

ADOPTED RULES

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

TITLE 1. ADMINISTRATION

PART 10. DEPARTMENT OF INFORMATION RESOURCES

CHAPTER 202. INFORMATION SECURITY STANDARDS

The Texas Department of Information Resources (department) adopts amendments to 1 Texas Administrative Code Chapter 202, concerning Information Security Standards. 1 Texas Administrative Code §§202.1 - 202.4, 202.20 - 202.22, 202.24, 202.25, 202.27, 202.70 - 202.72, 202.74, and 202.75 are adopted without changes to the proposal as published in the September 10, 2021, issue of the *Texas Register* (46 TexReg 5664). In addition, the department adopts new §202.77, which is adopted with changes to the proposal as published in the September 10, 2021, issue of the *Texas Register* (46 TexReg 5664). This rule will be republished.

The amendments to 1 Texas Administrative Code §202.23 and §202.73, are adopted with nonsubstantive changes to the proposal as published in the September 10, 2021, issue of the *Texas Register* (46 TexReg 5664) in response to comments received from the public. These rules will be republished.

DIR is not adopting amendments proposed to 1 Texas Administrative Code §202.26 and §202.76 as published in the September 10, 2021, issue of the *Texas Register* (46 TexReg 5664) at this time.

The adopted 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 department's formal notice of rule review was published in the May 17, 2019, issue of the *Texas Register* (44 TexReg 2473). The proposed rules were published in the September 10, 2021, issue of the *Texas Register* (46 TexReg 5664).

The adopted rules apply to both state agencies and institutions of higher education.

Comments Received by the Department in Response to the Proposed Rule

The department received comments in response to the proposed amendments as discussed below.

The department received comments on the rules proposed establishing the Texas Risk and Management Authorization Program (TX-RAMP) and the definitions pertinent to TX-RAMP.

A customer state agency recommended that the department remove the proposed phrase and definition "nonconfidential data" as found at 1 Texas Administrative Code §202.1(31),

remove all references to "nonconfidential data" found in the proposed 1 Texas Administrative Code §202.27, and replace such references with data classification categories provided in a department-promulgated data classification guidelines document. The department declined to make this change as nonconfidential data and confidential data, as referenced by 1 Texas Administrative Code §202.27, are not meant to establish specifics of a statewide data classification scheme. Further, the term confidential data could include multiple data classification categories created by a state agency.

A customer state agency recommended that DIR remove the proposed phrase and definition "State-Controlled Data" as found at proposed 1 Texas Administrative Code §202.1(43) and referenced by 1 Texas Administrative Code §202.27 and replace it and any references to it with "Agency Data," with the proposed definition provided by the customer state agency for that term. The department declined to make this change as the Texas Risk and Authorization Management Program establishes a standardized approach for the security of cloud computing services that process the data controlled by a state agency. The purpose of this processing or the ownership of the state agency data is not applicable to this program.

A vendor identified that there might be fiscal impacts to state agencies as a result of TX-RAMP and requested clarity into the applicability of TX-RAMP to local governments and upon the use of next generation technology. The department declines to make a change to the proposed rule as a result of this comment as these requirements and applicability of statutory requirements are established by Texas Government Code § 2054.0593.

A vendor inquired as to the interoperability of other State's RAMP and FedRAMP certifications and as to whether the department published any rules for vendors to become certified as TX-RAMP compliant. The department declines to make a change to the proposed rule as specifics regarding the processes of vendor certification are established in the Program Manual created by 1 Texas Administrative Code §202.27(f).

DIR also received comments from customer state agencies regarding proposed amendments that did not pertain to TX-RAMP.

A customer state agency recommended the removal of the proposed security reporting requirement found at 1 Texas Administrative Code §202.23(b)(A)(iv), requiring a state agency to report security incidents assessed to "be an event that compromises, destroys, or alters information systems or applications in any way." The customer state agency identified that this language may have unintended consequences that require state agencies to report every security event, regardless of if such event rises to the level of a security incident. The department considered this comment and proposes the following nonsubstantive amendment to the proposed language to clarify the initial intent: "be an unauthorized incident that compromises, destroys, or al-

ters information systems, applications, or access to such systems or applications in any way."

A customer state agency inquired as to whether information security officers must meet with vendors to evaluate their compliance or document risk mitigation plans prior to contract award and questions its ability to document risk mitigation plans prior to contract award. The department declines to make a change to the proposed rule as 1 Texas Administrative Code §202.21(b)(9) does not mandate a state agency evaluate vendor compliance with a risk mitigation plan prior to acquisition of information nor does it require a state agency to fully document its risk mitigation plan.

Department Description of Adopted Changes.

The department adopts amendments correcting existing references to the Texas Government Code, Texas Penal Code, and Texas Business and Commerce Code to be in compliance with legal citation standards in §§202.1 - 202.4, 202.20 - 202.25, and 202.70 - 202.75.

In §202.1, the department adopts amendments 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 adopts amendments to the definitions of "Control," "Destruction," "Information," "Information Owner," "Information System," "Security Incident," and "Threat" found in §202.1 to reflect current widely accepted industry definitions.

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

The department further adopts amendments to the definition of "state agency" found in §202.3 for clarity.

In §202.4, the department adopts amendments 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 adopts amendments tasking state agency and institution of higher education heads with ultimate responsibility for information security while permitting the agency or institution of higher education head to delegate 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 adopts amendments incorporating by reference Texas Government Code § 2054.136, addressing requirements for and responsibilities of a designated Information Security Officer and removing the list of Information

Security Officer responsibilities that are enumerated at this statutory reference. Further, the department adopts amendments clarifying the role of the Information Security Officer in risk and security assessments and expanding 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 adopts amendments 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 development of 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 adopts amendments clarifying 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 adopts amendments to the annual reporting requirement that require an Information Security Officer to provide an annual security report directly to the agency head. The department further expands 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 adopts amendments to agency information security program requirements to include periodic assessments in alignment with minimum legal reporting requirements and expanding such assessments to include applications. The department further adopts the expansion of program requirements to include a plan for providing information security for applications. The department further adopts amendments 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 adopts amendments to the requirements of risk assessments to include the ranking of risks and impacts and remove language regarding inherent risks. The department further clarifies the timeline by which risk assessments shall be conducted. The department adopts the expansion of agency head responsibilities to include the approval of security risk acceptance, transference, or mitigation decisions for all high residual risk systems.

DIR also adopts two new subsections, §202.27, for state agencies, and §202.77, for institutions of higher education, concerning the Texas Risk and Authorization Management Program (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 as permitted by statute.

SUBCHAPTER A. DEFINITIONS

1 TAC §§202.1 - 202.4

The amendments are adopted 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 adoption.

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

Filed with the Office of the Secretary of State on October 28, 2021.

TRD-202104338

Katherine Rozier Fite

General Counsel

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Effective date: November 17, 2021

Proposal publication date: September 10, 2021

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SUBCHAPTER B. INFORMATION SECURITY STANDARDS FOR STATE AGENCIES

1 TAC §§202.20 - 202.25, 202.27

The amendments are adopted 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 adoption.

§202.23. Security Reporting.

(a) Agency Reporting. Each Information Security Officer shall directly report to the agency head, at least annually, on the adequacy and effectiveness of information security policies, procedures, practices, 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 incidents shall be 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;

(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) and other applicable laws that may require public notification; or

(iv) be an unauthorized incident that compromises, destroys, or alters information systems, applications, or access to such 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 33 or Texas Penal Code Chapter 33A, 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 of the incident, it will not always be feasible to gather all the information prior to reporting. In such cases, incident response teams shall 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 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 shall submit such reports to the agency in the form and manner specified by the department, unless otherwise directed by the agency.

(3) Biennial Information Security Plan. Each state agency shall submit to the department a Biennial Information Security Plan in accordance with Texas Government Code § 2054.133.

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

Filed with the Office of the Secretary of State on October 28, 2021.

TRD-202104339

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**SUBCHAPTER C. INFORMATION SECURITY
STANDARDS FOR INSTITUTIONS OF HIGHER
EDUCATION**

1 TAC §§202.70 - 202.75, 202.77

The amendments are adopted 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 adoption.

§202.73. Security Reporting.

(a) Institution Reporting. Each Information Security Officer shall directly report to the agency head, at least annually, on the adequacy and effectiveness of information security policies, procedures, practices, 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 incidents shall be reported to immediate supervisors and the institution of higher education Information Security Officer. Confirmed or suspected security incidents shall be 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;
- (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) and other applicable laws that may require public notification; or

(iv) be an unauthorized incident that compromises, destroys, or alters information systems, applications, or access to such 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 or 33A, 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 of the incident, it will not always be feasible to gather all the information prior to reporting. In such cases, incident response teams shall 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.

(3) Biennial Information Security Plan. Each state institution of higher education shall submit to the department a biennial Information Security plan, in accordance with Texas Government Code § 2054.133.

§202.77. Texas Risk and Authorization Management Program for Institutions 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 subsection (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 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:

(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 of higher education at least 30 days prior to publication of proposed program manual; and

(2) after reviewing comments provided during the comment period described by paragraph (1) 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

(2) 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 adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 28, 2021.

TRD-202104340

Katherine Rozier Fite

General Counsel

Department of Information Resources

Effective date: November 17, 2021

Proposal publication date: September 10, 2021

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

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TITLE 7. BANKING AND SECURITIES

PART 7. STATE SECURITIES BOARD

CHAPTER 101. GENERAL ADMINISTRATION

7 TAC §101.7

The Texas State Securities Board adopts new rule §101.7, concerning References to the Texas Securities Act in Board Rules, without changes to the proposed text as published in the September 17, 2021, issue of the *Texas Register* (46 TexReg 6009). The new rule will not be republished.

The new rule provides interim guidance to the industry and public until the Board rules are updated during the next rule review cycle beginning in September 2022. Specifically, subsection (a) of new §101.7 provides a short history of the upcoming transition of the current Texas Securities Act from the Civil Statutes (e.g., the non-codified version) to the codified version of the Act to be located in the Government Code (which will become effective January 1, 2022) and refers readers to a disposition table posted on the Agency's website. Subsection (b) clarifies that a Board rule that references or cites the non-codified version of the Act is also a reference or cite to the equivalent provision in the codified Act. Subsection (c) clarifies that when a Board rule is amended in the future to refer to the codified Act, the requirements, obligations, or duties that existed in such rule will be preserved and continue to apply. The new rule also clarifies that existing provisions under the Board rules will continue to apply to activities occurring prior to a later update of the rules.

The rule assists the public and industry when reading the board rules to understand the effect of the non-substantive codification and directs them to a resource to locate the correct codified sections of the Act which correspond to the former, non-codified sections of the Act appearing in the rules.

No comments were received regarding adoption of the new rule.

The new rule is adopted under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The adopted new rule affects: none applicable.

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

Filed with the Office of the Secretary of State on November 1, 2021.

TRD-202104383

Travis J. Iles

Securities Commissioner

State Securities Board

Effective date: November 21, 2021

Proposal publication date: September 17, 2021

For further information, please call: (512) 305-8303



7 TAC §101.8

The Texas State Securities Board adopts new rule §101.8, concerning Employee Leave Pools, without changes to the proposed text as published in the September 17, 2021, issue of the *Texas Register* (46 TexReg 6010). The new rule will not be republished.

The new rule prescribes procedures relating to the operation of the Agency's family leave pool and sick leave pool, as required by Government Code, Chapter 661, and the Government Code, Section 661.002. The new rule sets forth the purpose of each leave pool, designates the Securities Commissioner as the administrator of the leave pools, and requires the Commissioner to develop and implement operating procedures consistent with the requirements of the new rule and relevant laws governing operation of the pools.

The Agency is in compliance with the directives of the legislature.

No comments were received regarding adoption of the new rule.

The new rule is adopted under the authority of Government Code, §661.002 and §661.022. Section 661.002 requires that the governing body of each state agency adopt rules and prescribe procedures relating to the operation of an agency's sick leave pool. Section 661.022 requires the governing bodies of state agencies to adopt rules to create and administer an employee family leave pool.

The adopted new rule affects Government Code, Chapter 661.

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

Filed with the Office of the Secretary of State on November 1, 2021.

TRD-202104385

Travis J. Iles

Securities Commissioner

State Securities Board

Effective date: November 21, 2021

Proposal publication date: September 17, 2021

For further information, please call: (512) 305-8303



CHAPTER 115. SECURITIES DEALERS AND AGENTS

7 TAC §115.18

The Texas State Securities Board adopts an amendment to §115.18, concerning Special Provisions Relating to Military Applicants, without changes to the proposed text as published in the September 17, 2021, issue of the *Texas Register* (46 TexReg 6011). The amended rule will not be republished.

The amendment implements the requirements of House Bill 139, passed by the 87th Legislature, Regular Session(2021), which amended the definition of "Armed Forces of the United States" in §55.001 of the Texas Occupations Code to add the Space Force as the newest branch of the Armed Forces and amended §55.004 of the Texas Occupations Code to allow military spouse applicants to establish Texas residency for occupational licensing purposes by providing copies of the military service member's change of station orders. The amendment aligns the requirements and procedures for military applicants to become registered as securities professionals with the updated sections of the Occupations Code.

The regulatory burdens of certain military service members and spouses, licensed in good standing as securities professionals in another state, who are relocating to Texas, are eased or reduced, and the amendment makes the rule consistent with Chapter 55 of the Occupations Code and the current structure of the Armed Forces of the United States.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 581-28-1 and §55.0041 of the Texas Occupations Code. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Section 55.0041 of the Texas Occupations Code requires a state agency that issues a license to adopt rules to implement §55.0041 and authorizes a state agency to adopt rules to provide for the issuance of a license to a military spouse to whom the agency provides confirmation under subsection (b)(3) of §55.0041.

The adopted amendment affects Texas Civil Statutes, Articles 581-12, 581-13, 581-14, 581-15, 581-18, and 581-35.

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

Filed with the Office of the Secretary of State on November 1, 2021.

TRD-202104388

Travis J. Iles

Securities Commissioner

State Securities Board

Effective date: November 21, 2021

Proposal publication date: September 17, 2021

For further information, please call: (512) 305-8303



CHAPTER 116. INVESTMENT ADVISERS
AND INVESTMENT ADVISER REPRESENTA-
TIVES

7 TAC §116.18

The Texas State Securities Board adopts an amendment to §116.18, concerning Special Provisions Relating to Military Applicants, without changes to the proposed text as published in the September 17, 2021, issue of the *Texas Register* (46 TexReg 6012). The amended rule will not be republished.

The amendment implements the requirements of House Bill 139, passed by the 87th Legislature, Regular Session(2021), which amended the definition of "Armed Forces of the United States" in §55.001 of the Texas Occupations Code to add the Space Force as the newest branch of the Armed Forces and amended §55.004 of the Texas Occupations Code to allow military spouse applicants to establish Texas residency for occupational licensing purposes by providing copies of the military service member's change of station orders. The amendment aligns the requirements and procedures for military applicants to become registered as securities professionals with the updated sections of the Occupations Code.

The regulatory burdens of certain military service members and spouses, licensed in good standing as securities professionals in another state, who are relocating to Texas, are eased or reduced, and the amendment makes the rule consistent with Chapter 55 of the Occupations Code and the current structure of the Armed Forces of the United States.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 581-28-1 and §55.0041 of the Texas Occupations Code. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Section 55.0041 of the Texas Occupations Code requires a state agency that issues a license to adopt rules to implement §55.0041 and authorizes a state agency to adopt rules to provide for the issuance of a license to a military spouse to whom the agency provides confirmation under subsection (b)(3) of §55.0041.

The adopted amendment affects Texas Civil Statutes, Articles 581-12, 581-13, 581-14, 581-15, 581-18, and 581-35.

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

Filed with the Office of the Secretary of State on November 1, 2021.

TRD-202104389

Travis J. Iles

Securities Commissioner

State Securities Board

Effective date: November 21, 2021

Proposal publication date: September 17, 2021

For further information, please call: (512) 305-8303

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TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF
LICENSING AND REGULATION

CHAPTER 73. ELECTRICIANS

16 TAC §73.100

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to an existing rule at 16 Texas Administrative Code (TAC), Chapter 73, §73.100, regarding the Electricians Program, without changes to the proposed text as published in the July 23, 2021, issue of the *Texas Register* (46 TexReg 4424). This rule will not be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC Chapter 73 implement Texas Occupations Code, Chapter 1305, Electricians.

Pursuant to Occupations Code, Chapter 1305, §1305.101(a)(2), the Commission is required to adopt the National Electrical Code (NEC) every three years "as the electrical code for the state." The Commission has adopted the 2020 NEC in its entirety by rule at 16 TAC, Chapter 73, §73.100, Technical Requirements. Section 90.4 of the 2020 NEC authorizes the Department to waive specific code requirements when doing so will not have a negative impact on safety.

Section 210.8(F) of the 2020 NEC requires certain outdoor outlets to have ground-fault circuit-interrupter (GFCI) protection. An incompatibility between most GFCI products on the market and certain types of air-conditioning and heating equipment has resulted in that equipment failing by persistently tripping circuit breakers. The summer heat and winter cold pose a serious threat to Texas residents whose air-conditioning systems have failed or are malfunctioning. Adopting the proposed rule would help keep Texas residents safe by ensuring installed air-conditioning systems are not subject to failure due to equipment incompatibility. Additionally, the Department's technical experts have confirmed that adopting the proposed rule would not have a negative impact on safety.

The Texas Commission of Licensing and Regulation (Commission), the Department's governing body, adopted this rule on an emergency basis at its May 18, 2021, meeting. The rule became effective on May 20, 2021, was extended for an additional 60 days by the Commission at its August 10, 2021 meeting, and will expire on November 16, 2021. The text of the emergency rule is identical to that of the proposed rule.

The proposed rule was presented to and discussed by the Electrical Safety and Licensing Advisory Board at its meeting on July 2, 2021. The Advisory Board did not make any changes to the proposed rule. The Advisory Board voted and recommended that the proposed rule be published in the *Texas Register* for public comment.

SECTION-BY-SECTION SUMMARY

The adopted rule amends §73.100 by placing the existing rule text into new subsection (a) and adding new subsection (b) to state that compliance with Section 210.8(F) of the 2020 NEC is not required until January 1, 2023. It is widely expected that manufacturers of both electrical and air conditioning equipment

will have resolved the compatibility issues by this date, at which point the danger to Texas residents will subside.

PUBLIC COMMENTS

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the July 23, 2021, issue of the *Texas Register* (46 TexReg 4424). The deadline for public comments was August 23, 2021. The Department received comments from two interested parties on the proposed rules during the 30-day public comment period. The public comments are summarized below.

Comment: One commenter stated that the proposed rules should not be adopted, suggesting that delaying the effective date of Section 210.8(F) of the 2020 NEC would discourage manufacturers from developing compatible equipment.

Department response: The Department disagrees with the comment. Department staff have reported that equipment manufacturers are actively developing equipment to address GFCI compatibility issues posed by Section 210.8(F). No changes to the proposed rules were made in response to this comment.

Comment: One commenter noted that the rules were necessary to protect Texans from the threats posed by extreme heat and cold.

Department response: The Department appreciates the comment.

ADVISORY BOARD RECOMMENDATIONS AND COMMISSION ACTION

The Electrical Safety and Licensing Advisory Board met on September 8, 2021, to discuss the proposed rules and the public comments received. The Advisory Board recommended that the Commission adopt the proposed rules as published in the *Texas Register*. At its meeting on October 5, 2021, the Commission adopted the proposed rules as recommended by the Advisory Board.

STATUTORY AUTHORITY

The adopted rule is adopted under Texas Occupations Code, Chapters 51 and 1305, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rule are those set forth in Texas Occupations Code, Chapters 51 and 1305. No other statutes, articles, or codes are affected by the adopted rule.

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

Filed with the Office of the Secretary of State on October 28, 2021.

TRD-202104336

Brad Bowman

General Counsel

Texas Department of Licensing and Regulation

Effective date: November 17, 2021

Proposal publication date: July 23, 2021

For further information, please call: (512) 475-4879



CHAPTER 75. AIR CONDITIONING AND REFRIGERATION

16 TAC §75.100

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to an existing rule at 16 Texas Administrative Code (TAC), Chapter 75, §75.100, regarding the Air Conditioning and Refrigeration Contractors Program, without changes to the proposed text as published in the July 23, 2021, issue of the *Texas Register* (46 TexReg 4426). This rule will not be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC Chapter 75 implement Texas Occupations Code, Chapter 1302, Air Conditioning and Refrigeration Contractors.

Pursuant to 16 TAC, Chapter 75, §75.100(a)(4), electrical work performed by air conditioning and refrigeration contractors must be performed in accordance with the 2020 National Electrical Code (NEC). Section 90.4 of the 2020 NEC authorizes the Department to waive specific code requirements when doing so will not have a negative impact on safety.

Section 210.8(F) of the NEC requires certain outdoor outlets to have ground-fault circuit-interrupter (GFCI) protection. An incompatibility between most GFCI products on the market and certain types of air-conditioning and heating equipment has resulted in that equipment failing by persistently tripping circuit breakers. The summer heat and winter cold pose a serious threat to Texas residents whose air-conditioning systems have failed or are malfunctioning. Adopting the proposed rule would help keep Texas residents safe by ensuring installed air-conditioning systems are not subject to failure due to equipment incompatibility. Additionally, the Department's technical experts have confirmed that adopting the proposed rule would not have a negative impact on safety.

The Texas Commission of Licensing and Regulation (Commission), the Department's governing body, adopted this rule on an emergency basis at its May 18, 2021, meeting. The rule became effective on May 20, 2021, and will expire November 16, 2021. The text of the emergency rule is identical to that of the proposed rule.

The proposed rule was presented to and discussed by the Air Conditioning and Refrigeration Contractors Advisory Board at its meeting on June 30, 2021. The Advisory Board did not make any changes to the proposed rule. The Advisory Board voted and recommended that the proposed rule be published in the *Texas Register* for public comment.

SECTION-BY-SECTION SUMMARY

The adopted rule amends §75.100 by adding new subsection (a)(5) to state that compliance with Section 210.8(F) of the 2020 NEC is not required until January 1, 2023. It is widely expected that manufacturers of both electrical and air conditioning equipment will have resolved the compatibility issues by this date, at which point the danger to Texas residents will subside.

PUBLIC COMMENTS

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the July 23, 2021, issue of the *Texas Register* (46 TexReg 4426). The deadline for public comments was August 23, 2021. The Department received comments from three

interested parties on the proposed rules during the 30-day public comment period. The public comments are summarized below.

Comment: One commenter stated that it would be best to delay implementation of Section 210.8(F) until equipment manufacturers find a solution to the issue of GFCI compatibility.

Department Response: The Department appreciates the comment.

Comment: One commenter stated that the industry has been aware of the GFCI compatibility issues for some time, and that he did not know what the solution should be.

Department Response: The Department appreciates the comment.

Comment: One commenter noted that the rule was necessary to protect Texans from the threats posed by extreme heat and cold.

Department Response: The Department appreciates the comment.

No changes were made to the proposed rules as a result of these comments.

ADVISORY BOARD RECOMMENDATIONS AND COMMISSION ACTION

The proposed rule was presented to and discussed by the Air Conditioning and Refrigeration Contractors Advisory Board at its meeting on June 30, 2021. The Advisory Board did not make any changes to the proposed rule. The Advisory Board voted and recommended that the proposed rule be published in the *Texas Register* for public comment. At its meeting on September 7, 2021, due to quorum issues the Advisory Board was unable to make a formal decision to recommend adoption of the proposed rule. However, none of the members expressed an objection to the adoption of the rule as published.

The Commission adopted this rule on an emergency basis at its May 18, 2021, meeting. The rule became effective on May 20, 2021, was extended for an additional 60 days by the Commission at its August 10, 2021 meeting, and will expire on November 16, 2021. The text of the emergency rule is identical to that of the proposed rule.

At its meeting on October 5, 2021, the Commission voted to adopt the proposed rule as published.

STATUTORY AUTHORITY

The adopted rule is adopted under Texas Occupations Code, Chapters 51 and 1302, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rule are those set forth in Texas Occupations Code, Chapters 51 and 1302. No other statutes, articles, or codes are affected by the adopted rule.

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

Filed with the Office of the Secretary of State on October 28, 2021.

TRD-202104335

Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
Effective date: November 17, 2021
Proposal publication date: July 23, 2021
For further information, please call: (512) 475-4879



TITLE 22. EXAMINING BOARDS

PART 30. TEXAS STATE BOARD OF EXAMINERS OF PROFESSIONAL COUNSELORS

CHAPTER 681. PROFESSIONAL COUNSELORS

SUBCHAPTER B. RULES OF PRACTICE

22 TAC §681.41

The Texas Behavioral Health Executive Council adopts amendments to §681.41, relating to General Ethical Requirements. Section 681.41 is adopted without changes to the proposed text as published in the June 18, 2021, issue of the *Texas Register* (46 TexReg 3681) and will not be republished.

Reasoned Justification.

The amended rule clarifies a licensee's duty to take reasonable action in response to actions by third-parties.

If a rule will pertain to the qualifications necessary to obtain a license; the scope of practice, standards of care, or ethical practice for a profession; continuing education requirements; or a schedule of sanctions then the rule must first be proposed to the Executive Council by the applicable board for the profession before the Executive Council may propose or adopt such a rule, see §507.153 of the Tex. Occ. Code. The rule pertains to the scope of practice, standards of care, or ethical practice for the practice of professional counseling. Therefore, this rule is covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Examiners of Professional Counselors, in accordance with §503.2015 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Tex. Occ. Code and may adopt this rule.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §503.2015 of the Tex. Occ. Code the Board previously voted and, by a majority, approved to propose the adoption this rule to the Executive Council. The rule is specifically authorized by §503.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council also adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

Filed with the Office of the Secretary of State on November 1, 2021.

TRD-202104392

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Professional Counselors

Effective date: November 21, 2021

Proposal publication date: June 18, 2021

For further information, please call: (512) 305-7706



SUBCHAPTER C. APPLICATION AND LICENSING

22 TAC §681.72

The Texas Behavioral Health Executive Council adopts amendments to §681.72, relating to Required Application Materials. Section 681.72 is adopted without changes to the proposed text

as published in the June 18, 2021, issue of the *Texas Register* (46 TexReg 3684) and will not be republished.

Reasoned Justification.

The amended rule is necessary to ensure the regulatory standard for substantial equivalency comports with the underlying statutory requirement.

If a rule will pertain to the qualifications necessary to obtain a license; the scope of practice, standards of care, or ethical practice for a profession; continuing education requirements; or a schedule of sanctions then the rule must first be proposed to the Executive Council by the applicable board for the profession before the Executive Council may propose or adopt such a rule, see §507.153 of the Tex. Occ. Code. The rule pertains to the qualifications necessary to obtain a license to practice professional counseling. Therefore, this rule is covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Examiners of Professional Counselors, in accordance with §503.2015 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Tex. Occ. Code and may adopt this rule.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §503.2015 of the Tex. Occ. Code the Board previously voted and, by a majority, approved to propose the adoption this rule to the Executive Council. The rule is specifically authorized by §503.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council also adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

Filed with the Office of the Secretary of State on November 1, 2021.

TRD-202104393

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Professional Counselors

Effective date: November 21, 2021

Proposal publication date: June 18, 2021

For further information, please call: (512) 305-7706



22 TAC §681.73

The Texas Behavioral Health Executive Council adopts amendments to §681.73, relating to Application for Art Therapy Specialty Designation. Section 681.73 is adopted with changes to the proposed text as published in the June 18, 2021, issue of the *Texas Register* (46 TexReg 3686). The rule will be republished.

Reasoned Justification.

The amended rule is necessary because the agency has received information that the American Art Therapy Association is being replaced as an accrediting body. This amended rule will allow the agency to rely upon accreditation by its successor.

If a rule will pertain to the qualifications necessary to obtain a license; the scope of practice, standards of care, or ethical practice for a profession; continuing education requirements; or a schedule of sanctions then the rule must first be proposed to the Executive Council by the applicable board for the profession before the Executive Council may propose or adopt such a rule, see §507.153 of the Tex. Occ. Code. The rule pertains to the qualifications necessary to obtain a license to practice professional counseling. Therefore, this rule is covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Examiners of Professional Counselors, in accordance with §503.2015 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Tex. Occ. Code and may adopt this rule.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §503.2015 of the Tex. Occ. Code the Board previously voted and, by a majority, approved to propose the adoption this rule to the Executive Council. The rule is specifically authorized by §503.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council also adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

§681.73. *Application for Art Therapy Specialty Designation.*

(a) A person applying for licensure with an art therapy specialty designation must:

(1) meet the requirements for an LPC license set out in this chapter;

(2) hold either:

(A) a master's or doctoral degree in art therapy that includes 700 hours of supervised practicum from an accredited school; or

(B) all of the following:

(i) a master's degree in a counseling-related field;

(ii) a minimum of 21 semester hours or the equivalent of sequential course work in the history, theory, and practice of art therapy; and

(iii) 700 hours of supervised practicum from an accredited school;

(3) have the experience requirements set out in subsection (c) of this section; and

(4) submit documentation of successful completion of the Certification Examination in Art Therapy of the Art Therapy Credentials Board.

(b) The Council will accept an individual course from an art therapy program accredited through the American Art Therapy Association (or its successor) as satisfying the education requirements set out in §681.82 of this title (relating to Academic Requirements) if not less than 75% of the course content is substantially equivalent to the content of a course required in §681.83 of this title (relating to Academic Course Content).

(c) As part of the supervised experience requirements for art therapy specialty designation under the Act, §503.303, an applicant must fulfill the requirements of §§681.91 - 681.93 of this title (relating to Application and Licensing) and must have the following:

(1) 1,500 client contact hours under supervision of a licensed professional counselor with an art therapy specialty designation, if the applicant holds a master's or doctoral degree in art therapy that includes 700 hours of practicum; or

(2) 2,000 client contact hours under supervision of a licensed professional counselor with an art therapy specialty designation, if the applicant holds a master's degree in counseling or a counseling related field and has a minimum of 21 semester hours or the equivalent of sequential course work in the history, theory, and practice of art therapy with 700 hours practicum.

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

Filed with the Office of the Secretary of State on November 1, 2021.

TRD-202104394

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Professional Counselors

Effective date: November 21, 2021

Proposal publication date: June 18, 2021

For further information, please call: (512) 305-7706



22 TAC §681.82

The Texas Behavioral Health Executive Council adopts amendments to §681.82, relating to Academic Requirements. Section 681.82 is adopted without changes to the proposed text as pub-

lished in the June 18, 2021, issue of the *Texas Register* (46 TexReg 3688). The rule will not be republished.

Reasoned Justification.

The amended rule is necessary to ensure the minimum degree requirement applies equally to counseling and counseling-related degrees. Additionally, the amended rule will streamline the application process for qualified out of state applicants.

If a rule will pertain to the qualifications necessary to obtain a license; the scope of practice, standards of care, or ethical practice for a profession; continuing education requirements; or a schedule of sanctions then the rule must first be proposed to the Executive Council by the applicable board for the profession before the Executive Council may propose or adopt such a rule, see §507.153 of the Tex. Occ. Code. The rule pertains to the qualifications necessary to obtain a license to practice professional counseling. Therefore, this rule is covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Examiners of Professional Counselors, in accordance with §503.2015 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Tex. Occ. Code and may adopt this rule.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §503.2015 of the Tex. Occ. Code the Board previously voted and, by a majority, approved to propose the adoption this rule to the Executive Council. The rule is specifically authorized by §503.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council also adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

Filed with the Office of the Secretary of State on November 1, 2021.

TRD-202104395

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Professional Counselors

Effective date: November 21, 2021

Proposal publication date: June 18, 2021

For further information, please call: (512) 305-7706



22 TAC §681.114

The Texas Behavioral Health Executive Council adopts amendments to §681.114, relating to Licensing of Military Service Members, Military Veterans, and Military Spouses. Section 681.114 is adopted without changes to the proposed text as published in the June 18, 2021, issue of the *Texas Register* (46 TexReg 3691) and will not be republished.

Reasoned Justification.

The amended rule is necessary to determine substantial equivalency for out of state licensees that are military service members, military veterans, and military spouses.

If a rule will pertain to the qualifications necessary to obtain a license; the scope of practice, standards of care, or ethical practice for a profession; continuing education requirements; or a schedule of sanctions then the rule must first be proposed to the Executive Council by the applicable board for the profession before the Executive Council may propose or adopt such a rule, see §507.153 of the Tex. Occ. Code. The rule pertains to the qualifications necessary to obtain a license to practice professional counseling. Therefore, this rule is covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Examiners of Professional Counselors, in accordance with §503.2015 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Tex. Occ. Code and may adopt this rule.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §503.2015 of the Tex. Occ. Code the Board previously voted and, by a majority, approved to propose the adoption this rule to the Executive Council. The rule is specifically authorized by §503.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council also adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

Filed with the Office of the Secretary of State on November 1, 2021.

TRD-202104396

Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Professional Counselors
Effective date: November 21, 2021
Proposal publication date: June 18, 2021
For further information, please call: (512) 305-7706

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**SUBCHAPTER D. SCHEDULE OF
SANCTIONS**

22 TAC §681.205

The Texas Behavioral Health Executive Council adopts amendments to §681.205, relating to Schedule of Sanctions. Section 681.205 is adopted without changes to the proposed text as published in the June 18, 2021, issue of the *Texas Register* (46 TexReg 3693) and will not be republished.

Reasoned Justification.

The amended rule is necessary to match other corresponding rule amendments referenced in this rule.

If a rule will pertain to the qualifications necessary to obtain a license; the scope of practice, standards of care, or ethical practice for a profession; continuing education requirements; or a schedule of sanctions then the rule must first be proposed to the Executive Council by the applicable board for the profession before the Executive Council may propose or adopt such a rule, see §507.153 of the Tex. Occ. Code. The rule pertains to a schedule of sanctions. Therefore, this rule is covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Examiners of Professional Counselors, in accordance with §503.2015 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Tex. Occ. Code and may adopt this rule.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which

vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §503.2015 of the Tex. Occ. Code the Board previously voted and, by a majority, approved to propose the adoption this rule to the Executive Council. The rule is specifically authorized by §503.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council also adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

Filed with the Office of the Secretary of State on November 1, 2021.

TRD-202104397
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Professional Counselors
Effective date: November 21, 2021
Proposal publication date: June 18, 2021
For further information, please call: (512) 305-7706

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**PART 41. TEXAS BEHAVIORAL
HEALTH EXECUTIVE COUNCIL**

CHAPTER 883. RENEWALS

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §883.1

The Texas Behavioral Health Executive Council adopts amendments to §883.1, relating to Renewal of a License. Section 883.1 is adopted without changes to the proposed text as published in the August 13, 2021, issue of the *Texas Register* (46 TexReg 4973). The rule will not be republished.

Reasoned Justification.

The amended rule modifies the assessment of late fees such that licensees need only pay a late renewal fee for late renewals, rather than a late fee in addition to the standard renewal fee.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

A commenter voiced her support for the amendment to this rule.

Agency Response.

The Executive Council appreciates the commenter's support.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

The Executive Council adopts this rule pursuant to the authority found in §507.154 of the Tex. Occ. Code which authorizes the Executive Council to set fees necessary to cover the costs of administering Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code; as well as §507.255 of the Tex. Occ. Code which requires the Executive Council to charge late renewal fees.

The Executive Council also adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

Filed with the Office of the Secretary of State on November 1, 2021.

TRD-202104391

Darrel D. Spinks

Executive Director

Texas Behavioral Health Executive Council

Effective date: November 21, 2021

Proposal publication date: August 13, 2021

For further information, please call: (512) 305-7706



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 1. MISCELLANEOUS PROVISIONS SUBCHAPTER D. LOW-THC CANNABIS FOR COMPASSIONATE USE

25 TAC §1.65

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), adopts new §1.65, relating to Compassionate-use Research and Reporting. The new section is adopted with changes to the proposed text as published in the August 20, 2021, issue of the *Texas Register* (46 TexReg 5164). The rule will be republished.

BACKGROUND AND JUSTIFICATION

The new section is necessary to comply with House Bill (H.B.) 1535, 87th Legislature, Regular Session, 2021, which amended Texas Health and Safety Code, Chapter 487 by adding Subchapter F, Compassionate-use Research and Reporting. H.B. 1535 requires the Executive Commissioner of HHSC to adopt rules to implement Subchapter F. H.B. 1535 also states that a compassionate-use institutional review board (CIRB) may be established to evaluate, approve, and oversee research programs to study the medical use of low-THC cannabis and must submit written reports that describe and assess the research findings to HHSC and the Legislature. The Executive Commissioner charged the implementation of H.B. 1535 to DSHS.

COMMENTS

The 31-day comment period ended September 20, 2021.

During this period, DSHS received comments regarding the proposed rule from seven commenters, including Texas Council for Developmental Disabilities, PharmaCann Inc., and five individuals. A summary of comments relating to new §1.65 and DSHS's responses follows.

Comment: One commenter interpreted the rule meant that DSHS would create the CIRB and questioned the purpose of creating a duplicate CIRB when current institutional review boards (IRBs) already support cannabis research looking at both cannabis as a medicine and the safety of cannabis. This commenter urged DSHS to reassign funding for the creation of this new CIRB to sponsor legitimate clinical trials.

Response: DSHS disagrees with the commenter's interpretation but made minor grammatical changes to §1.65(a) to clarify the rule language. This rule does not create another IRB. Researchers can continue to use the existing IRB system in accordance with Texas Health and Safety Code §487.253(b). There is no state funding allocated to creating a new CIRB at DSHS.

Comment: One commenter suggested the rule is unclear about what entity will establish the CIRB, and stated the rule syntax might indicate DSHS will create the CIRB but there is no defined "membership or criteria." This commenter recommended DSHS expands the rule to "constitute an effective and ethical CIRB for Texas."

Response: DSHS declines to expand the rule to constitute one CIRB for Texas. Instead of creating one CIRB hosted at DSHS, H.B. 1535 seeks to establish one or more CIRBs to evaluate and approve proposed research programs to study the medical use of low-THC cannabis. The criteria for establishing the CIRB is described in Texas Health and Safety Code §487.253.

Comment: One commenter indicated §1.65(f)(2) is ambiguous and recommended structural changes for clarification.

Response: DSHS agrees and made minor grammatical edits to clarify the rule language.

Comment: Two commenters suggested the requirement in Texas Health and Safety Code §487.253(b) that an IRB be affiliated with a dispensing organization creates a potential for unethical behavior and limits the researchers' ability to evaluate risks and benefits of a larger range of THC products.

Response: DSHS declines to revise the rule in response to this comment. Texas Health and Safety Code §487.253 requires the CIRB to be affiliated with a dispensing organization and meet at least one other condition outlined in §487.253(b)(1) - (5).

Comment: One commenter asked if conditions added in §1.65 will also be added to the list of conditions in Texas Administrative Code, Title 25 §1.61.

Response: DSHS declines to revise the rule in response to this comment. Texas Administrative Code Title 25 §1.61 is specific to Texas Occupations Code §169.001(1-a), related to incurable neurodegenerative diseases.

Comment: One commenter expressed support for H.B. 1535 and commended Texas Legislators for creating an informed path to study the impacts of cannabis in clinical treatment settings.

Response: No change is needed in response to this comment.

Comment: One commenter stated that Texas made the wrong decision by not leaving medical decisions for each individual patient to their physician. This commenter also recommended "changes with many organic choices of cannabis oils, edibles, flowers."

Response: DSHS declines to revise the rule in response to this comment. Texas Health and Safety Code, Chapter 487, Subchapter F, does not restrict the type of low-THC cannabis that can be studied. Texas Occupations Code §169.001(3) defines Low-THC Cannabis as the plant *Cannabis sativa* L., and any part of that plant or any compound, manufacture, salt, derivative, mixture, preparation, resin, or oil of that plant that contains not more than one percent by weight of tetrahydrocannabinols.

Comment: One commenter suggested adding details about how to become a "cannabis caregiver" and allowing patient caregivers to "cultivate their medication" with a physician assuming "the right to terminate patient licensing rendering the caregiver license invalid."

Response: DSHS disagrees and declines to add details relating to "cannabis caregivers." The licensing for cannabis cultivation is beyond the scope of this rule. DSHS does have the statutory authority to set such standards.

Comment: One commenter recommended including asthma to the rule.

Response: DSHS declines to revise the rule in response to this comment. Section 1.65 does not dictate the medical conditions for proposed studies. A CIRB established in accordance with Texas Health and Safety Code §487.253 will evaluate and approve proposed conditions.

STATUTORY AUTHORITY

The new section is adopted under 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, Chapter 487, Subchapter F.

§1.65. *Compassionate-use Research and Reporting.*

(a) One or more compassionate-use institutional review boards (CIRBs) may be established to evaluate and approve proposed research to study the medical use of low-THC cannabis, in accordance with Texas Health and Safety Code §487.253.

(b) When seeking approval from a CIRB, the principal investigator of a proposed research program must clearly identify the medical condition for which a patient will be treated with low-THC cannabis.

(c) A principal investigator shall only study the use of low-THC cannabis in treating the medical condition identified in the proposed research program application approved by a CIRB.

(d) The CIRB shall specify an end date to any study it approves. A study may terminate earlier than the date specified by the CIRB if the principal investigator chooses to end the study early. However, a CIRB shall have authority to suspend or terminate approval of research that is not being conducted in accordance with the CIRB's requirements or that has been associated with unexpected serious harm to subjects.

(e) Approval of a research program by a CIRB is not transferable to another research program.

(f) A medical condition may be treated with low-THC cannabis as part of an approved research program if:

(1) treatment is overseen by a CIRB;

(2) treatment is administered by a physician in accordance with Texas Occupations Code §169.002 and the physician is certified by a CIRB to participate in the program;

(3) the patient is a resident of Texas; and

(4) the patient or, if the patient is a minor or lacks capacity to consent, a parent, guardian, or conservator, signs a written informed consent form provided by the approved research program.

(g) Reports.

(1) Not later than October 1 of each year, each CIRB must submit a written report that describes and assesses the research findings of each approved research program to the Texas Department of State Health Services.

(2) Not later than October 1 of each even-numbered year, each CIRB must submit a written report that describes and assesses the research findings of each approved research program to the Legislature.

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

Filed with the Office of the Secretary of State on October 28, 2021.

TRD-202104355

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Interim General Counsel

Department of State Health Services

Effective date: November 17, 2021

Proposal publication date: August 20, 2021

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TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 555. NURSING FACILITY ADMINISTRATORS

The Texas Health and Human Services Commission (HHSC) adopts the repeal of §§555.4 and 555.11 - 555.16; new §§555.3 and 555.11 - 555.18; and amendments to §§555.1, 555.2, 555.31 - 555.42, and 555.51 - 555.57, in Texas Administrative Code (TAC) Title 26, Part 1, Chapter 555, concerning Nursing Facility Administrators.

Amendments to §§555.2, 555.32, 555.41, 555.42, 555.55, and 555.56, and new §555.18 are adopted with changes to the proposed text as published in the May 7, 2021, issue of the *Texas Register* (46 TexReg 2985). These rules will be republished.

Amendments to §§555.1, 555.31, 555.33 - 555.40, 555.51 - 555.54, and 555.57; new §§555.3 and 555.11 - 555.17; and the repeal of §§555.4 and 555.11 - 555.16 are adopted without changes to the proposed text as published in the May 7, 2021, issue of the *Texas Register* (46 TexReg 2985). These rules will not be republished.

BACKGROUND AND JUSTIFICATION

The adopted rules amend existing, add new, and repeal portions of the nursing facility administrators (NFA) licensure requirements to correspond with the National Association of Long Term Care Administrators Board (NAB) requirements, including reciprocity. This includes adopting the NAB Administrator-in-Training (AIT) manual and preceptor training and allowing more flexibility with reciprocity, such as license by endorsement and accepting internships or AIT completed in other states or a NAB accredited program.

The adopted rules amend Subchapter A, General Information, by adding new §555.3, Schedule of Fees. The new §555.3 adjusts the administrative and licensure fees collected by HHSC and other administrative fees collected by the NAB designee or contractor.

The adopted rules amend Subchapter C, Licenses, §555.31 and §555.41, to implement House Bill 1342, 86th Legislature, Regular Session, 2019, which requires HHSC to eliminate 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. This includes requiring a licensing authority to provide an applicant an opportunity to submit relevant information in the event of a potential denial of a license based on prior criminal convictions.

The adopted rules amend Subchapter C, Licenses, §555.42, to implement Senate Bill 1200, 86th Legislature, Regular Session, 2019, which allows military spouses who have occupational licensing from other states to engage in that occupation without obtaining an additional license by following the notification and reciprocal licensing procedures laid out in the rule.

The adopted rules amend Subchapter A, General Information, §555.2, to implement House Bill 139, 87th Legislature, Regular Session, 2021, which added the term Space Force to the Occupations Code definition of Armed Forces.

NFAs will be able to take required training, to become or maintain certification as a preceptor, at their convenience and via computer-based training (CBT), instead of having to travel to an in-person training location. The in-person training is currently held twice a year. On-demand CBT will allow preceptors to complete the training at a time that works for them, and without incurring travel costs. Allowing reciprocity for an individual credentialed as a Health Services Executive will also streamline the process for obtaining credentialing as an NFA.

The adopted rules also respond to challenges presented by the COVID-19 pandemic and the need for greater awareness and emphasis on infection control and personal protective equipment by increasing infection control training and continuing education requirements for NFAs.

COMMENTS

The 31-day comment period ended June 7, 2021. During this period, HHSC received comments regarding the proposed rules from four commenters: representatives from the Texas Health Care Association, LeadingAge Texas, and Texas Long-Term Care Ombudsman, and a private citizen. A summary of comments relating to the NFA proposed rules and HHSC's responses follows.

Comment: Regarding §555.2, Definitions, a commenter had a concern with the definition of abuse. The commenter indicated that because licensure of NFAs is very closely related to the operation of nursing facilities, the commenter recommends making definitions consistent with the definitions used in the nursing facility regulations. The commenter also requested that the definition of abuse not include the concept of negligence.

Response: HHSC declines to make the requested change. The definition of abuse in the NFA rules is consistent with the definitions of abuse in the nursing facility rules and Texas Health and Safety Code §242.061 and §260A.001. These provisions all include negligent acts in the definition of abuse. Accordingly, HHSC does not believe it is able to remove negligent acts from the definition of abuse in the NFA rules.

Comment: Regarding §555.11(a)(4) and (5), Application Requirements, a commenter requested that HHSC change the education and experience requirements to be an NFA. The commenter recommended that an NFA have, at a minimum, a bachelor's degree and hands-on health care experience, such as experience as a registered nurse, nurse practitioner, or physician. The commenter believes that NFAs with hands-on health care experience would improve the quality of care for nursing facility residents.

Response: HHSC declines to make the requested change. The minimum requirement for a license is a bachelor's degree. Currently, there is no requirement for health care experience. To limit applicants to registered nurses, advanced practice registered nurses, and physicians would severely limit the applicant pool and would also pull individuals from clinical care to be NFAs.

Comment: A commenter requested a copy of the Reciprocity Licensing Questionnaire mentioned in §555.11(c)(1).

Response: HHSC will provide the reciprocity questionnaire when it is finalized.

Comment: A commenter requested a good cause exception to the requirement in §555.11(e) that an applicant for an NFA license must meet all the requirements for licensure within one year after HHSC receives the application for licensure. The com-

menter recommends the good-cause exception so that an applicant has longer than one year to meet the requirements if the applicant can show good cause for the delay, such as residing in a declared disaster during a portion of the year following the application.

Response: HHSC declines to make the requested change. The applicant determines when they submit their application for licensure. HHSC does not specify when they must submit an application for initial license. The exception for natural disasters could be included in a governor's waiver approved during the disaster.

Comment: Regarding the licensure requirements in §555.12(a)(5) for an applicant with an NFA license issued by a state other than Texas, a commenter expressed concern that the rules appear to require three-years management experience in addition to a baccalaureate degree or a master's degree. The commenter's main concern is that this would place an unreasonable burden on out-of-state administrators in excess of the requirements for an in-state administrator. The commenter recommended that an applicant with an NFA license issued by a state other than Texas and a baccalaureate degree in health administration, health services administration, health care administration, or nursing be required to have two years of management experience rather than three.

Response: HHSC declines to make a change to the rules in response to this comment. The three years of management experience or a master's degree and one year of management experience is a way for the individual to have a lower internship requirement. Management experience or a master's degree is not a requirement of licensure. If the applicant does not have the management experience or a master's degree, they are required to have the 1,000-hour internship, which can be satisfied through an internship received in Texas or another state.

Comment: Regarding §555.12, Licensure Requirements, a commenter expressed concern that the rules require an out-of-state administrator to have either a baccalaureate degree in certain subjects or a baccalaureate degree in any subject with 15 hours of courses in the NAB domains, which are resident care and quality of life, human resources, finance, physical environment and atmosphere, and leadership and management. The commenter's concern is that this would place an unreasonable burden on out-of-state administrators. The commenter also expressed concern that requiring a baccalaureate degree would impede an NFA licensed in another state who does not have a baccalaureate degree from moving to Texas. The commenter recommended creating a mentor program that would allow out-of-state applicants to apply for a provisional license without meeting all the requirements for licensure.

Response: HHSC declines to make the requested change. An applicant in Texas must meet the same requirements as an applicant licensed in another state. If an applicant's baccalaureate degree is in health administration, health services administration, health care administration, or nursing and includes coursework encompassing the five domains of the NAB, the applicant does not also need the additional hours of courses in the NAB domains. Eliminating one or more of these requirements for out-of-state applicants has the potential to reduce the quality of care a nursing facility resident receives. Requiring course work in the NAB domains for an applicant with a baccalaureate degree in any subject ensures potential administrators can be successful in the complex task of running a NF. Furthermore, 67 percent of US jurisdictions require a baccalaureate degree to become an NFA. Thus, HHSC does not believe that requiring a

baccalaureate degree will significantly impact the availability of NFAs in Texas.

Comment: Regarding §555.13(a)(2), Internship Requirements, a commenter requests that HHSC revise the requirement that an internship be in a nursing facility with a minimum of 60 beds to allow greater flexibility for smaller nursing facilities to onboard and train future NFAs. The commenter indicates the current 60-bed requirement does not consider actual occupancy. The commenter recommends lowering the 60-bed minimum to 40 beds or including an occupancy threshold as an alternative to the 60-bed requirement that reflects current statewide occupancy rates. The commenter states that in terms of training standards, a 40-bed nursing facility that maintains full occupancy can offer the same if not a better experience than a 60-bed facility at 65 percent occupancy or less. As an alternative, the commenter suggests that the rule permit HHSC to grant an exception to the 60-bed requirement for any facility, not just a facility located in a rural area and more than 50 miles away from a 60-bed facility.

Response: HHSC declines to make the requested changes. The adopted rule adds an exception to the 60-bed requirement. The rule language allows for flexibilities geared toward smaller rural providers that have less than 60-beds. HHSC data showed that most regions have an adequate number of 60-bed plus facilities to provide internship opportunities. The data also showed that facilities with less than 60-beds were concentrated in more rural parts of the state.

Comment: Regarding §555.13(a)(5), Internship Requirements, and §555.35(a)(4), Continuing Education Requirements for License Renewal, a commenter recommends requiring training on resident rights for licensure and continuing education. The commenter notes that they routinely identify training deficits in administrators, including facility administrators, who do not allow residents to make their own choices about their care, prohibit residents from leaving the facility, and open residents' mail, despite those rights never being waived.

Response: HHSC declines to make the requested changes. The five domains of the NAB include resident rights. The AIT manual and the examination also cover resident rights.

Comment: Regarding §555.18(a), Examinations and Requirements to Take the Examinations, a commenter is concerned that the rule conflicts with §555.12 and §555.13 and recommends we revise or delete the conflicting language.

Response: HHSC agrees with the comment and has removed the conflicting rule language in §555.18(a). HHSC also removed an unnecessary reference to the state examination.

Comment: A commenter noted that §§555.31, 555.32, 555.33, 555.34, and 555.37 all refer to HHSC and not a specific division of HHSC that handles licensing and credentialing. To clarify the department of HHSC that performs these tasks, the commenter recommends that each section of the rules clarify that NFA licensing is administered through the Long Term Care Licensing and Credentialing Division.

Response: HHSC declines to make the requested change. Specifying an HHSC division in rule limits HHSC's ability to change the division or name of the division that handles a specific task. A rule amendment would have to be implemented prior to HHSC being able to make these kinds of organizational changes.

Comment: A commenter requested that HHSC remove the requirement in §555.32(a)(4)(B) that an applicant with a license in

another state have two years of experience as an administrator to be eligible for a provisional license. The commenter stated there is a shortage of NFAs and the requirements for licensure are too stringent. The commenter proposed removing the experience requirement altogether and permitting any licensed NFA to get a provisional license.

Response: HHSC agrees to reduce the experience requirement from two years to one. This change will allow more individuals who do not meet the requirements for reciprocity to meet the requirements for a provisional license. One year of full-time experience is about 2,000 hours. Given that an internship is 1,000 hours of intensive training with a preceptor, 2,000 hours of work experience is substantially equivalent.

Comment: Regarding §555.35(a)(3), which requires continuing education in infection control and personal protective equipment (PPE) use every two years, a commenter is concerned this requirement is an overreaction to the COVID-19 pandemic and that infection control practices will not change every two years, making this requirement unnecessary. The commenter recommended that the rule require this continuing education every four years. The commenter also requested to see the infection control and PPE course created by HHSC.

Response: HHSC declines to make the requested change. Infection control is one of the top cited tags every year for NFAs. The requirement for refresher training every two years is not only meant to address any changes within the two years, but to serve as a reminder or refresher on the information in the course. NFAs may not always be involved in day-to-day utilization of the information but are expected to lead people who are and develop and implement infection control policies and procedures. The infection control and PPE course created by HHSC is now available on the HHSC website.

Comment: A commenter indicated that §555.37(a)(1), which permits HHSC to refuse to renew a license when the licensee commits a violation of §555.54, does not make clear whether HHSC can deny a license to an NFA who enters into a settlement agreement. The commenter recommended excluding settlement agreements from reasons why a license may be denied.

Response: HHSC declines to make the requested change. The rule language in §555.54(10) specifies that HHSC may sanction a licensee who does not comply with the settlement agreement rather than a licensee who enters into a settlement agreement.

Comment: Regarding §555.41(c), which concerns the licensure of persons with criminal backgrounds, a commenter is concerned the language implies that a conviction for certain crimes would automatically bar an application for licensure. The commenter recommends that this language be changed to give HHSC discretion to deny a license to an applicant who is convicted of one of the listed crimes.

Response: HHSC declines to make the requested change. The language in the rule allows some discretion in some circumstances, as required by Occupations Code Chapter 53. If an applicant has been convicted of a crime listed in §555.41(c), HHSC will propose to deny the applicant's application and give the applicant due process, as required by §555.41(g), to address the factors listed in §555.41(d). Under Chapter 53 of the Occupations Code, HHSC must give an applicant a chance to explain why HHSC should not deny the license based on a previous conviction, even if that conviction is an automatic bar to licensure or employment. The language in this provision was drafted

to comply with the changes made in 2019 to Chapter 53 of the Occupations Code.

Comment: Regarding §555.51(b), Referral and Complaint Procedures, a commenter recommended that the rule section include specific contact information to file a complaint against an NFA, rather than directing complainants to the HHSC website. The commenter states that, at a minimum, a toll-free phone number and email address should be included; otherwise, it is unclear where on the HHSC website to find this information.

Response: HHSC declines to make the requested change. The HHSC website has details on the process for filing a complaint. In addition, putting specific phone numbers or addresses in rule limits the ability to make changes to HHSC's contact information. HHSC would have to initiate a rule project in order to update contact information in this section.

Comment: A commenter recommends deleting §555.53(c), which provides that HHSC may issue a hearing notice for the original sanction proposed before the informal review if the licensee does not accept a modified sanction resulting from an informal review.

Response: HHSC declines to make the requested change. The purpose of the informal review is for the NFA to present HHSC additional information or documentation for the purpose of dismissing or reducing the originally proposed sanction. If the informal review results in HHSC proposing a modified sanction, an NFA has the choice to either accept the modified sanction or not. If the NFA chooses not to accept the modified sanction, then HHSC may proceed to impose the original sanction, which the NFA may either accept or contest through a formal hearing.

Comment: Regarding §555.55(a)(1), a commenter is concerned that with recent staffing shortages related to the public health emergency that an NFA may not be able to employ sufficient staff to adequately meet the needs of nursing facility residents as determined by care outcomes, which may result in sanctions against their license. The commenter proposes the rule be changed to "licensee must use all reasonable resources available to employ sufficient staff to adequately meet the needs of nursing facility residents as determined by care outcomes."

Response: HHSC declines to make the requested change. By using the terms "sufficient" and "adequately," HHSC offers flexibility on this requirement.

Comment: Regarding §555.55(a)(16), a commenter is concerned sanctions could be enforced because the rule does not depend on the NFA knowingly allowing an employee, contractor, or volunteer to make misrepresentations or fraudulent statements about the operation of a nursing facility. The commenter states other sections of the rule require that an administrator have knowledge of a wrongful act before being subject to penalty. The commenter recommends the following language: A licensee must not make or knowingly allow an employee, contractor, or volunteer to make misrepresentations or fraudulent statements about the operation of a nursing facility.

Response: HHSC agrees with the comment and has added the term "knowingly" to §555.55(a)(16).

Comment: Regarding §555.55(a)(17), a commenter is concerned sanctions could be enforced because the rule does not depend on the NFA knowingly allowing an employee's, a contractor's, or another person's action or inaction to result in harassment or intimidation of any person for purposes of coercing that person to use the services or equipment of a particular

health agency or facility. The commenter states other sections of the rule require that an administrator have knowledge of a wrongful act before being subject to penalty. The commenter recommends the following language: A licensee must not knowingly allow an employee's, a contractor's, or another person's action or inaction to result in harassment or intimidation of any person for purposes of coercing that person to use the services or equipment of a particular health agency or facility.

Response: HHSC agrees with the comment and has added the term "knowingly" to §555.55(a)(17).

Comment: A commenter is concerned that the language in §555.56(d), permanently disqualifying a licensee for allowing their license to expire instead of accepting a proposed license revocation, is too harsh a penalty. The commenter requests a process by which a person may re-apply after training, application, and a set time period. The commenter recommends the following language: "A licensee allowing a license to expire instead of accepting a proposed license revocation is disqualified from licensure in Texas for a period of no less than five years following the expiration of the prior license. The applicant NFA must demonstrate an additional 12 hours of education on the topic leading to the prior license revocation action before applying for re-licensure."

Response: HHSC partially agrees with this comment. HHSC retained the language that the licensee may be permanently disqualified from licensure and added that, in certain circumstances at HHSC's discretion, the licensee may be disqualified from licensure for five years.

HHSC changed the term "Long-term Care Regulatory" to the term "Long-term Care Regulation," in §555.2(16) and (31), which is now the name of the department of HHSC responsible for long-term care regulation.

HHSC updated the Texas Administrative Code reference in §555.2(35) from 40 TAC Chapter 19 to 26 TAC Chapter 554. Chapter 19 was administratively transferred to Chapter 554 effective January 15, 2021.

HHSC amended §555.18(b) to remove a reference to an applicant with a health services executive (HSE) qualification completing a 500-hour internship. An applicant with an HSE qualification is not required to complete a 500-hour internship.

HHSC amended §555.42 to add a new subsection (b) and renumbered the rule accordingly. This new subsection permits a military spouse to apply for a waiver of the application fee and the initial license fee. This change was made for consistency with other HHSC Long-term care regulation rules. HHSC also amended §555.42(g)(3)(C) to provide that a military spouse may prove residence in this state with a copy of the permanent change of station order for the military service member to whom the military spouse is married.

SUBCHAPTER A. GENERAL INFORMATION

26 TAC §§555.1 - 555.3

STATUTORY AUTHORITY

The amendments and new section are adopted under 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 Government Code §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 §242.302, which grants HHSC the general authority to establish rules consistent with that subchapter, and directs HHSC to establish qualifications of applicants for licenses and renewal of licenses issued under that subchapter, as well as reasonable and necessary administration and implementation fees, and continuing education hours required to renew a license under that subchapter.

§555.2. Definitions.

The words and terms in this chapter have the following meanings, unless the context clearly indicates otherwise:

(1) Abuse--Negligent or willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical or emotional harm or pain to a resident; or sexual abuse, including involuntary or nonconsensual sexual conduct that would constitute an offense under Texas Penal Code §21.08 (relating to Indecent Exposure) or Texas Penal Code Chapter 22 (relating to Assaultive Offenses), sexual harassment, sexual coercion, or sexual assault.

(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) Administrator-in-training (AIT)-- A person undergoing an internship under a HHSC-approved certified preceptor.

(4) Administrator of Record--The individual who is listed as the facility's licensed nursing facility administrator with the HHSC Licensure and Credentialing Section.

(5) Applicant--A person applying for a Texas nursing facility administrator (NFA) license.

(6) 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.

(7) Complaint--An allegation that an NFA violated one or more of the licensure rules or statutory requirements.

(8) Domains of the National Association of Long Term Care Administrator Boards (NAB)--The five categories for education and continuing education of the NAB, which are resident care and quality of life; human resources; finance; physical environment and atmosphere; and leadership and management.

(9) Formal hearing--A hearing held by the State Office of Administrative Hearings to adjudicate a sanction taken by HHSC against an NFA.

(10) Good standing--In Texas an NFA is in good standing if the NFA is in compliance with the rules in this chapter and, if applicable, the terms of any sanction imposed by HHSC. An NFA licensed or registered in another state is in good standing if the NFA is in compliance with the NFA licensing or registration rules in the other state and, if applicable, the terms of any sanction imposed by the other state.

(11) Health services executive (HSE) --An individual who has entry-level competencies of a nursing facility, assisted living community, or home and community-based service provider in this jurisdiction or another jurisdiction. The HSE has met NAB's minimum standards for qualification as an HSE.

(12) HHSC--The Texas Health and Human Services Commission.

(13) Internship--The training period in a nursing facility for an AIT. When HHSC accepts internship hours completed in another state, the hours must be completed in a facility that qualifies as a nursing facility or nursing home under the laws of the other state.

(14) License--An NFA license or provisional license.

(15) Licensee--A person licensed by HHSC as an NFA.

(16) Long-term Care Regulation--The department of HHSC responsible for long-term care regulation, including determining nursing facility compliance with licensure and certification requirements and the regulation of NFAs.

(17) Management experience--Full-time employment as a department head, assistant nursing facility administrator, or licensed professional supervising two or more employees in a nursing facility, including a nursing facility outside of Texas, or skilled nursing hospital unit.

(18) Military service member--A person who is on active duty.

(19) Military spouse--A person who is married to a military service member.

(20) Military veteran--A person who has served on active duty and who was discharged or released from active duty.

(21) Misappropriation of resident property--Taking, secretion, misapplication, deprivation, transfer, or attempted transfer to any person not entitled to receive any property, real or personal, or anything of value belonging to or under the legal control of a resident without the effective consent of the resident or other appropriate legal authority, or the taking of any action contrary to any duty imposed by federal or state law prescribing conduct relating to the custody or disposition of property of a resident

(22) NAB examination--The national examination developed by NAB that applicants must pass in combination with the state licensure examination to be issued a license to practice nursing facility administration in Texas. The NAB examination consists of two modules: Core of Knowledge and Line of Service.

(23) National Association of Long Term Care Administrator Boards (NAB)--State boards or agencies responsible for the licensure of NFAs.

(24) National Continuing Education Review Service (NCERS)--The part of NAB that approves and monitors continuing education activities for NFAs.

(25) Neglect--Failure to provide goods or services, including medical services, that are necessary to avoid physical or emotional harm, pain, or mental illness.

(26) Nursing facility--A facility licensed in accordance with THSC Chapter 242.

(27) Nursing Facility Administrator (NFA)--An individual licensed to engage in the practice of nursing facility administration, regardless of whether the individual has an ownership interest in the facility.

(28) Nursing Facility Administrators Advisory Committee (NFAAC)--The advisory committee established by THSC §242.303 (the text of Subchapter I is effective until federal determination of failure to comply with federal regulations).

(29) Preceptor--An NFA certified by HHSC to provide supervision to an AIT.

(30) Professional examination services (PES)--The testing agency that administers the NAB and state examinations to applicants seeking licensure as an NFA.

(31) Referral--A recommendation made by Long-term Care Regulation staff to investigate an NFA's compliance with licensure requirements when deficiencies or substandard quality of care deficiencies are found in a nursing facility, as required by Title 42 Code of Federal Regulations §488.325.

(32) Sanctions--An adverse licensure action against an NFA. In Texas, a sanction is one of the actions listed in §555.57 of this chapter (relating to Schedule of Sanctions).

(33) Self-study course--A NAB-approved education course that an individual pursues independently to meet continuing education requirements for license renewal.

(34) State examination--The state licensure examination that applicants must pass, in combination with the NAB examination, to be issued a license to practice nursing facility administration in Texas.

(35) Substandard quality of care--For a Medicare- or Medicaid-certified facility, this term has the meaning given in Title 42 Code of Federal Regulations §488.301. For a licensed-only facility, this term has the meaning given in Texas Administrative Code, Title 26, Part 1, §554.101(139).

(36) THSC--Texas Health and Safety Code.

(37) Traditional business hours--Monday through Friday from 8:00 a.m. until 5:00 p.m.

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

Filed with the Office of the Secretary of State on October 25, 2021.

TRD-202104299

Karen Ray

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Health and Human Services Commission

Effective date: November 14, 2021

Proposal publication date: May 7, 2021

For further information, please call: (512) 761-6041



26 TAC §555.4

STATUTORY AUTHORITY

The repeal is adopted under 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 Government Code §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 §242.302, which grants HHSC the general authority to establish rules consistent with that subchapter, and directs HHSC to establish qualifications of applicants for licenses and renewal of licenses issued under

that subchapter, as well as reasonable and necessary administration and implementation fees, and continuing education hours required to renew a license under that subchapter.

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

Filed with the Office of the Secretary of State on October 25, 2021.

TRD-202104300

Karen Ray

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Health and Human Services Commission

Effective date: November 14, 2021

Proposal publication date: May 7, 2021

For further information, please call: (512) 761-6041



SUBCHAPTER B. REQUIREMENTS FOR LICENSURE

26 TAC §§555.11 - 555.16

STATUTORY AUTHORITY

The repeals are adopted under 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 Government Code §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 §242.302, which grants HHSC the general authority to establish rules consistent with that subchapter, and directs HHSC to establish qualifications of applicants for licenses and renewal of licenses issued under that subchapter, as well as reasonable and necessary administration and implementation fees, and continuing education hours required to renew a license under that subchapter.

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

Filed with the Office of the Secretary of State on October 25, 2021.

TRD-202104301

Karen Ray

Chief Counsel

Health and Human Services Commission

Effective date: November 14, 2021

Proposal publication date: May 7, 2021

For further information, please call: (512) 761-6041



26 TAC §§555.11 - 555.18

STATUTORY AUTHORITY

The new sections are adopted under 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 Government Code §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 §242.302, which grants HHSC the general authority to establish rules consistent with that subchapter, and directs HHSC to establish qualifications of applicants for licenses and renewal of licenses issued under that subchapter, as well as reasonable and necessary administration and implementation fees, and continuing education hours required to renew a license under that subchapter.

§555.18. *Examinations and Requirements to Take the Examinations.*

(a) Except as provided in subsection (b) of this section, an applicant seeking a license as a nursing facility administrator (NFA) from the Texas Health and Human Services Commission (HHSC) must pass the following examinations:

- (1) the state examination on nursing facility requirements in Texas; and
- (2) the NAB examinations.

(b) An applicant who meets the academic and internship requirements by presenting evidence of a health services executive (HSE) qualification must pass the state examination.

(c) An applicant registers for examination at the designated NAB website by:

- (1) submitting an application for approval to take the examination; and
- (2) paying the applicable state examination and NAB examination fees on-line.

(d) HHSC sends an e-mail notifying an applicant of the applicant's eligibility to take the examinations.

(e) An applicant must not take any examination without HHSC approval.

(f) 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.

(g) An applicant completes the on-line state and NAB examinations at professional examination services.

(h) HHSC notifies an applicant of examination scores after receiving examination results.

(i) An applicant who fails an examination and wants to retake it must pay the appropriate state or NAB examination fee.

(j) An applicant who fails the state or NAB examination three consecutive times must complete an additional 1,000-hour administrator-in-training internship before retaking the examination.

(k) An applicant previously licensed as an NFA and whose license expired 365 or more days before the applicant reapplies for a license or who voluntarily surrendered the license must retake the state examination to obtain a new license.

(I) An applicant previously licensed as an NFA and whose license expired 365 or more days before the applicant reapplies for a license, or who voluntarily surrendered the license, must retake the NAB examination to obtain a new license if more than five years have passed since the applicant passed the NAB examination.

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

Filed with the Office of the Secretary of State on October 25, 2021.

TRD-202104302

Karen Ray

Chief Counsel

Health and Human Services Commission

Effective date: November 14, 2021

Proposal publication date: May 7, 2021

For further information, please call: (512) 761-6041



SUBCHAPTER C. LICENSES

26 TAC §§555.31 - 555.42

STATUTORY AUTHORITY

The amendments are adopted under 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 Government Code §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 §242.302, which grants HHSC the general authority to establish rules consistent with that subchapter, and directs HHSC to establish qualifications of applicants for licenses and renewal of licenses issued under that subchapter, as well as reasonable and necessary administration and implementation fees, and continuing education hours required to renew a license under that subchapter.

§555.32. *Provisional License.*

(a) The Texas Health and Human Services Commission (HHSC) issues a provisional license to an applicant currently licensed or registered as a nursing facility administrator (NFA) in another state who submits the following to HHSC:

(1) complete and notarized Provisional Licensure Questionnaire and Nursing Facility Administrator License Application forms;

(2) the application fee;

(3) the provisional license fee; and

(4) proof of the following:

(A) a license and good standing status in another state with licensing requirements substantially equivalent to the Texas licensure requirements;

(B) employment for at least one year as an administrator of record of a nursing facility in applicant's state;

(C) a passing score on the National Association of Long Term Care Administrator Boards examination and the state examination; and

(D) sponsorship by an NFA licensed by HHSC and who is in good standing, unless HHSC waives sponsorship based on a demonstrated hardship.

(b) A provisional license expires 180 days from the date of issue.

(c) HHSC issues an initial license certificate to a provisional license holder who satisfies the requirements for a license in §555.12 of this chapter (relating to Licensure Requirements) and §555.31 of this subchapter (relating to Initial license).

(d) HHSC may determine that a criminal conviction or sanction taken in another state is a basis for pending or denying a provisional license.

§555.41. *Licensure of Persons with Criminal Backgrounds.*

(a) Subject to subsection (f) of this section, the Texas Health and Human Services Commission (HHSC) may disqualify an applicant or licensee from taking an examination required by §555.18 of this chapter (relating to Examinations and Requirements to Take the Examinations), may deny an initial or renewal application for licensure, or impose a sanction listed in §555.57 of this chapter (relating to Schedule of Sanctions) if the applicant or licensee has been convicted of:

(1) an offense that directly relates to the duties and responsibilities of a nursing facility administrator (NFA);

(2) an offense listed in Article 42A.054, Code of Criminal Procedure; or

(3) a sexually violent offense, as defined by Article 62.001, Code of Criminal Procedure.

(b) HHSC considers the following when determining if a criminal conviction directly relates to the duties, responsibilities, and job performance of an NFA:

(1) the nature and seriousness of the crime;

(2) the extent to which a license may offer an individual an opportunity to engage in the same type of criminal activity; and

(3) the relationship of the crime to the ability or fitness required to perform the duties of an NFA.

(c) HHSC has determined that a conviction of the following crimes relates to nursing facility administration and reflects an inability to perform or tendency to inadequately perform as an NFA. Accordingly, HHSC proposes to deny an application for licensure from an applicant who has been convicted of any of the following crimes:

(1) intentionally acting as an NFA without a license;

(2) attempting or conspiring to commit or committing any offense under the following chapters of the Texas Penal Code:

(A) Title 5 (offenses against persons), including homicide, kidnapping, unlawful restraint, and sexual and assault offenses;

(B) Title 7 (offenses against property), including arson, criminal mischief, robbery, burglary, criminal trespass, theft, fraud, computer crimes, telecommunications crimes, money laundering, and insurance fraud;

(C) Title 9 (offenses against public order and decency), including disorderly conduct and public indecency; or

(D) Title 10 (offenses against public health, safety, and morals), including weapons, gambling, conduct affecting public health, intoxication, and alcoholic beverage offenses;

(3) committing an offense listed in Texas Health and Safety Code (THSC) §250.006(a) or (c); or

(4) committing an offense listed in THSC §250.006(b) within the last five years.

(d) If HHSC determines an applicant or licensee has a criminal conviction that directly relates to the duties and responsibilities of an NFA, HHSC considers the following in determining whether to take an action authorized by subsection (a) of this section:

(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.

(e) HHSC may consider other crimes and pertinent information as a potential basis for denying an initial or renewal application.

(f) Convictions under federal law or the laws of another state or nation for offenses containing elements similar to offenses listed in subsection (c) of this section may be a basis for HHSC denying an initial application or imposing sanctions.

(g) A notice required under subsection (a) of this section must contain, as applicable:

(1) a statement that the applicant or licensee is disqualified from receiving the license or being examined for the license because of the applicant's or licensee's prior conviction of an offense specified in the notice, as provided in subsection (a)(2) and (a)(3) of this section; or

(2) a statement that:

(A) the final decision of the licensing authority to deny the applicant or licensee a license, or the opportunity to be examined for the license, will be based on the factors listed in subsection (d) of this section, as provided in subsection (a)(1) of this section; and

(B) the applicant or licensee has the responsibility to obtain and provide to HHSC evidence regarding the factors listed in subsection (d) of this section.

(h) If HHSC suspends or revokes a license, or denies an applicant or licensee a license or the opportunity to be examined for a license because of the applicant's or licensee's prior conviction of an offense, HHSC shall notify the person in writing of:

(1) the reason for the suspension, revocation, denial, or disqualification including any factor considered under subsection (b) and (d) of this section that served as the basis for suspension, revocation, denial, or disqualification;

(2) the procedure for judicial review; and

(3) the earliest date the applicant or licensee may appeal HHSC's action.

§555.42. *Alternate Licensing Requirements for Military Service Personnel.*

(a) Fee waiver based on military experience.

(1) The Texas Health and Human Services Commission (HHSC) waives the application fee described in §555.11(a)(2) of this chapter (relating to Application Requirements) and the initial license fee described in §555.31(a)(2) of this chapter (relating to Initial License) 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 initial license application submitted to HHSC in accordance with §555.11 of this chapter. The applicant must include with the request:

(A) documentation of the applicant's status as a military service member or military veteran that is acceptable to HHSC; and

(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 licensure under this chapter.

(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 for a military spouse.

(1) HHSC waives the application fee described in §555.11(a)(2) of this chapter and the initial license fee described in §555.31(a)(2) of this chapter for an applicant who is a military spouse if HHSC receives and approves a request for a waiver of fees from the applicant and documentation of the applicant's status as a military spouse.

(2) Documentation of military status that is acceptable to HHSC includes:

(A) a copy of a marriage certificate issued to the applicant by a state of the United States or a foreign government; and

(B) 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) If HHSC requests additional documentation, the applicant must submit the requested documentation.

(c) Fee waiver based on license issued by another jurisdiction.

(1) HHSC waives the application fee described in §555.11(a)(2) of this chapter and the provisional initial license fee

described in §555.32(a)(3) of this chapter (relating to Provisional License) for an applicant if HHSC receives and approves a request for a waiver of fees in accordance with this subsection.

(2) To request a waiver of fees under this subsection, an applicant must include a written request for a waiver of fees with the applicant's provisional license application that is submitted to HHSC in accordance with §555.32 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 fees submitted in accordance with this subsection if HHSC determines that:

(A) the applicant holds a license in good standing in another jurisdiction with licensing requirements substantially equivalent to the requirements for a license under this chapter; and

(B) the applicant is a military service member, a military veteran, or a military spouse.

(d) Additional time for license renewal.

(1) HHSC gives a nursing facility administrator (NFA) an additional two years to complete the license renewal requirements described in §555.43 of this subchapter (relating to License Renewal) and §555.35 of this subchapter (relating to Continuing Education Requirements for License Renewal), if HHSC receives and approves a request for additional time to complete the licensing renewal requirements from an NFA in accordance with this subsection.

(2) To request additional time to complete license renewal requirements, an NFA must:

(A) submit a written request for additional time to HHSC before the expiration date of the NFA's license; and

(B) include with the request, documentation of the NFA'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 NFA by the armed forces of the United States, the State of Texas, or another state.

(3) If HHSC requests additional documentation, the NFA must submit the requested documentation.

(4) HHSC approves a request for two additional years to complete license renewal requirements submitted in accordance with this subsection if HHSC determines that the NFA is a military service

member, except HHSC does not approve a request if HHSC granted the NFA a previous extension and the NFA has not completed the license renewal requirements during the two-year extension period.

(5) If an NFA does not submit the written request described by paragraph (2) of this subsection before the expiration date of the NFA's license, HHSC will consider a request after the expiration date of the license if the NFA establishes to the satisfaction of HHSC that the request was not submitted before the expiration date of the NFA's license because the NFA was serving as a military service member at the time the request was due.

(e) Credit toward internship requirements.

(1) HHSC gives an applicant credit toward the internship requirements for an administrator-in-training (AIT) described in §555.13 of this chapter (relating to Internship Requirements) based on the applicant's military service, training, or education if HHSC receives and approves a request for credit from an applicant in accordance with this subsection.

(2) To request credit for military service, training, or education, the applicant must submit a written request for credit to HHSC with the applicant's initial license application. The applicant must include, with the request, documentation of the type and dates of the service, training, and education the applicant received and an explanation as to how the applicant's military service, training, or education is substantially similar to the training or education requirements described in §555.13 of this chapter.

(3) If HHSC requests additional documentation, the applicant must submit the requested documentation.

(4) HHSC approves a request for credit submitted in accordance with this subsection if HHSC determines that the military service, training, or education that the applicant received is substantially similar to the training or education requirements described in §555.12 of this chapter (relating to Licensure Requirements).

(f) Renewal of expired license.

(1) HHSC renews an expired license if HHSC receives and approves a request for renewal from a former NFA in accordance with this subsection.

(2) To request renewal of an expired license, a former NFA must submit a written request with a license renewal application within five years after the former NFA's license expired. The former NFA must include with the request documentation of the former administrator'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 NFA 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 NFA 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 NFA 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 NFA'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 NFA must submit the requested documentation.

(5) HHSC approves a request for renewal of an expired license submitted in accordance with this subsection if HHSC determines that:

(A) the former NFA is a military service member, military veteran, or military spouse;

(B) the former NFA has not committed an offense listed in Texas Health and Safety Code (THSC) §250.006(a) and has not committed an offense listed in THSC §250.006(b) during the five years before the date the former NFA submitted the initial license application; and

(C) the former NFA is not listed on the employee misconduct registry described in THSC Chapter 253.

(g) Recognition of Out-of-State License of Military Spouse.

(1) A military spouse may engage in the practice of nursing facility administration in Texas without obtaining a license, as required by §555.31 of this subchapter (relating to Initial License) or §555.32 of this subchapter (relating to Provisional License), if the spouse:

(A) is currently licensed in good standing by another jurisdiction that has licensing requirements substantially equivalent to the requirements for a license 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 license in the other jurisdiction; and

(ii) a license to practice nursing facility administration in Texas.

(2) HHSC will review and evaluate the following criteria when determining whether another state's licensing requirements are substantially equivalent to the requirement for a license 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 license;

(B) whether the other state requires an applicant to meet any experience qualifications to obtain the license;

(C) whether the other state requires an applicant to meet education qualifications to obtain the license;

(D) whether the other state denies an application for licensure from an applicant who has been convicted of an offense containing elements similar to offenses listed in §555.41(c) of this subchapter; and

(E) the other state's license requirements, including the scope of work authorized to be performed under the license issued by the other state.

(3) The military spouse must submit:

(A) a written request to HHSC for recognition of the spouse's license issued by the other state;

(B) any form and additional information regarding the license 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) fingerprints for a Texas Department of Public Safety criminal background check to enable HHSC to confirm that the military spouse is in compliance with other laws and regulations applicable to nursing facility administration in Texas.

(4) Upon verification from the licensing jurisdiction of the military spouse's license and if the license is substantially equivalent to a Texas license, HHSC shall issue a confirmation that HHSC has verified the spouse's license in the other jurisdiction and a license to practice nursing facility administration in Texas.

(5) The license issued under paragraph (4) of this subchapter 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 license certificate for a military spouse as provided in §555.33 of this subchapter (relating to Duplicate License), but the military spouse does not pay the duplicate license 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 all relevant Texas Administration Code provision.

(8) HHSC may withdraw or modify the verification letter for reasons including the following:

(A) the military spouse fails to comply with paragraph (1)(D)(i) of this section; or

(B) the military spouse's licensure required under subsection(c)(1) of this section expires or is suspended or revoked in another jurisdiction.

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

Filed with the Office of the Secretary of State on October 25, 2021.

TRD-202104303

Karen Ray

Chief Counsel

Health and Human Services Commission

Effective date: November 14, 2021

Proposal publication date: May 7, 2021

For further information, please call: (512) 761-6041



SUBCHAPTER D. REFERRALS, COMPLAINT PROCEDURES, AND SANCTIONS

26 TAC §§555.51 - 555.57

STATUTORY AUTHORITY

The amendments are adopted under 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 Government Code §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 §242.302, which grants HHSC the general authority to establish rules consistent with that subchapter, and directs HHSC to establish qualifications of applicants for licenses and renewal of licenses issued under that subchapter, as well as reasonable and necessary administration and implementation fees, and continuing education hours required to renew a license under that subchapter.

§555.55. *Violations of Standards of Conduct.*

(a) The Texas Health and Human Services Commission (HHSC) may impose a sanction listed in §555.57 of this subchapter (relating to Schedule of Sanctions) against a licensee for violations of the following nursing facility administrator (NFA) Standards of Conduct:

(1) A licensee must employ sufficient staff to adequately meet the needs of nursing facility residents as determined by care outcomes.

(2) A licensee must ensure that sufficient resources are present to provide adequate nutrition, medications, and treatments to nursing facility residents in accordance with physician orders as determined by care outcomes.

(3) A licensee must promote and protect the rights of nursing facility residents and ensure that employees, contractors, and others respect the rights of residents.

(4) A licensee must ensure that nursing facility residents remain free of chemical and physical restraints unless required by a physician's order to protect a nursing facility resident's health and safety.

(5) A licensee must report and direct nursing facility staff to report to the appropriate government agency any suspected case of abuse, neglect, or misappropriation of resident property as defined in §555.2 of this chapter (relating to Definitions).

(6) A licensee must ensure that the nursing facility is physically maintained in a manner that protects the health and safety of the residents and the public.

(7) A licensee must notify and direct employees to notify an appropriate government agency of any suspected cases of criminal activity as defined by state and federal laws.

(8) A licensee must post in the nursing facility where the licensee is employed the notice provided by HHSC that gives the address and telephone number for reporting complaints against an NFA. The notice must be posted in a conspicuous place and in clearly legible type.

(9) A licensee must not knowingly or through negligence commit, direct, or allow actions that result or could result in inadequate care, harm, or injury to a nursing facility resident.

(10) A licensee must not knowingly or through negligence allow a nursing facility employee to harm a nursing facility resident

by coercion, threat, intimidation, solicitation, harassment, theft of personal property, or cruelty.

(11) A licensee must not knowingly or through negligence allow or direct an employee to contradict or alter in any manner the orders of a physician regarding a nursing facility resident's medical or therapeutic care.

(12) A licensee must not knowingly commit or through negligence allow another individual to commit an act of abuse, neglect, or misappropriation of resident property as defined in §555.2 of this chapter.

(13) A licensee must not permit another individual to use his or her license or allow a nursing facility to falsely post his or her license.

(14) A licensee must not advertise or knowingly participate in the advertisement of nursing facility services in a manner that is fraudulent, false, deceptive, or misleading in form or content.

(15) A licensee must not knowingly allow, aid, or abet a violation by another NFA of the Texas Health and Safety Code, Chapter 242, Subchapter I (text of Subchapter I effective until federal determination of failure to comply with federal regulations), or the agency's rules adopted under that subchapter and must report such violations to HHSC.

(16) A licensee must not make or knowingly allow an employee, contractor, or volunteer to make misrepresentations or fraudulent statements about the operation of a nursing facility.

(17) A licensee must not knowingly allow an employee's, a contractor's, or another person's action or inaction to result in harassment or intimidation of any person for purposes of coercing that person to use the services or equipment of a particular health agency or facility.

(18) A licensee must not falsely bill for goods or services or allow another person to bill for goods or services other than those that have actually been delivered.

(19) A licensee must not make or file a false report or allow an employee, contractor, or volunteer to make or file a report that the licensee knows to be false.

(20) A licensee must not intentionally fail to file a report or record required by state or federal law, impede or obstruct such filings, or induce another person to impede or obstruct such filings.

(21) A licensee must not use or knowingly allow employees or others to use alcohol, narcotics, or other drugs in a manner that interferes with the performance of the licensee's or other person's duties.

(22) A licensee must not knowingly or through negligence violate any confidentiality provisions prescribed by state or federal law concerning a nursing facility resident.

(23) A licensee must not interfere with or impede an investigation by withholding or misrepresenting facts to HHSC representatives, or by using threats or harassment against any person involved or participating in the investigation.

(24) A licensee must not display a license issued by HHSC that is reproduced, altered, expired, suspended, or revoked.

(25) A licensee must not, knowingly or through negligence, allow an employee or other individual to mismanage a resident's personal funds deposited with the nursing facility.

(26) A licensee must not harass or intimidate an employee or other representative of HHSC, other government agencies, or their representatives concerning the administration of the nursing facility.

(27) A licensee must not offer or give any gift, loan, or other benefit to a person working for HHSC unless the benefit is offered or given on account of kinship or a personal relationship independent of the official status of the person working for HHSC.

(b) Negligence, as referenced in the Standards of Conduct in subsection (a) of this section, means the failure of a licensee to use such care as a reasonably prudent and careful licensee would use in similar circumstances, or failure to act as a reasonably prudent licensee would in similar circumstances.

§555.56. *Violations by Unlicensed Persons.*

(a) A person with an expired license must not engage in activities that require a license.

(b) A person practicing as a licensed nursing facility administrator after license expiration:

(1) commits an offense punishable as a Class B misdemeanor;

(2) is subject to local criminal prosecution; and

(3) may be referred to the Office of Attorney General for civil penalties not to exceed \$1,000 per violation per day for each day the violation continues.

(c) A licensee whose license expires before an investigation is complete, may still receive:

(1) a written reprimand; or

(2) an administrative penalty.

(d) A licensee allowing a license to expire instead of accepting a proposed license revocation may be, at HHSC's discretion, disqualified from licensure in Texas permanently or for five years.

(e) A person with an expired license must return the license certificate to the Texas Health and Human Services Commission within ten (10) days of expiration.

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

Filed with the Office of the Secretary of State on October 25, 2021.

TRD-202104304

Karen Ray

Chief Counsel

Health and Human Services Commission

Effective date: November 14, 2021

Proposal publication date: May 7, 2021

For further information, please call: (512) 761-6041



TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION

DIVISION 8. RATES

28 TAC §5.4702

The Commissioner of Insurance adopts new 28 TAC §5.4702, concerning the Texas Windstorm Insurance Association's rate filings and reinsurance purchases. Section 5.4702 implements House Bill 769, 87th Legislature, 2021. The section is adopted without changes to the proposed text published in the August 27, 2021, issue of the *Texas Register* (46 TexReg 5350) and will not be republished.

REASONED JUSTIFICATION. HB 769 (1) prohibits the Texas Windstorm Insurance Association (TWIA) board of directors from voting on a proposed rate increase if there is a vacancy on the board that has existed for at least 60 days at the time the vote is to be taken, (2) prohibits TWIA from buying reinsurance from any insurer or broker involved in executing catastrophe models that TWIA relies on in determining its probable maximum loss or in adopting rates, and (3) requires TDI to conform TWIA's plan of operation to these changes.

The new section is described in the following paragraphs.

Section 5.4702. New §5.4702 consists of subsections (a) - (c).

Subsection (a) states that the TWIA board of directors must comply with Insurance Code §2210.3512 in all votes on proposed rate filings.

Subsection (b) states that TWIA must comply with Insurance Code §2210.453(f) in all purchases of reinsurance under §2210.453.

Subsection (c) states that §5.4702 is part of TWIA's plan of operation.

SUMMARY OF COMMENTS. TDI did not receive any comments on the proposed new section.

STATUTORY AUTHORITY. The Commissioner adopts new §5.4702 under HB 769 and Insurance Code §§2210.008, 2210.151, and 36.001.

HB 769, Section 4, states that TDI must amend TWIA's plan of operation to conform with the bill not later than the 60th day after the bill's effective date.

Insurance Code §2210.008 provides that the Commissioner may adopt rules as reasonable and necessary to implement Chapter 2210.

Insurance Code §2210.151 provides that the Commissioner adopt TWIA's plan of operation by rule.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

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

Filed with the Office of the Secretary of State on October 25, 2021.

TRD-202104298

James Person
General Counsel
Texas Department of Insurance
Effective date: November 14, 2021
Proposal publication date: August 27, 2021
For further information, please call: (512) 599-2127



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) adopts amendments to §151.3, concerning the Operating Procedures for the Texas Board of Criminal Justice, without changes to the proposed text as published in the September 10, 2021, issue of the *Texas Register* (46 TexReg 5761). The rule will not be republished.

The adopted amendments allow meetings of the board to be held at a location in Texas as determined by the board Chairman.

No comments were received regarding the amendments.

The amendments are adopted 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.

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

Filed with the Office of the Secretary of State on November 1, 2021.

TRD-202104380
Kristen Worman
General Counsel
Texas Department of Criminal Justice
Effective date: November 21, 2021
Proposal publication date: September 10, 2021
For further information, please call: (936) 437-6700



37 TAC §151.53

The Texas Board of Criminal Justice adopts new rule §151.53, Family Leave Pool, without changes to the proposed text as published in the September 10, 2021, issue of the *Texas Register* (46 TexReg 5762). The rule will not be republished.

The purpose of the new rule is to establish a family leave pool in compliance with House Bill 2063, 87th Leg., R.S.

No comments were received regarding the amendments.

The amendments are adopted 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.

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

Filed with the Office of the Secretary of State on November 1, 2021.

TRD-202104381
Kristen Worman
General Counsel
Texas Department of Criminal Justice
Effective date: November 21, 2021
Proposal publication date: September 10, 2021
For further information, please call: (936) 437-6700



37 TAC §151.55

The Texas Board of Criminal Justice adopts amendments to §151.55, concerning Disposal of Surplus Agricultural Goods and Agricultural Personal Property, without changes to the proposed text as published in the July 9, 2021, issue of the *Texas Register* (46 TexReg 4128). The rule will not be republished.

The adopted amendments are minor word changes, clarifications, and organizational changes.

No comments were received regarding the amendments.

The amendments are proposed under Texas Government Code §492.013, which authorizes the board to adopt rules; and §497.113, which authorizes the sale or disposal of surplus agricultural products and personal property owned by the department.

Cross Reference to Statutes: None.

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

Filed with the Office of the Secretary of State on November 1, 2021.

TRD-202104382
Kristen Worman
General Counsel
Texas Department of Criminal Justice
Effective date: November 21, 2021
Proposal publication date: July 9, 2021
For further information, please call: (936) 437-6700



PART 16. TEXAS CIVIL COMMITMENT OFFICE

CHAPTER 810. CIVIL COMMITMENT

SUBCHAPTER A. CIVIL COMMITMENT
GENERAL PROVISIONS

37 TAC §810.122

The Texas Civil Commitment Office (TCCO) adopts an amendment to §810.122 concerning Definitions. The amended section is adopted with minor formatting changes to the proposed text as published in the September 17, 2021, issue of the *Texas Register* (46 TexReg 6205). The rule will be republished.

The amended section is adopted to revise the definition of "income" for purposes of cost recovery authorized by Section 841.084 of the Health and Safety Code as part of TCCO's administration and implementation of the tiered treatment program. The amended definition clarifies what constitutes "income" and lists certain benefits excluded from that definition.

During the 30-day comment period following publication in the *Texas Register*, no comments were received regarding the amendment, and no one appeared at the Board meeting on October 21, 2021, to offer comment. The format changes are the result of the Texas Secretary of State notifying TCCO of the preferred format for rules that contain a list of items after the proposed rule had been submitted for publication in the *Texas Register*.

The amended section is adopted under Health and Safety Code §841.141 which authorizes the adoption of rules to administer Chapter 841 and approved for publication in the *Texas Register*.

§810.122. Definitions.

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

- (1) Act--Health and Safety Code Chapter 841, Civil Commitment of Sexually Violent Predators.
- (2) Case Management Team--All professionals involved in the assessment, treatment, supervision, monitoring, residential housing of the client, or other approved professionals. The case manager assigned by the office shall act as the chairperson of the team.
- (3) Chemical Restraints--Chemical agents or inflammatory agents such as Oleoresin Capsicum (OC) or Orthochlorobenzal-malononitrile (CS) spray, that are designed to temporarily immobilize or incapacitate through temporary discomfort caused by the chemical action.
- (4) Clinical Examiner--A person or persons employed by or under contract with the office to conduct a biennial examination to assess any change in the behavioral abnormality for a person committed under the Act, §841.081.
- (5) Income--
 - (A) or the purpose of recovery of costs under §841.084 of the Act, income includes but is not limited to:
 - (i) money received from employment, to include wages, salaries, tips and other taxable employee pay;
 - (ii) disability benefits;
 - (iii) net earnings from self-employment;
 - (iv) net gain from the sale of property purchased while under civil commitment;
 - (v) net income from rental property or an ownership in an on-going business;
 - (vi) interest or dividend income; retirement income;

- (vii) social security income;
 - (viii) unemployment benefits;
 - (ix) proceeds from lottery winnings; and
 - (x) gifts of cash.
- (B) The following are excluded from Income:
- (i) funds or property received from a judgment;
 - (ii) an inheritance;
 - (iii) funds or property received from a divorce decree;
 - (iv) insurance proceeds;
 - (v) transfers of funds from a spouse which shall not exceed \$100.00 monthly; or
 - (vi) proceeds from the sale of property acquired prior to being civilly committed.
- (6) Indigent--For the purpose of recovery of costs under § 841.084 of the Act, a sexually violent predator is considered to be indigent if the sexually violent predator does not have any income.
- (7) Mechanical Restraints--Items such as handcuffs, cuff protectors, plastic cuffs (disposable type), leg irons, belly chains etc. and are designed to immobilize or incapacitate a client.
- (8) Multidisciplinary Team (MDT)--Members of the Texas Civil Commitment Office (two), a licensed sex offender treatment provider from the Council on Sex Offender Treatment (one), Texas Department of Criminal Justice Rehabilitation Programs Division - sex offender rehabilitation program (one), Texas Department of Criminal Justice - Victim Service Division (one), a licensed peace officer employed by the Texas Department of Public Safety with at least five years' experience working for that department or the officer's designee (one), and a mental health professional from the Texas Department of State Health Services (one). The team assesses whether a person is a repeat sexually violent offender and whether the person is likely to commit a sexually violent offense after release; gives notice of its findings to the Texas Department of Criminal Justice; and recommends that the person be assessed for a behavioral abnormality.
- (9) Office--The Texas Civil Commitment Office (TCCO) including the Governing Board (Government Code Chapter 420A).

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

Filed with the Office of the Secretary of State on October 25, 2021.

TRD-202104306
Marsha McLane
Executive Director
Texas Civil Commitment Office
Effective date: November 14, 2021
Proposal publication date: September 17, 2021
For further information, please call: (512) 341-4421

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 12. TEXAS BOARD OF OCCUPATIONAL THERAPY EXAMINERS

CHAPTER 364. REQUIREMENTS FOR LICENSURE

40 TAC §364.5

The Texas Board of Occupational Therapy Examiners adopts amendments to 40 TAC §364.5, concerning Recognition of Out-of-State License of Military Spouse. The amendments allow a military spouse to show proof of residency by submitting a permanent change of station order. The amendments also include adding that individuals update the Board of certain changes. The amendments are adopted without changes to the proposed text as published in the August 27, 2021, issue of the *Texas Register* (46 TexReg 5377). The rule will not be republished.

House Bill 139 of the 87th Regular Legislative Session, codified as Texas Occupations Code §55.004(d), provides that: "A state agency that issues a license that has a residency requirement for license eligibility shall adopt rules regarding documentation necessary for a military spouse applicant to establish residency for purposes of this subsection, including by providing to the agency a copy of the permanent change of station order for the military service member to whom the spouse is married." The Bill took effect September 1, 2021. In accordance with HB 139, the amendment allows a permanent change of station order to serve as proof of residency for a military spouse requesting the authorization provided by the section.

An additional amendment concerns updating the Board of changes. Subsection (b)(2) of the section requires that a military spouse requesting the authorization submit proof of the military spouse's residency in this state and a copy of the military spouse's military identification card. The amendment adds the requirement that individuals who have received the authorization described by the section update the Board of any changes to information as specified under subsection (b)(2) within 30 days of such change(s). The change is adopted to enhance the Board's ability to remain apprised of changes to the information submitted for the authorization.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Occupations Code §454.102, Rules, which authorizes the Board to adopt rules to carry out its duties under chapter 454, and under Texas Occupations Code §55.0041, Recognition of Out-of-State License of Military Spouse, which requires to Board to adopt rules to implement the section.

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

Filed with the Office of the Secretary of State on November 1, 2021.

TRD-202104399

Ralph A. Harper
Executive Director
Texas Board of Occupational Therapy Examiners
Effective date: December 1, 2021
Proposal publication date: August 27, 2021
For further information, please call: (512) 305-6900



TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 9. CONTRACT AND GRANT MANAGEMENT

SUBCHAPTER A. GENERAL

43 TAC §9.8

The Texas Department of Transportation (department) adopts amendments to §9.8 concerning Enhanced Contract and Performance Monitoring. The amendments to §9.8 are adopted without changes to the proposed text as published in the August 13, 2021, issue of the *Texas Register* (46 TexReg 5001) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

Section 9.8, Enhanced Contract and Performance Monitoring, requires the department to monitor and report to the Texas Transportation Commission (commission), on a quarterly basis, the performance and status of each contract, other than a low-bid construction and maintenance contract, that is valued at \$5 million or more or that the department determines constitutes a high-risk to the department. The department has determined that due to the high volume of department contracts that are valued at \$5 million or more, the dollar threshold that identifies contracts that must be monitored and reported to the commission should be increased to an amount that will meaningfully capture the department's highest dollar contracts. Accordingly, amended §9.8, Enhanced Contract and Performance Monitoring, is revised to increase the dollar threshold that identifies contracts that must be reported to the commission from \$5 million to \$50 million. The department will continue to monitor and report on contracts with a lesser value that it determines constitute high-risks to the department.

COMMENTS

No comments on the proposed amendments were received.

STATUTORY AUTHORITY

The rule is adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Government Code, §2261.253, which requires a state agency to adopt rules to establish a procedure to identify each contract requiring enhanced contract or performance monitoring and submit information on the contract to its governing body.

CROSS REFERENCE TO STATUTES IMPLEMENTED BY THIS RULEMAKING

Government Code, §2261.253.

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

Filed with the Office of the Secretary of State on October 28, 2021.

TRD-202104334

Becky Blewett

Deputy General Counsel

Texas Department of Transportation

Effective date: November 17, 2021

Proposal publication date: August 13, 2021

For further information, please call: (512) 463-8630



SUBCHAPTER C. CONTRACTING FOR ARCHITECTURAL, ENGINEERING, AND SURVEYING SERVICES

The Texas Department of Transportation (department) adopts amendments to §§9.31 - 9.35 and §§9.38 - 9.41 and the repeal of §9.36 and §9.37, relating to Contracting for Architectural, Engineering, and Surveying Services. The amendments to §§9.31 - 9.35 and §§9.38 - 9.41 and the repeal of §9.36 and §9.37 are adopted without changes to the proposed text as published in the August 13, 2021, issue of the *Texas Register* (46 TexReg 5003) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS AND REPEAL

This rulemaking streamlines the selection process for architectural, engineering, and surveying service contracts in several ways, including by eliminating the Request for Qualifications (RFQ) and using only the Request for Proposals (RFP) as the solicitation method for professional services contracts. The response requiring a Statement of Qualifications (SOQ) is eliminated, with the Proposal being the only response format used by the department. This change will align the non-federal selection process, which is sometimes referred to as the state process, with the federal selection process and will reduce the risk of confusion by utilizing only one process for procurements. Under the federal requirements in 23 United States Code of Federal Regulations (CFR) 172, the RFQ is optional; however, the RFP is required.

Amendments allow a non-federal indefinite deliverable contract to be extended beyond five years and increase the period to issue work to four years, instead of three. These changes provide flexibility by allowing the department to keep the design provider under contract to provide construction phase services.

Amendments to §9.31, Definitions, remove or amend definitions to align with the elimination of the SOQ and RFQ and other amendments. The definitions are amended to remove the terms "statements of qualifications" or "qualification" and replace with "proposal" or "proposals." The definitions for RFQ and SOQ are removed because the department is streamlining the process and is no longer using the RFQ and SOQ process. The definition for "Request for Proposal (RFP)" is clarified to identify the RFP as the advertisement for an architectural, engineering, or surveying contract. This amendment will streamline the selection processes. The definition of "solicitation" is removed since the RFP is the only advertisement format.

Amendments to §9.32, Selection Processes, Contract Types, Selection Types, and Projected Contracts, to streamline the selection processes and align the non-federal selection process with the federal selection process. Section 9.32(a) is amended to add the non-federal (state) process as a selection process and delete the comprehensive, streamlined, and accelerated selection processes. Both the non-federal and federal processes will have options for selection to be made with or without interviews. Section 9.32 is also amended to replace the term "solicitation" with "RFP" to align with a single advertisement format. Subsection (b)(1)(B) is amended to change the three-year limit on issuing work authorizations to four years after the date of contract execution. This provides flexibility by allowing the department to continue to issue work authorizations for projects that can be completed before the termination date in the contract. Subsection (b)(1)(C) adds text to maintain the limit on contracts procured using the federal selection process to a contract period of no more than five years. This addition is consistent with federal guidelines for contracts procured with the federal selection process and adds flexibility to contracts procured using the non-federal process. By allowing indefinite deliverable contracts procured using a non-federal selection process to be extended beyond five years, the department may be able to keep the design provider under contract to provide construction phase services.

Amendments to §9.33, Precertification, replace the term "solicitation" with "RFP" to align with a single advertisement format.

Amendments to §9.34, Comprehensive Process, rename the comprehensive process to the non-federal (state) process and align the section with the federal selection process. The amendments streamline the selection processes. Section 9.34 is also amended to replace the term "solicitation" with "RFP" to align with a single advertisement format. Subsection (a) is amended to delete the reference to specific deliverable contracts \$1 million or more in value and allows the non-federal (state) process to be used for any contract that is not subject to the federal process. This deletion will align the non-federal selection process with the federal selection process. Subsection (b)(8)(B) is amended to add Group 17, Facilities Engineering, to the work groups that are exempted from administrative qualifications. This change aligns this type of work with the architectural exemption for contracts procured using the non-federal process.

Subsections (d), (e), (g), and (h) are amended to replace the Request for qualifications (RFQ) and the Statement of qualifications (SOQ) with the Request for Proposals (RFP) and proposal, respectively. These changes will streamline the selection process since the department is no longer using the RFQ and SOQ process. Subsection (g)(3) is amended to add a statement to include the prime provider's past performance scores in the evaluation of the responsive proposals. This amendment streamlines the process by incorporating the provider's past performance score early in the selection process.

Subsection (i) is amended to clarify that the department will determine whether interviews are required in the non-federal selection process. This amendment aligns the non-federal process with the federal process. New Subsection(i)(1) adds the requirement for an interview for specific deliverable contracts of \$5 million or more in value or any indefinite deliverable contract for higher-risk services based on complexity, anticipated project costs, number of contracts, or type of services. This amendment aligns the non-federal process with the federal process and increases the dollar value threshold for interviews

on specific deliverable contracts to streamline the interview process. Subsection(i)(3) is amended to delete the use of the prime provider's past performance scores during the interview stage of the non-federal selection process. This amendment aligns this subsection with subsection (g)(3).

Subsection(j)(1) is amended to clarify the basis for final selection dependent on whether an interview is required. These additions align the non-federal process with the federal process. Subsection (j)(2) is amended to clarify that the process for breaking ties will be using scores from either the interview or the proposal, if no interviews are required. This clarification aligns the non-federal with the federal process. The title of the section is changed to "Non-federal Process."

Amendments to §9.35, Federal Process, delete references to the "comprehensive" process and replace them with the "non-federal" process. Each paragraph is amended to reference back to the applicable paragraph in §9.34 to align the federal and non-federal selection processes. Section 9.35 is also amended to replace the term "solicitation" with "RFP" to align with a single advertisement format. The text in subsections (d), (e), and (g) is deleted and a reference to §9.34(d), §9.34(e), §9.34(h) - (j), respectively, is added. Subsections (f) and (h) are deleted. The amendments to §9.35 align the federal selection process and the non-federal selection process, but do not alter the federal selection process.

Sections 9.36 and 9.37 are repealed. The three non-federal processes (comprehensive, streamlined, and accelerated) have been replaced with a single non-federal selection process in §9.34, which has an option for including interviews. These amendments streamline the non-federal process and align it with the federal process.

Amendments to §9.38, Emergency Contract Process, and §9.39, Urgent and Critical Process, change the reference to the heading of §9.34 in accordance with the amendment of that heading made in this rulemaking.

Amendments to §9.40, Negotiations, replace the term "solicitation" with "RFP" to align with a single advertisement format and replace the references to the comprehensive, streamlined, or accelerated processes are replaced with references to the non-federal process to align with changes made to §9.34.

Amendments to §9.41, Contract Administration, make changes to provisions relating to performance evaluations. Amendments to subsection (d)(1) allow the evaluation of a provider employee who is involved with managing a work authorization and replace the text that requires a performance evaluation of the provider project manager and firm during the contract activity with a requirement for evaluations to be conducted at least once every 12 months. These amendments allow a department project manager to evaluate both the prime provider's project manager and a member of the prime provider's staff assigned to represent the prime provider on a work authorization, providing more flexibility to the department project manager to give feedback to the provider, and provide clarity to the department project manager for completing an annual evaluation for the provider.

COMMENTS

No comments on the proposed amendments and repeal were received.

43 TAC §§9.31 - 9.35, 9.38 - 9.41

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTES IMPLEMENTED BY THIS RULEMAKING

Government Code, Chapter 2254, Subchapter A (Professional Services Procurement Act) and Transportation Code, §223.041.

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

Filed with the Office of the Secretary of State on October 28, 2021.

TRD-202104333

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Effective date: November 17, 2021

Proposal publication date: August 13, 2021

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43 TAC §9.36, §9.37

STATUTORY AUTHORITY

The repeals are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTES IMPLEMENTED BY THIS RULEMAKING

Government Code, Chapter 2254, Subchapter A (Professional Services Procurement Act) and Transportation Code, §223.041.

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

Filed with the Office of the Secretary of State on October 28, 2021.

TRD-202104332

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Effective date: November 17, 2021

Proposal publication date: August 13, 2021

For further information, please call: (512) 463-8630



PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 217. VEHICLE TITLES AND REGISTRATION

SUBCHAPTER B. MOTOR VEHICLE REGISTRATION

43 TAC §217.41

INTRODUCTION. The Texas Department of Motor Vehicles (department) adopts amendments to 43 TAC §217.41, concerning disabled person license plates and disabled parking placards that will be issued to disabled veterans. The amendments are necessary to implement new Transportation Code §504.202(b-1) and (b-2) and amendments to Transportation Code §504.202 and §681.004, related to the issuance and use of disabled person license plates and disabled parking placards as added by Senate Bill (SB) 792, 87th Legislature, Regular Session (2021). The department adopts the amendments to §217.41 with changes to the proposed text as published in the August 20, 2021, issue of the *Texas Register* (46 TexReg 5167). The rule will be republished. The rule is adopted to be effective January 1, 2022.

REASONED JUSTIFICATION. Senate Bill 792 establishes requirements on access to disabled parking. The adopted amendments to §217.41 are necessary to implement SB 792.

Section 217.41(b)(1) is added to define the term "disabled person" and clarify that it includes veterans who qualify for a disabled person license plate under Transportation Code §504.202(b-1).

Section 217.41(b)(2) is amended to address the new processes that will apply to obtain disabled person license plates with the International Symbol of Access. Transportation Code §504.202(b-1) provides a qualifying disabled veteran the option to receive disabled person license plates with the International Symbol of Access if the disabled veteran is eligible to receive disabled person license plates under Transportation Code §504.201. Transportation Code §504.202(g) and §681.004(a)(3) requires a qualifying disabled veteran to elect to receive the disabled person license plates with the International Symbol of Access to obtain disabled parking placards. A qualifying disabled veteran is not required to accept a disabled person license plate displaying the International Symbol of Access; however, as stated in SECTION 8 and SECTION 9 of SB 792, beginning January 1, 2022, only vehicles displaying license plates bearing the International Symbol of Access or a disabled parking placard may lawfully park in disabled parking spaces under Transportation Code §§681.008, 681.009, and 681.011.

The statutory requirements for a disabled person under Transportation Code §504.201 differ from the requirements to qualify as a disabled veteran under Transportation Code §504.202. As such, it is possible that not all persons who qualify for a disabled veteran license plate will meet the requirement in Transportation Code §504.202(b-1) and be able to obtain license plates bearing the International Symbol of Access or disabled parking placards.

Section 217.41(b)(2)(A) is also amended to establish satisfactory proof of eligibility for an organization that under Transportation Code §504.202(c) transports disabled veterans who would qualify for license plates issued under Transportation Code §504.202(b-1), as required in Transportation Code §504.202(b-2). As amended, §217.41(b)(2)(A) includes the certification requirements in Transportation Code §504.202(d) and adds a requirement for the certifying authority, the veteran's county service officer of the county in which a vehicle described by Transportation Code §504.202(c) is registered or the Department of Veterans Affairs certify that the vehicle regularly

transports veterans that would qualify for license plates under Transportation Code §504.202(b-1). The department considers that Transportation Code §504.202(b-2) requires transportation on a regular but not constant basis.

Section 217.41(b)(2)(B) and (C) are amended to recognize that a disabled veteran may qualify for certain military specialty license plates under §217.43. Also, the terms "Disabled Person" and "International Symbol of Access" are restated for consistent usage in the section.

Section 217.41(b)(3)(A) is amended to inform the reader of the Transportation Code sections that establish requirements for the issuance of disabled parking placards. Section 217.41(b)(3)(B) is amended to inform the reader of department rules that have provisions related to the renewal of regular, military, and specialty license plates. In response to a comment, the department has added §217.41(e)(B)(iii), which reads "The department will provide a form that persons may use to facilitate a transfer of disabled person license plates between vehicles." The change does not impose a new requirement or add costs not addressed in the proposal.

The department also adopts nonsubstantive changes for department style, including adding lead statements in §217.41(b)(2)(B) and (C); changing the term "Disabled Person" to "disabled person" throughout §217.41; and adding "tax assessor-collector" references to "county" in §217.41(d)(1)(B) and (e)(1)(B) for consistency with other references in the subsections. Finally, the department adopts as a nonsubstantive change that all references in the section to the parking placard be styled "disabled parking placard," for consistency with the terminology in Transportation Code §504.201 and §504.202, and Chapter 681.

Senate Bill 792 required the department to adopt rules by December 1, 2021. Because the amendments to §217.41 implement SB 792, the amended section cannot become effective until SB 792, which is January 1, 2022. As such, the amendments to §217.41 are adopted to be effective January 1, 2022.

SUMMARY OF COMMENTS.

The department received two written comments on the proposal from The Tax Assessor-Collectors Association of Texas (TACA), which represents all 254 county tax assessor-collectors in Texas.

Comment:

The commenter notes that the second sentence §217.41(e)(1)(A) appears to be duplicated in §217.41(e)(1)(B)(ii), with some slight differences. The commenter recommended that the duplicate statement be eliminated for clarity.

Agency Response:

The department agrees that both provisions require a person that sells or trades a vehicle with disabled person license plates to remove the license plates. However, each statement applies to a different circumstance: the transfer of license plates between persons and the transfer of license plates between vehicles. Because the proposal did not indicate the requirement was under review, the department declines to determine if, or which, statement is duplicate and remove it from the adopted text.

Comment:

The commenter recommends that §217.41 (e)(1)(B)(ii) include a requirement that Form VTR-420-UT must be used.

Agency Response:

The department agrees that transfer of a military specialty plate with a DV designation would currently involve VTR-420-UT. However, §217.41 is not limited to military plates or disabled veterans. While not contemplated at this time, the form and form number may change to better serve disabled persons in complying with this rule. For these reasons, the department declines to refer to the form by number but has added a statement that "The department will provide a form that persons may use to facilitate a transfer of disabled person license plates between vehicles." The change does not impose a new requirement or add costs not addressed in the proposal.

STATUTORY AUTHORITY. The department adopts amendments to §217.41 under Transportation Code §§504.202, 504.0011, and 1002.001.

- Transportation Code §504.202(b-2) requires the department to adopt rules prescribing satisfactory proof of eligibility for an organization that registers a motor vehicle under Transportation Code §504.202(c) to receive license plates under Transportation Code §504.202(b-1) if the vehicle regularly transports veterans who are eligible to receive license plates under Subsection (b-1).

- Transportation Code §504.0011 authorizes the board to adopt rules to implement and administer Transportation Code Chapter 504.

- Transportation Code §1002.001, authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

CROSS REFERENCE TO STATUTE. Transportation Code §§502.410, 504.201, 504.202, 681.004, 681.008, 681.009, and 681.011.

§217.41. *Disabled Person License Plates and Disabled Parking Placards.*

(a) Purpose. Transportation Code, Chapters 504 and 681, charge the department with the responsibility for issuing specially designed license plates and disabled parking placards for disabled persons. For the department to perform these duties efficiently and effectively, this section prescribes the policies and procedures for the application, issuance, and renewal of disabled person license plates and disabled parking placards.

(b) Issuance.

(1) For purposes of this section, "disabled person" means a person eligible for issuance of a license plate bearing the International Symbol of Access under Transportation Code §504.201, including a qualifying disabled veteran under §504.202(b-1).

(2) Disabled person license plates.

(A) Eligibility. In accordance with Transportation Code §504.201 and §504.202(b-1) and (b-2), the department will issue specially designed license plates displaying the International Symbol of Access to permanently disabled persons or their transporters instead of regular motor vehicle license plates. As satisfactory proof of eligibility, an organization that transports disabled veterans who would qualify for license plates issued under Transportation Code §504.202(b-1) must provide a written statement from the veteran's county service officer of the county in which a vehicle described by Transportation Code §504.202(c) is registered or by the Department of Veterans Affairs that:

(i) the vehicle is used exclusively to transport veterans of the United States armed forces who have suffered, as a result of military service, a service-connected disability;

(ii) the vehicle regularly transports veterans who are eligible to receive license plates under Subsection (b-1); and

(iii) the veterans are not charged for the transportation.

(B) Specialty license plates. The department will issue disabled person specialty license plates displaying the International Symbol of Access that can accommodate the identifying insignia and that are issued in accordance with §217.43 or §217.45 of this title.

(C) License plate number. Disabled person license plates will bear a license plate number assigned by the department or will bear a personalized license plate number issued in accordance with §217.43 or §217.45 of this title.

(3) Windshield disabled parking placards.

(A) Issuance. The department will issue removable windshield disabled parking placards to temporarily or permanently disabled persons and to the transporters of permanently disabled persons, as provided under Transportation Code §§504.201, 504.202, and 681.004.

(B) Display. A person who has been issued a windshield disabled parking placard shall hang the placard from a vehicle's rearview mirror when the vehicle is parked in a disabled person parking space or shall display the placard on the center portion of the dashboard if the vehicle does not have a rearview mirror.

(c) Renewal of disabled person license plates. Disabled person license plates are valid for a period of 12 months from the date of issuance and are renewable as specified in §§217.28, 217.43, and 217.45 of this title.

(d) Replacement.

(1) License plates. If a disabled person metal license plate is lost, stolen, or mutilated, the owner may obtain a replacement metal license plate by applying with a county tax assessor-collector.

(A) Accompanying documentation. To replace disabled person metal license plates, the owner must present the current year's registration receipt and personal identification acceptable to the county tax assessor-collector.

(B) Absence of accompanying documentation. If the current year's registration receipt is not available and the county tax assessor-collector cannot verify that the disabled person metal license plates were issued to the owner, the owner must reapply in accordance with this section.

(2) Disabled parking placards. If a disabled parking placard becomes lost, stolen, or mutilated, the owner may obtain a new disabled parking placard in accordance with this section.

(e) Transfer of disabled person license plates and disabled parking placards.

(1) License plates.

(A) Transfer between persons. Disabled person license plates may not be transferred between persons. An owner who sells or trades a vehicle to which disabled person license plates have been issued shall remove the disabled person license plates from the vehicle. The owner shall return the license plates to the department and shall obtain appropriate replacement license plates to place on the vehicle prior to any transfer of ownership.

(B) Transfer between vehicles. Disabled person license plates may be transferred between vehicles if the county tax assessor-collector or the department can verify the plate ownership and the

owner of the vehicle is a disabled person or the vehicle is used to transport a disabled person.

(i) Plate ownership verification may include:

(I) a Registration and Title System (RTS) inquiry;

(II) a copy of the department application for disabled person license plates; or

(III) the owner's current registration receipt.

(ii) An owner who sells or trades a vehicle with disabled person license plates must remove the plates from the vehicle.

(iii) The department will provide a form that persons may use to facilitate a transfer of disabled person license plates between vehicles.

(2) Disabled parking placards.

(A) Transfer between vehicles. Disabled parking placards may be displayed in any vehicle driven by the disabled person or in which the disabled person is a passenger.

(B) Transfer between persons. Disabled parking placards may not be transferred between persons.

(f) Seizure and revocation of disabled parking placard.

(1) If a law enforcement officer seizes and destroys a disabled parking placard under Transportation Code §681.012, the officer shall notify the department by email.

(2) The person to whom the seized disabled parking placard was issued may apply for a new disabled parking placard by submitting an application to the county tax assessor-collector of the county in which the person with the disability resides or in which the applicant is seeking medical treatment.

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

Filed with the Office of the Secretary of State on November 1, 2021.

TRD-202104379

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Effective date: January 1, 2022

Proposal publication date: August 20, 2021

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