment under Government Code §2007.043.

**PUBLIC COMMENTS**

Comments on the proposed rules may be submitted electronically on the Department's website at https://ga.tdlr.texas.gov:1443/form/gcrules; by facsimile to (512) 475-3032; or by mail to Monica Nuñez, Legal Assistant, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711. The deadline for comments is 30 days after publication in the Texas Register.

**SUBCHAPTER A. GENERAL PROVISIONS**

### 16 TAC §111.2

**STATUTORY AUTHORITY**

The proposed rules are proposed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The proposed rules are also proposed under Texas Occupations Code, Chapter 51, §51.501, Telehealth, as added by S.B. 40; Texas Occupations Code, Chapter 111, Telemedicine and Telehealth; and Texas Occupations Code, Chapter 401, Speech-Language Pathologists and Audiologists.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51, 111, 401, and 402. No other statutes, articles, or codes are affected by the proposed rules.

#### §111.2. Definitions.

Unless the context clearly indicates otherwise, the following words and terms shall have the following meanings.

1. **ABA--**The American Board of Audiology.

2. **Act--**Texas Occupations Code, Chapter 401, relating to Speech-Language Pathologists and Audiologists.

3. **Acts--**Texas Occupations Code, Chapter 401, relating to Speech-Language Pathologists and Audiologists; and Texas Occupations Code, Chapter 402, relating to Hearing Instrument Fitters and Dispensers.

4. **Advisory board--**The Speech-Language Pathologists and Audiologists Advisory Board.


6. **Assistant in audiology--**An individual licensed under Texas Occupations Code §401.312 and §111.90 of this chapter and who provides audiological support services to clinical programs under the supervision of an audiologist licensed under the Act.

7. **Assistant in speech-language pathology--**An individual licensed under Texas Occupations Code §401.312 and §111.60 of this chapter and who provides speech-language pathology support services under the supervision of a speech-language pathologist licensed under the Act.

8. **Audiologist--**An individual who holds a license under Texas Occupations Code §401.302 and §401.304 to practice audiology.

9. **Audiology--**The application of nonmedical principles, methods, and procedures for measurement, testing, appraisal, prediction, consultation, counseling, habilitation, rehabilitation, or instruction related to disorders of the auditory or vestibular systems for the purpose of providing or offering to provide services modifying communication disorders involving speech, language, or auditory or vestibular function or other aberrant behavior relating to hearing loss.
(10) Caseload--The number of clients served by the licensed speech-language pathologist or licensed speech-language pathology intern.

(11) Client--A consumer or proposed consumer of audiology or speech-language pathology services.

(12) Commission--The Texas Commission of Licensing and Regulation.

(13) Department--The Texas Department of Licensing and Regulation.

(14) Direct Supervision [related to Assistants] (Speech-Language Pathology and Audiology) --Real-time observation and guidance by the supervisor while a client contact or clinical activity or service is performed by the assistant or intern. Direct supervision may [shall be performed in person or via tele-supervision [telepractice/telehealth] as authorized and prescribed by this chapter.

(15) Direct supervision related to Interns (Speech-Language Pathology)--Real-time observation and guidance by the supervisor while a client contact or clinical activity or service is performed by the intern. Telepractice/telehealth may not be used for direct supervision of Speech-Language Pathology Interns.

(16) Ear specialist--A licensed physician who specializes in diseases of the ear and is medically trained to identify the symptoms of deafness in the context of the total health of the client, and is qualified by special training to diagnose and treat hearing loss. Such physicians are also known as otolaryngologists, otologists, neurotologists, otorhinolaryngologists, and ear, nose, and throat specialists.

(17) Executive director--The executive director of the department.

(18) Extended absence--More than two consecutive working days for any single continuing education experience.

(19) Extended recertification--Starting at 40 dB and going down by 10 dB until no response is obtained or until 20 dB is reached and then up by 5 dB until a response is obtained. The frequencies to be evaluated are 1,000, 2,000, and 4,000 hertz (Hz).

(20) Fitting and dispensing hearing instruments--The measurement of human hearing by the use of an audiometer or other means to make selections, adaptations, or sales of hearing instruments. The term includes the making of impressions for earmolds to be used as a part of the hearing instruments and any necessary postfitting counseling for the purpose of fitting and dispensing hearing instruments.

(21) Hearing instrument--Any wearable instrument or device designed for, or represented as, aiding, improving or correcting defective human hearing. This includes the instrument’s parts and any attachment, including an earmold, or accessory to the instrument. The term does not include a battery or cord.

(22) Hearing screening--A test administered with pass/fail results for the purpose of rapidly identifying those persons with possible hearing impairment which has the potential of interfering with communication.

(23) In-person--The licensee is physically present with the client while a client contact or clinical activity or service is performed. In the case of supervision, the supervisor is physically present with the assistant or intern while a client contact or clinical activity or service is performed. [The supervisor must be physically present, observing the assistant’s or the intern’s client contact or clinical activity or service. Telepractice/telehealth is not considered in-person.]

(24) Intern in audiology--An individual licensed under Texas Occupations Code §401.311 and §111.80 of this chapter and who is supervised by an individual who holds an audiology license under Texas Occupations Code §401.302 and §401.304.

(25) Intern in speech-language pathology--An individual licensed under Texas Occupations Code §401.311 and §111.40 of this chapter and who is supervised by an individual who holds a speech-language pathology license under Texas Occupations Code §401.302 and §401.304.

(26) Intern Plan and Agreement of Supervision Form (for Interns in Speech-Language Pathology and Audiology)--An agreement between a supervisor and an intern in which the parties enter into a supervisory relationship and the supervisor agrees to assume responsibility for all services provided by the intern.

(27) Provisional Licensee--An individual granted a provisional license under Texas Occupations Code §401.308.

(28) Sale or purchase--Includes the sale, lease or rental of a hearing instrument or augmentative communication device to a member of the consuming public who is a user or prospective user of a hearing instrument or augmentative communication device.

(29) Speech-language pathologist--An individual who holds a license under Texas Occupations Code §401.302 and §401.304, to practice speech-language pathology.

(30) Speech-language pathology--The application of nonmedicinal principles, methods, and procedures for measurement, testing, evaluation, prediction, counseling, habilitation, rehabilitation, or instruction related to the development and disorders of communication, including speech, voice, language, oral pharyngeal function, or cognitive processes, for the purpose of evaluating, preventing, or modifying or offering to evaluate, prevent, or modify those disorders and conditions in an individual or a group.

(31) Supervisor--An individual who holds a license under Texas Occupations Code §401.302 and §401.304 and whom the department has approved to oversee the services provided by the assigned assistant and/or intern. The term “supervisor” and “department-approved supervisor” have the same meaning as used throughout this chapter.

(32) Supervisory Responsibility Statement (SRS) Form (for Assistants in Audiology or Speech-Language Pathology)--An agreement between a supervisor and an assistant in which the parties enter into a supervisory relationship, the supervisor agrees to assume responsibility for the assistant’s activities, and the assistant agrees to perform only those activities assigned by the supervisor that are not prohibited under this chapter.
Telehealth.--See definition(s) in Subchapter V, Telehealth.

Tele-supervision--Supervision of interns or assistants that is provided remotely using telecommunications technology.

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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SUBCHAPTER E. REQUIREMENTS FOR INTERN IN SPEECH-LANGUAGE PATHOLOGY LICENSE

16 TAC §111.41

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The proposed rules are also proposed under Texas Occupations Code, Chapter 51, §51.501, Telehealth, as added by S.B. 40; Texas Occupations Code, Chapter 111, Telemedicine and Telehealth; and Texas Occupations Code, Chapter 401, Speech-Language Pathologists and Audiologists.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51, 111, 401, and 402. No other statutes, articles, or codes are affected by the proposed rules.

§111.41. Intern in Speech-Language Pathology License--Internship and Supervision Requirements.

(a) A licensed intern in speech-language pathology (intern) must be supervised by a licensed speech-language pathologist who has been approved by the department to serve as the intern's supervisor.

(b) A supervisor must agree to assume responsibility for all services provided by the intern. The supervisor must comply with the requirements set out in the Act and §111.154.

(c) Intern Plan and Agreement of Supervision Form. A Speech-Language Pathology Intern Plan and Agreement of Supervision Form shall be submitted in a manner prescribed by the department and completed by both the applicant and the proposed supervisor. The proposed supervisor must meet the requirements set out in the Act and §111.154.

(1) Approval from the department shall be required prior to practice by the intern. The Speech-Language Pathology Intern Plan and Agreement of Supervision Form shall be submitted upon:

(A) application for an intern license;

(B) any changes in supervision; and

(C) the addition of other supervisors.

(2) If more than one speech-language pathologist agrees to supervise the intern, each proposed supervisor must submit a Speech-Language Pathology Intern Plan and Agreement of Supervision Form.

(3) The intern may not practice without an approved Speech-Language Pathology Intern Plan and Agreement of Supervision Form. The supervisor may not allow an intern to practice before a Speech-Language Pathology Intern Plan and Agreement of Supervision Form is approved.

(4) If the supervisor ceases supervision of the intern, the supervisor shall notify the department, in a manner prescribed by the department, and shall inform the intern to stop practicing immediately. The supervisor is responsible for the practice of the intern until notification has been received by the department.

(5) If the intern's supervisor ceases supervision, the intern shall stop practicing immediately. The intern may not practice until a new Speech-Language Pathology Intern Plan and Agreement of Supervision Form has been submitted to and approved by the department.

(d) Internship Requirements. The internship shall:

(1) be completed within a maximum period of forty-eight (48) months once initiated;

(2) be successfully completed after no more than two attempts;

(3) consist of thirty-six (36) weeks of full-time supervised professional experience (thirty-five (35) hours per week) totaling a minimum of 1,260 hours, or its part-time equivalent, of supervised professional experience in which clinical work has been accomplished in speech-language pathology. Professional experience of less than five hours per week cannot be used to meet the minimum 1,260 hours, but the professional experience still must be supervised by a licensed speech-language pathologist.

(4) involve primarily clinical activities such as assessment, diagnosis, evaluation, screening, treatment, report writing, family/client consultation, and/or counseling related to the management process of individuals who exhibit communication disabilities;

(5) be divided into three (3) segments with no fewer than thirty-six (36) clock hours of supervisory activities to include:

(A) six (6) hours of [in-person] direct supervision per segment by the supervisor(s) of the intern's [direct] client contact [at the workplace] in which the intern provides screening, evaluation, assessment, habilitation, and rehabilitation; and

(B) six (6) hours of indirect supervision per segment with the supervisor(s) which may include correspondence, review of videos, evaluation of written reports, phone conferences with the intern, evaluations by professional colleagues; or

(C) an alternative plan as approved by the department.

(e) Extension Request. An applicant who does not meet the time frames defined in subsection (d)(1), shall request an extension, in writing, explaining the reason for the request. The request must be signed by both the intern and the supervisor in a manner prescribed by the department. Evaluation of the intern's progress of performance from all supervisors must accompany the request. Intern plans and supervisory evaluations for any completed segments must be submitted in a manner prescribed by the department. The department shall determine if the internship:

(1) should be revised or extended; and
(2) whether additional course work, continuing professional education hours, or passing the examination referenced in §111.21 is required.

(f) Evaluations. During each segment of the internship, each supervisor shall conduct a formal evaluation of the intern's progress in the development of professional skills. Documentation of this evaluation shall be maintained by both parties for three years or until the speech-language pathology license is granted. A copy of this documentation shall be submitted to the department upon request.

(g) Changes in Internship. Prior to implementing changes in the internship, approval from the department is required.

(1) If the intern changes the intern's supervisor or adds additional supervisors, a current Speech-Language Pathology Intern Plan and Agreement of Supervision Form shall be submitted by the new proposed supervisor and approved by the department before the intern may resume practice as prescribed under subsection (c).

(2) If the intern changes the intern's supervisor, the Speech-Language Pathology Report of Completed Internship Form shall be completed by the former supervisor and the intern and submitted to the department upon completion of that portion of the internship. It is the decision of the former supervisor to determine whether the internship is acceptable. The department shall review the form and inform the intern of the results.

(3) Each supervisor who ceases supervising an intern shall submit a Speech-Language Pathology Report of Completed Internship Form for the portion of the internship completed under the supervisor's supervision. This must be submitted within thirty (30) days of the date the supervision ended.

(4) If no hours were earned under an approved supervisor, the licensed intern or the approved supervisor must submit a signed, written statement that no hours were earned and provide the reason.

(5) If the intern changes the intern's employer but the supervisor and the number of hours employed per week remain the same, the supervisor shall notify the department in a manner prescribed by the department of the new location. This must be submitted within thirty (30) days of the date the change occurred.

(h) Notwithstanding the supervision provisions in this section, the department may establish procedures, processes, and mechanisms for the monitoring and reporting of the supervision requirements.

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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SUBCHAPTER F. REQUIREMENTS FOR ASSISTANT IN SPEECH-LANGUAGE PATHOLOGY LICENSE

16 TAC §111.50, §111.51

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The proposed rules are also proposed under Texas Occupations Code, Chapter 51, §51.501, Telehealth, as added by S.B. 40; Texas Occupations Code, Chapter 111, Telemedicine and Telehealth; and Texas Occupations Code, Chapter 401, Speech-Language Pathologists and Audiologists.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51, 111, 401, and 402. No other statutes, articles, or codes are affected by the proposed rules.

§111.50. Assistant in Speech-Language Pathology License-Licensing Requirements--Education and Clinical Observation and Experience.

(a) An individual shall not practice as an assistant in speech-language pathology without a current license issued by the department. An applicant for an assistant in speech-language pathology license must meet the requirement under the Act and this section. The applicant must meet the following requirements:

(1) possess a baccalaureate degree with an emphasis in communicative sciences or disorders;

(2) have acquired at least twenty-four (24) semester credit hours in speech-language pathology and/or audiology with a grade of "C" or above with the following conditions:

(A) at least 18 of the 24 semester credit hours must be in speech-language pathology;

(B) at least three (3) of the 24 semester credit hours must be in language disorders;

(C) at least three (3) of the 24 semester credit hours must be in speech disorders;

(D) the 24 semester credit hours excludes course work such as special education, deaf education, or sign language;

(E) the 24 semester credit hours must be academic course work and excludes any clinical experience; and

(3) have earned no fewer than twenty-five (25) hours of clinical observation in the area of speech-language pathology and twenty-five (25) hours of clinical assisting experience in the area of speech-language pathology obtained within an educational institution or in one of its cooperating programs. If these hours are not completed, the applicant must complete the Clinical Deficiency Plan under subsection (e).

(b) The baccalaureate degree shall be completed at a college or university which has a program accredited by the ASHA Council on Academic Accreditation or holds accreditation or candidacy status from a recognized regional accrediting agency.

(1) Original or certified copy of the transcripts showing the conferred degree shall be submitted and reviewed as follows:

(A) only course work earned within the past ten (10) years with a grade of "C" or above is acceptable;

(B) a quarter hour of academic credit shall be considered as two-thirds of a semester credit hour; and
(C) academic courses, the titles of which are not self-explanatory, shall be substantiated through course descriptions in official school catalogs or bulletins or by other official means.

(2) In the event the course work and clinical experience set out in subsection (a), were earned more than ten (10) years before the date of application for the assistant license, the applicant shall submit proof of current knowledge of the practice of speech-language pathology to be evaluated by the department. Proof of current knowledge may include: recently completing continuing education or other courses; or holding a current license in another state.

(c) An applicant who possesses a baccalaureate degree with a major that is not in communicative sciences or disorders may qualify for the assistant license. The department shall evaluate transcripts on a case-by-case basis to ensure equivalent academic preparation, and shall determine if the applicant satisfactorily completed twenty-four (24) semester credit hours in communicative sciences or disorders and meets the requirements of §111.50(b)(2), which may include some leveling hours.

(d) Degrees and/or course work received at foreign universities shall be acceptable only if such course work and clinical practicum hours may be verified as meeting the requirements of subsection (a). The applicant must bear all expenses incurred during the procedure. The department shall evaluate the documentation, which shall include an original transcript and an original report from a credential evaluation services agency acceptable to the department.

(e) An applicant who has not acquired the twenty-five (25) hours of clinical observation and twenty-five (25) hours of clinical experience referenced in subsection (a)(3), shall not meet the minimum qualifications for the assistant license. These hours must be obtained through an accredited college or university, or through a Clinical Deficiency Plan. All hours must be completed under [in-person] direct supervision. In order to acquire these hours, the applicant shall first obtain the assistant license by submitting the forms, fees, and documentation referenced in §111.55 and include the prescribed Clinical Deficiency Plan to acquire the clinical observation and clinical assisting experience hours lacking.

(1) The licensed speech-language pathologist who will provide the applicant with the training to acquire these hours must meet the requirements set out in the Act and §111.154 and shall submit:

(A) the Supervisory Responsibility Statement Form prescribed under §111.51; and

(B) the prescribed Clinical Deficiency Plan.

(2) The department shall evaluate the documentation and fees submitted to determine if the assistant license shall be issued. Additional information or revisions may be required before approval is granted.

(3) The Clinical Deficiency Plan shall be completed within sixty (60) days of the issue date of the assistant's license or the licensed assistant must submit a new plan.

(4) Immediately upon completion of the Clinical Deficiency Plan, the licensed speech-language pathologist identified in the plan shall submit a statement or information that the licensed assistant successfully completed the clinical observation and clinical assisting experience and that all hours worked by the licensed assistant were under the in-person, direct supervision of the licensed speech-language pathologist. This statement shall specify the number of hours completed and verify completion of the training identified in the Clinical Deficiency Plan.

(5) Department staff shall evaluate the documentation required in paragraph (4) and inform the licensed assistant and licensed speech-language pathologist who provided the training if acceptable.

(6) A licensed assistant may continue to practice under the in-person, direct supervision of the licensed speech-language pathologist who provided the licensed assistant with the training while the department evaluates the documentation identified in paragraph (4). All hours worked by the licensed assistant must be under the in-person, direct supervision of the licensed speech-language pathologist.

(7) In the event another licensed speech-language pathologist shall supervise the licensed assistant after completion of the Clinical Deficiency Plan, a Supervisory Responsibility Statement Form shall be submitted to the department seeking approval for the change in supervision. If the documentation required by paragraph (4), has not been received and approved by the department, approval for the change in supervision shall not be granted.

§111.51. Assistant in Speech-Language Pathology License--Supervision Requirements.

(a) A licensed assistant in speech-language pathology (assistant) must be supervised by a licensed speech-language pathologist who has been approved by the department to serve as the assistant's supervisor (supervisor).

(b) A supervisor must agree to assume responsibility for all services provided by the assistant. The supervisor must comply with the requirements set out in the Act and §111.154.

(c) Supervisory Responsibility Statement Form. A Supervisory Responsibility Statement Form shall be submitted in a manner prescribed by the department by both the applicant and the proposed supervisor. The proposed supervisor must meet with the requirements set out in the Act and §111.154.

(1) Approval from the department shall be required prior to practice by the assistant. The Supervisory Responsibility Statement Form shall be submitted upon:

(A) application for an assistant license;

(B) any changes in supervision; and

(C) the addition of other supervisors.

(2) If more than one speech-language pathologist agrees to supervise the assistant, each proposed supervisor must submit a separate Supervisory Responsibility Statement Form in manner prescribed by the department.

(3) The assistant may not practice without an approved Supervisor Responsibility Statement Form. The supervisor may not allow an assistant to practice before a Supervisor Responsibility Statement Form is approved.

(4) The assistant shall only provide services for the caseload of the assistant's supervisors who have current Supervisor Responsibility Statement Forms on file with the department.

(5) If the supervisor ceases supervision of the assistant, the supervisor shall notify the department, in a manner prescribed by the department, and shall inform the assistant to stop practicing immediately. The supervisor is responsible for the practice of the assistant until notification has been received by the department.

(6) If the assistant's supervisor ceases supervision, the assistant shall stop practicing immediately. The assistant may not practice until a new Supervisor Responsibility Statement Form has been submitted to and approved by the department.
The supervisor shall assign duties and provide appropriate supervision to the assistant.

Direct supervision of the assistant may only occur when [at the worksite in which] the assistant provides services to existing clients or while the assistant provides services to cases previously delegated to the assistant. The supervisor may not make temporary, short-term assignments from the supervisor's caseload to the assistant in order to fulfill direct supervision requirements.

Client Contacts.

1. Initial contacts directly with the client shall be conducted by the supervisor.

2. Following the initial contact, the supervisor shall determine whether the assistant has the competence to perform specific duties before delegating tasks.

Amount and Type of Supervision. Each supervisor shall provide a minimum of eight (8) hours per calendar month of supervision to the assistant. This subsection applies whether the assistant is employed full-time or part-time.

1. At least four (4) hours must be direct supervision. [At least two (2) of the direct supervision hours must be in-person. The other two (2) hours may be in-person or by telehealth/telepractice.]

2. The remaining hours may be performed using indirect supervision.

3. If fewer than four (4) weeks are worked in a calendar month, then the number of hours of supervision provided will be based on the number of weeks worked. Two (2) hours of supervision must be provided for each week worked, including one (1) hour of direct supervision and one (1) hour of indirect supervision.

4. Tele-supervision may be used for direct and indirect supervision. [For the purposes of this subsection the telehealth/telepractice provisions allowed by Subchapter Y may be used for up to six (6) hours of supervision (two (2) hours of direct supervision and four (4) hours of indirect supervision).]

5. When determining the amount and type of supervision, the supervisor must consider the skill and experience of the assistant as well as the services to be provided. The supervision hours established in this subsection may be exceeded as determined by the supervisor.

Delegating Clinical Tasks.

1. The supervisor may delegate specific clinical tasks to an assistant; however, the responsibility to the client for all services provided cannot be delegated.

2. The supervisor shall ensure that all services are documented and provided in compliance with the Act and this chapter.

3. The supervisor shall:
   A. in writing, determine the skills and assigned tasks the assistant is able to carry out under §111.52. This document must be agreed upon by the assistant and the supervisor;
   B. notify the client or client's legal guardian(s) that services will be provided by a licensed assistant;
   C. develop the client's treatment program in all settings and review it with the assistant who will provide the service; and
   D. maintain responsibility for the services provided by the assistant.

Admission, Review, and Dismissal Meetings. The supervisor, prior to an Admission, Review and Dismissal (ARD) meeting, shall:

1. notify the parents of students with speech impairments that services will be provided by the assistant and that the assistant will represent Speech Pathology at the ARD;

2. develop the student's new Individual Education Program (IEP) goals and objectives and review them with the assistant; and

3. maintain undiminished responsibility for the services provided and the actions of the assistant.

Records. The supervisor shall maintain the following records.

1. The supervisor shall maintain for a period of three years supervisory records that verify regularly scheduled monitoring, assessment, and evaluation of the assistant's and client's performance. Such documentation may be requested by the department.

2. The supervisor shall keep job descriptions and performance records of the assistant. Records shall be current and made available upon request to the department.

Supervision Audits. The department may audit a random sampling of assistants for compliance with this section and §111.154.

1. The department shall notify the assistant and the supervisor in a manner prescribed by the department that the assistant has been selected for an audit.

2. Upon receipt of an audit notification, the assistant and the supervisor shall provide in a manner prescribed by the department the requested proof of compliance to the department.

3. The assistant and the supervisor shall comply with the department's request for documentation and information concerning compliance with the audit.

Notwithstanding the supervision provisions in this section, the department may establish procedures, processes, and mechanisms for the monitoring and reporting of the supervision requirements. The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.
other law establishing a program regulated by the Department. The proposed rules are also proposed under Texas Occupations Code, Chapter 51, §51.501, Telehealth, as added by S.B. 40; Texas Occupations Code, Chapter 111, Telemedicine and Telehealth; and Texas Occupations Code, Chapter 401, Speech-Language Pathologists and Audiologists.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51, 111, 401, and 402. No other statutes, articles, or codes are affected by the proposed rules.

§111.91. Assistant in Audiology License--Supervision Requirements.
(a) A licensed assistant in audiology (assistant) must be supervised by a licensed audiologist who has been approved by the department to serve as the assistant's supervisor (supervisor).

(b) A supervisor must agree to assume responsibility for all services provided by the assistant. The supervisor must comply with the requirements set out in the Act and §111.154.

(c) Supervisory Responsibility Statement Form. A Supervisory Responsibility Statement Form shall be submitted in a manner prescribed by the department by both the applicant and the proposed supervisor. The proposed supervisor must meet the requirements set out in the Act and §111.154.

(1) Approval from the department shall be required prior to practice by the licensed assistant in audiology. The Supervisory Responsibility Statement for an Assistant in Audiology Form shall be submitted upon:

(A) application for a license;

(B) any changes in supervision; and

(C) addition of other supervisors.

(2) If more than one audiologist agrees to supervise the assistant, each proposed supervisor must submit a separate Supervisory Responsibility Statement Form in a manner prescribed by the department.

(3) The assistant may not practice without an approved Supervisor Responsibility Statement Form. The supervisor may not allow an assistant to practice before a Supervisor Responsibility Statement Form is approved.

(4) The assistant shall only provide services for the caseload of the assistant's supervisors who have current Supervisor Responsibility Statement Forms on file with the department.

(5) If the supervisor ceases supervision of the assistant, the supervisor shall notify the department, in a manner prescribed by the department, and shall inform the assistant to stop practicing immediately. The supervisor is responsible for the practice of the assistant until notification has been received by the department.

(6) If the assistant's supervisor ceases supervision, the assistant shall stop practicing immediately. The assistant may not practice until a new Supervisor Responsibility Statement Form has been submitted to and approved by the department.

(d) A supervisor shall assign duties and provide appropriate supervision to the assistant.

(e) Client Contacts.

(1) All diagnostic contacts shall be conducted by the supervisor.

(2) Following the initial diagnostic contact, the supervisor shall determine whether the assistant has the competence to perform specific non-diagnostic and non-prohibited duties before delegating tasks as referenced in §111.92(c).

(f) Amount and Type of Supervision. Each supervisor must provide a minimum of ten (10) hours per week, or forty (40) hours per calendar month, of supervision to the assistant. This subsection applies whether the assistant is employed full-time or part-time.

(1) At least one (1) hour per week, or four (4) hours per calendar month, must be direct supervision.

(2) The remaining hours may be performed using indirect supervision.

(3) If fewer than four (4) weeks are worked in a calendar month, then the number of hours of supervision provided will be based on the number of weeks worked. Ten (10) hours of supervision must be provided for each week worked, including one (1) hour of direct supervision.

(4) The supervisor shall provide in-person, direct supervision for the duties described under §111.92(c)(1) - (4).]

(5) Tele-supervision may be used for direct and indirect supervision. [For the purposes of this subsection, the telehealth and telepractice provisions described under §111.215 may be used except for duties described under §111.92(c)(1) - (4) where the supervisor must provide in-person, direct supervision.]

(6) When determining the amount and type of supervision, the supervisor must consider the skill and experience of the assistant as well as the services to be provided. The supervision hours established in this paragraph may be exceeded as determined by the supervisor.

(g) Delegating Clinical Tasks.

(1) Although the supervisor may delegate specific clinical tasks to an assistant, the responsibility to the client for all services provided cannot be delegated.

(2) The supervisor shall ensure that all services are documented and provided in compliance with the Act and this chapter.

(3) The supervisor shall:

(A) in writing, determine the skills and assigned tasks the assistant is able to carry out under §111.92. This document must be agreed upon by the assistant and the supervisor;

(B) notify the client or client's legal guardian(s) that services will be provided by a licensed assistant; and

(C) maintain responsibility for the services provided by the assistant.

(h) Records. The supervisor shall maintain the following records.

(1) Supervisory records shall be maintained by the supervisor for a period of three years which verify regularly scheduled monitoring, assessment, and evaluation of the assistant's and client's performance. Such documentation may be requested by the department.

(2) The supervisor shall keep job descriptions and performance records. Records shall be current and be made available upon request to the department.

(i) Supervision Audits. The department may audit a random sampling of assistants for compliance with this section and §111.154.

(1) The department shall notify an assistant and the supervisor in a manner prescribed by the department that the assistant has been selected for an audit.
(2) Upon receipt of an audit notification, the assistant and the supervisor, who agreed to accept responsibility for the services provided by the assistant, shall provide the requested proof of compliance to the department in a manner prescribed by the department.

(3) The assistant and the supervisor shall comply with the department's request for documentation and information concerning compliance with the audit.

(j) Notwithstanding the supervision provisions in this section, the department may establish procedures, processes, and mechanisms for the monitoring and reporting of the supervision requirements.

§111.92  Assistant in Audiology License--Practice and Duties of Assistants.

(a) A licensed assistant in audiology (assistant) must perform assigned duties under the supervision of a licensed audiologist who has been approved by the department to serve as the assistant's supervisor (supervisor).

(b) The assistant may execute specific components of the clinical hearing program if the supervisor:

(1) determines that the assistant has received the training and has the skill to accomplish that task; and

(2) provides sufficient supervision to ensure appropriate completion of the task assigned to the assistant.

(c) Duties that a supervisor may assign to an assistant, who has received appropriate training, include the following:

(1) under [in-person] direct supervision, conduct or participate in, hearing screening including screening otoscopy, tympanometry, otocoustic emissions procedures and pure tone air conduction procedures, but may not diagnose hearing loss or disorders of the auditory system, or make statements of severity or impairment;

(2) under [in-person] direct supervision, assist the audiologist with play audiometry, visual reinforcement audiometry, and tasks such as picture-pointing speech audiometry;

(3) under [in-person] direct supervision, assist the audiologist in the evaluation of difficult-to-test patients;

(4) under [in-person] direct supervision, assist the audiologist with technical tasks for diagnostic evaluation such as preparing test rooms, attaching electrodes, and preparing patients prior to procedures;

(5) maintain clinical records;

(6) prepare clinical materials;

(7) participate with the supervisor in research projects, staff development, public relations programs, or similar activities as designated and supervised by the supervisor;

(8) maintain equipment by conducting biologic and electroacoustic calibration of audiometric equipment, perform preventative maintenance checks and safety checks of equipment;

(9) explain the proper care of hearing instruments and assistive listening devices to patients;

(10) maintain hearing instruments including cleaning, replacing ear mold tubing, minor hearing instrument repairs, determining need for repair, and performing biologic and electroacoustic checks of hearing instruments;

(11) provide case history and/or self-assessment forms and clarify questions on the forms to patients as needed;

(12) conduct basic record keeping and prepare paperwork for signature by the audiologist;

(13) coordinate ear mold and hearing instrument records or repairs and other orders;

(14) attach hearing aids to computers and use software to verify internal electroacoustic settings; and

(15) perform other non-diagnostic duties not prohibited in subsection (d), for which the assistant has been trained and demonstrates appropriate skills, as assigned by the supervisor.

(d) The assistant shall not:

(1) conduct aural habilitation or rehabilitation activities or therapy;

(2) provide carry-over activities (therapeutically designed transfer of a newly acquired communication ability to other contexts and situations) for patients in aural rehabilitation therapy;

(3) collect data during aural rehabilitation therapy documenting progress and results of therapy;

(4) administer assessments during aural rehabilitation therapy to assess therapeutic progress;

(5) conduct any audiological procedure that requires decision-making or leads to a diagnosis;

(6) interpret results of procedures and evaluations, except for screening tests;

(7) make diagnostic statements, or propose or develop clinical management strategies;

(8) make ear impressions;

(9) cause any substance to enter the ear canal or place any instrument or object in the ear canal for the purpose of removing cerumen or debris;

(10) make any changes to the internal settings of a hearing instrument manually or using computer software;

(11) represent audiology at staffing meetings or on an admission, review and dismissal (ARD) committee;

(12) attend staffing meetings or ARD committee meetings without the supervisor being present;

(13) design a treatment program;

(14) determine case selection;

(15) present written or oral reports of client information, except to the assistant's supervisor;

(16) refer a client to other professionals or other agencies;

(17) use any title which connotes the competency of a licensed audiologist; or

(18) practice as an assistant without a valid Supervisory Responsibility Statement for an Audiology Assistant Form on file with the department.

(e) In any professional context the assistant must indicate the assistant's status as a licensed audiology assistant.

(f) A licensed assistant in audiology may not engage in the fitting, dispensing or sale of a hearing instrument under this chapter; however, a licensed assistant in audiology who is licensed under the Texas Occupations Code, Chapter 402 may engage in activities as allowed
by that law and is not considered to be functioning under the person's assistant in audiology license when performing those activities.

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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SUBCHAPTER V. TELEHEALTH

16 TAC §§111.210 - 111.212

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The proposed rules are also proposed under Texas Occupations Code, Chapter 51, §51.501, Telehealth, as added by S.B. 40; Texas Occupations Code, Chapter 111, Telemedicine and Telehealth; and Texas Occupations Code, Chapter 401, Speech-Language Pathologists and Audiologists.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51, 111, 401, and 402. No other statutes, articles, or codes are affected by the proposed rules.


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

1. Client--A consumer or proposed consumer of speech-language pathology or audiology services.

2. Client site--The physical location of the client at the time the telehealth services are being provided [furnished via telecommunications].

3. Consultant--Any professional who collaborates with a provider of telehealth services to provide services to clients.

4. ([4]) Facilitator--The individual at the client site who assists with the delivery of the telehealth services at the direction of the provider [audiologist or speech-language pathologist].

5. ([5]) Provider--An individual who holds a current, renewable, unrestricted speech-language pathology, [or] audiology, or dual license under Texas Occupations Code §401.302 and §401.304; [or] an individual who holds a current speech-language pathology intern or an audiology intern license under Texas Occupations Code §401.311; or an individual who holds a current speech-language pathology assistant license under Texas Occupations Code §401.312.

6. ([6]) Provider site--The physical location of [at which] the provider [speech-language pathologist or audiologist delivering the services is located] at the time the telehealth services are provided [via telecommunications] which is distant or remote from the client site.

7. ([7]) Telecommunications--Interactive communication at a distance by concurrent two-way transmission, using telecommunications technology, of information, including, without limitation, sound, visual images, and/or computer data, between the client site and the provider site, and required to occur without a change in the form or content of the information, as sent and received, other than through encoding or encryption of the transmission itself for purposes of and to protect the transmission.

8. ([8]) Telecommunications technology--Computers, smart phones, and equipment, other than analog telephone, email or facsimile technology and equipment, used or capable of use for purposes of telecommunications. For purposes of this subchapter, the term includes, without limitation:

(A) compressed digital interactive video, audio, or data transmission;

(B) clinical data transmission using computer imaging by way of still-image capture and storage and forward; and

(C) smart phones, or any audio-visual, real-time, or two-way interactive communication system; and

(D) other technology that facilitates the delivery of telehealth services.

9. ([9]) Telehealth--The use of telecommunications and information technologies for the exchange of information from one site to another for the provision of speech-language pathology or audiology services to a client from a provider, including for assessments, interventions, or consultations regarding a speech-language pathology or audiology client. For a provider who is an audiologist or an audiology intern, telehealth includes the use of telecommunications technology for the fitting and dispensing of hearing instruments. Telehealth is also referred to as telepractice.

10. ([10]) Telehealth services--The application of telecommunications technology to deliver speech-language pathology and/or audiology services at a distance for assessment, intervention, and/or consultation, including the rendering of audiology and/or speech-language pathology services through telehealth to a client who is physically located at a site other than the site where the provider is located. For a provider who is an audiologist or an audiology intern, telehealth services includes the fitting and dispensing of hearing instruments through telehealth to a client who is physically located at a site other than the site where the provider is located. Telehealth services are also referred to as telepractice services.

11. ([11]) Telepractice--The use of telecommunications technology by a license holder for an assessment, intervention, or consultation regarding a speech-language pathology or audiology client.

12. ([12]) Telepractice services--The rendering of audiology and/or speech-language pathology services through telepractice to a client who is physically located at a site other than the site where the provider is located.

§111.211. Service Delivery Models [of Speech-Language Pathologists].

(a) Telehealth may be delivered in a variety of ways, including, but not limited to those set out in this section.

1. Store-and-forward model/electronic transmission is an asynchronous electronic transmission of stored clinical data from one location to another.
(2) Clinician interactive model is a synchronous, real time interaction between the provider and client [or consultant] that may occur via telecommunication links.

(b) Self-monitoring/testing model refers to when the client [or consultant] receiving the services provides data to the provider without a facilitator present at the site of the client [or consultant].

(c) Live versus stored data refers to the actual data transmitted during the telehealth service [telepractice]. Both live, real-time and stored clinical data may be included during the telehealth service [telepractice].

§111.212. Requirements for Providing Telehealth Services and Using Telehealth.

(a) Applicability.

(1) Except where noted, this subchapter applies to speech-language pathologists, speech-language pathology interns, speech-language pathology assistants, audiologists, audiology interns, audiology assistants, and dual speech-language pathologist and audiologist license holders, as authorized under this subchapter.

(2) Except to the extent it imposes additional or more stringent requirements, this subchapter does not affect the applicability of any other requirement or provision of law to which an individual is otherwise subject under this chapter or other law.

(b) Licensure and Scope of Practice.

(1) An individual shall not provide telehealth services to a client in the State of Texas, unless the individual is licensed by the department and qualifies as a provider as that term is defined in this subchapter, or is otherwise legally authorized to do so.

(2) A provider may provide only those telehealth services that are within the course and scope of the provider's license and competence, and delivered in accordance with the requirements of that license and pursuant to the terms and conditions set forth in this chapter.

(3) A provider who is a speech-language pathology assistant may provide services through telehealth, as directed by their supervisor, according to the speech-language pathology assistant supervision requirements and the practice and duties under 16 TAC §111.51 and §111.52. A provider who is an audiology assistant may provide services through telehealth, as directed by their supervisor, according to the audiology assistant supervision requirements and the practice and duties under 16 TAC §111.91 and §111.92.

(c) Competence and Standard of Practice (Code of Ethics).

(1) A provider of telehealth services shall be competent in both the type of services provided and the methodology and equipment used to provide the service.

(2) A provider shall comply with the code of ethics and scope of practice requirements in this chapter when providing telehealth services.

(3) The scope, nature, and quality of the services provided via telehealth shall be the same as the services provided in-person.

(4) A provider shall determine whether a particular service or procedure is appropriate to be provided via telehealth. A provider shall not provide a service or procedure via telehealth if it is not appropriate or cannot be provided at the same standard of care as if it were provided in-person.

(5) As pertaining to liability and malpractice issues, a provider providing telehealth services shall be held to the same standards of practice as if the services were provided in person.

(d) Facilitators.

(1) Subject to the requirements and limitations of this subchapter, a provider may utilize a facilitator at the client site to assist the provider in providing telehealth services.

(2) A provider shall document whether a facilitator is used in providing telehealth services. If a facilitator is used, the provider shall document the tasks in which the facilitator provided assistance.

(3) Before allowing a facilitator to assist the provider in providing telehealth services, the provider shall ascertain and document the facilitator's qualifications, training, and competence, as appropriate and reasonable, in:

(A) each task the provider directs the facilitator to perform at the client site; and

(B) the methodology and equipment the facilitator is to use at the client site.

(4) The facilitator may perform at the client site only the following tasks:

(A) a task for which the facilitator holds and acts in accordance with any license, permit, authorization, or exemption required by law to perform the task; and

(B) those physical, administrative, and other tasks for which a provider determines a facilitator is competent to perform in connection with the provision of audiology or speech-language pathology services, for which no form of license, permit, authorization, or exemption is required by law.

(5) A provider is responsible for the actions of the facilitator and shall monitor the client and oversee and direct the facilitator at all times during the telehealth session.

(e) Technology and Equipment.

(1) The provider shall use only telecommunications technology, as defined in this subchapter, to provide telehealth services. Modes of communication that do not utilize such telecommunications technology, including analog telephone, facsimile, and email, may be used only as adjuncts.

(2) A provider shall only utilize telecommunications technology and other equipment that the provider is competent to use as part of the provider's telehealth services.

(3) The provider shall not provide telehealth services unless the telecommunications technology and equipment located at the client site and at the provider site:

(A) are appropriate to the telehealth services to be provided;

(B) are properly calibrated, if appropriate, and in good working order; and

(C) are of sufficient quality to allow the provider to deliver equivalent service and quality to the client as if those services were provided in person at the same physical location.

(f) Client Contacts and Communications.

(1) The initial contact between a provider and client may be at the same physical location or through telehealth, as determined appropriate by the provider. For a provider who is a speech-language pathology assistant, the initial contact with a client must be made by the assistant's supervisor.
(2) A provider shall consider relevant factors including the client's behavioral, physical, and cognitive abilities in determining the appropriateness of providing services via telehealth.

(3) A provider shall be aware of the client's level of comfort with the technology being used as part of the telehealth services.

(4) A provider shall be sensitive to cultural and linguistic variables that affect the identification, assessment, treatment, and management of the clients.

(5) Notification of telehealth services shall be provided to the client, the guardian, the caregiver, and the multi-disciplinary team, if appropriate. The notification shall include, but not be limited to: the right to refuse telehealth services, options for service delivery, and instructions on filing and resolving complaints.

(g) Records and Billing.

(1) A provider of telehealth services shall comply with all laws, rules, and regulations governing the maintenance of client records, including client confidentiality requirements.

(2) Documentation of telehealth services shall include documentation of the date and nature of services performed by the provider through telehealth and the assistive tasks of the facilitator, if used.

(3) A provider is allowed to provide telehealth services in accordance with this subchapter, but reimbursement of telehealth services is subject to the reimbursement policies of the entity being billed.

(h) Hearing Instruments. Hearing instruments may be adjusted digitally through the use of telecommunications technology by a provider who is an audiologist or an audiology intern and who provides telehealth services under this subchapter.

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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Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
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16 TAC §§111.212 - 111.216

STATUTORY AUTHORITY

The proposed repeals are proposed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The proposed repeals are also proposed under Texas Occupations Code, Chapter 51, §51.501, Telehealth, as added by S.B. 40; Texas Occupations Code, Chapter 111, Telemedicine and Telehealth; and Texas Occupations Code, Chapter 401, Speech-Language Pathologists and Audiologists.

The statutory provisions affected by the proposed repeals are those set forth in Texas Occupations Code, Chapters 51, 111, 401, and 402. No other statutes, articles, or codes are affected by the proposed repeal.

§111.212. Requirements for the Use of Telehealth by Speech-Language Pathologists.

§111.213. Limitations on the Use of Telecommunications Technology by Speech-Language Pathologists.

§111.214. Requirements for Providing Telehealth Services in Speech-Language Pathology.

§111.215. Requirements for Providing Telepractice Services in Audiology.

§111.216. Limitations on the Use of Telecommunications Technology by Audiologists.

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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SUBCHAPTER X. JOINT RULES FOR FITTING AND DISPENSING OF HEARING INSTRUMENTS BY TELEPRACTICE

16 TAC §§111.230 - 111.232

STATUTORY AUTHORITY

The proposed repeals are proposed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The proposed repeals are also proposed under Texas Occupations Code, Chapter 51, §51.501, Telehealth, as added by S.B. 40; Texas Occupations Code, Chapter 111, Telemedicine and Telehealth; and Texas Occupations Code, Chapter 401, Speech-Language Pathologists and Audiologists.

The statutory provisions affected by the proposed repeals are those set forth in Texas Occupations Code, Chapters 51, 111, 401, and 402. No other statutes, articles, or codes are affected by the proposed repeal.

§111.230. Purpose.

§111.231. Definitions.

§111.232. Requirements for Providing Telehealth Services for the Fitting and Dispensing of Hearing Instruments.

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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CHAPTER 112. HEARING INSTRUMENT FITTERS AND DISPENSERS

The Texas Department of Licensing and Regulation (Department) proposes amendments to an existing rule at 16 Texas Administrative Code (TAC), Chapter 112, Subchapter A, §112.2; proposes new rules at Subchapter N, §§112.130 and §112.132; and proposes the repeal of an existing rule at Subchapter P, §112.150, regarding the Hearing Instrument Fitters and Dispensers program. These proposed changes are referred to as "proposed rules."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC Chapter 112 implement Texas Occupations Code, Chapter 402, Hearing Instrument Fitters and Dispensers; Chapter 51, the enabling statute of the Texas Commission of Licensing and Regulation (Commission) and the Department; and Chapter 111, Telemedicine and Telehealth.

The proposed rules implement the telehealth emergency rules on a permanent basis; implement SB 40, 87th Legislature, Regular Session (2021); and include changes as a result of the four-year rule review related to telehealth. The proposed rules also reorganize the existing provisions.

Telehealth Emergency Rules

The Commission adopted emergency rules to ensure that services to clients may continue to be provided through telehealth as was allowed under the waivers that were granted by the Governor during the COVID-19 pandemic. The emergency rules also reflected the change in the statutory authority regarding telehealth. The emergency rules were necessary to protect the public health, safety, and welfare. (Emergency Rules, 46 TexReg 5327, August 27, 2021).

The telehealth emergency rules were effective September 1, 2021. Emergency rules are only effective for 120 days, with one 60-day extension, for a total of 180 days. The current proposed rules implement the emergency rules on a permanent basis.

Implementation of SB 40

Senate Bill (SB) 40, 87th Legislature, Regular Session (2021) added new telehealth provisions and rulemaking authority to Texas Occupations Code, Chapter 51, and repealed the provisions regarding joint rules for fitting and dispensing hearing instruments by telepractice in Texas Occupations Code, Chapters 401 and 402. The joint rules were with the Speech-Language Pathologists and Audiologists program. These changes became effective immediately.

The proposed rules implement SB 40 as it relates to telehealth and the repeal of the statutory requirements for joint rules for fitting and dispensing hearing instruments by telepractice. Because SB 40 was effective immediately, the necessary changes related to statutory authority for telehealth were included in the emergency rules (discussed above).

Four-Year Rule Review Changes

The proposed rules include changes as a result of the four-year rule review related to telehealth. The Department conducted the required four-year rule review of the rules under 16 TAC Chapter 112, and the Commission readopted the rule chapter in its entirety and in its current form. (Proposed Rule Reviews, 45 TexReg 7281, October 9, 2020. Adopted Rule Reviews, 46 TexReg 2050, March 26, 2021).

In response to the Notice of Intent to Review that was published, the Department received two public comments regarding 16 TAC Chapter 112. One of the comments suggested changes to the joint rules for fitting and dispensing hearing instruments by telepractice. This comment suggested changing the terminology and the definition of "hearing instrument" under 16 TAC §112.150(b). The Department did not make the suggested change, since this is the same terminology and definition that is included in Texas Occupations Code §402.001 and 16 TAC §112.2. The proposed rules, however, include changes based on the Department’s review of the rules during the rule review process related to telehealth.

Reorganization Changes

The proposed rules create a new subchapter for the new telehealth rules and relocate and reorganize the existing provisions by subject matter, as recommended by Department staff.

Advisory Board Recommendation

The proposed rules were presented to and discussed by the Hearing Instrument Fitters and Dispensers Advisory Board at its meeting on August 25, 2021. The Advisory Board made a small change to the definition of "telecommunications" under proposed new §112.130(7). The Advisory Board voted and recommended that the proposed rules with the noted change be published in the Texas Register for public comment.

SECTION-BY-SECTION SUMMARY

Subchapter A

The proposed rules amend Subchapter A. General Provisions. The proposed rules amend §112.2, Definitions. The proposed rules add a definition of "telehealth" with a cross-reference to the definitions under new Subchapter N. Telehealth.

Subchapter N

The proposed rules add new Subchapter N. Telehealth.

The proposed rules add new §112.130, Definitions Relating to Telehealth. This new section includes definitions from §112.150(b), as necessary. Other definitions are found in existing §112.2.

The proposed rules make clean-up changes to the definitions of "client site," "facilitator," and "provider site." The proposed rules add a definition of "in-person." The definition of "provider" has been expanded to include apprentice permit holders and temporary training permit holders who have completed the direct supervision training requirements. This change will allow additional providers to provide telehealth services.

The definition of "telecommunications" is updated to include the word "synchronous." The definition of "telecommunications technology" is updated to include a smart phone, or any audio-visual, real-time, or two-way interactive communication system, and to clarify the current reference to telephone in the definition.

The proposed rules replace the term "telepractice" with the term "telehealth." This change provides consistency in terminology across provisions and reflects the terminology used in Texas Occupation Code, Chapter 51, as amended by S.B. 40, and Texas Occupations Code, Chapter 111, Telemedicine and Telehealth. The reference to "telepractice" was found in Texas Occupations Code §402.1023, which was repealed.
The proposed rules update the definition of "telehealth" (formerly "telepractice") to provide for the use of telecommunications and information technologies for the exchange of information from one site to another for the provision of services to a client from a provider, and to include assessments, interventions, or consultations regarding a client. The proposed rules update the definition of "telehealth services" to include assessments, interventions, and/or consultations regarding a client.

The proposed rules add new §112.132, Requirements for Providing Telehealth Services and Using Telehealth. This new section contains most of the provisions under §112.150(c)-(n). These provisions have been reorganized by subject matter with the new provisions, and the terminology has been updated to use the terms "telehealth" and "telehealth services."

New §112.132(a) addresses the applicability of the subchapter. Except where noted, the subchapter applies to hearing instrument fitters and dispensers, apprentice permit holders, and temporary training permit holders, as authorized under this subchapter. This subsection also addresses the applicability of other laws.

New §112.132(b) addresses licensure and scope of practice requirements related to providing telehealth services. This subsection also specifies that an apprentice permit holder may provide telehealth services under their approved supervisor’s license according to the specified requirements. A temporary training permit holder may provide telehealth services, as directed by their supervisor, according to the specified requirements, but only after the direct supervision training requirements are completed.

New §112.132(c) addresses competence and standard of practice. The subsection includes provisions regarding provider competence in the services being provided and the methodology and equipment being used; the standard of practice being the same for services provided via telehealth as services provided in-person; and the responsibility of a provider to determine whether a particular service or procedure is appropriate to be provided via telehealth.

New §112.132(d) addresses the use of facilitators to assist a provider in providing telehealth services. This subsection includes provisions regarding the facilitator’s qualifications, training, and competence, as appropriate; the tasks that may be performed; the responsibilities of the provider; and the required documentation.

New §112.132(e) addresses technology and equipment. This subsection includes provisions regarding using telecommunications technology and other equipment that the provider is competent to use, and only providing telehealth services if the telecommunications technology and equipment are appropriate for the services to be provided; are properly calibrated, if appropriate, and in good working order; and are of sufficient quality to deliver equivalent service and quality to the client as if those services were provided in-person.

New §112.132(f) addresses client contacts and communications. This subsection provides that the initial contact between a provider and a client may be at the same physical location or through telehealth, as determined appropriate by the provider. This subsection requires consideration of certain factors in determining the appropriateness of providing services via telehealth and requires a notification of telehealth services be provided to a client.

New §112.132(g) addresses records and billing. This subsection includes provisions regarding maintenance of client records; documentation of telehealth services; and reimbursement of telehealth services.

New §112.132(h) addresses hearing instruments. This subsection includes a provision regarding digital adjustments of hearing instruments through telecommunications technology by a provider.

Subchapter P

The proposed rules repeal Subchapter P, Joint Rules for Fitting and Dispensing of Hearing Instruments by Telepractice.

The proposed rules repeal existing §112.150, Requirements Regarding the Fitting and Dispensing of Hearing Instruments by Telepractice. The statutory requirements for joint rules for fitting and dispensing hearing instruments by telepractice were repealed by SB 40, effective immediately. The definitions under §112.150(b) are included in §112.2 and new §112.130, as necessary. Most of the remaining provisions under §112.150(c)-(n) have been relocated to new §112.132 under new Subchapter N, Telehealth, and have been reorganized by subject matter with the new provisions.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rules are in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rules.

Mr. Couvillon has determined that for each year of the first five years the proposed rules are in effect, there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed rules.

Mr. Couvillon has determined that for each year of the first five years the proposed rules are in effect, enforcing or administering the proposed rules does not have foreseeable implications relating to costs or revenues of state governments or local governments.

LOCAL EMPLOYMENT IMPACT STATEMENT

Mr. Couvillon has determined that the proposed rules will not affect the local economy, so the agency is not required to prepare a local employment impact statement under Government Code §2001.022.

PUBLIC BENEFITS

Mr. Couvillon also has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be expanded access to services; an increase in the number of providers who may provide telehealth services; an increase in the number of clients who may receive services; a reduction in travel costs; a reduction in the number of office visits; and additional technologies to expand the availability of telehealth.

For those services which may be provided at the same level of quality via telehealth as in-person, a provider using telehealth could provide services to a larger number of clients living in rural areas who may not currently have access to services due to the distance to the nearest provider.

The proposed rules allow apprentice permit holders and temporary training permit holders who have completed their direct su-
pervision training requirements to be providers of telehealth, under their supervisor's license, which will increase the number of providers and increase the number of clients who may be served through telehealth.

For those aspects of the fitting and dispensing of hearing instruments which may be performed through telehealth, there may be a decrease or elimination of travel costs for the client associated with an in-person office visit versus receiving that same service without the need to travel to a physical office location. Allowing providers to use telecommunications technology to remotely program hearing instruments will reduce the number of office visits needed by some clients for those services, as well as travel time and costs.

The inclusion of smartphones in the definition of telecommunications technology expands the availability of telehealth to those who may not have access to computers or Wi-Fi.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, there are no significant economic costs to persons who are required to comply with the proposed rules. The rules do not impose additional fees upon licensees or permit holders, nor do they create requirements that would cause licensees or permit holders to expend funds for equipment, technology, staff, supplies, or infrastructure. A provider who wishes to expand services through the use of telehealth might need new or additional telecommunications technology, but this would be a discretionary cost and not required by the rule changes. Costs to establish telehealth capability is relatively inexpensive, with teleconferencing applications available for free or for prices as low as less than $15 per month, and computer cameras and other hardware are available also at low costs.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed rules. Since the agency has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, are not required.

ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT

The proposed rules do not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the agency is not required to take any further action under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

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 rules will be in effect, the agency 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 create a new regulation.

6. The proposed rules do expand, limit, or repeal an existing regulation.

7. The proposed rules do increase or decrease the number of individuals subject to the rules’ applicability.

8. The proposed rules do not positively or adversely affect this state’s economy.

Existing rules for fitting and dispensing hearing instruments by telepractice are being proposed for repeal, and new rules for telehealth services are being proposed for adoption as part of the updating and clarification of the existing telehealth rules. Rule changes are proposed to implement SB 40, to update the current telehealth rules based on the four-year rule review, and to make the emergency rules permanent. The proposed rules expand the definitions for telehealth and telecommunications technology. The definition of telehealth provider is also expanded to include apprentice permit holders and temporary training permit holders who have completed their direct supervision training requirements, thereby increasing the number of individuals subject to the rule’s applicability.

TAKINGS IMPACT ASSESSMENT

The Department has determined that no private real property interests are affected by the proposed rules and the proposed rules do not restrict, limit, or impose a burden on an owner’s rights to his or her private real property that would otherwise exist in the absence of government action. As a result, the proposed rules do not constitute a taking or require a takings impact assessment under Government Code §2007.043.

PUBLIC COMMENTS

Comments on the proposed rules may be submitted electronically on the Department’s website at https://ga.tdlr.texas.gov/1443/form/gcerules; by facsimile to (512) 475-3032; or by mail to Monica Nuñez, Legal Assistant, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711. The deadline for comments is 30 days after publication in the Texas Register.

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §112.2

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department’s governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The proposed rules are also proposed under Texas Occupations Code, Chapter 51, §51.501, Telehealth, as added by S.B. 40; Texas Occupations Code, Chapter 111, Telemedicine and Telehealth; and Texas Occupations Code, Chapter 402, Hearing Instrument Fitters and Dispensers.
The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51, 111, 401, and 402. No other statutes, articles, or codes are affected by the proposed rules.

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

1. Act--Texas Occupations Code, Chapter 402, concerning the licensing of persons authorized to fit and dispense hearing instruments.

2. Advisory board--The Hearing Instrument Fitters and Dispensers Advisory Board.

3. Applicant--An individual who applies for a license or permit under the Act.

4. Apprentice permit--A permit issued by the department to an individual who meets the qualifications established by Texas Occupations Code, §402.207 and this chapter, and which authorizes the permit holder to fit and dispense hearing instruments under appropriate supervision from an individual who holds a license to fit and dispense hearing instruments without supervision under Texas Occupations Code, Chapter 401 or 402, other than an individual licensed under §401.311 or §401.312.

5. Certification, proof of--A certificate of calibration, compliance, conformance, or performance.

6. Commission--The Texas Commission of Licensing and Regulation.

7. Contact hour--A period of time equal to 55 minutes.

8. Continuing education hour--A period of time equal to 50 minutes.

9. Contract--See definition for "written contract for services."

10. Continuing education--Education intended to maintain and improve the quality of professional services in the fitting and dispensing of hearing instruments, to keep licensees knowledgeable of current research, techniques, and practices, and provide other resources which will improve skills and competence in the fitting and dispensing of hearing instruments.


12. Department--The Texas Department of Licensing and Regulation.

13. Direct supervision--The physical presence with prompt evaluation, review and consultation of a supervisor any time a temporary training permit holder is engaged in the act of fitting and dispensing of hearing instruments.

14. Executive director--The executive director of the department.

15. Fitting and dispensing hearing instruments--The measurement of human hearing by the use of an audiometer or other means to make selections, adaptations, or sales of hearing instruments. The term includes the making of impressions for earmolds to be used as a part of the hearing instruments and any necessary post-fitting counseling for the purpose of fitting and dispensing hearing instruments.

16. Hearing instrument--Any wearable instrument or device designed for, or represented as, aiding, improving, or correcting defective human hearing. The term includes the instrument's parts and any attachment, including an earmold, or accessory to the instrument. The term does not include a battery or cord.

17. Indirect supervision--The daily evaluation, review, and prompt consultation of a supervisor any time a permit holder is engaged in the act of fitting and dispensing hearing instruments.

18. License--A license issued by the department under the Act and this chapter to a person authorized to fit and dispense hearing instruments.

19. Licensee--Any person licensed or permitted by the department under Texas Occupations Code Chapter 401 or 402.

20. Manufacturer--The term includes a person who applies to be a continuing education provider who is employed by, compensated by, or represents an entity, business, or corporation engaged in any of the activities described in this paragraph. An entity, business, or corporation that:

A. is engaged in manufacturing, producing, or assembling hearing instruments for wholesale to a licensee or other hearing instrument provider;

B. is engaged in manufacturing, producing, or assembling hearing instruments for sale to the public;

C. is a subsidiary of, or held by, an entity that is engaged in manufacturing, producing, or assembling hearing instruments as described in this definition;

D. holds an entity, business, or corporation engaged in manufacturing, producing, or assembling hearing instruments as described in this definition; or

E. serves as a buying group for an entity, business, or corporation engaged in manufacturing, producing, or assembling hearing instruments as described in this definition.

21. Non-Manufacturer--Any person, entity, buyer group, or corporation that does not meet the definition of a manufacturer.

22. Person--An individual, corporation, partnership, or other legal entity.

23. Sale or sell--A transfer of title or of the right to use by lease, bailment, or other contract. The term does not include a sale at wholesale by a manufacturer to a person licensed under the Act or to a distributor for distribution and sale to a person licensed under the Act.

24. Specific Product Information--Specific product information shall include, but not be limited to, brand name, model number, shell type, and circuit type.

25. Supervisor--A supervisor is an individual who holds a valid license to fit and dispense hearing instruments under Texas Occupations Code, Chapter 401 or 402, other than an individual licensed under §401.311 or §401.312, and who meets the qualifications established by Texas Occupations Code, §402.255 and this chapter.

26. Telehealth--See definition(s) in Subchapter N, Telehealth.

27. [§46] Temporary training permit--A permit issued by the department to an individual who meets the qualifications established by Texas Occupations Code, Chapter 402, Subchapter F, and this chapter, to authorize the permit holder to fit and dispense hearing instruments only under the direct or indirect supervision, as required and as appropriate, of an individual who holds a license to fit and dispense hearing instruments without supervision under Texas Occupations Code, Chapter 401 or 402, other than an individual licensed under §401.311 or §401.312.
(28) Working days--Working days are Monday through Friday, 8:00 a.m. to 5:00 p.m.

(29) Written contract for services--A written contract between the license holder and purchaser of a hearing instrument as set out in §112.140 (relating to Joint Rule Regarding the Sale of Hearing Instruments).

(30) 30-day trial period--The period in which a person may cancel the purchase of a hearing instrument.

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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Brad Bowman
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SUBCHAPTER N. TELEHEALTH

16 TAC §112.130, §112.132

STATUTORY AUTHORITY
The proposed rules are proposed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The proposed rules are also proposed under Texas Occupations Code, Chapter 51, §51.501, Telehealth, as added by S.B. 40; Texas Occupations Code, Chapter 111, Telemedicine and Telehealth; and Texas Occupations Code, Chapter 402, Hearing Instrument Fitters and Dispensers.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51, 111, 401, and 402. No other statutes, articles, or codes are affected by the proposed rules.

§112.130 Definitions Relating to Telehealth.

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

(1) Client--A consumer or proposed consumer of services.

(2) Client site--The physical location of the client at the time the telehealth services are being provided.

(3) Facilitator--An individual at the client site who assists with the delivery of the telehealth services at the direction of the provider.

(4) In-person--The provider is physically present with the client while a client contact or service is performed.

(5) Provider--An individual who holds a current hearing instrument fitter and dispenser license under Texas Occupations Code, Chapter 402; an individual who holds a current apprentice permit under Texas Occupations Code, Chapter 402; or an individual who holds a current temporary training permit under Texas Occupations Code, Chapter 402 and has completed the direct supervision training requirements.

(6) Provider site--The physical location of the provider at the time the telehealth services are provided which is distant or remote from the client site.

(7) Telecommunications--Interactive communication at a distance by concurrent and synchronous two-way transmission, using telecommunications technology, information including, without limitation, sound, visual images, and/or computer data, between the client site and the provider site, and required to occur without a change in the form or content of the information, as sent and received, other than through encoding or encryption of the transmission itself for purposes of and to protect the transmission.

(8) Telecommunications technology--Computers, smart phones, and equipment, other than analog telephone, email or facsimile technology and equipment, used or capable of use for purposes of telecommunications. For purposes of this subchapter, the term includes, without limitation:

(A) compressed digital interactive video, audio, or data transmission;

(B) clinical data transmission using computer imaging by way of still-image capture and storage and forward;

(C) smart phones, or any audio-visual, real-time, or two-way interactive communication system; and

(D) other technology that facilitates the delivery of telehealth services.

(9) Telehealth--The use of telecommunications and information technologies for the exchange of information from one site to another for the provision of services to a client from a provider, including for assessments, interventions, or consultations regarding a client or for the fitting and dispensing of hearing instruments. Telehealth is also referred to as telepractice.

(10) Telehealth services--The assessment, intervention, and/or consultation including the fitting and dispensing of hearing instruments through telehealth to a client who is physically located at a site other than the site where the provider is located. Telehealth services is also referred to as telepractice services.

§112.132 Requirements for Providing Telehealth Services and Using Telehealth.

(a) Applicability.

(1) Except where noted, this subchapter applies to hearing instrument fitters and dispensers, apprentice permit holders, and temporary training permit holders, as authorized under this subchapter.

(2) Except to the extent it imposes additional or more stringent requirements, this subchapter does not affect the applicability of any other requirement or provision of law to which an individual is otherwise subject under this chapter or other law.

(b) Licensure and Scope of Practice.

(1) An individual shall not provide telehealth services to a client in the State of Texas, unless the individual holds a license or permit issued by the department and qualifies as a provider as that term is defined in this subchapter, or is otherwise legally authorized to do so.

(2) A provider may provide only those telehealth services that are within the course and scope of the provider's license or permit and competence, and delivered in accordance with the requirements of that license or permit and pursuant to the terms and conditions set forth in this chapter.
(3) A provider who is an apprentice permit holder may provide telehealth services under their approved supervisor’s license according to the supervision requirements under 16 TAC §112.43.

(4) A provider who is a temporary training permit holder may provide telehealth services, as directed by their supervisor, according to the temporary training permit holder requirements under Texas Occupations Code, Chapter 402, Subchapter F and 16 TAC §112.53. A provider who is a temporary training permit holder may only provide telehealth services after the direct supervision training requirements are completed.

(c) Competence and Standard of Practice (Code of Ethics).

(1) A provider of telehealth services shall be competent in both the type of services provided and the methodology and equipment used to provide the service.

(2) A provider shall comply with the code of ethics and scope of practice requirements in this chapter when providing telehealth services.

(3) The scope, nature, and quality of the services provided via telehealth shall be the same as the services provided in-person.

(4) A provider shall determine whether a particular service or procedure is appropriate to be provided via telehealth. A provider shall not provide a service or procedure via telehealth if it is not appropriate or cannot be provided at the same standard of care as if it were provided in-person.

(5) As pertaining to liability and malpractice issues, a provider providing telehealth services shall be held to the same standards of practice as if the services were provided in person.

(d) Facilitators.

(1) Subject to the requirements and limitations of this subchapter, a provider may utilize a facilitator at the client site to assist the provider in providing telehealth services.

(2) A provider shall document whether a facilitator is used in providing telehealth services. If a facilitator is used, the provider shall document the tasks in which the facilitator provided assistance.

(3) Before allowing a facilitator to assist the provider in providing telehealth services, the provider shall ascertain and document the facilitator’s qualifications, training, and competence, as appropriate and reasonable, in:

(A) each task the provider directs the facilitator to perform at the client site; and

(B) the methodology and equipment the facilitator is to use at the client site.

(4) The facilitator may perform at the client site only the following tasks:

(A) a task for which the facilitator holds and acts in accordance with any license, permit, authorization, or exemption required by law to perform the task; and

(B) those physical, administrative, and other tasks for which a provider determines a facilitator is competent to perform in connection with providing telehealth services, for which no form of license, permit, authorization, or exemption is required by law.

(5) A provider is responsible for the actions of the facilitator and shall monitor the client and oversee and direct the facilitator at all times during the telehealth session.

(6) A provider shall not provide telehealth services to a client if the presence of a facilitator is required for safe and effective service to the client and no qualified facilitator is available.

(e) Technology and Equipment.

(1) The provider shall use only telecommunications technology, as defined in this subchapter, to provide telehealth services. Modes of communication that do not utilize such telecommunications technology, including analog telephone, facsimile, and email, may be used only as adjuncts.

(2) A provider shall only utilize telecommunications technology and other equipment that the provider is competent to use as part of the provider’s telehealth services.

(3) The provider shall not provide telehealth services unless the telecommunications technology and equipment located at the client site and at the provider site:

(A) are appropriate to the telehealth services to be provided;

(B) are properly calibrated, if appropriate, and in good working order; and

(C) are of sufficient quality to allow the provider to deliver equivalent service and quality to the client as if those services were provided in person at the same physical location.

(f) Client Contacts and Communications.

(1) The initial contact between a provider and client may be at the same physical location or through telehealth, as determined appropriate by the provider.

(2) A provider shall consider relevant factors including the client’s behavioral, physical, and cognitive abilities in determining the appropriateness of providing services via telehealth.

(3) A provider shall be aware of the client’s level of comfort with the technology being used as part of the telehealth services.

(4) A provider shall be sensitive to cultural and linguistic variables that affect the identification, assessment, treatment, and management of the clients.

(5) Notification of telehealth services shall be provided to the client, the guardian, the caregiver, and the multi-disciplinary team, if appropriate. The notification shall include, but not be limited to: the right to refuse telehealth services, options for service delivery, and instructions on filing and resolving complaints.

(g) Records and Billing.

(1) A provider of telehealth services shall comply with all laws, rules, and regulations governing the maintenance of client records, including client confidentiality requirements.

(2) Documentation of telehealth services shall include documentation of the date and nature of services performed by the provider through telehealth and the assistive tasks of the facilitator, if used.

(3) A provider is allowed to provide telehealth services in accordance with this subchapter, but reimbursement of telehealth services is subject to the reimbursement policies of the entity being billed.

(h) Hearing Instruments. Hearing instruments may be adjusted digitally through the use of telecommunications technology by a provider who provides telehealth services under this subchapter.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency’s legal authority to adopt.
SUBCHAPTER P. JOINT RULES FOR FITTING AND DISPENSING OF HEARING INSTRUMENTS BY TELEPRACTICE

16 TAC §112.150

STATUTORY AUTHORITY

The proposed repeal is proposed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The proposed repeal is also proposed under Texas Occupations Code, Chapter 51, §§1.501, Telehealth, as added by S.B. 40; Texas Occupations Code, Chapter 111, Telemedicine and Telehealth; and Texas Occupations Code, Chapter 402, Hearing Instrument Fitters and Dispensers.

The statutory provisions affected by the proposed repeal are those set forth in Texas Occupations Code, Chapters 51, 111, 401, and 402. No other statutes, articles, or codes are affected by the proposed repeal.

§112.150. Requirements Regarding the Fitting and Dispensing of Hearing Instruments by Telepractice.

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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Brad Bowman
General Counsel
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TITLE 22. EXAMINING BOARDS

PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

CHAPTER 72. BOARD FEES, LICENSE APPLICATIONS, AND RENEWALS

22 TAC §72.18

The Texas Board of Chiropractic Examiners (Board) proposes repealing 22 TAC §72.18 (Criminal History). The Board will propose a new §72.18 in a separate rulemaking. This rulemaking action will remove the current language in §72.18 concerning the reporting of criminal convictions and put that language into a stand-alone rule.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government. 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 repeal as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed repeal 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 repeal will be in effect the public benefit is to make the requirements for reporting criminal convictions easier to find in the Board's rules.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed repeal of 22 TAC §72.18. For each year of the first five years the proposed repeal is in effect, Mr. Fortner has determined:

(1) The proposed repeal does not create or eliminate a government program.

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

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

(4) The proposed repeal does not require a decrease or increase in fees paid to the Board.

(5) The proposed repeal does not create a new regulation.

(6) The proposal repeals existing Board rules for an administrative process.

(7) The proposed repeal does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed repeal does not positively or adversely affect the state economy.

Comments on the proposed repeal 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 repeal is published in the Texas Register. Please include the rule name and number in the subject line of any comments submitted by email.

The repeal 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), Texas Occupations Code §201.313 (which requires the Board to conduct criminal history checks on applicants for licensure), and Texas Occupations Code §53.22 (which requires the Board to consider an applicant's criminal background).

No other statutes or rules are affected by this proposed repeal.

§72.18. Criminal History.
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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Christopher Burnett
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22 TAC §72.18

The Texas Board of Chiropractic Examiners (Board) proposes new 22 TAC §72.18 (Criminal History); the current rule is being repealed in a separate rulemaking action. The only purpose is to remove language in the current rule about a licensee's or applicant's requirement to report criminal convictions and deferred adjudications to the Board. That language will be placed in a stand-alone rule (proposed 22 TAC §72.19), making that information easier to find. Other than this change, the provisions about a licensee's or applicant's criminal history remain the same.

The Board’s Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed new rule is in effect there will be no fiscal implications for state or local government. 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 new rule as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed new rule 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 new rule will be in effect the public benefit is to remove language in the current rule about a licensee's or applicant's requirement to report criminal convictions and deferred adjudications to the Board. That language will be placed in a stand-alone rule (proposed 22 TAC §72.19), making that information easier to find.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the new 22 TAC §72.18. For each year of the first five years the proposed new rule is in effect, Mr. Fortner has determined:

(1) The proposed new rule does not create or eliminate a government program.

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

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

(4) The proposed new rule does not require a decrease in fees paid to the Board.

(5) The proposed new rule does not create a new regulation.

(6) The proposed new rule amends an existing Board rules for an administrative process.

(7) The proposed new rule does not decrease the number of individuals subject to the rule’s applicability.

(8) The proposed new rule does not positively or adversely affect the state economy.

Comments on the proposed new rule 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 new rule is published in the Texas Register. Please include the rule name and number in the subject line of any comments submitted by email.

The new 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), Texas Occupations Code §201.313 (which requires the Board to conduct criminal history checks on applicants for licensure), and Texas Occupations Code §53.22 (which requires the Board to consider an applicant's criminal background).

No other statutes or rules are affected by this proposed new rule.

§72.18. Criminal History

(a) The Board may suspend or revoke a current license or refuse to approve an applicant to sit for the jurisprudence examination because of the licensee's or applicant's conviction of an offense that directly relates to the practice of chiropractic.

(b) The Board shall revoke a license upon a licensee's imprisonment following a felony conviction or revocation of felony community supervision, parole, or mandatory supervision.

(c) An individual in prison is not eligible for a license.

(d) An individual in prison with a verifiable release date from prison of three months or less may submit an application for a license.

(e) The Board shall consider the following to determine whether a criminal conviction directly relates to the occupation of chiropractic:

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the practice of chiropractic; and

(3) if a license might reasonably lead to a repeat of the crime.

(f) The Board shall also determine an applicant's fitness to become a licensed chiropractor by considering:

(1) the extent and nature of the applicant's past criminal activity;

(2) the age at the time of the crime;

(3) the time since the crime occurred;

(4) the applicant's personal and work conduct after the crime;

(5) evidence of the applicant's rehabilitation while incarcerated and after release; and

(6) other evidence of fitness for a license, including recommendation letters from prosecutors, law enforcement, or correctional officers who prosecuted, arrested, or had custodial responsibility for
the applicant, the sheriff or chief of police where the applicant lives, or any other person familiar with the applicant.

(g) The Board shall notify an individual whose application has been denied or license revoked or suspended of the procedures for appealing the Board's decision.

(h) The Board may delegate to the executive director the authority to consider an applicant's minor criminal convictions. 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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Christopher Burnett
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22 TAC §72.19

The Texas Board of Chiropractic Examiners (Board) proposes new 22 TAC §72.19 (Requirement to Report a Conviction or Deferred Adjudication). This rulemaking simply moves the language in the current 22 TAC §72.18 (Criminal History) about reporting convictions and deferred adjudications into a stand-alone rule, making it easier for licensees and applicants to find the information. Other than this change, the provisions about a licensee's or applicant's criminal history remain the same.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed new rule is in effect there will be no fiscal implications for state or local government. 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 new rule as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed new rule 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 new rule will be in effect the public benefit is to make it easier for licensees and applicants to find the Board's requirements to report convictions and deferred adjudications.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the new 22 TAC §72.19. For each year of the first five years the proposed new rule is in effect, Mr. Fortner has determined:

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

Comments on the proposed new rule 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 new rule is published in the Texas Register. Please include the rule name and number in the subject line of any comments submitted by email.

The new 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), Texas Occupations Code §201.313 (which requires the Board to conduct criminal history checks on applicants for licensure), and Texas Occupations Code §53.22 (which requires the Board to consider an applicant's criminal background).

No other statutes or rules are affected by this proposed new rule.


(a) An applicant shall disclose in writing to the Board any prior conviction or deferred adjudication (other than a Class C misdemeanor traffic violation) at the time of application.

(b) An applicant or licensee shall disclose in writing to the Board any new conviction or deferred adjudication (other than a Class C misdemeanor traffic violation) no later than 30 days after the trial court's judgment.

(c) An applicant or licensee shall submit certified copies of any indictment or information and the court's judgment to the Board.

(d) On notification by an applicant or licensee of a new conviction or deferred adjudication, the Board may request the applicant or licensee explain in writing why the Board should not deny the application or take disciplinary action against the license.

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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CHAPTER 77. ADVERTISING AND PUBLIC COMMUNICATIONS

22 TAC §77.1
The Texas Board of Chiropractic Examiners (Board) proposes repealing 22 TAC §77.1 (Advertising and Public Communications). The Board will propose a new §77.1 in a separate rulemaking. This rulemaking action will remove the current language in §77.1 concerning the use of "D.C." and similar terms in advertising and public communications and put that language into a stand-alone rule.

The Board’s Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government. 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 repeal as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed repeal 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 repeal will be in effect the public benefit is to make the restrictions on the use of "D.C." and similar terms easier to find in the Board’s rules.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed repeal of 22 TAC §77.1. For each year of the first five years the proposed repeal is in effect, Mr. Fortner has determined:

1. The proposed repeal does not create or eliminate a government program.
2. Implementation of the proposed repeal does not require the creation of new employee positions or the elimination of existing employee positions.
3. Implementation of the proposed repeal does not require an increase or decrease in future legislative appropriations to the Board.
4. The proposed repeal does not require a decrease or increase in fees paid to the Board.
5. The proposed repeal does not create a new regulation.
6. The proposal repeals existing Board rules for an administrative process.
7. The proposed repeal does not decrease the number of individuals subject to the rule’s applicability.
8. The proposed repeal does not positively or adversely affect the state economy.

Comments on the proposed repeal 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 repeal is published in the Texas Register. Please include the rule name and number in the subject line of any comments submitted by email.

The repeal 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) and Texas Occupations Code §201.155 (which authorizes the Board to adopt rules to prohibit false, misleading, or deceptive advertising).

No other statutes or rules are affected by this proposed repeal. §77.1. Advertising and Public Communications.

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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22 TAC §77.1

The Texas Board of Chiropractic Examiners (Board) proposes new 22 TAC §77.1 (Advertising and Public Communications). This rulemaking simply removes the language in the current 22 TAC §77.1 about the use of "D.C." and similar terms, which will be placed into a stand-alone rule (proposed §77.3). The purpose of the change is make finding this information in the Board’s rules easier.

The Board’s Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed new rule is in effect there will be no fiscal implications for state or local government. 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 new rule as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed new rule 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 new rule will be in effect the public benefit is to make it easier to find the Board’s requirements on the use of "D.C." and similar terms.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the new 22 TAC §77.1. For each year of the first five years the proposed new rule is in effect, Mr. Fortner has determined:

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

Comments on the proposed new rule 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 new rule is published in the Texas Register. Please include the rule name and number in the subject line of any comments submitted by email.

The new 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) and Texas Occupations Code §201.155 (which authorizes the Board to adopt rules to prohibit false, misleading, or deceptive advertising).

No other statutes or rules are affected by this proposed new rule.

§77.1. Advertising and Public Communications.

(a) A licensee, or a licensee’s employee, agent, or partner may not use or authorize the use of any public communication or advertising containing a false, misleading, deceptive, or fraudulent claim, or indicating the licensee provides services outside the scope of practice.

(b) In any public communication or advertising, if a licensee makes a claim based on a research study, the licensee shall:

(1) clearly identify the research study; and
(2) provide the source of the research study to the Board or the public upon request.

(c) In any public communication or advertising, a licensee may not state any service is free unless the communication or advertising clearly states all component services which are included.

(d) A licensee shall be responsible for any agent, employee, or partner acting on the licensee’s behalf who violates this section.

(e) An individual violating this section is subject to disciplinary action.

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, 2021.
TRD-202103337
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: October 10, 2021
For further information, please call: (512) 305-6700

22 TAC §77.3

The Texas Board of Chiropractic Examiners (Board) proposes new 22 TAC §77.3 (Proper Use of "D.C." or Similar Terms and Restrictions). This rulemaking simply removes the language in the current 22 TAC §77.1 about the proper use of "D.C." and similar terms, and places it in this new stand-alone rule. The purpose of moving this language into a stand-alone rule is to make finding this information in the Board's rules easier.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed new rule is in effect there will be no fiscal implications for state or local government. 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 new rule as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed new rule 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 new rule will be in effect the public benefit is to make it easier to find the Board's requirements on the proper use of "D.C." and similar terms.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the new 22 TAC §77.3. For each year of the first five years the proposed new rule is in effect, Mr. Fortner has determined:

(1) The proposed new rule does not create or eliminate a government program.

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

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

(4) The proposed new rule does not require a decrease in fees paid to the Board.

(5) The proposed new rule does not create a new regulation.

(6) The proposal new rule amends an existing Board rules for an administrative process.

(7) The proposed new rule does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed new rule does not positively or adversely affect the state economy.

Comments on the proposed new rule 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 new rule is published in the Texas Register. Please include the rule name and number in the subject line of any comments submitted by email.

The new 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) and Texas Occupations Code §201.155 (which authorizes the Board to adopt rules to prohibit false, misleading, or deceptive advertising).

No other statutes or rules are affected by this proposed new rule.

§77.3. Proper Use of "D.C." or Similar Terms and Restrictions.

(a) A licensee shall use clear language in any advertising and public communication to specify the type of license the licensee currently holds.

(b) A licensee who uses the terms "doctor" or "Dr." in any public communication or advertising shall also clearly use the terms "doctor of chiropractic," "D.C.,” "chiropractor," or "chiropractic" in the public communication or advertising.
An individual may not identify the individual as a "doctor of chiropractic," "D.C.,” or "chiropractor" in any public communication or advertising without holding an active Texas license except as allowed by subsection (d) of this section.

An individual who has earned a chiropractic academic degree but is not licensed in Texas may use the academic title in advertising or public communications if the advertising or public communications makes clear the individual is unlicensed by prominently modifying the terms "doctor of chiropractic," "D.C.,” or "chiropractor" with language such as:

1. "retired;"
2. "pending licensure in Texas" (only if the individual has submitted an application to the Board);
3. "not licensed in Texas;” or
4. "unlicensed in Texas."

A licensee shall identify by name any board certifying the licensee’s professional credentials in any public communication or advertising using the term "Board Certified" or similar term.

A licensee may not state in any public communication or advertising that the licensee is "Board Certified" by the Texas Board of Chiropractic Examiners.

An individual violating this section is subject to disciplinary action.

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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PART 11. TEXAS BOARD OF NURSING
CHAPTER 213. PRACTICE AND PROCEDURE

22 TAC §213.28

(Editor’s note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 22 TAC §231.28(c) is not included in the print version of the Texas Register. The figure is available in the on-line version of the September 10, 2021, issue of the Texas Register.)

The Texas Board of Nursing (Board) proposes amendments to §213.28, relating to Licensure of Individuals with Criminal History. The amendments are being proposed under the authority of the Occupations Code §301.151 and House Bills (HB) 375 and 757, both effective September 1, 2021.

Background. Two bills were enacted during the 87th Legislative Session that impact Board Rule §213.28 and the Board’s Disciplinary Guidelines for Criminal Conduct (Guidelines). First, HB 375, effective September 1, 2021, amends the existing criminal offense found in the Texas Penal Code §21.02, Continuous Sexual Abuse of Young Child or Children, to include disabled individuals. This offense is currently specified in the enumerated list of crimes in the Occupations Code §301.4535 that mandates licensure revocation and denial, as applicable. The proposed amendments to the Guidelines, located in §213.28(c), amend the title of the offense for consistency with the statutory change made by HB 375.

Second, HB 757, also effective September 1, 2021, prohibits a licensing agency from denying, suspending, or revoking a license based upon a deferred adjudication that has been successfully completed and dismissed, except in certain, specified circumstances. Under the terms of the bill, a successfully completed deferred adjudication may be considered by a licensing agency when issuing, renewing, denying, or revoking a license if the offense is listed in the Texas Code of Criminal Procedure Article 42A.054(a); is described by the Texas Code of Criminal Procedure Article 62.001(5) or (6); is committed under Texas Penal Code Chapter 21 or 43; or is related to the activity or conduct for which the individual seeks or holds the license. Further, an agency may also consider a completed deferred adjudication if the profession for which the individual holds or seeks a license involves direct contact with children in the normal course of official duties or duties for which the license is required.

The proposed amendments to §213.28 are necessary for consistency with these statutory directives. Board Rule 213.28 currently requires a criminal offense to be directly related to the practice of nursing in order for the Board to consider the offense in licensure decisions. As such, the Board finds the majority of Rule 213.28 already complies with the mandates of HB 757. The proposed amendments make minor changes to the rule text, however, to incorporate the additional exception permitted by HB 757 (Texas Code of Criminal Procedure Article 42A.111(d)(4)(B)) into the rule. The remaining proposed amendments make editorial changes for additional clarity.

Section by Section Overview. The proposal makes one change to the Board's Guidelines, located in §213.28(c). The proposed amendment to the Guidelines changes the title of the listed offense from Continuous Sexual Abuse of Young Child or Children to Continuous Sexual Abuse of Young Child or Disabled Individual for compliance with the statutory changes made by HB 375.

The proposed change to §213.28(a) includes a reference to the Code of Criminal Procedure Article 42A.111 because the changes made by HB 757 govern the criteria to be used by the Board in determining the effect of criminal history on nursing licensure and eligibility. The proposed change to §213.28(c) incorporates one of the statutory exceptions provided by HB 757 and provides that the Board may consider an individual's prior deferred adjudication community supervision, even if successfully completed, in its licensure decisions, since the practice of nursing may involve direct contact with children in the normal course of official nursing duties. The proposed changes to §213.28(g) and (j) make editorial changes to the section for additional clarity.

Fiscal Note. Katherine Thomas, Executive Director, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no change in the revenue to state government as a result of the enforcement or administration of the proposal.

Public Benefit/Cost Note. Ms. Thomas has also determined that for each year of the first five years the proposed amendments are in effect, the anticipated public benefit will be the adoption
of rules that implement changes made by HBs 375 and 757. Further, the proposed amendments result in clearer and more effective rules. There are no anticipated costs of compliance with the proposal.

Costs Under the Government Code §2001.0045. The Government Code §2001.0045 prohibits agencies from adopting a rule that imposes costs on regulated persons unless the agency repeals a rule that imposes a total cost on regulated persons that is equal to or greater than the total cost imposed on regulated persons by the proposed rule or amends a rule to decrease the total cost imposed on regulated persons by an amount that is equal to or greater than the cost imposed on the persons by the proposed rule. Pursuant to §2001.0045(c)(9), this prohibition does not apply to a rule that is necessary to implement legislation, unless the legislature specifically states §2001.0045 applies to the rule. There are no anticipated costs of compliance with the proposal, and the proposal is necessary to implement the requirements of HBs 375 and 757. As such, the proposal is not subject to the requirements of §2001.0045.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. The Government Code §2006.002(c) and (f) require, that if a proposed rule may have an economic impact on small businesses, micro businesses, or rural communities, state agencies must prepare, as part of the rule-making process, an economic impact statement that assesses the potential impact of the proposed rule on these businesses and communities and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule. Because there are no anticipated costs of compliance associated with the proposal, an economic impact statement and regulatory flexibility analysis is not required.

Government Growth Impact Statement. The Board is required, pursuant to Tex. Gov’t Code §2001.0221 and 34 Tex. Admin. Code §11.1, to prepare a government growth impact statement. The Board has determined for each year of the first five years the proposed amendments will be in effect: (i) the proposal does not create or eliminate a government program; (ii) the proposal is not expected to have an effect on current agency positions; (iii) implementation of the proposal does not require an increase or decrease in future legislative appropriations to the Board; (iv) the proposal does not affect the fees paid to the Board; (v) the proposal amends an existing regulation in order to implement the statutory requirements of HBs 375 and 757 and make editorial changes that result in clearer rules; (vi) the proposal does not expand, limit, or repeal an existing regulation; (vii) the proposal does not extend to new entities not previously subject to the rule; and (viii) the proposal will not affect the state’s economy.

Takings Impact Assessment. The Board has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner’s right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

Request for Public Comment. To be considered, written comments on this proposal should be submitted to James W. Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to Dusty.Johnston@bon.texas.gov, or faxed to (512) 305-8101. If a hearing is held, written and oral comments presented at the hearing will be considered.

Statutory Authority. The amendments are proposed under the authority of the Occupations Code §301.151 and amended Code of Criminal Procedure Article 42A.111 and Occupations Code §301.4535, effective September 1, 2021.

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

Cross Reference To Statute. The following statutes are affected by this proposal: the Occupations Code §301.151 and amended and amended Code of Criminal Procedure Article 42A.111 and Occupations Code §301.4535, effective September 1, 2021.

Amended Article 42A.111(c-1), effective September 1, 2021, provides that subject to subsection (d), an offense for which the defendant received a dismissal and discharge under this article may not be used as grounds for denying issuance of a professional or occupational license or certificate to, or suspending or revoking the professional or occupational license or certificate of, an individual otherwise entitled to or qualified for the license or certificate.

Amended Article 42A.111(d)(4), effective September 1, 2021, provides that, for any defendant who receives a dismissal and discharge under this article, if the defendant is an applicant for or the holder of a professional or occupational license or certificate, the licensing agency may consider the fact that the defendant previously has received deferred adjudication community supervision in issuing, renewing, denying, or revoking a license or certificate if: (A) the defendant was placed on deferred adjudication community supervision for an offense: (i) listed in Article 42A.054(a); (ii) described by Article 62.001(5) or (6); (iii) committed under Chapter 21 or 43, Penal Code; or (iv) related to the activity or conduct for which the person seeks or holds the license; (B) the profession for which the defendant holds or seeks a license or certificate involves direct contact with children in the normal course of official duties or duties for which the license or certification is required; or (C) the defendant is an applicant for or the holder of a license or certificate issued under Chapter 1701, Occupations Code.

Amended §301.4535(a), effective September 1, 2021, provides that the Board shall suspend a nurse’s license or refuse to issue a license to an applicant on proof that the nurse or applicant has been initially convicted of: (1) murder under Section 19.02, Penal Code, capital murder under Section 19.03, Penal Code, or manslaughter under Section 19.04, Penal Code; (2) kidnapping or unlawful restraint under Chapter 20, Penal Code, and the offense was punished as a felony or state jail felony; (3) sexual assault under Section 22.011, Penal Code; (4) aggravated sexual assault under Section 22.021, Penal Code; (5) continuous sexual abuse of young child or disabled individual under Section 21.02, Penal Code, or indecency with a child under Section 21.11, Penal Code; (6) aggravated assault under Section 22.02, Penal Code; (7) intentionally, knowingly, or recklessly injuring a child, elderly individual, or disabled individual under Section 22.04, Penal Code; (8) intentionally, knowingly, or recklessly abandoning or endangering a child under Section 22.041, Penal Code; (9) aiding suicide under Section 22.08, Penal Code, and the offense was punished as a state jail felony;
§213.28. Licensure of Individuals with Criminal History.

(a) Purpose and Applicability. This section establishes the criteria utilized by the Board in determining the effect of criminal history on nursing licensure and eligibility for nursing licensure and implements the requirements of Texas Occupations Code §53.025 and Code of Criminal Procedure Article 42A.111. This section applies to all individuals seeking to obtain or retain a license or multistate licensure privilege to practice nursing in Texas.

(b) (No change.)

c) The Board considers the crimes listed in the attached Criminal Guidelines (Guidelines) to be directly related to the practice of nursing. The Guidelines reflect the most common or well known crimes. The vast majority of an individual's criminal history that is reviewed by the Board will fall within the Guidelines. However, the Guidelines are not intended to be an exhaustive listing, and they do not prohibit the Board from considering an offense not specifically listed in the Guidelines. In matters involving an offense that is not specifically listed in the Guidelines, such as a violation of another state's law, federal law, or the Uniform Code of Military Justice, a determination shall be made by comparing that offense to the crime listed in the Guidelines that contains substantially similar elements. The offense must meet the requirements of subsection (b) of this section to be actionable. Further, because the practice of nursing may involve direct contact with children in the normal course of official nursing duties, the Board may consider an individual's prior deferred adjudication community supervision, even if successfully completed, in its licensure decisions.

Figure: 22 TAC §213.28 (c)

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

(g) Sanction. Not all criminal conduct will result in a sanction. The Board recognizes that an individual may make a mistake, learn from it, and not repeat it in the nursing practice setting. As such, each case will be evaluated on its own merits to determine if a sanction is warranted. If multiple crimes are present in a single case, a more severe sanction may be considered by the Board pursuant to Texas Occupations Code §301.4531. If a sanction is warranted, the Board will utilize the schedule of sanctions set forth in §213.33 (e) (relating to Factors Considered for Imposition of Penalties/Sanctions) of this chapter. At a minimum, an individual will be required to successfully complete the terms of his/her criminal probation and provide evidence of successful completion to the Board. If an individual's criminal behavior is due to, or associated with, a substance use disorder or a mental health condition, evidence of ongoing sobriety, effective clinical management, and/or appropriate ongoing treatment may be required. Further, if an individual's criminal history implicates his/her current fitness to practice, the individual may also be required to meet the requirements of §213.29 to ensure he/she is safe to practice nursing.

(h) - (i) (No change.)

(j) Youthful Indiscretions. Some criminal behavior that is otherwise actionable may be deemed a youthful indiscretion under this paragraph. In that event, a sanction will not be imposed. The following criteria will be considered in making such a determination:

(1) - (12) (No change.)

(k) - (n) (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.

Filed with the Office of the Secretary of State on August 25, 2021.

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Jena Abel
Deputy General Counsel
Texas Board of Nursing

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

22 TAC §213.33

(Reporter's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 22 TAC §213.33(b) is not included in the print version of the Texas Register. The figure is available in the on-line version of the September 10, 2021, issue of the Texas Register.)

The Texas Board of Nursing (Board) proposes amendments to 22 TAC §213.33, relating to Factors Considered for Imposition of Penalties/Sanctions. The amendments are being proposed under the authority of the Occupations Code §301.151 and House Bill (HB) 1434, effective September 1, 2021.

Background. HB 1434, enacted during the 87th Legislative Session, creates a new disciplinary cause of action for practitioners who conduct pelvic examinations on unconscious or anesthetized patients without proper informed consent, where the procedure is not within the standard scope of a scheduled procedure or diagnostic examination, where the examination is not necessary for the diagnosis or treatment of the patient's medical condition, or where the examination is not for the purpose of collecting evidence. The new disciplinary cause of action is located in the Occupations Code §301.452(b)(13). The proposed amendments to the Board's Disciplinary Matrix (Matrix) are necessary for consistency with this statutory change.

First, the proposed amendments add a new subsection to the Matrix that corresponds to the new disciplinary cause of action. The proposed amendments also renumber existing §301.452(b)(13) accordingly. The proposed amendments also include a range of disciplinary sanctions applicable to the new violation and aggravating and mitigating factors that could apply to a violation of §301.452(b)(13). The proposed range of sanctions includes licensure suspension, including temporary suspension on an emergency basis under the Occupations Code §301.455; licensure revocation, or licensure denial. The Board has determined that these levels of discipline are appropriate given the seriousness of the conduct that would constitute a violation of §301.452(b)(13). Further, the aggravating factors include actual patient harm; impairment at the time of the incident; severity of patient harm; prior complaints or discipline for similar conduct; and patient vulnerability. These factors, if present in a given case, could justify a higher sanction. The
proposed mitigating factors include mistaken consent or a good faith belief that a statutory exception applied. These factors, if present in a given case, could justify a lower sanction.

The remaining proposed amendments to the Matrix correct outdated references to website addresses; remove obsolete provisions; make editorial changes; and clarify sanctions that are not available as the result of a contested case proceeding. Specifically, the proposed amendments make clear that participation in a peer assistance program, such as the Texas Peer Assistance Program for Nurses (TPAPN), or participation in a targeted assessment and remediation program, such as the Knowledge, Skills, Training, Assessment, and Research Program (KSTAR), are not available as the result of a contested case hearing. Like a corrective action, participation in a targeted assessment and remediation program is only available as a condition of settlement. See 22 Texas Administrative Code §213.32(4) (relating to Corrective Action Proceedings and Schedule of Administrative Fines) and §213.35(k)(2) (relating to Targeted Assessment and Remediation Pilot Program). Likewise, participation in a peer assistance program must be voluntary, not forced, as the program contains rigorous requirements for the participant's successful completion of the program. See 22 Texas Administrative Code §217.13 (relating to Peer Assistance Program). The proposed amendments clarify the applicability of these existing rules and policies of the Board as they apply to contested case proceedings. The remaining proposed amendments to §213.33 make editorial, non-substantive changes to the section.

Section by Section Overview. The proposal makes several changes to the Board’s Disciplinary Matrix, located in §213.33(b). The most substantial proposed changes relate to new §301.452(b)(13). Existing §301.452(b)(13) has been re-numbered as §301.452(b)(14). The proposed changes to new §301.452(b)(13) include a range of new disciplinary sanctions, as well as aggravating and mitigating factors applicable to the new disciplinary cause of action. Other proposed changes affect §301.452(b)(1) - (b)(4) and (b)(7) - (b)(12). These proposed changes correct outdated references to website addresses in (b)(4) and (b)(8) - (b)(10); remove obsolete provisions from (b)(9); make editorial changes in (b)(1) - (b)(3) and (b)(7), (b)(10), (b)(11), and (b)(12); and clarify sanctions that are not available as the result of a contested case proceeding in (b)(9), (b)(12), and (b)(14). The proposal also makes editorial, non-substantive changes to §213.33(c).

Fiscal Note. Katherine Thomas, Executive Director, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no change in the revenue to state government as a result of the enforcement or administration of the proposal.

Public Benefit/Cost Note. Ms. Thomas has also determined that for each year of the first five years the proposed amendments are in effect, the anticipated public benefit will be the adoption of rules that implement changes made by HB 1434. Further, the proposed amendments result in clearer and more effective rules. There are no anticipated costs of compliance with the proposal.

Costs Under the Government Code §2001.0045. The Government Code §2001.0045 prohibits agencies from adopting a rule that imposes costs on regulated persons unless the agency repeals a rule that imposes a total cost on regulated persons that is equal to or greater than the total cost imposed on regulated persons by the proposed rule or amends a rule to decrease the total cost imposed on regulated persons by an amount that is equal to or greater than the cost imposed on the persons by the proposed rule. Pursuant to §2001.0045(c)(9), this prohibition does not apply to a rule that is necessary to implement legislation, unless the legislature specifically states §2001.0045 applies to the rule. There are no anticipated costs of compliance with the proposal, and the proposal is necessary to implement the requirements of HB 1434. As such, the proposal is not subject to the requirements of §2001.0045.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. The Government Code §2006.002(c) and (f) require, that if a proposed rule may have an economic impact on small businesses, micro businesses, or rural communities, state agencies must prepare, as part of the rule-making process, an economic impact statement that assesses the potential impact of the proposed rule on these businesses and communities and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule. Because there are no anticipated costs of compliance associated with the proposal, an economic impact statement and regulatory flexibility analysis is not required.

Government Growth Impact Statement. The Board is required, pursuant to Tex. Gov’t Code §2001.0221 and 34 Texas Administrative Code §11.1, to prepare a government growth impact statement. The Board has determined for each year of the first five years the proposed amendments will be in effect: (i) the proposal does not create or eliminate a government program; (ii) the proposal is not expected to have an effect on current agency positions; (iii) implementation of the proposal does not require an increase or decrease in future legislative appropriations to the Board; (iv) the proposal does not affect the fees paid to the Board; (v) the proposal amends an existing regulation in order to implement the statutory requirements of HB 1434 and make editorial and clarifying changes that result in clearer rules; (vi) the proposal does not expand, limit, or repeal an existing regulation; (vii) the proposal does not extend to new entities not previously subject to the rule; and (viii) the proposal will not affect the state’s economy.

Takings Impact Assessment. The Board has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner’s right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

Request for Public Comment. To be considered, written comments on this proposal should be submitted to James W. Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to Dusty.Johnston@bon.texas.gov, or faxed to (512) 305-8101. If a hearing is held, written and oral comments presented at the hearing will be considered.

Statutory Authority. The amendments are proposed under the authority of the Occupations Code §301.151 and amended Occupations Code §301.452(b), effective September 1, 2021.

Section 301.151 addresses the Board’s rulemaking authority. Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders under Chapter 301; and (iv) determine whether an act
violations
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[Figure: Occupations Cross of Nursing.
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Figure: 22 TAC §213.33(b)

(c) The Board and SOAH shall consider the following factors in conjunction with the Disciplinary Matrix when determining the appropriate penalty/sanction in disciplinary and eligibility matters. The mitigating and aggravating factors specified in the Matrix are in addition to the factors listed in this subsection. Further, the presence of mitigating factors in a particular case does not constitute a requirement of dismissal of a violation of the Nursing Practice Act (NPA) and/or Board rules. If multiple violations of the NPA and/or Board rules are present in a single case, the most severe sanction recommended by the Matrix for any one of the individual offenses should be considered by the Board and SOAH pursuant to Tex. Occ. Code §301.4531. The following factors shall be analyzed in determining the tier and sanction level of the Disciplinary Matrix for a particular violation or multiple violations of the NPA and Board rules:

(1) - (9) (No change).

(10) attempts by the person [licensee] to correct or stop the violation;

(11) - (18) (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-202103350
Jena Abel
Deputy General Counsel
Texas Board of Nursing

Earliest possible date of adoption: October 10, 2021
For further information, please call: (512) 305-6822

CHAPTER 214. VOCATIONAL NURSING EDUCATION
22 TAC §214.4

The Texas Board of Nursing (Board) proposes amendments to 22 TAC §214.4(c), relating to Approval. The amendments are being proposed under the authority of the Occupations Code §301.151 and §301.157(b).

Background. House Bill (HB) 2426, enacted by the 80th Legislature, required the Board to identify national nursing accreditation agencies recognized by the United States Department of Education with standards equivalent to the Board’s ongoing approval standards. In order to implement the requirements of HB 2426, the Board conducted a comprehensive comparative review of national accreditation standards and identified two accreditation agencies with equivalent standards: the Accreditation Commission for Education in Nursing (ACEN) and the Commission on Collegiate Nursing Education (CCNE). Based upon these findings, the Board adopted Education Guideline 3.2.4.a, which provided guidance to accredited programs regarding their exemption from compliance with certain Board rules. This guidance was also included in Board §214.4. However, the rule did not include a specific reference to ACEN or CCNE at that time. In October 2012, Board §214.4(c)(8) was amended to specifically incorporate the title of Education Guideline 3.2.4.a into the rule. The title of Education Guideline 3.2.4.a specifically referenced the names of the Board’s approved national nursing accreditation agencies, the ACEN and CCNE. These two accreditation agencies have remained the only accreditation agencies recognized by the Board until recently.

The National League for Nursing (NLN) launched a third nursing accreditation organization in 2013, and 115 education programs across 29 states representing all program types have been pre-accredited or accredited by the NLN Commission for Nursing Education Accreditation (CNEA). On May 25, 2021, the NLN CNEA was recognized by the United States Department of Education as a fully accrediting agency for an initial five-year period. At its July 2021 meeting, the Board voted to add the NLN CNEA to its list of approved accreditation agencies, recognized by the United States Department of Education, and determined to have standards equivalent to the Board’s ongoing approval standards for nursing education programs. Due to the addition of an additional accreditation agency, the title of Education Guideline 3.2.4.a was also amended to eliminate reference to the specific approved accreditation agencies. Instead, the title of the
guideline was amended to refer more generically to Board-approved national nursing accreditation agencies.  

The proposed amendments to §214.4(c)(8) are now necessary for consistency with these recent changes made by the Board. The proposed amendments reference the newly amended title of Education Guideline 3.2.4.a by referring generically to Board-approved national nursing accreditation organizations instead of including specific reference to the ACEN and CCNE.  

Section by Section Overview. Proposed amended §214.4(c)(8) references the newly amended title of Board Education Guideline 3.2.4.a: Specific Exemptions from Education Rule Requirements for Nursing Education Programs Accredited by a Board-Approved National Nursing Accreditation Organization.  

Fiscal Note. Katherine Thomas, Executive Director, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no change in the revenue to state government as a result of the enforcement or administration of the proposal.  

Public Benefit/Cost Note. Ms. Thomas has also determined that for each year of the first five years the proposed amendments are in effect, the anticipated public benefit will be the adoption of consistent and clear rules that correctly reference changes made to the Board’s education guidelines. There are no anticipated costs of compliance with the proposal.  

Costs Under the Government Code §2001.0045. The Government Code §2001.0045 prohibits agencies from adopting a rule that imposes costs on regulated persons unless the agency repeals a rule that imposes a total cost on regulated persons that is equal to or greater than the total cost imposed on regulated persons by the proposed rule or amends a rule to decrease the total cost imposed on regulated persons by an amount that is equal to or greater than the cost imposed on the persons by the proposed rule. There are no anticipated costs of compliance with the proposal. As such, the proposal is not subject to the requirements of §2001.0045.  

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. The Government Code §2006.002(c) and (f) require, that if a proposed rule may have an economic impact on small businesses, micro businesses, or rural communities, state agencies must prepare, as part of the rule-making process, an economic impact statement that assesses the potential impact of the proposed rule on these businesses and communities and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule. Because there are no anticipated costs of compliance associated with the proposal, an economic impact statement and regulatory flexibility analysis is not required.  

Government Growth Impact Statement. The Board is required, pursuant to Tex. Gov't Code §2001.0221 and 34 Texas Administrative Code §11.1, to prepare a government growth impact statement. The Board has determined for each year of the first five years the proposed amendments will be in effect: (i) the proposal does not create or eliminate a government program; (ii) the proposal is not expected to have an effect on current agency positions; (iii) implementation of the proposal does not require an increase or decrease in future legislative appropriations to the Board; (iv) the proposal does not affect the fees paid to the Board; (v) the proposal makes editorial changes to an existing rule; (vi) the proposal does not expand, limit, or repeal an existing regulation; (vii) the proposal does not extend to new not previously subject to the rule; and (viii) the proposal will not affect the state's economy.  

Takings Impact Assessment. The Board has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.  

Request for Public Comment. To be considered, written comments on this proposal should be submitted to Kristin Benton, DNP, RN, Director of Nursing, and James W. Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to Kristin.Benton@bon.texas.gov and Dusty.Johnston@bon.texas.gov, or faxed to (512) 305-8101. If a hearing is held, written and oral comments presented at the hearing will be considered.  

Statutory Authority. The amendments are proposed under the authority of the Occupations Code §301.151 and §301.157(b).  

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

Section 301.157(b) provides that the Board shall: (1) prescribe two programs of study to prepare a person to receive an initial vocational nurse license under Chapter 301 as follows: (A) a program conducted by an educational unit in nursing within the structure of a school, including a college, university, or proprietary school; and (B) a program conducted by a hospital; (2) prescribe and publish the minimum requirements and standards for a course of study in each program that prepares registered nurses or vocational nurses; (3) prescribe other rules as necessary to conduct approved schools of nursing and educational programs for the preparation of registered nurses or vocational nurses; (4) approve schools of nursing and educational programs that meet the Board's requirements; (5) select one or more national nursing accrediting agencies, recognized by the United States Department of Education and determined by the Board to have acceptable standards, to accredit schools of nursing and educational programs; and (6) deny or withdraw approval from a school of nursing or educational program that: (A) fails to meet the prescribed course of study or other standard under which it sought approval by the Board; (B) fails to meet or maintain accreditation with the national nursing accrediting agency selected by the Board under Subdivision (5) under which it was approved or sought approval by the Board; or (C) fails to maintain the approval of the state board of nursing of another state and the board under which it was approved.  

Cross Reference To Statute. The following statutes are affected by this proposal: the Occupations Code §301.151 and §301.157(b).  

§214.4. Approval.  

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

(c) Ongoing Approval Procedures. Ongoing approval status is determined biennially by the Board on the basis of information reported
or provided in the program's NEPIS and CANEP, NCLEX-PN® examination pass rates, program compliance with this chapter, and other program outcomes. Certificates of Board approval will be mailed to all Board-approved nursing programs biennially in even-numbered years.

(1) - (7) (No change.)

(8) A vocational nursing education program is considered approved by the Board and exempt from Board rules that require ongoing approval as described in Board Education Guideline 3.2.4.a. Specific Exemptions from Education Rule Requirements for Nursing Education Programs Accredited by a Board-Approved National Nursing Accreditation Organization [Nursing Education Programs Accredited by the Accreditation Commission for Education in Nursing and/or the Commission on Collegiate Nursing Education Specific Exemptions from Education Rule Requirements] if the program:

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

(9) - (13) (No change.)

d) (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.

Filed with the Office of the Secretary of State on August 25, 2021.
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Jena Abel
Deputy General Counsel
Texas Board of Nursing
Earliest possible date of adoption: October 10, 2021
For further information, please call: (512) 305-6822

CHAPTER 215. PROFESSIONAL NURSING EDUCATION

22 TAC §215.2

The Texas Board of Nursing (Board) proposes amendments to §215.2, relating to Definitions. The amendments are being proposed under the authority of the Occupations Code §301.151 and §301.157(a) & (b).

Background. 22 Texas Administrative Code Chapter 215 relates to professional nursing education programs, not vocational nursing education programs. The proposed amendments are necessary to correct a typographical error in §215.2 from vocational to professional.

Section by Section Overview. Proposed amended §215.2(4) defines a professional nursing education program.

Fiscal Note. Katherine Thomas, Executive Director, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no change in the revenue to state government as a result of the enforcement or administration of the proposal.

Public Benefit/Cost Note. Ms. Thomas has also determined that for each year of the first five years the proposed amendments are in effect, the anticipated public benefit will be the adoption of consistent and clear rules. There are no anticipated costs of compliance with the proposal.

Costs Under the Government Code §2001.0045. The Government Code §2001.0045 prohibits agencies from adopting a rule that imposes costs on regulated persons unless the agency repeals a rule that imposes a total cost on regulated persons that is equal to or greater than the total cost imposed on regulated persons by the proposed rule or amends a rule to decrease the total cost imposed on regulated persons by an amount that is equal to or greater than the total cost imposed on the persons by the proposed rule. There are no anticipated costs of compliance with the proposal. As such, the proposal is not subject to the requirements of §2001.0045.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. The Government Code §2006.002(c) and (f) require, that if a proposed rule may have an economic impact on small businesses, micro businesses, or rural communities, state agencies must prepare, as part of the rulemaking process, an economic impact statement that assesses the potential impact of the proposed rule on these businesses and communities and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule. Because there are no anticipated costs of compliance associated with the proposal, an economic impact statement and regulatory flexibility analysis is not required.

Government Growth Impact Statement. The Board is required, pursuant to Tex. Gov't Code §2001.0221 and 34 Texas Administrative Code §11.1, to prepare a government growth impact statement. The Board has determined for each year of the first five years the proposed amendments will be in effect: (i) the proposal does not create or eliminate a government program; (ii) the proposal is not expected to have an effect on current agency positions; (iii) implementation of the proposal does not require an increase or decrease in future legislative appropriations to the Board; (iv) the proposal does not affect the fees paid to the Board; (v) the proposal makes editorial changes to an existing rule; (vi) the proposal does not expand, limit, or repeal an existing regulation; (vii) the proposal does not extend to new entities not previously subject to the rule; and (viii) the proposal will not affect the state's economy.

Takings Impact Assessment. The Board has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

Request for Public Comment. To be considered, written comments on this proposal should be submitted to Kristin Benton, DNP, RN, Director of Nursing, and James W. Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to Kristin.Benton@bon.texas.gov and Dusty.Johnston@bon.texas.gov, or faxed to (512) 305-8101. If a hearing is held, written and oral comments presented at the hearing will be considered.

Statutory Authority. The amendments are proposed under the authority of the Occupations Code §301.151 and §301.157(a) & (b).

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

Section 301.157(a) provides that the Board shall prescribe three programs of study to prepare a person to receive an initial license as a registered nurse under Chapter 301 as follows: (1) a baccalaureate degree program that is conducted by an educational unit in nursing that is a part of a senior college or university and that leads to a baccalaureate degree in nursing; (2) an associate degree program that is conducted by an educational unit in nursing within the structure of a college or a university and that leads to an associate degree in nursing; and (3) a diploma program that is conducted by a single-purpose school, usually under the control of a hospital, and that leads to a diploma in nursing.

Section 301.157(b) provides that the Board shall: (1) prescribe two programs of study to prepare a person to receive an initial vocational nurse license under Chapter 301 as follows: (A) a program conducted by an educational unit in nursing within the structure of a school, including a college, university, or proprietary school; and (B) a program conducted by a hospital; (2) prescribe and publish the minimum requirements and standards for a course of study in each program that prepares registered nurses or vocational nurses; (3) prescribe other rules as necessary to conduct approved schools of nursing and educational programs for the preparation of registered nurses or vocational nurses; (4) approve schools of nursing and educational programs that meet the Board's requirements; (5) select one or more national nursing accrediting agencies, recognized by the United States Department of Education and determined by the Board to have acceptable standards, to accredit schools of nursing and educational programs; and (6) deny or withdraw approval from a school of nursing or educational program that: (A) fails to meet the prescribed course of study or other standard under which it sought approval by the Board; (B) fails to meet or maintain accreditation with the national nursing accrediting agency selected by the Board under Subdivision (5) under which it was approved or sought approval by the Board; or (C) fails to maintain the approval of the state board of nursing of another state and the board under which it was approved.

Cross Reference To Statute. The following statutes are affected by this proposal: the Occupations Code §301.151 and §301.157(a) & (b).

§215.2. Definitions.

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

(1) - (3) (No change.)

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

(5) - (45) (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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Jena Abel
Deputy General Counsel
Texas Board of Nursing

Earliest possible date of adoption: October 10, 2021

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

22 TAC §215.4

The Texas Board of Nursing (Board) proposes amendments to §215.4(c), relating to Approval. The amendments are proposed under the authority of the Occupations Code §301.151 and §301.157(b).

Background. House Bill (HB) 2426, enacted by the 80th Legislature, required the Board to identify national nursing accreditation agencies recognized by the United States Department of Education with standards equivalent to the Board’s ongoing approval standards. In order to implement the requirements of HB 2426, the Board conducted a comprehensive comparative review of national accreditation standards and identified two accreditation agencies with equivalent standards: the Accreditation Commission for Education in Nursing (ACEN) and the Commission on Collegiate Nursing Education (CCNE). Based upon these findings, the Board adopted Education Guideline 3.2.4.a, which provided guidance to accredited programs regarding their exemption from compliance with certain Board rules. This guidance was also included in Board Rule 215.4. However, the rule did not include a specific reference to ACEN or CCNE at that time. In October 2012, Board Rule 215.4(c)(8) was amended to specifically incorporate the title of Education Guideline 3.2.4.a. into the rule. The title of Education Guideline 3.2.4.a specifically referenced the names of the Board’s approved national nursing accreditation agencies, the ACEN and CCNE. These two accreditation agencies have remained the only accreditation agencies recognized by the Board until recently.

The National League for Nursing (NLN) launched a third nursing accreditation organization in 2013, and 115 education programs across 29 states representing all program types have been pre-accredited or accredited by the NLN Commission for Nursing Education Accreditation (CNEA). On May 25, 2021, the NLN CNEA was recognized by the United States Department of Education as a fully accrediting agency for an initial five-year period. At its July 2021 meeting, the Board voted to add the NLN CNEA to its list of approved accreditation agencies, recognized by the United States Department of Education, and determined to have standards equivalent to the Board’s ongoing approval standards for nursing education programs. Due to the addition of an additional accreditation agency, the title of Education Guideline 3.2.4.a was also amended to eliminate reference to the specific approved accreditation agencies. Instead, the title of the guideline was amended to refer more generically to Board-approved national nursing accreditation agencies.

The proposed amendments to §215.4(c)(8) are now necessary for consistency with these recent changes made by the Board. The proposed amendments reference the newly amended title of Education Guideline 3.2.4.a by referring generically to Board-approved national nursing accreditation organizations instead of including specific reference to the ACEN and CCNE.

Section by Section Overview. Proposed amended §215.4(c)(8) references the newly amended title of Board Education Guideline 3.2.4.a: Specific Exemptions from Education Rule Require-
ments for Nursing Education Programs Accredited by a Board-Approved National Nursing Accreditation Organization.

Fiscal Note. Katherine Thomas, Executive Director, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no change in the revenue to state government as a result of the enforcement or administration of the proposal.

Public Benefit/Cost Note. Ms. Thomas has also determined that for each year of the first five years the proposed amendments are in effect, the anticipated public benefit will be the adoption of consistent and clear rules that correctly reflect changes made to the Board’s education guidelines. There are no anticipated costs of compliance with the proposal.

Costs Under the Government Code §2001.0045. The Government Code §2001.0045 prohibits agencies from adopting a rule that imposes costs on regulated persons unless the agency repeals a rule that imposes a total cost on regulated persons that is equal to or greater than the total cost imposed on regulated persons by the proposed rule or amends a rule to decrease the total cost imposed on regulated persons by an amount that is equal to or greater than the cost imposed on the persons by the proposed rule. There are no anticipated costs of compliance with the proposal. As such, the proposal is not subject to the requirements of §2001.0045.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. The Government Code §2006.002(c) and (f) require, that if a proposed rule may have an economic impact on small businesses, micro businesses, or rural communities, state agencies must prepare, as part of the rule-making process, an economic impact statement that assesses the potential impact of the proposed rule on these businesses and communities and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule. Because there are no anticipated costs of compliance associated with the proposal, an economic impact statement and regulatory flexibility analysis is not required.

Government Growth Impact Statement. The Board is required, pursuant to Tex. Gov’t Code §2001.0221 and §2001.0222 and 34 Tex. Administrative Code §11.1, to prepare a government growth impact statement. The Board has determined for each year of the first five years the proposed amendments will be in effect: (i) the proposal does not create or eliminate a government program; (ii) the proposal is not expected to have an effect on current agency positions; (iii) implementation of the proposal does not require an increase or decrease in future legislative appropriations to the Board; (iv) the proposal does not affect the fees paid to the Board; (v) the proposal makes editorial changes to an existing rule; (vi) the proposal does not expand, limit, or repeal an existing regulation; (vii) the proposal does not extend to new entities not previously subject to the rule; and (viii) the proposal will not affect the state’s economy.

Takings Impact Assessment. The Board has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner’s right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

Request for Public Comment. To be considered, written comments on this proposal should be submitted to Kristin Benton, DNP, RN, Director of Nursing, and James W. Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to Kristin.Benton@bon.texas.gov and Dusty.Johnston@bon.texas.gov, or faxed to (512) 305-8101. If a hearing is held, written and oral comments presented at the hearing will be considered.

Statutory Authority. The amendments are proposed under the authority of the Occupations Code §301.151 and §301.157(b).

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

Section 301.157(b) provides that the Board shall: (1) prescribe two programs of study to prepare a person to receive an initial vocational nurse license under Chapter 301 as follows: (A) a program conducted by an educational unit in nursing within the structure of a school, including a college, university, or proprietary school; and (B) a program conducted by a hospital; (2) prescribe and publish the minimum requirements and standards for a course of study in each program that prepares registered nurses or vocational nurses; (3) prescribe other rules as necessary to conduct approved schools of nursing and educational programs for the preparation of registered nurses or vocational nurses; (4) approve schools of nursing and educational programs that meet the Board’s requirements; (5) select one or more national nursing accrediting agencies, recognized by the United States Department of Education and determined by the Board to have acceptable standards, to accredit schools of nursing and educational programs; and (6) deny or withdraw approval from a school of nursing or educational program that: (A) fails to meet the prescribed course of study or other standard under which it sought approval by the Board; (B) fails to meet or maintain accreditation with the national nursing accrediting agency selected by the Board under Subdivision (5) under which it was approved or sought approval by the Board; or (C) fails to maintain the approval of the state board of nursing of another state and the board under which it was approved.

Cross Reference To Statute. The following statutes are affected by this proposal: the Occupations Code §301.151 and §301.157(b).

§215.4. Approval.

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

(c) Ongoing Approval Procedures. Ongoing approval status is determined biennially by the Board on the basis of information reported or provided in the program’s NEPIS and CANEP, NCLEX-PN® and other program outcomes. Certificates of Board approval will be mailed to all Board-approved nursing programs biennially in even-numbered years.

(1) - (7) (No change.)

(8) A professional nursing education program is considered approved by the Board and exempt from Board rules that require ongoing approval as described in Board Education Guideline 3.2.4.a. Specific Exemptions from Education Rule Requirements for Nursing Education Programs Accredited by a Board-Approved National Nursing Accreditation Organization.
the Commission on Collegiate Nursing Education—Specific Exemptions from Education Rule Requirements] if the program:

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

(d) (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.

Filed with the Office of the Secretary of State on August 25, 2021.
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Jena Abel
Deputy General Counsel
Texas Board of Nursing
Earliest possible date of adoption: October 10, 2021
For further information, please call: (512) 305-6822

TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 181. VITAL STATISTICS

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), proposes amendments to §181.2, concerning Assuming Custody of Body; §181.22, concerning Fees Charged for Vital Records Services; and §181.30, concerning Instructions and Requirements for Filing of Amendments to Medical Certification of Certificate of Death with a Local Registrar.

BACKGROUND AND PURPOSE

The proposal is necessary to comply with House Bill (H.B.) 1011, Senate Bill (S.B.) 798, and H.B. 4048, 87th Legislature, Regular Session, 2021. H.B. 1011 created new Texas Health and Safety Code §193.0025 to establish a process for an individual to request an expedited death certificate for religious purposes in applicable counties. The proposed amendment to §181.2 specifies how DSHS will provide technical support, as needed, to local offices who will fulfill these requests.

S.B. 798 created new Texas Health and Safety Code §191.00491, waiving the fee for issuing a certified copy of a person's birth record to victims and the children of victims of family or dating violence. The proposed amendment to §181.22 establishes a fee waiver for persons who meet all requirements as defined by statute and rule.

H.B. 4048 repealed Texas Health and Safety Code §193.005(a-1), to permit a physician assistant or advanced practice resident nurse of the decedent to complete the medical certification for a death certificate or a fetal death certificate, if the death occurred under the care of the person in connection with the treatment of the condition or disease process that contributed to the death, and does not limit this permission to hospice or palliative care. The proposed amendment to §181.30 removes the prior statutory limitations.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §181.2 concerns expediting a death certificate for religious purposes in certain counties.

The proposed amendment to §181.22 establishes a fee waiver for issuing a certified copy of a person's birth record to an applicant who represents that the applicant is a victim, or child of a victim, of dating or family violence who is fleeing a dating or family violence living situation and does not have personal identification documents.

The proposed amendment to §181.30 defines who may file an amendment to a death certificate.

The proposed amendments to §§181.2, 181.22, and 181.30 change the title of the Vital Statistics Unit to Vital Statistics Section, and §181.22 and §181.30 make minor formatting changes.

FISCAL NOTE

Donna Sheppard, DSHS Chief Financial Officer, has determined that for each year of the first five years that §181.2 and §181.30 will be in effect, enforcing or administering the rules does not have foreseeable implications relating to costs or revenues of state or local governments.

Donna Sheppard has determined that for each year of the first five years that §181.22 will be in effect, there will be an estimated decrease in revenue to state and local governments as a result of enforcing and administering the rule as proposed.

The effect on state and local governments for each year of the first five years the proposed §181.22 is in effect is an estimated decrease in revenue of $6,600 in fiscal year (FY) 2022, $6,600 in FY 2023, $6,600 in FY 2024, $6,600 in FY 2025, and $6,600 in FY 2026 based on the estimate provided by the Department of Public Safety of 300 applicants at $22 per certificate. The actual fiscal impact of the proposed rule cannot be determined until after year one of implementation.

GOVERNMENT GROWTH IMPACT STATEMENT

DSHS has determined that during the first five years that the rules will be in effect:

(1) the proposed rules will not create or eliminate a government program;
(2) implementation of the proposed rules will not affect the number of DSHS employee positions;
(3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;
(4) the proposed rules will require a decrease in fees paid to DSHS;
(5) the proposed rules will not create a new rule;
(6) the proposed rules will expand existing rules; and
(7) the proposed rules will not change the number of individuals subject to the rules.

DSHS has insufficient information to determine the proposed rules' effect on the state's economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Donna Sheppard has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The proposed rules do not apply to small or micro-businesses, or rural communities.
LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas; the rules do not impose a cost on regulated persons; and are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

Dr. Manda Hall, Associate Commissioner, has determined that for each year of the first five years the rules are in effect, the public benefit will be that a person can request an expedited death certificate for religious purposes in applicable counties, and can request a fee-waived certified copy of the person's birth certificate if a survivor of domestic violence fleeing a dangerous living situation. The public will also benefit by having a death certificate certified faster now that a physician assistant or advanced practice resident nurse can complete the medical certification for any death certificate or fetal death certificate.

Donna Sheppard has determined that for the first five years the rules are in effect, persons who are required to comply with the proposed rules that amend existing business processes will not have a fiscal impact or additional cost. A state registrar, local registrar, or county clerk will issue a certified copy of the person's birth certificate without fee to survivors of domestic violence who are fleeing a dangerous living situation.

TAKINGS IMPACT ASSESSMENT

DSHS has determined that 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.

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4900 North Lamar Boulevard, Austin, Texas 78751; or emailed to HHSRulesCoordinationOffice@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the Texas Register. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 21R123" in the subject line.

SUBCHAPTER A. MISCELLANEOUS PROVISIONS

25 TAC §181.2

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and efficient enforcement of Texas Health and Safety Code, Chapters 191 and 193; and Texas Health and Safety Code, §1001.075, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.


§181.2. Assuming Custody of Body.

(a) The funeral director, or person acting as such, who assumes custody of a dead body or fetus shall obtain an electronically filed report of death through a Vital Statistics Section [limit] system or complete a report of death before transporting the body. The report of death shall within 24 hours be mailed or otherwise transmitted to the Local Registrar of the district in which the death occurred or in which the body was found. A copy of the completed or electronically filed report of death as prescribed by the Vital Statistics Section [limit] shall serve as authority to transport or bury the body or fetus within this state.

(b) If a dead body or fetus is to be removed from this state, transported by common carrier within this state, or cremated, the funeral director, or person acting as such, shall obtain a burial-transit permit from the Local Registrar where the death certificate is or will be filed, or from the State Registrar electronically through a Vital Statistics Section [limit] electronic death registration system. The registrar shall not issue a burial-transit permit until a certificate of death, completed in so far as possible, has been presented (See §181.6 of this title relating to Disinterment).

(c) The funeral director, or person acting as such, shall furnish the sexton or other person in charge of a cemetery with the information required.

(d) If a county elects to expedite death certificates pursuant to Texas Health and Safety Code §193.0025, the funeral director, or person acting as such, who assumes custody of the dead body will work with the Local Registrar to ensure that a copy of the decedent's death certificate is issued to the requestor not later than 48 hours after the requestor's request if all statutory requirements are met. The department, using existing resources and programs to the extent possible, shall provide technical support.

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, 2021.

TRD-202103329
Scott A. Merchant
Interim General Counsel
Department of State Health Services

Earliest possible date of adoption: October 10, 2021
For further information, please call: (512) 776-7646

SUBCHAPTER B. VITAL RECORDS

25 TAC §181.22, §181.30

STATUTORY AUTHORITY
The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and efficient enforcement of Texas Health and Safety Code, Chapters 191 and 193; and Texas Health and Safety Code, §1001.075, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.


(a) The fee for a certified or research copy of a birth record shall be $10.00. Additional copies shall be $10.00 for each copy requested.

(b) The fee for a certified or research copy of a death certificate shall be $10.00 for the first or only copy requested, and $3.00 for each additional copy of the same record requested in the same request.

(c) A surcharge of $2.00 shall be added to the fee for searching and issuing each certified copy of a certificate of birth, or conducting a search for a certificate of birth, as mandated by the Texas Health and Safety Code, §191.0045.

(d) The fee for issuing each heirloom birth certificate, or gift certificate for such, shall be $50.00. If a record is not found, $38.00 of the fee shall be returned to the applicant.

(e) The fee for issuing each wedding anniversary certificate or gift certificate for such shall be $50.00.

(f) The fee to search for any record or information on file within the Vital Statistics Section [limit] shall be $10.00, regardless of whether a certified copy is issued or not.

(g) The fee for a search to verify the existence of a birth or death record shall be $10.00.

(h) The fee for a search to verify a marriage or divorce record shall be $10.00.

(i) The fee for a search and identification of the court that granted an adoption shall be $10.00.

(j) The fee for filing an amendment to an existing certificate of birth or death on file with the Vital Statistics Section [limit] shall be $15.00. An amendment to a certificate includes adding information to a record to make it complete and changing information on a record to make it correct. An additional fee is required to issue a certified copy of the amended record.

(k) The fee for filing an amendment based on a court ordered name change shall be $15.00.

(l) The fee for a new birth record based upon adoption or parentage determination shall be $25.00.

(m) The fee for filing a delayed record of birth shall be $25.00.

(n) The fee for a search of the Paternity Registry shall be $10.00. The fee includes a certification stating whether or not the requested information is located in the Registry.

(o) The fee for a search of the Acknowledgment of Paternity Registry shall be $10.00. The fee includes a certified copy of the Acknowledgment of Paternity, if found.

(p) Each person applying to the Central Adoption Registry shall pay a registration fee of $30.00, which includes the $5.00 fee for determining if an agency that operates its own registry was involved in the adoption. (Also see §181.44 of this title (relating to the Inquiry Through the Central Index).)

(q) The fee charged for an expedited service shall be $5.00 per request in addition to any other fee required. Expedited service is any service requested via fax or overnight mail service. The expedited fee is nonrefundable if a record or the information requested is not found.

(r) The fee for the processing and issuance of a disinterment permit shall be $25.00. The fee is to be paid by the applicant for the permit, and must be submitted with the application.

(s) A Texas Online fee of $10.00 shall be added to all requests for birth, death, marriage, and divorce record searches and document production.

(t) Except as provided in subsection (c) of this section, the fee for a certified record that otherwise is required under this section is waived for an applicant who appears in person to obtain a certified copy from the department or a Local Registrar [local registrar] and represents that the certified record is required for the purpose of obtaining an identification certificate issued pursuant to Transportation Code, Chapter 521A.

(u) The fee for a certified birth record is waived for an applicant who represents the applicant is a victim, or child of a victim, of dating or family violence, pursuant to Texas Health and Safety Code §191.00491, who is fleeing a living situation due to dating or family violence and does not have personal identification documents.

§181.30. Instructions and Requirements for Filing of Amendments to Medical Certification of Certificate of Death with a Local Registrar:

(a) An amending certificate (medical amendment) may be filed with the appropriate Local Registrar or State Registrar electronically through a Vital Statistics Section [limit] electronic death registration system to complete or correct medical certification information on a certificate of death that is incomplete or inaccurate. The medical amendment must be in a format as prescribed by the department.

(b) Once the original death certificate is registered, if [A certificate described in subsection (a) of this section shall only be filed upon completion by the individual responsible for the certification of the original death certificate. If the original was certified by a physician, and] a justice of the peace (JP) or medical examiner's office (ME) has subsequently conducted an inquest as authorized by the Code of Criminal Procedure, Chapter 49, the medical amendment may be filed by the JP or ME that conducted the inquest.

(c) The registrar shall carefully examine each medical amendment when presented for registration to determine if it is complete as required by the State Registrar’s instructions.

(d) If the medical amendment is incomplete or unsatisfactory, the registrar shall call attention to the error or omission in the return.

(e) The registrar shall number the medical amendment with the same file number assigned to the original death certificate. The Local Registrar shall sign each medical amendment to attest to the date the amendment is filed in the Local Registrar's office. The signature may be either electronic, handwritten or a facsimile stamp. The medical amendment shall be attached to and become a part of the legal record of the death if the amendment is accepted for filing.

(f) The registrar shall duplicate the medical amendment as authorized by the Local Government Code, Chapters 201 or 204. The
duplicate shall be permanently preserved in the Local Registrar's [local registrars'] office as the local record, in the manner directed by the State Registrar [state registrar].

(g) The registrar shall forward all original non-electronic, medical amendments to the State Registrar [state registrar] within 10 days of filing.

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, 2021.
TRD-202103330
Scott A. Merchant
Interim General Counsel
Department of State Health Services
Earliest possible date of adoption: October 10, 2021
For further information, please call: (512) 776-7646

CHAPTER 412. LOCAL MENTAL HEALTH AUTHORITY RESPONSIBILITIES
SUBCHAPTER F. CONTINUITY OF SERVICES--STATE MENTAL RETARDATION FACILITIES

25 TAC §412.272
The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes the repeal of §412.272, concerning Transfer of an Individual from a State MR Facility to a State MH Facility.

BACKGROUND AND PURPOSE
The purpose of the proposed repeal is to reflect the move of the state hospitals from the Department of State Health Services (DSHS) to HHSC by moving an HHSC rule from Texas Administrative Code (TAC) Title 25, Chapter 412, Subchapter F to 26 TAC Chapter 902 to consolidate HHSC rules. The current rule will be repealed from 25 TAC, updated, and placed in 26 TAC Chapter 902. The new rule is proposed simultaneously elsewhere in this issue of the Texas Register.

SECTION-BY-SECTION SUMMARY
The proposed repeal of §412.272 removes the rule from 25 TAC Chapter 412, Subchapter F.

FISCAL NOTE
Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the repeal will be in effect, enforcing or administering the repeal does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT
HHSC has determined that during the first five years that the rule is repealed:
(1) the proposed repeal will not create or eliminate a government program;
(2) implementation of the repeal will not affect the number of HHSC employee positions;
(3) implementation of the repeal will result in no assumed change in future legislative appropriations;
(4) the proposed repeal will not affect fees paid to HHSC;
(5) the proposed repeal will not create a new rule;
(6) the proposed repeal will repeal an existing rule;
(7) the proposed repeal will not change the number of individuals subject to the rule; and
(8) the proposed repeal will not affect the state's economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS
Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. Under the proposed repeal there are no requirements to alter current business practices and there are no new fees or costs imposed.

LOCAL EMPLOYMENT IMPACT
The proposed repeal will not affect a local economy.

COSTS TO REGULATED PERSONS
Texas Government Code §2001.0045 does not apply to this repeal because the repeal does not impose a cost on regulated persons.

PUBLIC BENEFIT AND COSTS
Timothy E. Bray, State Hospitals Associate Commissioner, has determined that for each year of the first five years the repeal is in effect, the public benefit will be the removal of a rule no longer associated with DSHS from 25 TAC.

Trey Wood has also determined that for the first five years the repeal is in effect, there are no anticipated economic costs to persons who are required to comply with the repeal because there are no requirements to alter current business practices and there are no new fees or costs imposed.

TAKINGS IMPACT ASSESSMENT
HHSC has determined that 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.

PUBLIC COMMENT
Written comments on the proposal may be submitted to HHSC, Mail Code E619, P.O. Box 13247, Austin, Texas 78711-3247, or by email to HealthandSpecialtyCare@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the Texas Register. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 21R066" in the subject line.

STATUTORY AUTHORITY
The repeal is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC
shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §591.004 which provides that the Executive Commissioner of HHSC shall adopt rules to ensure the implementation of Title 7, Subtitle D, Texas Health and Safety Code.

The repeal affects Texas Government Code §§31.0055 and Texas Health and Safety Code Chapter 594, Subchapter C, which governs the transfer of residents from a state supported living center to a state hospital.

§412.272. Transfer of an Individual from a State MR Facility to a State MH Facility.

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, 2021.

TRD-202103381
Karen Ray
Chief Counsel
Department of State Health Services

Earliest possible date of adoption: October 10, 2021
For further information, please call: (512) 438-3049

TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 306. BEHAVIORAL HEALTH DELIVERY SYSTEM

SUBCHAPTER D. MENTAL HEALTH SERVICES--ADMISSION, CONTINUITY, AND DISCHARGE

DIVISION 4. TRANSFERS AND CHANGING LOCAL MENTAL HEALTH AUTHORITIES OR LOCAL BEHAVIORAL HEALTH AUTHORITIES

26 TAC §306.192

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendment to §306.192, concerning Transfers Between a State Mental Health Facility and a State Supported Living Center. Other edits are made for clarity and consistency.

FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the rule will be in effect, enforcing or administering the rule does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the amendment will be in effect:

(1) the proposed rule will not create or eliminate a government program;

(2) implementation of the proposed rule will not affect the number of HHSC employee positions;

(3) implementation of the proposed rule will result in no assumed change in future legislative appropriations;

(4) the proposed rule will not affect fees paid to HHSC;

(5) the proposed rule will not create a new rule;

(6) the proposed rule will not expand, limit, or repeal existing rules;

(7) the proposed rule will not change the number of individuals subject to the rule; and

(8) the proposed rule will not affect the state's economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. Under the proposed amendment there are no requirements to alter current business practices and there are no new fees or costs imposed.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule does not impose a cost on regulated persons.

PUBLIC BENEFIT AND COSTS

Timothy E. Bray, State Hospitals Associate Commissioner, has determined that for each year of the first five years the rule is in effect, the public benefit is an updated rule with the correct reference to an HHSC rule in 26 TAC.

Trey Wood has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because there are no requirements to alter current business practices and there are no new fees or costs imposed.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that 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.

PUBLIC COMMENT

PROPOSED RULES September 10, 2021 46 TexReg 5737
Written comments on the proposal may be submitted to HHSC, Mail Code E619, P.O. Box 13247, Austin, Texas 78711-3247, or by email to HealthandSpecialtyCare@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the Texas Register. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 21R066" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, Texas Health and Safety Code §571.006 which provides that the Executive Commissioner of HHSC may adopt rules as necessary for the proper and efficient treatment of persons with mental illness, and Texas Health and Safety Code §594.001 which provides that the Executive Commissioner of HHSC shall adopt rules to ensure the implementation of Title 7, Subtitle D, Texas Health and Safety Code.

The amendment affects Texas Government Code §531.0055, Texas Health and Safety Code §571.013 which governs the transfer of a person with an intellectual disability from a state hospital to a state supported living center, and Chapter 594, Subchapter C, Texas Health and Safety Code which governs the transfer of a resident from a state supported living center to a state hospital.

§306.192. Transfers Between a State Mental Health Facility and a State Supported Living Center:

(a) For an individual transferring from a state mental health facility (SMHF) [an SMHF] to a state supported living center (SSLC) [an SSLC]:

(1) the following rules and statutes govern the transfer:

{[A]} 25 TAC §412.272 (relating to Transfer of an Individual from a State MR Facility to a State MH Facility);

(A) [4B] 40 TAC Chapter 2, Subchapter F, Division 3 (relating to Transfers); and

(B) [[C]] Texas Health and Safety Code §575.013 and §575.017; and

(2) the SMHF must not transfer the individual before the judge of the committing court enters an order approving the transfer.

(b) For an individual transferring from an SSLC to an SMHF:

(1) Section 902.1 of this title (relating to Transfer of an Individual from a State Supported Living Center to a State Hospital) [25 TAC §412.272] and Texas Health and Safety Code §594.034 govern the transfer; and

(2) the receiving SMHF notifies the designated local mental health authority [LMHA] or local behavioral health authority [LBHA] or the designated local intellectual and developmental disability authority [LIDDA] of the transfer.

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, 2021.

TRD-202103379

Karen Ray
Chief Counsel
Health and Human Services Commission

Earliest possible date of adoption: October 10, 2021

For further information, please call: (512) 438-3049

CHAPTER 556. NURSE AIDES

26 TAC §556.100

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes new §556.100, concerning Nurse Aide Transition from Temporary Status.

BACKGROUND AND PURPOSE

Because of the COVID-19 pandemic, the Centers for Medicare & Medicaid Services (CMS) waived federal requirements prohibiting nursing facilities from employing anyone for longer than four months unless the person meets the training and certification requirements under 42 Code of Federal Regulations (CFR) §483.35(d). The Office of the Governor approved a corresponding suspension of state regulations. On April 9, 2020, HHSC issued a provider letter (PL 20-26) related to the governor's approval to suspend provisions prohibiting a nursing facility from hiring a non-certified nurse aide to complete nurse aide tasks for longer than four months. The suspension was intended to provide flexibility in staffing during the COVID-19 public health emergency issued by the United States Secretary of Health and Human Services (COVID-19 public health emergency). The waiver did not suspend the requirements for supervision, competency, employee misconduct registry verification, or criminal background checks (Texas Health and Safety Code Chapter 250).

Under this waiver, nursing facilities have employed and trained numerous staff to complete nurse aide tasks who are not certified nurse aides. Once this waiver is no longer available, either through the termination of the emergency declaration or through other means, the staff completing these tasks will no longer be able to do so unless they have become certified as nurse aides. To ensure continued staffing at nursing facilities, a transition plan needs to be in place.

The individuals at issue have been trained as nurse aides and have been completing nurse aide tasks under the current waiver. To provide individuals with credit for this experience, the proposed rule will allow time trained and time worked at a nursing facility during the pandemic (work training and experience) to be counted as classroom and clinical training hours required as part of a Nurse Aide Training and Competency Evaluation Program (NATCEP).

Under current regulations, the training provided by a NATCEP must be associated with a nursing facility that meets the requirements of 42 CFR §483.151(b)(2) - (3). This requirement is included in Title 26 Texas Administrative Code §556.3(e). State regulations provide a waiver for this requirement under certain circumstances, but only for nursing facilities prohibited from pro-
viding a NATCEP when another NATCEP is not available within a reasonable distance from the facility employing the individual. In the current pandemic, no nursing facility was a "reasonable" distance from another, considering the risk of exposure to COVID-19 posed to facility residents by non-employees or by non-essential visitors of their facility.

To provide a path for certification of nurse aides who have been working in nursing facilities under the waiver of training requirements during the COVID-19 public health emergency, HHSC adopted a new emergency rule on May 20, 2021. This emergency rule allowed time trained and time worked in a nursing facility during the COVID-19 public health emergency to be counted as classroom and clinical hours required as part of a NATCEP. The purpose of the proposed new section is to ensure continued staffing at nursing facilities by adopting the process established under the May 20, 2021 emergency rule into permanent rule.

SECTION-BY-SECTION SUMMARY

Proposed new §556.100 describes the process for an individual who accumulated hours of work training and experience in a nursing facility during the COVID-19 public health emergency to count those hours towards the classroom and clinical training hours required as part of a NATCEP. Subsection (a) states the purpose of the section. Subsections (b) and (c) provide the eligibility requirements for work and training experience hours to be counted towards NATCEP classroom and clinical training hours. Subsection (d) contains the required documentation for a nurse aide's qualifying work training and experience hours. Subsections (e) and (f) provide that nurse aides seeking certification under this section must still successfully complete both the written or oral examination and skill demonstration requirements for nurse aide certification and that nursing facilities without a NATCEP seeking certification for employees under this section must work with a NATCEP to complete the criminal background check and approve employees for nurse aide certification examinations. Subsection (g) provides that an individual's work training and experience hours must be completed during the duration of the COVID-19 public health emergency to be counted towards NATCEP classroom and clinical training hours. Subsection (h) requires that a nurse aide be certified within four months following the end of the COVID-19 public health emergency.

FISCAL NOTE

Trey Wood, HHSC Chief Financial Officer, has determined that for each year of the first five years that the rule will be in effect, enforcing or administering the rule does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rule will be in effect:

1. the proposed rule will not create or eliminate a government program;
2. implementation of the proposed rule will not affect the number of HHSC/DSHS employee positions;
3. implementation of the proposed rule will result in no assumed change in future legislative appropriations;
4. the proposed rule will not affect fees paid to HHSC/DSHS;
5. the proposed rule will create a new rule;
6. the proposed rule will not expand, limit, or repeal existing rules;
7. the proposed rule will not change the number of individuals subject to the rules; and
8. the proposed rule will not affect the state's economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The proposed rule puts in place a process for certifying nurse aides hired during the COVID-19 public health emergency. Any costs incurred by nursing facilities are costs that would otherwise be incurred through the normal nurse aide certification process.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas; do not impose a cost on regulated persons; and are adopted in response to a natural disaster.

PUBLIC BENEFIT AND COSTS

David Kostroun, HHSC Deputy Executive Commissioner for Regulatory Services, has determined that for each year of the first five years the rule is in effect, the public will benefit from not having a disruption in the available workforce in nursing facilities once the COVID-19 public health determination is ended and the associated waivers for nurse aide staff are lifted.

Trey Wood has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because any costs incurred by prospective nurse aides under this proposed rule would be costs that would otherwise be incurred through the current nurse aide certification process.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that 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.

PUBLIC COMMENT

Written comments on the proposal may be submitted to Kayla Lail, Rule and Policy Specialist, Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or 4900 North Lamar Boulevard, Austin, Texas 78751; or by email to: HHSLTCRRules@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the Texas Register. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please...
indicate "Comments on Proposed Rule 21R127" in the subject line.

STATUTORY AUTHORITY

The new section is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation of and provision of services by the health and human services agencies, and §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Human Resources Code §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program; and Texas Health and Safety Code, Chapter 250, which requires HHSC to maintain a Nurse Aide Registry.


§556.100. Nurse Aide Transition from Temporary Status.

(a) An individual who has accumulated hours of work training and work experience in a nursing facility during the COVID-19 public health emergency determination issued by the United States Secretary of Health and Human Services (COVID-19 public health emergency) is allowed to count such hours worked under a qualified instructor (work training and experience) towards classroom and clinical training hours required as part of a NATCEP. Due to the COVID-19 public health emergency, during which the containment of the spread of the COVID-19 virus was necessary, work training and experience will be accepted for this purpose from all nursing facilities regardless of their eligibility to provide or their establishment of a NATCEP.

(b) The work training and experience described in subsection (a) of this section must include the minimum requirements in §556.3(i) of this chapter (relating to Nurse Aide Training and Competency Evaluation Program (NATCEP) Requirements).

(c) The instructor for the work training and experience described in subsection (a) of this section must meet the requirements in §556.5(b) of this chapter (relating to Program Director, Program Instructor, Supplemental Trainers, and Skills Examiner Requirements).

(d) For an individual with work training and experience described in subsection (a) of this section to count work training and experience hours as classroom and clinical training hours, the facility where the work training and experience was performed must complete a form provided by HHSC. The facility must document the following on the form:

1. the name of the nurse instructor responsible for training and supervising the individual and an attestation that meets the requirements in §556.5(b) of this chapter;
2. a list of the training requirements with an attestation that the individual was trained in each;
3. an attestation that the duration of the work training and experience is at least 100 hours; and
4. the signature of the nurse instructor.

(e) A facility without a NATCEP that seeks to have an employed individual certified as a nurse aide must work with an approved NATCEP to complete the criminal background check and approve the individual for the nurse aide certification examinations.

(f) Each nurse aide candidate must successfully complete both the written or oral examination and the skills demonstration required by §556.6(g) of this chapter (relating to Competency Evaluation Requirements) to be certified and placed on the nurse aide registry.

(g) To be considered in lieu of formal training, an individual’s work training and experience must be completed during the duration of the COVID-19 public health emergency.

(h) Under the provisions of this section, a nurse aide must be certified within four months following the end of the COVID-19 public health emergency.

(i) This section only applies to individuals who were hired and accumulated work training and experience hours in a nursing facility during the COVID-19 public health emergency.

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 25, 2021.

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Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: October 10, 2021
For further information, please call: (512) 438-3161

CHAPTER 557. MEDICATION AIDES--PROGRAM REQUIREMENTS


The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes in Texas Administrative Code (TAC) Title 26, Part 1, Chapter 557, Medication Aides--Program Requirements, amendments to §§557.101, concerning Introduction; §§557.107, concerning Training Requirements; Nursing Graduates; Reciprocity; §§557.109, concerning Application Procedures; §§557.113, concerning Determination of Eligibility; §§557.115, concerning Permit Renewal; §§557.119, concerning Training Program Requirements; §§557.121, concerning Permitting of Persons with Criminal Backgrounds; §§557.123, concerning Violations, Complaints, and Disciplinary Actions; §§557.128, concerning Home Health Medication Aides; and §§557.129, concerning Alternate Licensing Requirements for Military Services.

BACKGROUND AND PURPOSE

The purpose of the proposal is to implement House Bill (H.B.) 1342 and Senate Bill (S.B.) 1200, 86th Legislature, Regular Session, 2019. H.B. 1342 eliminates certain grounds for disqualification for an occupational license based on prior criminal convictions that are unrelated to the duties and responsibilities of an occupational license. S.B. 1200 allows for military spouses who have occupational licensing from other states to engage in that occupation in Texas without obtaining an additional license by notifying the applicable state agency.

The proposed amendments require medication aides to submit fingerprints to the Texas Department of Public Safety for a criminal background check and clarify the utilization of online courses in medication aide training programs.

The proposed amendments also update outdated rule references resulting from the administrative transfer of the rules.
from 40 TAC Chapter 97 to 26 TAC Chapter 558, update terminology, and remove other outdated references for clarity and consistency.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §557.101 updates definitions for "classroom instruction and training" and "clinical experience" to clarify the utilization of online courses in Medication Aide training programs. The proposed amendment also updates the definition of "armed forces of the United States" to include the Space Force as a military branch.

The proposed amendment to §557.107 updates the criteria for applying to be a medication aide to refer to the criminal history requirements listed in §557.121.

The proposed amendment to §557.109 revises the application material requirements to include the requirement to submit fingerprints to the Texas Department of Public Safety for a criminal background check. The proposed amendment also adds references to §557.121 regarding denial of an application based on criminal history.

The proposed amendment to §557.113 updates the criteria for determination of approval of a medication aide permit to refer to the criminal history requirements listed in §557.121.

The proposed amendment to §557.115 adds a one-time submission of fingerprints to the Texas Department of Public Safety for a criminal background check as a requirement for renewal of a medication aide permit.

The proposed amendment to §557.119 clarifies that classroom instruction and training requirements can be provided through online instruction. The proposed amendment also removes the requirement for training programs to perform a criminal background check on trainees since this will be replaced by the proposed requirement to submit fingerprints to the Texas Department of Public Safety for a criminal background check added to §557.109.

The proposed amendment to §557.121 revises requirements for permitting persons with criminal backgrounds in accordance with H.B. 1342 which amends Occupations Code, Chapter 51. The proposed amendment outlines the factors that must be considered by HHSC which determining whether a criminal conviction relates to the duties and responsibilities of a medication aide. The proposed amendment also adds references to §557.123 for an applicant who is denied a permit, or a medication aide whose permit is suspended based on criminal background.

The proposed amendment to §557.123 adds processes for denials of medication aide applications and suspension or revocation of medication aide permits based on criminal history in accordance with H.B. 1342 which amends Occupations Code, Chapter 51. The proposed amendment adds processes for a medication aide or medication aide applicant to provide additional information for further review by HHSC. The proposed amendment also adds processes for a medication aide or medication aide applicant to request a formal hearing or judicial review relating to HHSC's decision to deny, suspend, or revoke a permit based on criminal background.

The proposed amendment to §557.128 revises the application material requirements for home health medication aides to include the requirement to submit fingerprints to the Texas Department of Public Safety for a criminal background check. The proposed amendment also adds references to §557.121 regarding criteria for applying to become a home health medication aide and denial of an application based on criminal history. The proposed amendment also adds a one-time submission of fingerprints to the Texas Department of Public Safety for a criminal background check as a requirement for renewal of a home health medication aide permit. The proposed amendment also clarifies that classroom instruction and training requirements for home health medication aide training programs can be provided through online instruction.

The proposed amendment to §557.129 adds processes for military spouses with an out-of-state medication aide permit to engage in the practice of a medication aide in Texas in accordance with S.B. 1200, which amends Occupations Code, Chapter 55. The proposed amendment adds processes for military spouses to request recognition of an out-of-state medication aide permit from HHSC and requirements to be approved for recognition of a military spouse's out-of-state permit. The proposed amendment adds that a permit issued for a military spouse under this section is not subject to fees and will expire three years from the date of issuance. The proposed amendment also adds military spouses to the list of individuals who can request reciprocity for training and experience requirements related to applying for a medication aide permit.

FISCAL NOTE

Trey Wood, HHSC Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, enforcing or administering the rules does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rules will be in effect:

(1) the proposed rules will not create or eliminate a government program;

(2) implementation of the proposed rules will not affect the number of HHSC employee positions;

(3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;

(4) the proposed rules will not affect fees paid to HHSC;

(5) the proposed rules will not create a new rule;

(6) the proposed rules will expand existing rules;

(7) the proposed rules will not change the number of individuals subject to the rules; and

(8) the proposed rules will not affect the state's economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Trey Wood has also determined that there will be no adverse economic effect on small businesses or micro-businesses as there is no requirement to alter current business practices. There will be no adverse economic effect on rural communities as no rural communities contract with HHSC in any program or service affected by the proposed rule.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS
Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas and to implement legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

David Kostroun, Deputy Executive Commissioner for Regulatory Services, has determined that for each year of the first five years the rules are in effect, the public benefit will be the opportunity for permitting for individuals who have been convicted of certain offenses that are unrelated to the duties and responsibilities of a certified medication aide, which may increase the overall number of permitted medication aides in the workforce. Additionally, military spouses with equivalent medication aide training from outside states will be able to work in Texas facilities more easily upon moving into the state.

Trey Wood has also determined that for the first five years the rules are in effect, persons who are required to comply with the proposed rules may incur economic costs because medication aides and medication aide applicants will be charged a one-time fee of $38.25 for submitting their fingerprints to the Department of Public Safety for a Federal Bureau of Investigations criminal background check.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that 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.

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4900 North Lamar Boulevard, Austin, Texas 78751; or emailed to Brindley Jones, Policy Specialist, HHSC Long-term Regulatory Services at HHSCLTCRRules@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the Texas Register. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate “Comments on Proposed Rule 21R042” in the subject line.

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code §142.023, which authorizes the HHSC executive commissioner to establish standards for home health medication aides, and §242.608, which authorizes the executive commissioner to adopt rules regulating medication aides in nursing facilities; and Texas Human Resources Code §161.083, which authorizes the executive commissioner to establish minimum standards and requirements for the issuance of corrections medication aide permits.


§557.101. Introduction.

(a) Purpose. The purpose of this chapter is to implement the provisions of the:

(1) Texas Health and Safety Code, Chapter 242, Subchapter N, concerning the administration of medications to facility residents;

(2) Texas Health and Safety Code, Chapter 142, Subchapter B, concerning the administration of medication by a home and community support services agency; and

(3) Texas Human Resource Code §161.083, concerning the administration of medication to an inmate in a correctional facility.

(b) Corrections medication aide permit requirements. Section 557.125 of this chapter (relating to Requirements for Corrections Medication Aides) applies to a corrections medication aide or an applicant for a corrections medication aide permit.

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

(1) Abuse—The willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain, or mental anguish.

(2) Active duty—Current full-time military service in the armed forces of the United States or as a member of the Texas military forces, as defined in Texas Government Code §437.001, or similar military service of another state.

(3) Armed forces of the United States—The Army, Navy, Air Force, Coast Guard, Space Force, or Marine Corps of the United States, including reserve units of those military branches.

(4) BON—Texas Board of Nursing.

(5) Classroom instruction and training—Teaching curricu- lum components through in-person instruction taught in a physical classroom location, which may include skills practice, or through online instruction taught in a virtual classroom location.

(6) [61] Client—An individual receiving home health, hospice, or personal assistance services from a HCSSA.

(7) Clinical experience—Teaching hands-on care of resi- dents in a nursing facility under the required level of supervision of a licensed nurse, which may include skills practice prior to performing the skills through hands-on care of a resident. The clinical experience provides the opportunity for a trainee to learn to apply the classroom instruction and training to the care of residents with the assistance and required level of supervision of the instructor.

(8) [66] Correctional facility—a facility operated by or under contract with the Texas Department of Criminal Justice.

(9) [62] Day—Any day, including a Saturday, a Sunday, and a holiday.

(10) [68] EMR—Employee misconduct registry. The regis- try maintained by HHSC in accordance with Texas Health and Safety Code, Chapter 253, to record findings of reportable conduct by certain unlicensed employees.

(11) [69] Examination—A written competency evaluation for medication aides administered by HHSC.
(12) [404] Facility--An institution licensed under Texas Health and Safety Code, Chapter 242; a state supported living center as defined in Texas Health and Safety Code §531.002(19); a licensed intermediate care facility for an individual with an intellectual disability or related condition as defined in the Texas Health and Safety Code Chapter 252; an intermediate care facility for an individual with an intellectual disability or related condition operated by a community center as described in Texas Health and Safety Code, Chapter 534; or an assisted living facility licensed under Texas Health and Safety Code, Chapter 247.

(13) [405] HCSSA—A home and community support services agency licensed under Texas Health and Safety Code Chapter 142 and Chapter 558 of this title [40 TAC Chapter 92] (relating to Licensing Standards for Home and Community Support Services Agencies).

(14) [406] HHSC--The Texas Health and Human Services Commission.

(15) [407] Licensed nurse--A licensed vocational nurse or an RN.

(16) [408] LVN--Licensed vocational nurse. A person licensed by the BON, or who holds a license from another state recognized by the BON, to practice vocational nursing in Texas.

(17) [409] Medication aide--A person who is issued a permit by HHSC under Texas Health and Safety Code Chapter 242, Subchapter N, Texas Human Resources Code, Chapter 161, Subchapter D, and Texas Health and Safety Code, Chapter 142, Subchapter B to administer medications to facility residents, correctional facility inmates, or to persons served by home and community support services agencies.

(18) [410] Military service member--A person who is on active duty.

(19) [411] Military spouse--A person who is married to a military service member.

(20) [412] Military veteran--A person who has served on active duty and who was discharged or released from active duty.

(21) [413] Misappropriation of resident property--The deliberate misplacement, exploitation, or wrongful temporary or permanent use of a resident's belongings or money without the resident's consent.

(22) [414] NAR--Nurse aide registry. A state listing of nurse aides maintained by HHSC in accordance with Texas Health and Safety Code, Chapter 250 that indicates if a nurse aide has active status, revoked status, or is unemployable based on a finding of having committed an act of abuse, neglect or misappropriation of resident property.

(23) [415] Neglect--The failure to provide goods and services necessary to avoid physical harm, mental anguish, or mental illness.

(24) [416] Non-licensed direct care staff--Employees of facilities other than Medicare-skilled nursing facilities or Medicaid nursing facilities who are primarily involved in the delivery of services to assist with residents' activities of daily living or active treatment programs.

(25) [417] Nurse aide--An individual who has completed a nurse aide training and competency evaluation program (NATCEP) approved by HHSC as meeting the requirements of 42 Code of Federal Regulations (CFR) §483.15 - 483.154, or has been determined competent as provided in 42 CFR §483.150(a) and (b), and is listed as certified on HHSC nurse aide registry.

(26) [418] PRN medication--P re e nta medication. Medication administered as the occasion arises or as needed.

(27) [419] Registered pharmacist--An individual currently licensed by the Texas Board of Pharmacy to practice pharmacy.

(28) [420] RN--Registered nurse. A person who is licensed by the BON, or who holds a license from another state recognized by the BON, to practice professional nursing in Texas.

(29) [421] TDCJ--Texas Department of Criminal Justice.

(30) [422] Training program--A program approved by HHSC to instruct individuals to act as medication aides.

§557.107. Training Requirements; Nursing Graduates; Reciprocity. (a) Each applicant for a permit issued under Texas Health and Safety Code, Chapter 242, Subchapter N, must complete a training program unless the applicant meets the requirements of subsection (c) or (e) of this section.

(b) Before submitting an application for a permit under Texas Health and Safety Code, Chapter 242, Subchapter N, an applicant must: (1) be able to read, write, speak, and understand English; (2) be at least 18 years of age; (3) be free of communicable diseases and in suitable physical and emotional health to safely administer medications; (4) be a graduate of an accredited high school or have proof of successfully passing a general educational development test; (5) be employed in a facility as a nurse aide or nonlicensed direct care staff person on the first official day of an applicant's medication aide training program; and (6) have been employed: (A) as a nurse aide in a Medicare-skilled nursing facility or a Medicaid nursing facility; or (B) in a facility for 90 days as a nonlicensed direct care staff person during the 12-month period before the first official day of the applicant's medication aide training program;

(7) not have a criminal history that HHSC determines is a basis for denying the permit under §557.121 of this chapter (relating to Permitting of Persons with Criminal Backgrounds) [been convicted of a criminal offense listed in Texas Health and Safety Code $250.006(a), and not have been convicted of a criminal offense listed in Texas Health and Safety Code §250.006(b) within five years before the date HHSC receives the permit application]; (8) not be listed as unemployable on the EMR; and (9) not be listed with a revoked or suspended status on the NAR.

(c) A person who is attending or has attended an accredited school of nursing and who does not hold a license to practice professional or vocational nursing meets the training requirement for issuance of a permit under Texas Health and Safety Code, Chapter 242, Subchapter N, if the person: (1) attended the nursing school no earlier than January 1 of the year immediately preceding the year of application for a permit under this chapter; (2) successfully completed courses at the nursing school that cover HHSC curriculum for a medication aide training program; (3) submits a statement, with the application for a permit and combined permit application and examination fee as provided in
§557.109 of this chapter (relating to Application Procedures), on the form provided by HHSC, signed by the nursing school's administrator or other authorized individual, certifying that the person completed the courses specified in paragraph (2) of this subsection; and

(4) complies with subsection (e)(5) and (6) of this section.

(d) The administrator or other authorized individual referred to in subsection (c)(3) of this section is responsible for determining that the nursing school courses cover HHSC curriculum.

(e) A person who is a graduate of an accredited school of nursing and who does not hold a license to practice professional or vocational nursing meets the training requirement for issuance of a permit under Texas Health and Safety Code, Chapter 242, Subchapter N, provided the date of graduation from the nursing school was no earlier than January 1 of the year immediately preceding the year of application for a permit under this chapter.

(1) The graduate must submit an official application form to HHSC. The applicant must meet the requirements of subsection (b)(1) - (4), (7), and (8) of this section.

(2) The application must be accompanied by the combined permit application and examination fee as set out in §557.109(c) of this chapter.

(3) The applicant must include an official transcript documenting graduation from an accredited school of nursing.

(4) HHSC acknowledges receipt of the application by sending the applicant a copy of this chapter and HHSC open book examination.

(5) The applicant must complete the open book examination and return it to HHSC by the date given in the examination notice.

(6) The applicant must complete HHSC written examination. HHSC denies the application of an applicant failing to schedule and take the examination by the date given in the examination notice.

(7) An open-book or written examination may not be re-taken if the applicant fails.

(8) Upon successful completion of the two examinations, HHSC evaluates all application documents submitted by the applicant.

(9) HHSC notifies the applicant in writing of the examination results.

(f) A person who holds a valid license, registration, certificate, or permit as a medication aide issued by another state whose minimum standards or requirements are substantially equivalent to or exceed the requirements of Texas Health and Safety Code, Chapter 242, Subchapter N, in effect at the time of application, may request a waiver of the training program requirement as follows:

(1) The applicant must submit an official application form to HHSC. The applicant must meet the requirements of subsection (b)(1) - (4), (7), and (8) of this section.

(2) The application must be accompanied by the combined permit application and examination fee required in §557.109(c) of this chapter.

(3) The application must include a current copy of the rules of the other state governing its licensing and regulation of medication aides, a copy of the legal authority (law, act, code, or other) for the state's licensing program, and a certified copy of the license or certificate for which the reciprocal permit is requested.

(4) HHSC acknowledges receipt of the application by sending the applicant a copy of this chapter and HHSC open book examination.

(5) HHSC may contact the issuing agency to verify the applicant's status with the agency.

(6) The applicant must complete HHSC open-book examination and return it to HHSC by the date given in the examination notice.

(7) The applicant must complete HHSC written examination. The site of the examination is determined by HHSC. HHSC denies the application of an applicant failing to schedule and take the examination by the date given in the examination notice.

(8) An open-book or written examination may not be re-taken if the applicant fails.

(9) Upon successful completion of the two examinations, HHSC evaluates all application documents submitted by the applicant.

(10) HHSC notifies the applicant in writing of the examination results.


(a) An applicant for a permit under Texas Health and Safety Code, Chapter 242, Subchapter N, who complies with §557.107(a) of this chapter (relating to Training Requirements; Nursing Graduates; Reciprocity) must [submit to HHSC], no later than 20 days after enrollment in a training program; [ ]

(1) complete an application, including the following materials [all required information and documentation on HHSC forms] :

(A) the general statement enrollment form, which must contain:

(i) specific information regarding the applicant's personal data, certain misdemeanor and felony convictions, work experience, education, and training;

(ii) a statement that the applicant has met all the requirements in §557.107(b) of this chapter before the start of the program;

(iii) a statement that the applicant understands that application fees submitted in the permit process are nonrefundable;

(iv) a statement that the applicant understands materials submitted in the application process are nonreturnable;

(v) a statement that the applicant understands that it is a misdemeanor to falsify any information submitted to HHSC; and

(vi) the applicant's signature, which has been dated and notarized; and

(B) a certified copy or a notarized photocopy of the applicant's unaltered, original, high school diploma or transcript or the written results of a general educational development (GED) test demonstrating that the applicant passed the GED test, unless the applicant is applying under §557.107(e) of this chapter;

(2) submit the application to HHSC; and

(3) submit the applicant's fingerprints to the Texas Department of Public Safety for a Federal Bureau of Investigations criminal background check.

(b) HHSC considers an application under subsection (a) of this section as officially submitted when HHSC receives the permit application and examination fee.
An applicant must pay the combined permit and examination fees by cashier's check or money order made payable to the Health and Human Services Commission, or by other HHSC-approved payment methods. All fees are nonrefundable, except as provided by Texas Government Code, Chapter 2005.

(1) The fee schedule is as follows:

(A) combined permit application and examination fee--$25;

(B) renewal fee--$15;

(C) late renewal fees for permit renewals made after the permit expires:
   (i) $22.50 for an expired permit renewed from one to 90 days after expiration;
   (ii) $30 for an expired permit renewed from 91 days to one year after expiration;
   (iii) $30 for a former medication aide who meets the criteria in §557.115(c)(5) of this chapter (relating to Permit Renewal); and

(D) permit replacement fee--$5.

(2) An initial or a renewal application is considered incomplete until the fee has been received and cleared through the appropriate financial institution.

(3) The fee schedule that applies to the correctional medication aide is in §557.125 of this chapter (relating to Requirements for Corrections Medication Aides), and the fee schedule that applies to the home health medication aide is in §557.128 of this chapter (relating to Home Health Medication Aides).

(4) An applicant must submit the following application materials:

(A) the general statement enrollment form, which must contain:

   (AA) specific information regarding personal data, certain misdemeanor and felony convictions, work experience, education, and training;

   (AB) a statement that all the requirements in §557.107(b) of this chapter were met before the start of the program;

   (AC) a statement that the applicant understands that application fees submitted in the permit process are nonrefundable;

   (AD) a statement that the applicant understands materials submitted in the application process are nonreturnable;

   (AE) a statement that the applicant understands that it is a misdemeanor to falsify any information submitted to HHSC; and

   (AF) the applicant's signature, which has been dated and notarized; and

(B) a certified copy or a notarized photocopy of an unaltered, original, high school diploma or transcript or the written results of a general educational development (GED) test demonstrating that the applicant passed the GED test, unless the applicant is applying under §557.107(c) of this chapter.

(c) HHSC sends a notice listing the additional materials required to an applicant who does not submit a complete application. An applicant must submit a complete application by the date of HHSC final exam.

(d) HHSC sends notice of HHSC application approval or deficiency to an applicant in accordance with §557.121 of this chapter (relating to Permitting of Persons with Criminal Backgrounds) or §557.127 of this chapter (relating to Application Processing).

§557.113. Determination of Eligibility.

(a) HHSC approves or denies each application for a permit.

(b) Notices of application approval, denial, or deficiency must be in accordance with §557.127 of this chapter (relating to Application Processing).

(c) HHSC denies an application for a permit if the person:

(1) does not meet the requirements in §557.107 of this chapter (relating to Training Requirements; Nursing Graduates; Reciprocity) or §557.125 of this chapter (relating to Requirements for Corrections Medication Aides);

(2) fails to pass the examination prescribed by HHSC, as referenced in §557.111 of this chapter (relating to Examination), or developed by TDCJ, as referenced in §557.125(g) of this chapter;

(3) fails or refuses to properly complete or submit an application form or fee, or deliberately submits false information on any form or document required by HHSC;

(4) violates or conspires to violate the Texas Health and Safety Code, Chapter 242, Subchapter N, Texas Human Resources Code §161.083, or any provision of this chapter;

(5) has a criminal history that HHSC determines is a basis for denying the permit under [has a felony or misdemeanor conviction of a crime that directly relates to the duties and responsibilities of a medication aide as described in] §557.121 of this chapter (relating to Permitting of Persons with Criminal Backgrounds);

(6) is listed with a revoked or suspended status on the HHSC NAR; or

(7) [has] is listed as unemployable on the EMR.

(d) If, after review, HHSC determines that the application should be denied, HHSC gives the applicant written notice of the reason for the proposed decision and of the opportunity for a formal hearing in accordance with §557.123(c)(3) of this chapter (relating to Violations, Complaints, and Disciplinary Actions).

§557.115. Permit Renewal.

(a) General.

(1) When issued, an initial permit is valid for 12 months from the date of issue.

(2) A medication aide must renew the permit annually.

(3) Each medication aide is responsible for renewing the permit before the expiration date. Failure to receive notification from HHSC before the expiration date of the permit does not excuse the medication aide's failure to file for timely renewal.
(4) A medication aide must complete a seven hour continuing education program approved by HHSC before expiration of the permit in order to renew the permit. Continuing education hours are not required for the first renewal. After a permit is renewed for the first time, the medication aide must earn approved continuing education hours to have the permit renewed again.

(5) HHSC denies renewal of the permit of a medication aide who:

(A) is in violation of Texas Health and Safety Code, Chapter 242, Subchapter N, Texas Human Resources Code §161.083, or this chapter at the time of application for renewal;

(B) has a conviction of a criminal offense listed in Texas Health and Safety Code §250.006(a), or a conviction of a criminal offense listed in Texas Health and Safety Code §250.006(b) within five years before the date HHSC receives the renewal application;

(C) is listed as unemployable on the EMR;

(D) is listed with a revoked or suspended status on the NAR; or

(E) is in default on a guaranteed student loan as described in Texas Education Code §57.491.

(6) A person whose permit has expired may not engage in activities that require a permit until the permit has been renewed.

(b) Permit renewal procedures.

(1) After receiving proof of the successful completion of the seven hour continuing education requirement, HHSC sends notice of the expiration date of the permit, the amount of the renewal fee due, and a renewal form to the medication aide physical or email address listed in HHSC records.

(2) The renewal form, which includes the contact information and preferred mailing address of the medication aide, must be completed and submitted to HHSC. HHSC may require additional information on certain misdemeanor and felony convictions; it must be completed and signed by the medication aide and returned to HHSC with the renewal fee.

(3) Medication aides will be required to submit fingerprints to the Texas Department of Public Safety for a Federal Bureau of Investigations criminal background check, if not submitted previously.

(4) HHSC issues a renewal permit to a medication aide who meets all requirements for renewal, including payment of the renewal fee.

(c) Late renewal procedures.

(1) If a medication aide submits a renewal application to HHSC that is late or incomplete, HHSC assesses the appropriate late fee described in §557.109(c)(1)(C) of this chapter (relating to Application Procedures). HHSC uses the postmark date to determine if a renewal application is late. If there is no postmark or the postmark is not legible, HHSC uses the date the renewal application was received and recorded by the HHSC Medication Aide Program to determine if the renewal application is late.

(2) A person whose permit has been expired for less than one year may renew the permit by submitting to HHSC:

(A) the permit renewal form;

(B) all accrued renewal fees;

(C) proof of having earned, during the expired period, seven hours in an approved continuing education program for each year, or part of a year, since the permit expired; and

(D) proof of having earned, before expiration of the permit, seven hours in an approved continuing education program as required by subsection (a)(4) of this section.

(3) A person whose permit has been expired for 90 days or less must pay HHSC the late renewal fee stated in §557.109(c)(1)(C)(ii) of this chapter (relating to Application Procedures) or §557.125(f)(3)(A) of this chapter (relating to Requirements for Corrections Medication Aides).

(4) A person whose permit has been expired for more than 90 days but less than one year must pay HHSC the late renewal fee stated in §557.109(c)(1)(C)(ii) or §557.125(f)(3)(B) of this chapter.

(5) A person who previously held a permit in Texas issued under Texas Health and Safety Code, Chapter 242, Subchapter N, may obtain a new permit without reexamination if the person holds a facility medication aide permit from another state, practiced in that state for at least the two years preceding the application date, and pays to HHSC the late renewal fee stated in §557.109(c)(1)(C)(iii) of this chapter.

(6) HHSC denies late renewal of the permit if a permit holder:

(A) is in violation of Texas Health and Safety Code, Chapter 242, Subchapter N, Texas Human Resources Code §161.083, or this chapter on the date HHSC receives the application for late renewal;

(B) has a conviction of a criminal offense listed in Texas Health and Safety Code §250.006(a), or a conviction of a criminal offense listed in Texas Health and Safety Code §250.006(b) within five years before the date HHSC receives the application for late renewal;

(C) is listed as unemployable on the EMR;

(D) is listed with a revoked or suspended status on the NAR; or

(E) is in default on a guaranteed student loan as described in Texas Education Code §57.491.

(d) A person whose permit has been expired for one year or more may not renew the permit. To obtain a new permit, the person must apply for a permit in accordance with §557.109 of this chapter (relating to Application Procedures) and §557.111 of this chapter (relating to Examination).

§557.119. Training Program Requirements.

(a) Application. An educational institution accredited by the Texas Workforce Commission or Texas Higher Education Coordinating Board that desires to offer a training program must file an application for approval on an HHSC form. Programs sponsored by state agencies for the training and preparation of their own employees are exempt from the accreditation requirement. An approved institution may offer the training program and a continuing education program.

(1) All signatures on HHSC forms and supporting documentation must be originals.

(2) The application must include:

(A) the anticipated dates of the program;

(B) the location(s) of the classroom instruction and training course(s);

(C) the name of the coordinator of the program;

(D) a list that includes the address and telephone number of each instructor and any other persons responsible for the conduct of the program; and
(E) an outline of the program content and curriculum if the curriculum covers more than HHSC established curricula.

(3) HHSC may conduct an inspection of the classroom instruction and training site.

(4) HHSC sends notice of approval or proposed denial of the application to the program within 30 days after receiving a complete application. If HHSC proposes to deny the application due to noncompliance with the requirements of Texas Health and Safety Code, Chapter 242, Subchapter N, or this chapter, the reasons for denial are given in the notice.

(5) An applicant may request in writing a hearing on a proposed denial. The applicant must submit a request within 15 days after the applicant receives notice of the proposed denial. The hearing is governed by 1 TAC Chapter 357, Subchapter I (relating to the Hearings under the Administrative Procedure Act); 40 TAC Chapter 91 (relating to Hearings under the Administrative Procedure Act); and Texas Government Code, Chapter 2001. If no request is made, the applicant has waived the opportunity for a hearing, and the proposed action may be taken.

(b) Basic training program.

(1) A training program must include the following instructional and training:

(A) procedures for preparation and administration of medications;
(B) responsibility, control, accountability, storage, and safeguarding of medications;
(C) use of reference material;
(D) documentation of medications in resident's clinical records, including PRN medications;
(E) minimum licensing standards for facilities covering pharmaceutical service, nursing service, and clinical records;
(F) federal and state certification standards for participation under Title XVIII (Medicare) and Title XIX (Medicaid) of the Social Security Act pertaining to pharmaceutical service, nursing service, and clinical records;
(G) lines of authority in the facility, including facility personnel who are immediate supervisors;
(H) responsibilities and liabilities associated with the administration and safeguarding of medications;
(I) allowable and prohibited practices of medication aides in the administration of medication;
(J) drug reactions and side effects of medications commonly administered to facility residents; and
(K) rules covering the medication aide program.

(2) The program must consist of 140 hours in the following sequence: 100 hours of classroom instruction and training; 20 hours of return skills demonstration laboratory; 10 hours of clinical experience, including clinical observation and skills demonstration under the direct supervision of a licensed nurse in a facility; and 10 hours of return skills demonstration laboratory. A classroom instruction and training or laboratory hour must include 50 minutes of actual classroom instruction and training or laboratory time.

(A) Class time must not exceed:

(i) four hours in a 24-hour period for a facility training program; or

(ii) eight hours in a 24-hour period for a correctional facility training program.

(B) The completion date of the program must be:

(i) a minimum of 60 days and a maximum of 180 days after the starting date of the facility training program; or

(ii) a minimum of 30 days and a maximum of 180 days after the starting date of a correctional facility training program.

(3) Each program must follow the curricula established by HHSC.

(4) Before a student begins a training program, the program must:

(A) ensure the student meets training requirements in §557.107(b)(1) - (9) of this chapter (relating to Training Requirements; Nursing Graduates; Reciprocity);

(B) [4] check the EMR to verify that the student is not listed as unemployable;

(C) [4] check the NAR to verify if the student is listed in revoked or suspended status; and

(D) [4] document the findings of the criminal history check and employability check in its records.

(5) At least seven days before the beginning of a training program, the coordinator must notify HHSC in writing of the dates and daily hours of the program, and the projected number of students.

(6) A change in any information presented by the program in an approved application, including location, instructors, and content must be approved by HHSC before the change is implemented.

(7) The program instructors of the classroom instruction and training hours must be a registered nurse and registered pharmacist.

(A) The nurse instructor must have:

(i) a minimum of two years of experience in caring for individuals in a long-term care setting or be an instructor in a school of nursing, for a facility training program; or

(ii) a minimum of two years of experience employed in a correctional setting or be an instructor in a school of nursing, for a correctional facility program.

(B) The pharmacist instructor must have:

(i) a minimum of one year of experience and be currently employed as a consultant pharmacist in a facility; or

(ii) a minimum of one year of experience employed as a pharmacist in a correctional setting.

(8) The program coordinator must provide clearly defined and written policies regarding each student's clinical experience to the student, the administrator, and the director of nursing in the facility used for the clinical experience.

(A) The clinical experience must be counted only when the student is performing functions involving medication administration and under the direct supervision of a licensed nurse.
(B) The program coordinator must be responsible for final evaluation of the student's clinical experience.

(9) Each program must issue to each student, upon successful completion of the program, a certificate of completion, which must include the program's name, the student's name, the date of completion, and the signature of the program coordinator or administrative official.

(10) Each program must inform HHSC on the HHSC class roster form of the final grade results for each student within 15 days after the student's completion of the course and prior to scheduling the exam.

(c) Continuing education training program.

(1) The program must consist of at least seven hours of classroom instruction and training or online instruction.

(2) The instructors must meet the requirements in subsection (b)(7) of this section.

(3) Each program must follow the curricula established by HHSC or the curriculum established by TDCJ for corrections medication aides, as applicable.

(4) Within 10 days after a medication aide's completion of the course, each program must inform HHSC on the HHSC class roster form of the name of each medication aide who has completed the course.

(d) In developing a training program for corrections medication aides that complies with Texas Government Code §501.1485, TDCJ may modify, as appropriate, the content of the training program curriculum originally developed under Texas Health and Safety Code, Chapter 242, to produce content suitable for administering medication in a correctional facility. The training program curriculum must be approved by HHSC.

(e) Subsection (c) of this section applies to a training program for medication aides and correction medication aides.

§557.121. Permitting of Persons with Criminal Backgrounds.

(a) HHSC may suspend or revoke an existing permit, deny a permit, or deny a person the opportunity to take the examination for a permit if the [a] person has been convicted of a felony or misdemeanor offense that [the] crime directly relates to the duties and responsibilities of a medication aide.

(b) When considering whether a criminal conviction directly relates to the duties and responsibilities of a medication aide, HHSC considers:

(1) the nature and seriousness of the offense;
(2) that the following offenses may reflect an actual or potential inability to perform as a medication aide:
   (A) the misdemeanor of knowingly or intentionally acting as a medication aide without a permit issued under the Texas Health and Safety Code, Chapter 242;
   (B) any conviction for an offense listed in §250.006 of the Texas Health and Safety Code;
   (C) any conviction, other than a Class C Misdemeanor, for an offense defined under Texas Penal Code, Chapter 22, as assault; sexual assault; intentional exposure of another to AIDS or HIV; aggravated assault or sexual assault; injury to a child, elderly person, or person with disabilities; or aiding suicide;
   (D) any conviction, except Class C Misdemeanors, with a final disposition within the last ten years, for an offense defined in the Texas Penal Code as burglary under Chapter 30; theft under §31.03; sale or display of harmful material to minors; sexual performance by a child; and possession or promotion of child pornography;
   (E) any conviction for an offense defined in the Texas Penal Code as an attempt, solicitation, conspiracy, or organized criminal activity to commit [for] any offense listed in subparagraphs (B) - (D) of this paragraph; and
   (F) any conviction under United States statutes or jurisdiction other than Texas for any offense equivalent to those listed in subparagraphs (B) - (E) of this paragraph;
(2) [A] the extent to which a permit might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and
(3) [B] the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a medication aide; [and]
(5) other factors related to the fitness of a person to perform the duties and discharge the responsibilities of a medication aide, as described in Texas Occupations Code §53.023;
(6) [C] If HHSC determines that a conviction directly relates to the duties and responsibilities of a medication aide, HHSC considers the following factors in determining whether to take an action authorized under subsection (a) of this section, as described in Texas Occupations Code §53.023 including:
   (1) the extent and nature of the person's past criminal activity;
   (2) the age of the person when the crime was committed;
   (3) the amount of time that has elapsed since the person's last criminal activity;
   (4) the conduct and work activity of the person before and after the criminal activity;
   (5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release;
   (6) evidence of the person's compliance with any conditions of community supervision, parole or mandatory supervision; and
   (7) other evidence of the person's fitness, including letters of recommendation;
(6) [D] HHSC gives written notice to the person that HHSC proposes to deny the application or suspend or revoke the permit after a hearing, in accordance with the provisions of §557.123(e)(3) of this chapter (relating to Violations, Complaints, and Disciplinary Actions). If HHSC denies, suspends, or revokes an application or permit under this chapter, HHSC gives the person written notice:
   (1) of the reasons for the decision;
   (2) that the person, after exhausting administrative appeals, may file an action in a district court of Travis County for review of the evidence presented to HHSC and HHSC final action; and
   (3) that the person must begin the judicial review by filing a petition with the court within 30 days after HHSC action is final and appealable.

(d) A person who is denied a permit, or who has a permit suspended or revoked, due to his or her criminal background is given notice in accordance with §557.123(d) and (e) of this chapter (relating to Violations, Complaints, and Disciplinary Actions).
(a) Filing of complaints. Any person may complain to HHSC alleging that a person or program has violated the Texas Health and Safety Code, Chapter 242, Subchapter N; Texas Human Resources Code §161.083; or this chapter.

(1) Persons who want to file a complaint against a medication aide, training program, or another person, must notify HHSC by calling 1-800-458-9858 or by writing the Medication Aide Permit Program, Health and Human Services Commission, P.O. Box 149030, Mail Code E-416, Austin, Texas 78714-9030.

(2) Anonymous complaints may be investigated by HHSC if the complainant provides sufficient information.

(b) Investigation of complaints. If HHSC initial investigation determines:

(1) the complaint does not come within HHSC jurisdiction, HHSC advises the complainant and, if possible, refers the complainant to the appropriate governmental agency for handling the complaint;

(2) there are insufficient grounds to support the complaint, HHSC dismisses the complaint and gives written notice of the dismissal to the medication aide or person against whom the complaint has been filed and the complainant; or

(3) there are sufficient grounds to support the complaint, HHSC may propose to deny, suspend, emergency suspend, revoke, or not renew a permit or to rescind program approval.

(c) Disciplinary actions. HHSC may revoke, suspend, or refuse to renew a permit, or reprimand a medication aide for a violation of Texas Health and Safety Code, Chapter 242, Subchapter N; Texas Human Resources Code §161.083; or this chapter. HHSC may suspend a permit in an emergency or rescind HHSC approval for an educational institution to offer a training program if the medication aide or educational institution fails to comply with the requirements in this chapter.

(1) HHSC may place on probation a person whose permit is suspended. HHSC may require the person on probation:

(A) to report regularly to HHSC on matters that are the basis of the probation;

(B) to limit practice to the areas prescribed by HHSC;

or

(C) to continue or pursue professional education until the person attains a degree of skill satisfactory to HHSC in those areas that are the basis of the probation.

(2) Before institution of formal proceedings to revoke or suspend a permit or rescind program approval, HHSC gives written notice to the medication aide or program of the facts or conduct alleged to warrant revocation, suspension, or rescission, and the medication aide or program must be given an opportunity, as described in the notice, to show compliance with all requirements of the Texas Health and Safety Code, Chapter 242, Subchapter N; Texas Human Resources Code §161.083; or this chapter. When there is a finding of an alleged act of abuse, neglect, or misappropriation of resident property by a medication aide employed at a Medicaid-certified nursing facility or a Medicare-certified skilled nursing facility, HHSC complies with the hearings process as provided in 42 Code of Federal Regulations §488.335.

(3) If denial, revocation, or suspension of a permit or rescission of program approval is proposed, HHSC gives written notice that the medication aide or program must request, in writing, a hearing within 30 days after receipt of the notice, or the right to a hearing is waived and the permit is denied, revoked, or suspended or the program approval is rescinded.

(4) A hearing is governed by 1 TAC Chapter 357, Subchapter I (relating to Hearings under the Administrative Procedure Act); and 40 TAC Chapter 91 (relating to Hearings under the Administrative Procedure Act).

(5) If an alleged act of abuse, neglect, or misappropriation by a medication aide who also is a certified nurse aide under the provisions of Chapter 556 of this title (relating to Nurse Aides) violates the rules in this chapter and Chapter 556, HHSC complies with the hearing process described in paragraph (4) of this subsection. Through the hearing, determinations will be made on both the permit for medication aide practice and the certification for nurse aide practice.

(d) Denial based on criminal history.

(1) HHSC provides written notice to any person HHSC proposes to deny an application based on the person's criminal history. The written notice must contain, as applicable:

(A) a statement that the person is disqualified from receiving a permit or being examined for a permit because of the person's prior conviction for the offense or offenses specified in the notice, as provided in §557.121(a) and (b) of this chapter (relating to Permitting of Persons with a Criminal Background); or

(B) a statement that:

(i) HHSC's decision to deny the person a permit, or the opportunity to be examined for a permit, will be based on the factors listed in subsection §557.121(b) of this chapter, as provided in §557.121(a) of this chapter; and

(ii) the person has the responsibility to obtain and provide to HHSC evidence regarding the factors listed in §557.121(c) of this chapter within 30 days of receipt of the notice.

(2) If, upon reviewing the evidence provided by the person, HHSC upholds its decision to deny the person, HHSC shall notify the person in writing of:

(A) the reason for the denial or disqualification, including any factors considered under §557.121(a) and (b) of this chapter that served as the basis for denial or disqualification; and

(B) the process for requesting a formal hearing before a State Office of Administrative Hearings administrative law judge.

(3) If HHSC's decision to deny the person is upheld during a formal hearing, HHSC shall notify the person in writing of:

(A) the process for requesting a motion for rehearing to appeal the decision; and

(B) if the decision is upheld upon a motion for rehearing, the process for requesting judicial review.

(e) Suspension or Revocation based on criminal history.

(1) HHSC provides written notice to a permit holder that HHSC proposes to suspend or revoke the permit holder's permit. The written notice must contain, as applicable:

(A) a statement that the permit holder is no longer eligible to have the permit because of the permit holder's prior conviction for the offense or offenses specified in the notice, as provided in §557.121(a) and (b) of this chapter; or

(B) a statement:

(i) that HHSC's decision to suspend or revoke the permit holder's permit will be based on the factors listed in subsection
§557.121(c) of this chapter, as provided in §557.121(a) of this chapter; and

(ii) describing the process for the permit holder to request an informal reconsideration opportunity by HHSC.

(2) If, after conducting the informal reconsideration, HHSC upholds its decision to suspend or revoke the permit holder’s permit, HHSC shall notify the permit holder in writing of:

(A) the reason for the suspension or revocation including any factors considered under §557.121(a) and (b) of this chapter that served as the basis for suspension or revocation; and

(B) the process for requesting a formal hearing before a State Office of Administrative Hearings administrative law judge.

(3) If HHSC’s decision to suspend or revoke the permit holder’s permit is upheld during a formal hearing, HHSC shall notify the permit holder in writing of:

(A) the process for requesting a motion for rehearing to appeal the decision; and

(B) if the decision is upheld upon a motion for rehearing, the process for requesting judicial review.

(f) [§557.121] Suspension, revocation, or nonrenewal. If HHSC suspends a permit, the suspension remains in effect until HHSC determines that the reason for suspension no longer exists or HHSC revokes or determines not to renew the permit. HHSC investigates before making a determination[:] and:

(1) during the time of suspension, the suspended medication aide must return his or her permit to HHSC;

(2) if a suspension overlaps a permit renewal date, the suspended medication aide may comply with the renewal procedures in §557.115 of this chapter (relating to Permit Renewal); however, HHSC does not renew the permit until HHSC determines that the reason for suspension no longer exists;

(3) if HHSC revokes or does not renew a permit, a person may reapply for a permit by complying with the requirements and procedures in this chapter at the time of reapplication. HHSC may refuse to issue a permit if the reason for revocation or nonrenewal continues to exist; and

(4) if a permit is revoked or not renewed, a medication aide must immediately return the permit to HHSC.

(g) [§557.122] Complaints of abuse and neglect by medication aides who are issued a permit under Texas Health and Safety Code, Chapter 242, Subchapter N, and employed in a correctional facility, are investigated as described in §557.125(k) of this chapter (relating to Requirements for Corrections Medication Aides).

§557.128. Home Health Medication Aides.

(a) General.

(1) A person may not administer medication to a client unless the person:

(A) holds a current license under state law that authorizes the licensee to administer medication;

(B) holds a current permit issued under this section and acts under the delegated authority of an RN to administer medication;

(C) administers a medication to a client in accordance with rules of the BON that permit delegation of the administration of medication to a person not holding a permit under this section; or

(D) administers noninjectable medication under circumstances authorized by the memorandum of understanding between the BON and HHSC.

(2) A HCSSA that provides licensed and certified home health services, licensed home health services, hospice services, or personal assistance services may use a home health medication aide. If there is a direct conflict between the requirements of this chapter and federal regulations, the requirements that are more stringent apply to the licensed and certified HCSSA.

(3) Exemptions are as follows.

(A) A person may administer medication to a client without the license or permit as required in paragraph (1) of this subsection if the person is:

(i) a graduate nurse holding a temporary permit issued by the BON;

(ii) a student enrolled in an accredited school of nursing or program for the education of RNs who is administering medications as part of the student’s clinical experience;

(iii) a graduate vocational nurse holding a temporary permit issued by the BON;

(iv) a student enrolled in an accredited school of vocational nursing or program for the education of vocational nurses who is administering medications as part of the student’s clinical experience; or

(v) a trainee in a medication aide training program approved by HHSC under this chapter who is administering medications as part of the trainee’s clinical experience.

(B) Supervision of an exempt person described in subparagraph (A) of this paragraph is as follows.

(i) A person described in:

(I) subparagraph (A)(i) of this paragraph shall be supervised by an RN;

(II) subparagraph (A)(ii) or (iv) of this paragraph shall be supervised by the student’s instructor; or

(III) subparagraph (A)(iii) of this paragraph shall be supervised by an RN or LVN [licensed vocational nurse].

(ii) Supervision must be on-site.

(C) An exempt person described in this subsection may not be used in a supervisory or charge position.

(b) Required actions.

(1) If a HCSSA provides home health medication aide services, the HCSSA must employ a home health medication aide to provide the home health medication aide services. The HCSSA must employ or contract with an RN to perform the initial health assessment, prepare the client care plan, establish the medication list, medication administration record, and medication aide assignment sheet, and supervise the home health medication aide. The RN must be available to supervise the home health medication aide when home health medication aide services are provided.

(2) The clinical records of a client using a home health medication aide must include a statement signed by the client or family acknowledging receipt of the list of permitted and prohibited acts of a home health medication aide.

(3) The RN must be knowledgeable of HHSC rules governing home health medication aides and must ensure that the home
health medication aide is in compliance with the Texas Health and Safety Code, Chapter 142, Subchapter B.

(4) A home health medication aide must:
(A) function under the supervision of an RN;
(B) comply with applicable law and this chapter relating to administration of medication and operation of the HCSSA;
(C) comply with HHSC rules applicable to personnel used in a HCSSA; and
(D) comply with this section and §558.701 of this title [40 TAC §97.701] (relating to Home Health Aides) if the person will be used as a home health aide and a home health medication aide.

(5) The RN must make a supervisory visit while the medication aide is in the client's residence in accordance with §558.298 of this title [40 TAC §97.298] (relating to Delegation of Nursing Tasks by Registered Professional Nurses to Unlicensed Personnel and Tasks Not Requiring Delegation).

(c) Permitted actions. A home health medication aide is permitted to:
(1) observe and report to the HCSSA RN and document in the clinical record any reactions and side effects to medication shown by a client;
(2) take and record vital signs of a client before administering medication that could affect or change the vital signs;
(3) administer regularly prescribed medication to a client if the medication aide:
(A) is trained to administer the medication;
(B) personally prepares the medication or sets up the medication to be administered; and
(C) documents the administration of the medication in the client's clinical record;
(4) administer oxygen per nasal cannula or a non-sealing face mask only in an emergency, after which the medication aide must verbally notify the supervising RN and appropriately document the action and notification;
(5) apply specifically ordered ophthalmic, otic, nasal, vaginal, topical, and rectal medication unless prohibited by subsection (d)(10) of this section;
(6) administer medications only from the manufacturer's original container or the original container in which the medication had been dispensed and labeled by the pharmacy with all information mandated by the Texas State Board of Pharmacy;
(7) administer previously ordered PRN medication if:
(A) the HCSSA's RN authorizes the medication;
(B) the medication aide documents in the client's clinical notes the symptoms indicating the need for medication and the time the symptoms occurred;
(C) the medication aide documents in the client's clinical notes that the HCSSA's RN was contacted, symptoms were described, and the HCSSA's RN granted permission to administer the medication, including the time of contact;
(D) the medication aide obtains authorization to administer the medication each time the symptoms occur; and
(E) the medication aide ensures that the client's clinical record is co-signed by the RN who gave permission within seven days after the notes are incorporated into the clinical record;
(8) measure a prescribed amount of a liquid medication to be administered;
(9) break a tablet for administration to a client if:
(A) the client's medication administration record accurately documents how the tablet must be altered before administration; and
(B) the licensed nurse on duty or on call has calculated the dosage;
(10) crush medication, if:
(A) authorization has been given in the original physician's order or the medication aide obtains authorization from the HCSSA's RN; and
(B) the medication aide documents the authorization on the client's medication administration record.

(d) Prohibited actions. A home health medication aide must not:
(1) administer a medication by any injectable route, including:
(A) intramuscular route;
(B) intravenous route;
(C) subcutaneous route;
(D) intradermal route; and
(E) hypodermoclysis route;
(2) administer medication used for intermittent positive pressure breathing treatment or any form of medication inhalation treatments;
(3) administer previously ordered PRN medication except in accordance with subsection (c)(7) of this section;
(4) administer medication that, according to the client's clinical records, has not been previously administered to the client;
(5) calculate a client's medication doses for administration;
(6) crush medication, except in accordance with subsection (c)(10) of this section;
(7) administer medications or feedings by way of a tube inserted in a cavity of the body except as specified in §558.404(b) of this title [40 TAC §97.404(b)] (relating to Standards Specific to Agencies Licensed to Provide Personal Assistance Services);
(8) receive or assume responsibility for reducing to writing a verbal or telephone order from a physician, dentist, podiatrist or advanced practice nurse;
(9) order a client's medication from a pharmacy;
(10) apply topical medications that involve the treatment of skin that is broken or blistered when a specified aseptic technique is ordered by the attending physician;
(11) administer medications from any container other than the manufacturer's original container or the original container in which the medication had been dispensed and labeled by the pharmacy with all information mandated by the Texas State Board of Pharmacy;
(12) steal, divert, or otherwise misuse medications;
(13) violate any provision of the statute or of this chapter;
(14) fraudulently procure or attempt to procure a permit;
(15) neglect to administer appropriate medications, as prescribed, in a responsible manner; or
(16) administer medications if the person is unable to do so with reasonable skill and safety to clients by reasons of drunkenness, inappropriate use of drugs, narcotics, chemicals, or any other type of material.

(e) Applicant qualifications. Each applicant for a permit issued under Texas Health and Safety Code, Chapter 142, Subchapter B must complete a training program. Before enrolling in a training program and applying for a permit under this section, all applicants:

(1) must be able to read, write, speak, and understand English;
(2) must be at least 18 years of age;
(3) must be free of communicable diseases and in suitable physical and emotional health to safely administer medications;
(4) must be a graduate of an accredited high school or have proof of successfully passing a general educational development test;
(5) must have satisfactorily completed a home health aide training and competency evaluation program or a competency evaluation program under §557.701 of this title [40 TAC §557.701];

(6) must not have a criminal history that HHSC determines is a basis for denying the permit under §557.121 of this chapter (relating to Permitting of Persons with Criminal Backgrounds) [been convicted of a criminal offense listed in Texas Health and Safety Code §250.006(a), or convicted of a criminal offense listed in Texas Health and Safety Code §250.006(b) within five years before the date HHSC receives a permit application];

(7) must not be listed as unemployable on the EMR; and
(8) must not be listed with a revoked or suspended status on the NAR.

(f) Nursing graduates. A person who is a graduate of an accredited school of nursing and who does not hold a license to practice professional or vocational nursing meets the training requirements for issuance of a permit under this section if the date of graduation from the nursing school was no earlier than January 1 of the year immediately preceding the year of application for a permit under this section.

(1) The applicant must submit an HHSC application form to HHSC. The applicant must meet the requirements of subsection (e)(1) - (6) of this section.

(2) The application must be accompanied by the combined permit application and examination fee.

(3) The applicant must include an official transcript documenting graduation from an accredited school of nursing.

(4) HHSC acknowledges receipt of the application by sending the applicant a copy of this chapter and HHSC open book examination.

(5) The applicant must complete the open book examination and return it to HHSC by the date given in the examination notice.

(6) The applicant must complete HHSC written examination. HHSC determines the site of the examination. HHSC denies the application of an applicant failing to schedule and take the examination by the date given in the examination notice.

(7) An open book or written examination may not be re-taken if the applicant fails.

(8) Upon successful completion of the two examinations, HHSC evaluates all application documents submitted by the applicant.

(9) HHSC notifies the applicant in writing of the examination results.

(g) Nursing students. A person who is attending or has attended an accredited school of nursing and who does not hold a license to practice professional or vocational nursing meets the training requirements for issuance of a permit under this section if the person:

(1) attended the nursing school no earlier than January 1 of the year immediately preceding the year of application for a permit under this section;

(2) successfully completed courses at the nursing school that cover HHSC curriculum for a home health medication aide training program;

(3) submits a statement with the person's application for a permit under this section, that is signed by the nursing school's administrator or other authorized individual who is responsible for determining that the courses that he or she certifies cover HHSC curriculum and certifies that the person completed the courses specified under paragraph (2) of this subsection; and

(4) complies with subsection (f)(1), (2), and (4) - (9) of this section.

(h) Reciprocity. A person who holds a valid license, registration, certificate, or permit as a home health medication aide issued by another state whose minimum standards or requirements are substantially equivalent to or exceed the requirements of this section in effect at the time of application may request a waiver of the training program requirement as follows:

(1) The applicant must submit an HHSC application form to HHSC. The applicant must meet the requirements of subsection (e)(1) - (4) of this section.

(2) The application must be accompanied by the combined permit application and exam fee.

(3) The application must include a current copy of the rules of the state governing its licensing and regulation of home health medication aides, a copy of the legal authority, including the law, act, code, or section, for the state's licensing program, and a certified copy of the license or certificate by which the reciprocal permit is requested.

(4) HHSC acknowledges receipt of the application by sending the applicant a copy of this chapter and of HHSC open book examination.

(5) HHSC may contact the issuing agency to verify the applicant's status with the agency.

(6) The applicant must complete HHSC open book examination and return it to HHSC by the date given in the examination notice.

(7) The applicant must complete HHSC written examination. The site of the examination is determined by HHSC. HHSC denies the application of an applicant failing to schedule and take the examination by the date given in the examination notice.

(8) An open book or written examination may not be re-taken if the applicant fails.

(9) Upon successful completion of the two examinations, HHSC evaluates all application documents submitted by the applicant.
(10) HHSC notifies the applicant in writing of the examination results.

(i) Application by trainees.

(1) An applicant under subsection (e) of this section must submit to HHSC, no later than 20 days after enrollment in a training program; [•]

(A) complete an application, including the following materials: [all required information and documentation on HHSC forms;]

(i) the general statement enrollment form, which must contain:

(II) a statement that the applicant has met all the requirements in §57.107(b) of this chapter (relating to Training Requirements; Nursing Graduates; Reciprocity) before the start of the program;

(III) a statement that the applicant understands that fee payments submitted in the permit process are nonrefundable;

(IV) a statement that the applicant understands materials submitted in the application process are nonreturnable;

(V) a statement that the applicant understands that it is a misdemeanor to falsify any information submitted to HHSC; and

(VI) the applicant's signature, which has been dated and notarized; and

(ii) a certified copy or a notarized photocopy of the applicant's unaltered, original, high school diploma or transcript or the written results of a general educational development (GED) test demonstrating that the applicant passed the GED test, unless the applicant is applying under subsection (f) of this section;

(B) submit the application to HHSC; and

(C) submit fingerprints to the Texas Department of Public Safety for a Federal Bureau of Investigations criminal background check.

(2) [¶] HHSC considers an application as officially submitted when HHSC receives the nonrefundable combined permit application and examination fee payable to the Health and Human Services Commission. The fee required by subsection (n) of this section must accompany the application form.

[¶] The general statement enrollment form must contain the following application material that is required of all applicants:

(A) specific information regarding personal data, certain misdemeanor and felony convictions, work experience, education, and training;

(B) a statement that all of the requirements in subsection (e) of this section were met before the start of the program;

(C) a statement that the applicant understands that the application fee submitted in the permit process is nonrefundable;

(D) a statement that the applicant understands that materials submitted in the application process are not returnable.

(2) The applicant must submit a certified copy or notarized photocopy of an unaltered original of the applicant's high school graduation diploma or transcript, or an equivalent document demonstrating that the applicant successfully passed a general educational development (GED) test, unless the applicant is applying under subsection (f) of this section.

(3) [¶] HHSC verifies the accreditation of the high school that issued the diploma or transcript, or the testing service or program that certified the GED test required by paragraph (1)(A)(ii) [paragraph (2)] of this subsection. If HHSC is unable to verify the accreditation status of the school, testing service, or program, and HHSC requests additional documentation from the applicant to verify the accreditation status, the applicant must provide the documentation to HHSC.

(4) [¶] HHSC sends a notice listing the additional materials required to an applicant who does not complete the application. An application not completed within 30 days after the date of the notice will be void.

(5) [¶] HHSC sends notice of application acceptance, disapproval, or deficiency in accordance with subsection (q) of this section.

(j) Examination. HHSC gives a written examination to each applicant at a site HHSC determines.

(1) No final examination may be given to an applicant until the applicant has met the requirements of subsections (e) and (i) of this section, and if applicable, subsections (f), (g), or (h) of this section.

(2) An applicant with a disability, including an applicant with dyslexia as defined in Texas Education Code §51.970 (relating to Instructional Material for Blind and Visually Impaired Students and Students with Dyslexia), may request a reasonable accommodation for the examination under the Americans with Disabilities Act.

(2) The applicant must be tested on the subjects taught in the training program curricula and clinical experience. The examination covers an applicant's knowledge of accurate and safe drug therapy to clients.

(4) A training program must notify HHSC at least four weeks before its requested examination date.

(5) HHSC determines the passing grade on the examination.

(6) HHSC notifies in writing an applicant who fails the examination.

(A) HHSC may give an applicant under subsection (e) of this section one subsequent examination, without additional payment of a fee, upon the applicant's written request to HHSC.

(B) A subsequent examination must be completed by the date given on the failure notification. HHSC determines the site of the examination.

(C) Another examination will not be permitted if the student fails the subsequent examination unless the student enrolls and successfully completes another training program.

(7) An applicant who is unable to attend the applicant's scheduled examination due to unforeseen circumstances may be given an examination at another time without payment of an additional fee.
upon the applicant's written request to HHSC. The examination must be completed within 45 days from the date of the originally scheduled examination. HHSC determines the site for the rescheduled examination.

(8) An applicant whose application for a permit will be disapproved under subsection (k) of this section is ineligible to take the examination.

(k) Determination of eligibility. HHSC approves or disapproves all applications. HHSC sends notices of application approval, disapproval, or deficiency in accordance with subsection (q) of this section.

(1) HHSC denies an application for a permit if the person has:

(A) not met the requirements of subsections (e) - (i) of this section, if applicable;

(B) failed to pass the examination prescribed by HHSC as set out in subsection (j) of this section;

(C) failed to or refused to properly complete or submit any application form, endorsement, or fee, or deliberately presented false information on any form or document required by HHSC;

(D) violated or conspired to violate the Texas Health and Safety Code, Chapter 142, Subchapter B, or any provision of this chapter; or

(E) has a criminal history that HHSC determines is a basis for denying the permit under §557.121 of this chapter (relating to Permitting of Persons with Criminal Backgrounds) [been convicted of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of a medication aide as set out in subsection (e) of this section].

(2) If, after review, HHSC determines that the application should not be approved, HHSC gives the applicant written notice of the reason for the proposed decision and of the opportunity for a formal hearing in accordance with subsection (r) of this section.

(l) Medication aide. Home health medication aides must comply with the following permit renewal requirements.

(1) When issued, a permit is valid for one year.

(2) A medication aide must renew the permit annually.

(3) The renewal date of a permit is the last day of the current permit.

(4) Each medication aide is responsible for renewing the permit before the expiration date. Failure to receive notification from HHSC before the expiration date of the permit does not excuse the medication aide's failure to file for timely renewal.

(5) A medication aide must complete a seven hour continuing education program approved by HHSC before expiration of the permit in order to renew the permit. Continuing education hours are not required for the first renewal. After a permit is renewed for the first time, the medication aide must earn approved continuing education hours to have the permit renewed again.

(6) HHSC denies renewal of the permit of a medication aide who is in violation of the Texas Health and Safety Code, Chapter 142, Subchapter B, or this chapter at the time of application for renewal.

(7) HHSC denies renewal of the permit of a medication aide who has been convicted of a criminal offense listed in Texas Health and Safety Code §250.006(a), or convicted of a criminal offense listed in Texas Health and Safety Code §250.006(b) within five years before the date HHSC receives the renewal application.

(8) HHSC denies renewal of the permit of a medication aide who is listed as unemployable on the EMR.

(9) Home health medication aide permit renewal procedures are as follows.

(A) At least 30 days before the expiration date of a permit, HHSC sends to the medication aide at the address in HHSC records notice of the expiration date of the permit and the amount of the renewal fee due and a renewal form that the medication aide must complete and return with the required renewal fee.

(B) The renewal form must include the preferred mailing address of the medication aide [and information on certain misdemeanor and felony convictions]. It must be signed by the medication aide.

(C) Medication aides will be required to submit fingerprints for a Federal Bureau of Investigations criminal background check to the Texas Department of Public Safety, if not submitted previously.

(D) [is] HHSC issues a renewal permit to a medication aide who has met all requirements for renewal.

(E) [is] HHSC does not renew a permit if the medication aide does not complete the required seven-hour continuing education requirement. Successful completion is determined by the student's instructor. An individual who does not meet the continuing education requirement must complete a new program, application, and examination in accordance with the requirements of this section.

(F) [is] HHSC does not renew a permit if renewal is prohibited by the Texas Education Code §57.491, concerning defaults on guaranteed student loans.

(G) [is] If a medication aide fails to timely renew his or her permit because the medication aide is or was on active duty with the armed forces of the United States of America serving outside the State of Texas, the medication aide may renew the permit pursuant to this subparagraph.

(i) Renewal of the permit may be requested by the medication aide, the medication aide's spouse, or an individual having power of attorney from the medication aide. The renewal form must include a current address and telephone number for the individual requesting the renewal.

(ii) Renewal may be requested before or after the expiration of the permit.

(iii) A copy of the official orders or other official military documentation showing that the medication aide is or was on active military duty serving outside the State of Texas must be filed with HHSC along with the renewal form.

(iv) A copy of the power of attorney from the medication aide must be filed with HHSC along with the renewal form if the individual having the power of attorney executes any of the documents required in this subparagraph.

(v) A medication aide renewing under this subparagraph must pay the applicable renewal fee.

(vi) A medication aide is not authorized to act as a home health medication aide after the expiration of the permit unless and until the medication aide actually renew the permit.
(vii) A medication aide renewing under this subparagraph is not required to submit any continuing education hours.

(10) A person whose permit has expired for not more than two years may renew the permit by submitting to HHSC:

(A) the permit renewal form;
(B) all accrued renewal fees;
(C) proof of having earned, during the expired period, seven hours in an approved continuing education program for each year or part of a year that the permit has been expired; and
(D) proof of having earned, before expiration of the permit, seven hours in an approved continuing education program as required in paragraph (5) of this subsection.

(11) A permit that is not renewed during the two years after expiration may not be renewed.

(12) HHSC issues notices of permit renewal approval, disapproval, or deficiency must be in accordance with subsection (q) of this section.

(m) Changes.

(1) A medication aide must notify HHSC within 30 days after changing his or her address or name.

(2) HHSC replaces a lost, damaged, or destroyed permit upon receipt of a completed duplicate permit request form and permit replacement fee.

(n) Fees.

(1) The schedule of fees is:

(A) combined permit application and examination fee-$25;
(B) renewal fee--$15; and
(C) permit replacement fee--$5.00.

(2) All fees are nonrefundable.

(3) An applicant or home health medication aide must pay the required fee by cashier's check or money order made payable to the Health and Human Services Commission. All fees are nonrefundable, except as provided by Texas Government Code, Chapter 2001.

(o) Training program requirements.

(1) An educational institution accredited by the Texas Workforce Commission or Texas Higher Education Coordinating Board that desires to offer a training program must file an application for approval on an HHSC form. Programs sponsored by state agencies for the training and preparation of its own employees are exempt from the accreditation requirement. An approved institution may offer the training program and a continuing education program.

(A) All signatures on HHSC forms and supporting documentation must be originals.

(B) The application includes:

(i) the anticipated dates of the program;
(ii) the location(s) of the classroom course(s);
(iii) the name of the coordinator of the program;
(iv) a list that includes the address and telephone number of each instructor and any other person responsible for the conduct of the program; and

(v) an outline of the program content and curriculum if the curriculum covers more than HHSC established curricula.

(C) HHSC may conduct an inspection of the classroom site.

(D) HHSC sends notice of approval or proposed disapproval of the application to the program within 30 days of the receipt of a complete application. If the application is proposed to be disapproved due to noncompliance with the requirements of the Texas Health and Safety Code, Chapter 142, Subchapter B, or of this chapter, the reasons for disapproval are given in the notice.

(E) An applicant may request a hearing on a proposed disapproval in writing within ten days of receipt of the notice of the proposed disapproval. The hearing must be in accordance with subsection (r) of this section and the Administrative Procedure Act, Texas Government Code, Chapter 2001. If no request is made, the applicant is deemed to have waived the opportunity for a hearing, and the proposed action may be taken.

(2) The program includes, but is not limited to, the following instruction and training:

(A) procedures for preparation and administration of medications;
(B) responsibility, control, accountability, storage, and safeguarding of medications;
(C) use of reference material;
(D) documentation of medications in the client's clinical records, including PRN medications;
(E) minimum licensing standards for agencies covering pharmaceutical service, nursing service, and clinical records;
(F) federal and state certification standards for participation under the Social Security Act, Title XVIII (Medicare), pertaining to pharmaceutical service, nursing service, and clinical records;
(G) lines of authority in the agency, including agency personnel who are immediate supervisors;
(H) responsibilities and liabilities associated with the administration and safeguarding of medications;
(I) allowable and prohibited practices of a medication aide in the administration of medication;
(J) drug reactions and side effects of medications commonly administered to home health clients;
(K) instruction on universal precautions; and
(L) the provisions of this chapter.

(3) The program consists of 140 hours in the following order: 100 hours of classroom instruction and training, 20 hours of return skills demonstration laboratory, ten hours of clinical experience including clinical observation and skills demonstration under the supervision of an RN in an agency, and ten more hours in the return skills demonstration laboratory. A classroom instruction and training or laboratory hour is 50 minutes of actual classroom instruction or training or laboratory time.

(A) Class time will not exceed four hours in a 24-hour period.

(B) The completion date of the program must be a minimum of 60 days and a maximum of 180 days from the starting date of the program.
Each program must follow the curricula established by HHSC.

At least seven days before the commencement of each program, the coordinator must notify HHSC in writing of the starting date, the ending date, the daily hours of the program, and the projected number of students.

A change in any information presented by the program in an approved application including, but not limited to, location, instructorship, and content must be approved by HHSC before the program's effective date of the change.

The program instructors of the classroom instruction or training hours must be an RN and registered pharmacist.

The nurse instructor must have a minimum of two years of full-time experience in caring for the elderly, chronically ill, or pediatric clients or been employed full time for a minimum of two years as an RN with a home and community support services agency. An instructor in a school of nursing may request a waiver of the experience requirement.

The pharmacist instructor must have a minimum of one year of experience and be currently employed as a practicing pharmacist.

The coordinator must provide clearly defined and written policies regarding each student's clinical experience to the student, the administrator, and the supervising nurse of the agency used for the clinical experience.

The clinical experience must be counted only when the student is observing or involved in functions involving medication administration and under the direct, contact supervision of an RN.

The coordinator is responsible for final evaluation of the student's clinical experience.

Upon successful completion of the program, each program issues to each student a certificate of completion, including the program's name, the student's name, the date of completion, and the signature of the program coordinator.

Within 15 days after completion of the course, each program must inform HHSC on the HHSC class roster form of the satisfactory completion for each student.

Continuing education. The continuing education training program is as follows.

The program must consist of at least seven clock hours of classroom instruction.

The instructor must meet the requirements in subsection (o)(6) of this section.

Each program must follow the curricula established by HHSC.

Within 15 days after completion of the course, each program must inform HHSC on the HHSC class roster form of the name of each medication aide who has completed the course.

Processing procedures. HHSC complies with the following procedures in processing applications of home health medication aide permits and renewal of permits.

The following periods of time apply from the date of receipt of an application until the date of issuance of a written notice that the application is complete and accepted for filing or that the application is deficient and additional specific information is required. A written notice stating that the application has been approved may be sent in lieu of the notice of acceptance of a complete application. The time periods are:

(A) letter of acceptance of an application for a home health medication aide permit--14 days; and

(B) letter of application or renewal deficiency--14 days.

(2) The following periods of time shall apply from the receipt of the last item necessary to complete the application until the date of issuance of written notice approving or denying the application. The time periods for denial include notification of proposed decision and of the opportunity, if required, to show compliance with the law and of the opportunity for a formal hearing. An application is not considered complete until the required documentation and fee have been submitted by the applicant. The time periods are as follows:

(A) the issuance of an initial permit--90 days;

(B) the letter of denial for a permit--90 days; and

(C) the issuance of a renewal permit--20 days.

In the event an application is not processed in the time period stated in paragraphs (1) and (2) of this subsection, the applicant has the right to request reimbursement of all fees paid in that particular application process. Request for reimbursement is made to the Home Health Medication Aide Permit Program. If the director of the Home Health Medication Aide Permit Program does not agree that the time period has been violated or finds that good cause existed for exceeding the time period, the request will be denied.

Good cause for exceeding the time period exists if the number of applications for initial home health medication aide permits and renewal permits exceeds by 15 percent or more the number of applications processed in the same calendar quarter of the preceding year; another public or private entity relied upon by HHSC in the application process caused the delay; or any other condition exists giving HHSC good cause for exceeding the time period.

If a request for reimbursement under paragraph (3) of this subsection is denied by the director of the Home Health Medication Aide Permit Program, the applicant may appeal to the HHSC commissioner for a timely resolution of any dispute arising from a violation of the time periods. The applicant must give written notice to the HHSC commissioner that the applicant requests full reimbursement of all fees paid because the application was not processed within the applicable time period. The applicant must mail the reimbursement request to Health and Human Services Commission, John H. Winters Human Services Complex, 701 W. 51st St., P.O. Box 149030, Austin, Texas 78714-9030. The director of the Home Health Medication Aide Permit Program must submit a written report of the facts related to the processing of the application and of any good cause for exceeding the applicable time period to the HHSC commissioner. The HHSC commissioner provides written notice of the commissioner's decision to the applicant and the director of the Home Health Medication Aide Permit Program. An appeal is decided in the applicant's favor if the applicable time period was exceeded and good cause was not established. If the appeal is decided in favor of the applicant, HHSC reimburses, in full, all fees paid in that particular application process.

Denial, suspension, or revocation.

HHSC may deny, suspend, emergency suspend, or revoke a permit or program approval if the medication aide or program fails to comply with any provision of the Texas Health and Safety Code, Chapter 142, Subchapter B, or this chapter.
(2) HHSC may also take action under paragraph (1) of this subsection for fraud, misrepresentation, or concealment of material fact on any documents required to be submitted to HHSC or required to be maintained or compiled by the medication aide or program pursuant to this chapter.

(3) HHSC may suspend or revoke an existing permit or program approval or disqualify a person from receiving a permit or program approval because of a person's criminal history that HHSC determines is a basis for denying the permit under §557.121 of this chapter (relating to Permitting of Persons with Criminal Backgrounds). A conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of a home health medication aide or training program. In determining whether a conviction directly relates, HHSC considers the elements set forth in Texas Occupations Code §§55.022 and §§55.023.

(4) If HHSC proposes to deny, suspend, or revoke a home health medication aide permit or to rescind a home health medication aide program approval, HHSC notifies the medication aide or home health medication aide program by certified mail, return receipt requested, of the reasons for the proposed action and offers the medication aide or home health medication aide program an opportunity for a hearing.

(A) The medication aide or home health medication aide program must request a hearing within 15 days after receipt of the notice. Receipt of notice is presumed to occur on the tenth day after the notice is mailed to the last address known to HHSC unless another date is reflected on a United States Postal Service return receipt.

(B) The request must be in writing and submitted to the Health and Human Services Commission, Medication Aide Program, Mail Code E-416, P.O. Box 149030, Austin, Texas 78714-9030.

(C) If the medication aide or home health medication aide program does not request a hearing, in writing, 15 days after receipt of the notice, the medication aide or home health medication aide program is deemed to have waived the opportunity for a hearing and the proposed action is taken.

(5) HHSC may suspend a permit to be effective immediately when the health and safety of persons are threatened. HHSC notifies the medication aide of the emergency action by certified mail, return receipt requested, or personal delivery of the notice and of the effective date of the suspension and the opportunity for the medication aide to request a hearing.

(6) All hearings are governed by Texas Government Code, Chapter 2001, and 1 TAC §§357.481 - 357.490.

(7) If the medication aide or program fails to appear or be represented at the scheduled hearing, the medication aide or program has waived the right to a hearing and the proposed action is taken.

(8) If HHSC suspends a home health medication aide permit, the suspension remains in effect until HHSC determines that the reason for suspension no longer exists, revokes the permit, or determines not to renew the permit. HHSC investigates before making a determination.

(A) During the time of suspension, the suspended medication aide must return the permit to HHSC.

(B) If a suspension overlaps a renewal date, the suspended medication aide may comply with the renewal procedures in this chapter; however, HHSC does not renew the permit until HHSC determines that the reason for suspension no longer exists.

(9) If HHSC revokes or does not renew a permit, a person may reapply for a permit by complying with the requirements and procedures in this chapter at the time of reapplication.

(A) HHSC may refuse to issue a permit if the reason for revocation or nonrenewal continues to exist.

(B) When a permit is revoked or not renewed, a medication aide must immediately return the permit to HHSC.

§557.129. Alternate Licensing Requirements for Military Service.

(a) Fee waiver based on military experience.

(1) HHSC waives the combined permit application and examination fee described in §557.109(c)(1)(A) of this chapter (relating to Application Procedures) and §557.128(n)(1)(A) of this chapter (relating to Home Health Medication Aides) and the permit application fee described in §557.125(f)(1) of this chapter (relating to Requirements for Corrections Medication Aides) for an applicant if HHSC receives and approves a request for a waiver of fees from the applicant in accordance with this subsection.

(2) To request a waiver of fees under this subsection, an applicant must submit a written request for a waiver with the applicant's application for a permit submitted to HHSC in accordance with this section. The applicant must include with the request:

(A) documentation of the applicant's status as a military service member, [and] military veteran, or military spouse that is acceptable to HHSC;

(B) documentation of the type and dates of the service, training, and education the applicant received and an explanation as to why the applicant's military service, training or education substantially meets all of the requirements for a permit under this chapter; and

(C) for status as a military spouse:

(i) a copy of a marriage certificate issued to the applicant by a state of the United States or a foreign government; and

(ii) a copy of a current military service order issued to the applicant's spouse by the armed forces of the United States, the State of Texas, or another state.

(3) Documentation of military status that is acceptable to HHSC includes:

(A) for status as a military service member, a copy of a current military service order issued to the applicant by the armed forces of the United States, the State of Texas, or another state; and

(B) for status as a military veteran, a copy of a military service discharge order issued to the applicant by the armed forces of the United States, the State of Texas, or another state.

(4) If HHSC requests additional documentation, the applicant must submit the requested documentation.

(5) HHSC approves a request for a waiver of fees submitted in accordance with this subsection if HHSC determines that the applicant is a military service member or a military veteran and the applicant's military service, training, or education substantially meets all of the requirements for licensure under this chapter.

(b) Fee waiver based on reciprocity.

(1) HHSC waives the combined permit application and examination fee described in §557.109(c)(1)(A) of this chapter and §557.128(n)(1)(A) of this chapter and the permit application fee described in §557.125(f)(1) of this chapter for an applicant if HHSC receives and approves a request for a waiver of fees from the applicant in accordance with this subsection.
(2) To request a waiver of the fee under this subsection, an applicant must include a written request for a waiver of the fee with the applicant's application that is submitted to HHSC in accordance with §557.128(h) of this chapter. The applicant must include with the request documentation of the applicant's status as a military service member, military veteran, or military spouse that is acceptable to HHSC.

(3) Documentation of military status that is acceptable to HHSC includes:

(A) for status as a military service member, a copy of a current military service order issued to the applicant by the armed forces of the United States, the State of Texas, or another state;

(B) for status as a military veteran, a copy of a military service discharge order issued to the applicant by the armed forces of the United States, the State of Texas, or another state; and

(C) for status as a military spouse:

(i) a copy of a marriage certificate issued to the applicant by a state of the United States or a foreign government; and

(ii) a copy of a current military service order issued to the applicant's spouse by the armed forces of the United States, the State of Texas, or another state.

(4) If HHSC requests additional documentation, the applicant must submit the requested documentation.

(5) HHSC approves a request for a waiver of the fee submitted in accordance with this subsection if HHSC determines that:

(A) the applicant holds a license, registration, certificate, or permit as a medication aide in good standing in another jurisdiction with licensing requirements substantially equivalent to or that exceed the requirements for a permit under this chapter; and

(B) the applicant is a military service member, a military veteran, or a military spouse.

(c) Additional time for permit renewal.

(1) HHSC gives a medication aide an additional two years to complete the permit renewal requirements described in §557.115 of this chapter (relating to Permit Renewal) if HHSC receives and approves a request for additional time to complete the permit renewal requirements from a medication aide in accordance with this subsection.

(2) To request additional time to complete permit renewal requirements, a medication aide must:

(A) submit a written request for additional time to HHSC before the expiration date of the medication aide's permit; and

(B) include, along with the request, documentation of the medication aide's status as a military service member that is acceptable to HHSC, which includes a copy of a current military service order issued to the medication aide by the armed forces of the United States, the State of Texas, or another state.

(2) To request additional time to complete permit renewal requirements, a medication aide must submit a written request for additional time to HHSC before the expiration date of the medication aide's permit. The medication aide must include with the request documentation of the medication aide's status as a military service member that is acceptable to HHSC. Documentation as a military service member that is acceptable to HHSC includes a copy of a current military service order issued to the medication aide by the armed forces of the United States, the State of Texas, or another state.

(3) If HHSC requests additional documentation, the medication aide must submit the requested documentation.

(4) HHSC approves a request for two additional years to complete permit renewal requirements submitted in accordance with this subsection if HHSC determines that the medication aide is a military service member, except HHSC does not approve a request if HHSC granted the medication aide a previous extension and the medication aide has not completed the permit renewal requirements during the two-year extension period.

(5) If a medication aide does not submit the written request described by paragraph (2) of this subsection before the expiration date of the medication aide's permit, HHSC will consider a request after the expiration date of the permit if the medication aide establishes to the satisfaction of HHSC that the request was not submitted before the expiration date of the medication aide's permit because the medication aide was serving as a military service member at the time the request was due.

(d) Renewal of expired permit.

(1) HHSC renews an expired permit if HHSC receives and approves a request for renewal from a former medication aide in accordance with this subsection.

(2) To request renewal of an expired permit, a former medication aide must submit a written request with a permit renewal application within five years after the former medication aide's permit expired. The former medication aide must include with the request documentation of the former medication aide's status as a military service member, military veteran, or military spouse that is acceptable to HHSC.

(3) Documentation of military status that is acceptable to HHSC includes:

(A) for status as a military service member, a copy of a current military service order issued to the former medication aide by the armed forces of the United States, the State of Texas, or another state;

(B) for status as a military veteran, a copy of a military service discharge order issued to the former medication aide by the armed forces of the United States, the State of Texas, or another state; and

(C) for status as a military spouse:

(i) a copy of a marriage certificate issued to the former medication aide by a state of the United States or a foreign government; and

(ii) a copy of a current military service order issued to the former medication aide's spouse by the armed forces of the United States, the State of Texas, or another state.

(4) If HHSC requests additional documentation, the former medication aide must submit the requested documentation.

(5) HHSC approves a request for renewal of an expired permit submitted in accordance with this subsection if HHSC determines that:

(A) the former medication aide is a military service member, military veteran, or military spouse;

(B) the former medication aide has not committed an offense listed in Texas Health and Safety Code §250.006(a) and has not committed an offense listed in Texas Health and Safety Code §250.006(b) during the five years before the date the former medication aide submitted the initial permit application;

(C) the former medication aide is not listed on the EMR;
(D) the former medication aide is not listed on the NAR.

(e) Recognition of Out-of-State Permit of Military Spouse.

(1) A military spouse may engage in the practice of a medication aide in Texas without obtaining a permit, according to the application requirements of §§557.103 of this chapter (relating to Requirements for Administering Medications), §§557.125 of this chapter (relating to Requirements for Corrections Medication Aides) or §§557.128 of this chapter (relating to Home Health Medication Aides), if the spouse:

(A) is currently licensed in good standing by another jurisdiction that has permitting requirements substantially equivalent to the requirements for a permit in Texas;

(B) notifies HHSC in writing of the spouse's intent to practice in Texas;

(C) submits to HHSC proof of the spouse's residence in this state and a copy of the spouse's military identification; and

(D) receives from HHSC:

(i) confirmation that HHSC has verified the spouse's permit in the other jurisdiction; and

(ii) a permit to practice as a medication aide in Texas.

(2) HHSC will review and evaluate the following criteria when determining whether another state's permitting requirements are substantially equivalent to the requirement for a permit under the statutes and regulations of this state:

(A) whether the other state requires an applicant to pass an examination that demonstrates competence in the field to obtain the permit;

(B) whether the other state requires an applicant to meet any experience qualifications to obtain the permit;

(C) whether the other state requires an applicant to meet education qualifications to obtain the permit;

(D) whether the other state denies an application for permit from an applicant who has been convicted of an offense containing elements similar to offenses listed in §557.121(b) of this subchapter; and

(E) the other state's permit requirements, including the scope of work authorized to be performed under the permit issued by the other state.

(3) The military spouse must submit:

(A) a written request to HHSC for recognition of the spouse's permit issued by the other state;

(B) any form and additional information regarding the permit issued by the other state required by the rules of the specific program or division within HHSC that licenses the business or occupation;

(C) proof of residence in this state, which may include a copy of the permanent change of station order for the military service member to whom the military spouse is married;

(D) a copy of the military spouse's identification card;

(E) proof the military service member is stationed at a military installation in Texas; and

(F) proof that fingerprints submitted to the Texas Department of Public Safety for a Federal Bureau of Investigations criminal background check enable HHSC to confirm that the military spouse is in compliance with other laws and regulations applicable to medication aides in Texas.

(4) Upon verification from the permitting jurisdiction of the military spouse's permit, and if the permit is substantially equivalent to a Texas permit, HHSC shall issue a confirmation that HHSC has verified the spouse's permit in the other jurisdiction and a permit to practice as a medication aide in Texas.

(5) The permit issued under paragraph (4) of this subsection will expire three years from date of issuance or when the military service member is no longer stationed at a military installation in Texas, whichever comes first. The license issued under paragraph (4) of this subsection may not be renewed.

(6) HHSC replaces a lost, damaged, or destroyed permit for a military spouse as provided in §557.117 of this chapter (relating to Changes), but the military spouse does not pay the replacement permit fee.

(7) The military spouse shall comply with all applicable laws, rules, and standards of this state, including applicable Texas Health and Safety Code and Texas Administration Code provisions.

(8) HHSC may withdraw or modify the verification letter for reasons including:

(A) the military spouse fails to comply with subsection (i) of this section; or

(B) the military spouse's licensure required under paragraph (1)(A) of this subsection expires or is suspended or revoked in another jurisdiction.

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, 2021.
TRD-202103378
Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: October 10, 2021
For further information, please call: (512) 438-3161

CHAPTER 902. CONTINUITY OF SERVICES--TRANSFERRING INDIVIDUALS FROM STATE SUPPORTED CENTERS TO STATE HOSPITALS

26 TAC §902.1

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes new §902.1, concerning Transfer of an Individual from a State Supported Living Center to a State Hospital.

BACKGROUND AND PURPOSE

The purpose of the proposed new rule is to reflect the move of the state hospitals from the Department of State Health Services to HHSC by moving an HHSC rule from Texas Administrative Code (TAC) Title 25, Chapter 412, Subchapter F to 26 TAC Chapter 902 to consolidate HHSC rules. The current rule will be repealed from 25 TAC, updated, and placed in 26
TAC Chapter 902. The proposed rule has updated agency information and appropriate population language. The rule repeal in 25 TAC Chapter 412, Subchapter F is proposed simultaneously elsewhere in this issue of the Texas Register.

SECTION-BY-SECTION SUMMARY

The proposed new §902.1 provides parameters for the transfer of individuals who have been committed or voluntarily admitted to a state supported living center (SSLC) from an SSLC to a state hospital.

FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the rule will be in effect, enforcing or administering the rule does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rule will be in effect:

1. the proposed rule will not create or eliminate a government program;
2. implementation of the proposed rule will not affect the number of HHSC employee positions;
3. implementation of the proposed rule will result in no assumed change in future legislative appropriations;
4. the proposed rules will not affect fees paid to HHSC;
5. the proposed rule will create a new rule;
6. the proposed rule will not expand, limit, or repeal existing rules;
7. the proposed rule will not change the number of individuals subject to the rule; and
8. the proposed rule will not affect the state’s economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. Under the proposed rule there are no requirements to alter current business practices and there are no new fees or costs imposed.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule does not impose a cost on regulated persons.

PUBLIC BENEFIT AND COSTS

Timothy E. Bray, State Hospitals Associate Commissioner, has determined that for each year of the first five years the rule is in effect, the public benefit is the placement of an HHSC rule in Title 26 of TAC so it is easier to locate.

Trey Wood has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because there are no requirements to alter current business practices and there are no new fees or costs imposed.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that 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.

PUBLIC COMMENT

Written comments on the proposal may be submitted to HHSC, Mail Code E619, P.O. Box 13247, Austin, Texas 78711-3247, or by email to HealthandSpecialtyCare@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the Texas Register. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate “Comments on Proposed Rule 21R066” in the subject line.

STATUTORY AUTHORITY

The new section is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §591.004 which provides that the Executive Commissioner of HHSC shall adopt rules to ensure the implementation of Title 7, Subtitle D, Texas Health and Safety Code.

The new section affects Texas Government Code §531.0055 and Texas Health and Safety Code Chapter §94, Subchapter C, which governs the transfer of residents from a state supported living center to a state hospital.

§902.1. Transfer of an Individual from a StateSupported Living Center to a State Hospital.

(a) Transfer of an individual committed to a state supported living center (SSLC):

1. An individual committed to an SSLC for residential services may be transferred to a state hospital for mental health care if a licensed physician of the SSLC determines after an examination that care, treatment, and rehabilitation in a state hospital is in the best interest of the individual.

2. The individual will be returned to the SSLC within 30 calendar days unless a court order transferring the individual is obtained by the state hospital as described in paragraph (3) of this subsection.

3. If the state hospital determines hospitalization of the individual is necessary for longer than 30 calendar days, the state hospital will request from the committing court an order transferring the individual to the state hospital. In support of the request, the state hospital will submit two certificates of medical examination for a mental illness to the court, as described in Texas Health and Safety Code §574.011, stating that the individual:

A. is a person with a mental illness; and
B. requires observation or treatment in the state hospital.
(4) If the state hospital determines an individual who has been transferred to a state hospital under a court order no longer requires hospitalization, the state hospital will request that the committing court approve the return of the individual to the SSLC, in accordance with Texas Health and Safety Code §594.043.

(b) Transfer of an Individual voluntarily admitted to an SSLC. An individual admitted to an SSLC under a regular voluntary admission for residential services may be transferred to a state hospital only if the individual consents to the transfer.

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, 2021.

TRD-202103380
Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: October 10, 2021
For further information, please call: (512) 438-3049

TITLE 37. PUBLIC SAFETY AND CORRECTIONS
PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE
CHAPTER 151. GENERAL PROVISIONS
37 TAC §151.3

The Texas Board of Criminal Justice (board) proposes amendments to §151.3, concerning the Operating Procedures for the Texas Board of Criminal Justice. The amendments are proposed in conjunction with a proposed rule review of §151.3 as published in another section of the Texas Register. The proposed amendments allow meetings of the board to be held at a location in Texas as determined by the board Chairman. The proposed amendments have been reviewed by legal counsel and found to be within the board's authority to adopt.

Ron Steffa, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for each year of the first five years the proposed amendments will be in effect, enforcing or administering the proposed amendments will not have foreseeable implications related to costs or revenues for state or local government because the proposed amendments merely allow board meetings to be held in more locations within Texas.

Mr. Steffa 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 rules because the proposed amendments merely allow board meetings to be held in more locations within Texas. 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 proposed amendments, will be to allow flexibility in scheduling the location of board meetings. No cost will be imposed on regulated persons.

The proposed amendments will have no impact on government growth; no impact on local employment; no creation or elimination of a government program; no creation or elimination of employee positions; no increase or decrease in future legislative appropriations to the TDCJ; 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. The proposed amendments will not constitute a taking.

Comments should be directed to the Office of the General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342, ogccomments@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 §§492.005-.007, which authorizes the organization of the board, establishes requirements of board meetings, and requires an opportunity for the public to appear before the board; §492.013, which authorizes the board to adopt rules; and §§551.001-.146, which establishes requirements for open meetings.

Cross Reference to Statutes: None.

§151.3. Texas Board of Criminal Justice Operating Procedures.

(a) General. This section establishes operating procedures for the Texas Board of Criminal Justice (TBCJ) to conduct business.

(b) Organization.

(1) The TBCJ is a nine member body appointed by the governor to oversee the Texas Department of Criminal Justice (TDCJ). The TBCJ chairman is designated by and serves at the request of the governor pursuant to Texas Government Code §492.005.

(2) The TBCJ shall elect a vice-chairman and a secretary each odd-numbered year. The vice-chairman shall preside over meetings in the chairman's absence, and either the chairman or the secretary shall execute any necessary documents.

(3) The chairman, on behalf of the TBCJ, is empowered to appoint members of the TBCJ to be members or chairs of standing or limited-purpose committees, or to serve as liaisons to the TBCJ on particular subject areas or divisions within the TDCJ's jurisdiction, or both. The purpose of a committee, if appointed, is to have certain members become particularly familiar with various issues and to facilitate discussion and recommend potential strategies as appropriate.

(4) The TBCJ chairman may appoint non-members to sit on a committee in an advisory capacity; however, advisory members are non-voting members and cannot be reimbursed for expenses incurred in this capacity.

(c) Meetings.

(1) The TBCJ shall attempt to hold a regular meeting at least every other month of the year, but shall meet at least once each quarter of the calendar year pursuant to Texas Government Code §492.006. Special called meetings can be held at the discretion of the TBCJ chairman.

(2) TBCJ meetings shall be held at a location in Texas as determined by the TBCJ chairman [in Austin or Huntsville, Texas]. If the TBCJ uses video conference technology to convene a meeting, at least one conference site must be located in Huntsville or Austin, Texas. To convene a video conference meeting, a quorum of the TBCJ must be present at one of the video conference sites. The other members may convene using the technology from remote sites.

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(A) During a TBCJ meeting convened as a video conference meeting, any member shall be considered absent from any portion of the meeting during which audio or video communication with the member is lost or disconnected.

(B) The TBCJ may continue the meeting only if a quorum remains present at the meeting location.

(3) The agenda and date for the TBCJ meetings shall be set by the TBCJ chairman in consultation with the TDCJ executive director.

(4) The agenda for committee meetings shall be set by the TBCJ chairman in consultation with the committee's chairman and the TDCJ executive director. If the TBCJ committee uses video conference technology to convene a meeting, at least one conference site must be located in Huntsville or Austin. To convene a video conference meeting, a quorum of the committee must be present at one of the video conference sites. The other member(s) may convene using the technology from remote sites.

(5) A majority of the TBCJ, or of a committee of the TBCJ, constitutes a quorum for the convening of and transaction of business at any meeting. A quorum of a committee with two members consists of both members.

(6) A quorum of a committee does not include its advisory member.

(7) Meetings of the TBCJ and its committees shall be conducted according to standard parliamentary procedures.

(8) TBCJ meetings are governed by the Texas Open Meetings Act, Texas Government Code §§551.001-.146.

(9) The TDCJ executive director shall ensure members are provided the materials necessary to conduct the business of the TBCJ and its committees well in advance of the meetings.

(10) The TDCJ executive director shall ensure the minutes of each meeting are prepared, retained, and filed with the Legislative Reference Library, and made available to the public. The minutes shall state the subject matter of each deliberation and shall indicate each vote, order, decision, or other action taken by the TBCJ.

(11) Requests by the public to make presentations or comments to the TBCJ are governed by 37 Texas Administrative Code §151.4, pursuant to Texas Government Code §§492.007 and 551.042.

(12) The TBCJ shall approve meeting minutes for any committees deleted, renamed, or for which their limited-purpose has concluded.

(13) Prior to each regularly scheduled meeting, the TBCJ shall offer the opportunity for:

(A) The presiding officer of the Board of Pardons and Paroles or a designee of the presiding officer to present any item relating to the operation of the parole system and other matters of mutual interest determined by the presiding officer to require the TBCJ's consideration, pursuant to Texas Government Code §492.006;

(B) The chairman of the Judicial Advisory Council (JAC) to the Community Justice Assistance Division and the TBCJ to present any item relating to the operation of the community justice system and other matters of mutual interest determined by the JAC chairman to require the TBCJ's consideration, pursuant to Texas Government Code §492.006;

(C) The TDCJ executive director to present any item relating to the TDCJ as determined by the executive director or the TBCJ chairman;

(D) The TBCJ chairman to present any item relating to the TBCJ or the TDCJ as determined by the TBCJ chairman in consultation with the TDCJ executive director;

(E) The chairman or designee of the Correctional Managed Health Care Committee (CMHCC) to present on the CMHCC's policy decisions, the financial status of the correctional health care system, and corrective actions taken by or required of the TDCJ or the health care providers; and

(F) The chairman of the Advisory Committee on Offenders with Medical or Mental Impairments (ACOOMMI) or a designee of the ACOMMI chairman to present any item related to offenders with medical or mental impairments.

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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Kristen Worman
General Counsel
Texas Department of Criminal Justice
Earliest possible date of adoption: October 10, 2021
For further information, please call: (936) 437-6700

37 TAC §151.53
The Texas Board of Criminal Justice (board) proposes new rule §151.53, Family Leave Pool. The purpose of the new rule is to establish a family leave pool in compliance with House Bill 2063, 87th Leg., R.S. The proposed rule has been reviewed by legal counsel and found to be within the board's authority to adopt.

Ron Steffa, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for each year of the first five years the proposed rule will be in effect, enforcing or administering the proposed rule will not have foreseeable implications related to costs or revenues for state or local government because the proposed rule will be administered using existing staffing and processes.

Mr. Steffa 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 rules because the proposed rule does not require compliance by any persons. 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 proposed rule, will be to provide TDCJ employees paid leave to attend to important family events and illnesses. No cost will be imposed on regulated persons.

The proposed rule will have no impact on government growth; no impact on local employment; no creation or elimination of employee positions; no increase or decrease in future legislative appropriations to the TDCJ; 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. The proposed rule will create a family leave pool in compliance with HB 2063, 87th Leg., R.S. The proposed rule will not constitute a takings.
Comments should be directed to the Office of the General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342, ogccomments@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 §492.013, which authorizes the board to adopt rules; and §661.022, which requires the board to adopt rules and prescribe procedures relating to the operation of a family leave pool.

Cross Reference to Statutes: None.

§151.53. Family Leave Pool.

(a) Definitions. Family Leave Pool Administrator is the Human Resources Division director or designee.

(b) Procedures.

(1) All contributions to the Texas Department of Criminal Justice (TDCJ) family leave pool are voluntary. Employees who contribute accrued sick or vacation leave hours to the TDCJ family leave pool may not designate the contributed hours for use by a specific employee. An employee who contributes accrued sick or vacation leave hours to the family leave pool may not withdraw the contributed hours of sick or vacation leave. There is no limitation for frequency of donations.

(2) An employee may only withdraw time from the family leave pool in case of:

(A) the birth of a child;

(B) the placement of a foster child or adoption of a child under 18 years of age;

(C) the placement of any person 18 years of age or older requiring guardianship;

(D) a serious illness to an immediate family member or the employee, including a pandemic-related illness; or

(E) an extenuating circumstance created by an ongoing pandemic, including providing essential care to a family member.

(3) The family leave pool administrator shall determine the amount of time that an employee may withdraw from the family leave pool. Any family leave pool time granted qualifies as sick leave.

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 28, 2021.

Kristen Worman
General Counsel
Texas Department of Criminal Justice

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

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