

PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to

submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 351. COORDINATED PLANNING AND DELIVERY OF HEALTH AND HUMAN SERVICES

SUBCHAPTER B. ADVISORY COMMITTEES

DIVISION 1. COMMITTEES

1 TAC §351.805

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §351.805, concerning State Medicaid Managed Care Advisory Committee.

BACKGROUND AND PURPOSE

The primary purpose of amending §351.805 is to implement changes recommended by the State Medicaid Managed Care Advisory Committee (SMMCAC) in March 2020 and to make additional changes recommended by HHSC staff.

Additional edits reorganize and format the rule so that the SMMCAC rule is consistent with other HHSC advisory committee rules established under Texas Government Code §531.012.

SECTION-BY-SECTION SUMMARY

The proposed amendment to subsection (a) adds that the SMMCAC is subject to §351.801.

The proposed amendment to subsections (b) and (d) makes several nonsubstantive editorial changes.

The proposed amendment to subsection (e) adds new language that the SMMCAC complies with the requirement for open meetings under Texas Government Code Chapter 551.

The proposed amendment to §351.805(f), (f)(1), and (f)(2) adds new rule language concerning term length, term limits, and vacancies.

The maximum number of SMMCAC members is increased from 23 to 24, the maximum allowed by Texas Government Code §2110.002(a). A total number of 24 members may be appointed from the three membership categories described in subsection (f)(3).

Subsection (f)(3) is reorganized. The proposed amendment removes, adds, and reorganizes the nineteen categories used to select and appoint representatives to the SMMCAC into three categories. The first category has subcategories of people en-

rolled in Medicaid managed care from which 10 people can be appointed as members. The second category has subcategories of providers contracted with Texas Medicaid managed care organizations (MCOs) from which 10 members can be appointed. The third category provides for the appointment of representatives of four MCOs participating in Texas Medicaid, including both national and community-based plans, and dental maintenance organizations. These proposed changes make the composition of the SMMCAC more equal between persons enrolled and providers and allows for the appointment of four MCO representatives as members.

The proposed amendment, for each subcategory of person enrolled, allows HHSC, to appoint the person or to appoint the person's family member or an advocate representing people in the person's subcategory. The term "family member" is defined in §351.801 as a "parent, spouse, grandparent, adult sibling, adult child, guardian, or legally authorized representative." These proposed changes may make it easier for HHSC to appoint a representative from each subcategory of persons enrolled in Medicaid managed care.

The proposed amendment adds a subcategory for a person who is 21 years of age or older and is dually enrolled in Medicaid and Medicare and adds a subcategory of providers serving Medicaid recipients who are 21 years of age or older and have a disability. These changes help ensure additional representation on the SMMCAC for dual eligible adults and providers serving adults with disabilities.

The proposed amendment restates and reorganizes the rules for officers in subsection (g).

The proposed amendment adds the training that each member must complete on relevant statutes and rules in subsection (h).

The proposed amendment moves the SMMCAC's date of abolition to the end of the rule to subsection (i). Based on recommendations, the proposed amendment extends the SMMCAC membership terms from two to three years. It extends the date of abolition from December 31, 2023, to December 31, 2024. This change gives members more time to use the experience they gain over time as committee members.

FISCAL NOTE

Trey Wood, HHSC Chief Financial Officer, has determined that for each year of the first five years that the rule will be in effect, enforcing or administering the rule does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rule will be in effect:

- (1) the proposed rule will not create or eliminate a government program;
- (2) implementation of the proposed rule will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rule will result in no assumed change in future legislative appropriations;
- (4) the proposed rule will not affect fees paid to HHSC;
- (5) the proposed rule will not create a new rule;
- (6) the proposed rule will not expand, limit, or repeal existing rules;
- (7) the proposed rule will not change the number of individuals subject to the rule; and
- (8) the proposed rule will not affect the state's economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. No entities other than HHSC are required to comply with the proposed amendment.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule does not impose a cost on regulated persons.

PUBLIC BENEFIT AND COSTS

Stephanie Stephens, State Medicaid Director, has determined that for each year of the first five years the rule is in effect, the public will benefit from a rule that allows HHSC to appoint twenty-four SMMCAC members to serve three-year terms and adjusts the committee membership so that the committee can most effectively provide feedback to HHSC's managed care oversight improvement initiatives and implementation of legislation.

Trey Wood has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because no entities other than HHSC are required to comply with the rule.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposed amendment does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 701 W. 51st Street, Austin, Texas 78751; or emailed to HHSRulesCoordinationOffice@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day

to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 20R108" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.012, which requires the Executive Commissioner to establish an advisory committee and to adopt rules related to an advisory committee's size, membership, and duty to comply with Texas Government Code Chapter 551.

The amendment affects Texas Government Code §531.0055 and §531.012.

§351.805. State Medicaid Managed Care Advisory Committee.

(a) Statutory authority. The State Medicaid Managed Care Advisory Committee (SMMCAC) is established in accordance with Texas Government Code §531.012 and is subject to §351.801 of this division (relating to Authority and General Provisions).

(b) Purpose.

(1) The SMMCAC advises the Executive Commissioner and the Texas Health and Human Services Commission (HHSC) [HHSC] on the statewide operation of Medicaid managed care, including program design and benefits, systemic concerns from consumers and providers, efficiency and quality of services, contract requirements, provider network adequacy, trends in claims processing, and other issues as requested by the Executive Commissioner.

(2) The SMMCAC assists HHSC with Medicaid managed care issues.

(3) The SMMCAC disseminates Medicaid managed care best practice information as appropriate.

(c) Tasks. The SMMCAC makes recommendations to HHSC and performs other tasks consistent with its purpose.

(d) Reporting requirements [Reports].

(1) Report to the Executive Commissioner. By December 31st of each [fiscal] year, the SMMCAC files [must file] a written report with the Executive Commissioner covering [that covers] the meetings and activities in the immediately preceding fiscal year. The report:

(A) lists the meeting dates;

(B) provides the members' attendance records;

(C) briefly describes actions taken by the committee;

(D) describes how the committee has accomplished its tasks;

(E) summarizes the status of any recommendations [rules] that the SMMCAC made [committee recommended] to HHSC;

(F) describes [anticipated] activities the committee anticipates undertaking [will undertake] in the next fiscal year;

(G) describes recommended [recommends] amendments to this section[; as needed]; and

(H) describes [identifies] the costs related to the committee, including the cost of HHSC staff time spent supporting the committee's activities and the source of funds used to support the committee's activities.

(2) Report to the Texas Legislature. By December 31st of each even-numbered year, the SMMCAC files ~~[eommittee must file]~~ a written report with the Texas Legislature of any policy recommendations made to the Executive Commissioner.

(e) Open meetings. The SMMCAC complies with the requirement for open meetings under Texas Government Code Chapter 551.

~~[(e) Abolition. The SMMCAC is abolished, and this section expires, December 31, 2023.]~~

(f) Membership. The SMMCAC is composed of ~~[eonsists of an odd number, but]~~ no more than 24 ~~[23;]~~ members appointed by the Executive Commissioner. Except as may be necessary to stagger terms, the term of office of each member is three years. A member may apply to serve one additional term. In selecting members to serve on the committee, HHSC considers an applicant's qualifications, background, and interest in serving. HHSC tries to choose committee members who represent the diversity of all Texans, including ethnicity, gender, and geographic location.

(1) Members are appointed for staggered terms so that terms of an equal or almost equal number of members expire on August 31st of each year. Regardless of the term limit, a member serves until his or her replacement has been appointed. This ensures sufficient, appropriate representation.

~~[(1) Each member is appointed by the Executive Commissioner.]~~

(2) If a vacancy occurs, a person is appointed to serve the unexpired portion of that term.

(3) [(2)] The SMMCAC consists of representatives of the following categories:

(A) ten people enrolled in Medicaid managed care appointed from one or more of the following subcategories:

(i) a person who has low-income, a family member of the person, or an advocate representing people with low-income;

(ii) a person age 21 or older with an intellectual, a developmental, or a physical disability, including a person with autism spectrum disorder, or a family member of the person, or an advocate representing people with an intellectual, a developmental, or a physical disability, including persons with autism spectrum disorder;

(iii) a family member of a child who is a Medicaid recipient or an advocate representing children who are Medicaid recipients, except for a child with special health care needs listed in clause (iv) of this subparagraph;

(iv) a family member of a child with special health care needs or an advocate representing children with special health care needs;

(v) a person who is 65 years of age or older, the person's family member, or an advocate representing persons who are 65 years of age or older;

(vi) a person 21 or older who is dually enrolled in Medicaid and Medicare, a family member of the person, or an advocate representing people 21 or older who are dually enrolled in Medicaid and Medicare;

(vii) a person using mental health services, a family member of the person, or an advocate representing people who use mental health services; or

(viii) a person using non-emergency medical transportation services, a family member of the person, or an advocate representing persons using non-emergency medical transportation;

~~[(A) hospitals;]~~

(B) ten providers contracted with Texas Medicaid managed care organizations, appointed from one or more of the following subcategories:

(i) rural providers;

(ii) hospitals;

(iii) primary care providers;

(iv) pediatric health care providers;

(v) dentists;

(vi) community-based organizations either:

(I) serving children enrolled in Medicaid who are low-income and their families;

(II) serving people age 65 or older and people with disabilities; or

(III) engaged in perinatal services and outreach;

(vii) obstetrical care providers;

(viii) providers serving people dually enrolled in Medicaid and Medicare;

(ix) providers serving people who are 21 years of age or older and have a disability;

(x) non-physician mental health providers; or

(xi) long-term services and supports providers, including nursing facility providers and direct service workers; and

~~[(B) managed care organizations and participating health care providers;]~~

(C) four managed care organizations participating in Texas Medicaid, including:

(i) both national and community-based plans; and

(ii) dental maintenance organizations (for the purpose of this section).

~~[(C) primary care providers and specialty care providers;]~~

~~[(D) state agencies;]~~

~~[(E) low-income Medicaid recipients or consumer advocates representing low-income recipients;]~~

~~[(F) Medicaid recipients with intellectual, developmental and/or physical disabilities, or consumer advocates representing those recipients;]~~

~~[(G) parents of children who are Medicaid recipients;]~~

~~[(H) rural providers;]~~

~~[(I) advocates for children with special health care needs;]~~

~~[(J) pediatric health care providers, including specialty providers;]~~

~~[(K) long-term services and supports providers, including nursing facility providers and direct service workers;]~~

- ~~[(L) obstetrical care providers;]~~
- ~~[(M) community-based organizations serving low-income children and their families;]~~
- ~~[(N) community-based organizations engaged in perinatal services and outreach;]~~
- ~~[(O) Medicaid recipients who are 65 years of age or older;]~~
- ~~[(P) Medicaid recipients or family members who are using mental health services;]~~
- ~~[(Q) non-physician mental health providers participating in the Medicaid managed care program; and]~~
- ~~[(R) entities with responsibilities for the delivery of long-term services and supports or other Medicaid service delivery, including:]~~
 - ~~[(i) independent living centers;]~~
 - ~~[(ii) area agencies on aging;]~~
 - ~~[(iii) aging and disability resource centers established under the Aging and Disability Resource Center initiative funded in part by the federal Administration on Aging and the Centers for Medicare and Medicaid Services; and]~~
 - ~~[(iv) community mental health and intellectual disability centers.]~~
- ~~[(3) The membership will be racially and geographically diverse.]~~
- ~~[(4) Except as necessary to stagger terms, each member is appointed to serve a term of two years, with an appropriate number expiring each August 31. A member can serve no more than two terms.]~~
- ~~(g) Officers. The SMMCAC selects a chair and vice chair of the committee from its members.~~
 - ~~(1) The chair serves until December 1st of each even-numbered year. The vice chair serves until December 1st of each odd-numbered year.~~
 - ~~[(1) The SMMCAC selects a chair and vice chair from among its members].~~
 - ~~(2) A member serves no more than two consecutive terms as chair or vice chair. A chair or vice chair may not serve beyond their membership term.~~
 - ~~[(2) Each officer serves until his or her committee term expires.]~~
 - ~~(h) Required Training. Each member must complete all training HHSC will provide on relevant statutes and rules, including:

 - ~~(1) this section;~~
 - ~~(2) §351.801 of this subchapter;~~
 - ~~(3) Texas Government Code §531.012; and~~
 - ~~(4) Texas Government Code Chapters 551, 552, and 2110.~~~~
 - ~~(i) Date of abolition. The SMMCAC is abolished, and this section expires, on December 31st, 2024.~~

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

Filed with the Office of the Secretary of State on November 29, 2021.

TRD-202104721

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: January 9, 2022

For further information, please call: (512) 707-6117

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TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 94. PROPERTY TAX PROFESSIONALS

16 TAC §94.60

The Texas Department of Licensing and Regulation (Department) proposes a new rule at 16 Texas Administrative Code (TAC), Chapter 94, §94.60, regarding the Property Tax Professionals Program. This proposed change is referred to as the "proposed rule."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The proposed rule under 16 TAC, Chapter 94 implements Texas Occupations Code, Chapter 51, General Provisions Related to Licensing, and Chapter 1151, Property Tax Professionals.

The proposed rule is necessary to implement Senate Bill (SB) 916, 87th Legislature, Regular Session (2021). The aforementioned legislation requires the Department to provide an electronic link on its website that connects a user to the findings from the comptroller's biennial review of the appraisal district during a time that the selected registered professional appraiser was serving as the chief appraiser for that district, as well as each property value study used by the comptroller in each review. The availability of such centralized information referencing the selected appraiser's time as chief appraiser for a district will assist the board of directors of an appraisal district in its evaluation for the appointment of a new chief appraiser and provide additional transparency to the public regarding a chief appraiser's past and present work performance.

SECTION-BY-SECTION SUMMARY

The proposed rule adds new §94.60, Information on Appraisal District Reviews, which implements SB 916, and will require TDLR to provide an electronic link on its website for each registered professional appraiser that links to the comptroller's review of the appraisal district at the time the selected appraiser was serving as the chief appraiser of that district, as well as each property value study used by the comptroller in each review.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

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

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

LOCAL EMPLOYMENT IMPACT STATEMENT

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

The proposed rule requires TDLR to post information for appraisal district reviews that occurred during a registered appraiser's time as chief appraiser of a district. The availability of this information will not affect the number of appraisers in any local economy, or the number of individuals who might choose to become registered as appraisers.

PUBLIC BENEFITS

Mr. Couvillon also has determined that for each year of the first five-year period the proposed rule is in effect, the public benefit will be the increased access and transparency that the Department's electronic link to the appraisal district reviews performed during a registered professional appraiser's time as chief appraiser of a district will provide to appraisal district officials for evaluation of past performance when considering the appointment of a new chief appraiser, and for the general public assessment of the chief appraiser's conduct and performance during his or her tenure with the district in the event of question, dispute or contest.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Couvillon has determined that for each year of the first five-year period the proposed rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES

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

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

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

1. The proposed rule does not create or eliminate a government program.

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

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

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

5. The proposed rule does create a new regulation. The proposed rule creates a new regulation by requiring the Department to now provide an electronic link on its website for each registered appraiser that links to the comptroller's review of the appraisal district at the time the appraiser was serving as the chief appraiser of that district, as well as each property value study used by the comptroller in each review.

6. The proposed rule does not expand, limit, or repeal an existing regulation.

7. The proposed rule does not increase or decrease the number of individuals subject to the rules' applicability.

8. The proposed rule does not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENTS

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

STATUTORY AUTHORITY

The proposed rule is proposed under Texas Occupations Code, Chapters 51 and 1151, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rule are those set forth in Texas Occupations Code, Chapters 51 and 1151. No other statutes, articles, or codes are affected by the proposed rule.

§94.60. Department Information on Appraisal District Reviews.

The department must provide in the licensing record for each registered professional appraiser who serves as chief appraiser for an appraisal district at the time the comptroller finalizes its biennial review of the appraisal district's performance required under Section 5.102(c), Tax Code, an electronic link to:

- (1) the comptroller's report for the review; and

(2) each comptroller-conducted property value study pursuant to Subchapter M, Chapter 403, Government Code, used in the review.

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

Filed with the Office of the Secretary of State on November 29, 2021.

TRD-202104739

Brad Bowman

General Counsel

Texas Department of Licensing and Regulation

Earliest possible date of adoption: January 9, 2022

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



TITLE 22. EXAMINING BOARDS

PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

CHAPTER 78. SCOPE OF PRACTICE

22 TAC §78.2

The Texas Board of Chiropractic Examiners (Board) proposes repealing 22 TAC §78.2 (Prohibitions on the Scope of Practice). As part of the Board's comprehensive rule revision effort, the overall purpose of the repeal is to make the Board's rules simpler and easier to navigate.

The Board will propose a new §78.2 in a separate rulemaking. That action will simply cut language in the current §78.1 (Scope of Practice) referring to prohibited acts and move it to the new, updated §78.2. These rulemaking actions are to improve the readability and organization of the Board's rules; there are no substantive changes to the effect of the Board's current rules. None of these proposed rules change the current chiropractic scope of practice in Texas.

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

Mr. Fortner has determined that for each year of the first five years the proposed repeal will be in effect the public benefit is to make the Board's rules simpler and easier to navigate.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed repeal of 22 TAC §78.2. For each year of the first five years the proposed repeal is in effect, Mr. Fortner has determined:

(1) The proposed repeal does not create or eliminate a government program.

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

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

(4) The proposed repeal does not require a decrease or increase in fees paid to the Board.

(5) The proposed repeal does not create a new regulation.

(6) The proposal repeals existing Board rules for an administrative process.

(7) The proposed repeal does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed repeal does not positively or adversely affect the state economy.

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

The repeal is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic, and Texas Occupations Code §201.1525, which requires the Board to adopt necessary rules to clarify the chiropractic scope of practice.

No other statutes or rules are affected by this proposed repeal.

§78.2. Prohibitions on the Scope of Practice.

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

Filed with the Office of the Secretary of State on November 29, 2021.

TRD-202104727

Christopher Burnett

General Counsel

Texas Board of Chiropractic Examiners

Earliest possible date of adoption: January 9, 2022

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



CHAPTER 78. SCOPE OF PRACTICE AND DELEGATION

22 TAC §78.2

The Texas Board of Chiropractic Examiners (Board) proposes new 22 TAC §78.2 (Prohibitions on the Scope of Practice). As part of the Board's comprehensive rule revision effort, the overall purpose of the new rule is to make the Board's rules simpler and easier to navigate.

Specifically, this proposed action moves language referring to the prohibition on chiropractors from using surgical or invasive

procedures from the current §78.1 (Scope of Practice) and places it into the new §78.2.

These rulemaking actions are to improve the readability and organization of the Board's rules; there are no substantive changes to the effect of the Board's current rules relating to the scope of practice.

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

Mr. Fortner has determined that for each year of the first five years the proposed rule will be in effect the public benefit is to make the Board's rules simpler and easier to navigate.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for new 22 TAC §78.2. For each year of the first five years the proposed rule is in effect, Mr. Fortner has determined:

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

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

The rule is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic, and Texas Occupations Code §201.1525, which requires the Board to adopt necessary rules to clarify the chiropractic scope of practice.

No other statutes or rules are affected by this proposed rule.

§78.2. Prohibitions on the Scope of Practice.

(a) A licensee may not:

- (1) perform, prescribe, or order incisive or surgical procedures;
- (2) prescribe controlled substances, dangerous drugs, or any other drug that requires a prescription;
- (3) use, prescribe, or order x-ray therapy or therapy that exposes a body to radioactive materials;
- (4) perform, prescribe, or order solely cosmetic treatments;
- (5) use a needle for procedures that make an incision other than for drawing blood for diagnostic purposes; or
- (6) perform manipulations or adjustments on a patient under anesthesia.

(b) A licensee performing acts in subsection (a) of this section is practicing outside the scope of practice.

(c) A licensee who violates this section may be subject to disciplinary action by the Board.

(d) A licensee who violates this section may be subject to legal action by other governmental entities.

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

Filed with the Office of the Secretary of State on November 29, 2021.

TRD-202104728

Christopher Burnett

General Counsel

Texas Board of Chiropractic Examiners

Earliest possible date of adoption: January 9, 2022

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



CHAPTER 78. SCOPE OF PRACTICE

22 TAC §78.3

The Texas Board of Chiropractic Examiners (Board) proposes repealing 22 TAC §78.3 (General Delegation of Responsibility). As part of the Board's comprehensive rule revision effort, the overall purpose of the repeal is to make the Board's rules simpler and easier to navigate. The Board will propose a new §78.3 in a separate rulemaking. These rulemaking actions are to improve the readability and organization of the Board's rules; there are no substantive changes to the effect of the Board's current rules on delegation.

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

Mr. Fortner has determined that for each year of the first five years the proposed repeal will be in effect the public benefit is to make the Board's rules simpler and easier to navigate.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed repeal of 22 TAC §78.3. For each year of the first five years the proposed repeal is in effect, Mr. Fortner has determined:

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

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

The repeal is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic, and Texas Occupations Code §201.1525, which requires the Board to adopt necessary rules to clarify the chiropractic scope of practice.

No other statutes or rules are affected by this proposed repeal.

§78.3. *General Delegation of Responsibility.*

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

Filed with the Office of the Secretary of State on November 29, 2021.

TRD-202104729

Christopher Burnett

General Counsel

Texas Board of Chiropractic Examiners

Earliest possible date of adoption: January 9, 2022

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



CHAPTER 78. SCOPE OF PRACTICE AND DELEGATION

22 TAC §78.3

The Texas Board of Chiropractic Examiners (Board) proposes new 22 TAC §78.3 (General Delegation of Responsibility). As part of the Board's comprehensive rule revision effort, the overall purpose of the new rule is to make the Board's rules simpler and easier to navigate.

Specifically, this proposed action removes superfluous language from the current subsection (c)(4) of §78.3 referring to the performance of physical treatments by a qualified individual.

These rulemaking actions are to improve the readability and organization of the Board's rules; there are no substantive changes to the effect of the Board's current rules relating to delegation.

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

Mr. Fortner has determined that for each year of the first five years the proposed rule will be in effect the public benefit is to make the Board's rules simpler and easier to navigate.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for new 22 TAC §78.3. For each year of the first five years the proposed rule is in effect, Mr. Fortner has determined:

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

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

The rule is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic, and Texas Occupations Code §201.1525, which requires the Board to adopt necessary rules to clarify the chiropractic scope of practice.

No other statutes or rules are affected by this proposed rule.

§78.3. General Delegation of Responsibility.

(a) "Qualified individual" means an unlicensed individual with adequate education, training, and skill to perform an act.

(b) A licensee may not delegate responsibility to render a diagnosis, prescribe a treatment plan, or perform adjustments or manipulations under this section.

(c) A licensee may delegate responsibility to a qualified individual to perform acts within the scope of practice, including:

- (1) taking a medical history;
- (2) taking or recording vital signs;
- (3) taking or recording range of motion measurements;
- (4) performing physical treatments or modalities;
- (5) demonstrating exercises or stretches;
- (6) demonstrating the use of supports and devices; or
- (7) performing radiological procedures.

(d) A licensee shall document that an individual is qualified to perform an act.

(e) A licensee may not allow an individual whose chiropractic license has expired or been suspended or revoked in any jurisdiction to treat a patient in any manner, including acts in subsection (c) of this section.

(f) A licensee shall determine a reasonable number of qualified individuals a licensee can safely supervise.

(g) A licensee shall be physically present or on-call when any qualified individual performs an act in subsection (c) of this section unless another licensee is physically present at the place of business or on-call.

(h) "On-call" means a licensee must be available for voice consultation within 15 minutes.

(i) A licensee shall differentiate on a patient's records between acts performed by the licensee and acts performed by a qualified individual.

(j) A licensee who violates this section is subject to disciplinary action.

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

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TRD-202104730

Christopher Burnett

General Counsel

Texas Board of Chiropractic Examiners

Earliest possible date of adoption: January 9, 2022

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

◆ ◆ ◆
22 TAC §78.6

The Texas Board of Chiropractic Examiners (Board) proposes new 22 TAC §78.6 (Required Diligence in the Practice of Chiropractic). This rulemaking action is simply taking the language referring to those acts a chiropractor must affirmatively perform from the current §79.2 (Lack of Diligence) and moving it to a stand-alone rule. The new proposed §79.2 will retain the prohibited acts only. The Board believes moving the affirmative act language of the current §79.2 to a stand-alone rule in the chapter on scope of practice is a more logical place for it and will make it easier for stakeholders to find. This new rule and the proposed §79.2 do not substantively change the effect of the Board's existing rules on the diligent practice of chiropractic.

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

Mr. Fortner has determined that for each year of the first five years the proposed rule will be in effect the public benefit is to make the Board's rules simpler and easier to navigate.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for new 22 TAC §79.2. For each year of the first five years the proposed rule is in effect, Mr. Fortner has determined:

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

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

The rule is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic, and Texas Occupations Code §201.1525, which requires the Board to adopt necessary rules to clarify the chiropractic scope of practice.

No other statutes or rules are affected by this proposed rule.

§78.6. Required Diligence in the Practice of Chiropractic.

(a) A licensee shall:

(1) conform to the generally accepted standards of practice of the chiropractic profession in Texas;

(2) properly evaluate a patient;

(3) obtain a patient's informed consent for any treatment;

(4) protect a patient's privacy, dignity, safety, and confidential records;

(5) timely transfer a patient's records;

(6) timely refer a patient to an appropriate health care provider for diagnosis or treatment for a condition outside the scope of practice;

(7) timely refer a patient to an appropriate health care provider for diagnosis or treatment for a condition within the scope of practice, but which requires a diagnosis or treatment that exceeds the licensee's abilities or limitations; and

(8) adequately supervise staff, students, and recent graduates.

(b) A licensee who violates this section is subject to disciplinary action.

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

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TRD-202104740

Christopher Burnett

General Counsel

Texas Board of Chiropractic Examiners

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



CHAPTER 79. UNPROFESSIONAL CONDUCT

22 TAC §79.2

The Texas Board of Chiropractic Examiners (Board) proposes repealing 22 TAC §79.2 (Lack of Diligence). As part of the Board's comprehensive rule revision effort, the overall purpose of the repeal is to make the Board's rules simpler and easier to navigate. The Board will propose a new §79.2 in a separate rulemaking. The Board will also propose a new §78.6 (Required Diligence in the Practice of Chiropractic) to accommodate the structural changes in §79.2. These rulemaking actions are to improve the readability and organization of the Board's rules; there are no substantive changes to the effect of the Board's current rules on diligence in the practice of chiropractic.

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

Mr. Fortner has determined that for each year of the first five years the proposed repeal will be in effect the public benefit is to make the Board's rules simpler and easier to navigate.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed repeal of 22 TAC §79.2. For each year of the first five years the proposed repeal is in effect, Mr. Fortner has determined:

(1) The proposed repeal does not create or eliminate a government program.

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

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

(4) The proposed repeal does not require a decrease or increase in fees paid to the Board.

(5) The proposed repeal does not create a new regulation.

(6) The proposal repeals existing Board rules for an administrative process.

(7) The proposed repeal does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed repeal does not positively or adversely affect the state economy.

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

The repeal is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic, and Texas Occupations Code §201.1525, which requires the Board to adopt necessary rules to clarify the chiropractic scope of practice.

No other statutes or rules are affected by this proposed repeal.

§79.2. Lack of Diligence.

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

Filed with the Office of the Secretary of State on November 29, 2021.

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Christopher Burnett

General Counsel

Texas Board of Chiropractic Examiners

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



22 TAC §79.2

The Texas Board of Chiropractic Examiners (Board) proposes new 22 TAC §79.2 (Lack of Diligence). As part of the Board's comprehensive rule revision effort, the overall purpose of the new rule is to make the Board's rules simpler and easier to navigate.

This rulemaking action is simply taking the language referring to those acts a chiropractor must affirmatively perform and moving it to a stand-alone rule in the new proposed §78.6 (Required Diligence in the Practice of Chiropractic). The new §79.2 retains the prohibited acts from the current rule. The Board believes moving the affirmative act language of the current §79.2 to a stand-alone rule in the chapter on scope of practice is a more logical place for it and will make it easier for stakeholders to find. This new rule and the proposed §78.6 do not substantively change the effect of the Board's existing rules on the diligent practice of chiropractic.

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

Mr. Fortner has determined that for each year of the first five years the proposed rule will be in effect the public benefit is to make the Board's rules simpler and easier to navigate.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for new 22 TAC §79.2. For each year of the first five years the proposed rule is in effect, Mr. Fortner has determined:

- (1) The proposal does not create or eliminate a government program.
- (2) Implementation of the proposal does not require the creation of new employee positions or the elimination of existing employee positions.
- (3) Implementation of the proposal does not require an increase or decrease in future legislative appropriations to the Board.
- (4) The proposal does not require a decrease or increase in fees paid to the Board.
- (5) The proposal does not create a new regulation.
- (6) The proposal does not repeal existing Board rules for an administrative process.

(7) The proposal does not decrease the number of individuals subject to the rule's applicability.

(8) The proposal does not positively or adversely affect the state economy.

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

The rule is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic, and Texas Occupations Code §201.1525, which requires the Board to adopt necessary rules to clarify the chiropractic scope of practice.

No other statutes or rules are affected by this proposed rule.

§79.2. Lack of Diligence.

(a) A licensee may not:

(1) perform or attempt to perform procedures for which the licensee is untrained;

(2) delegate responsibilities to an untrained individual;

(3) physically harm or allow physical harm to an individual;

(4) abandon a patient without reasonable cause and adequate notice; or

(5) expose an individual to unsafe or unsanitary conditions.

(b) A licensee who violates this section is subject to disciplinary action.

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

Filed with the Office of the Secretary of State on November 29, 2021.

TRD-202104736

Christopher Burnett

General Counsel

Texas Board of Chiropractic Examiners

Earliest possible date of adoption: January 9, 2022

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



PART 14. TEXAS OPTOMETRY BOARD

CHAPTER 277. PRACTICE AND PROCEDURE

22 TAC §277.13

The Texas Optometry Board proposes new §277.13, concerning Complaints Relating From Glaucoma Treatment - Preliminary Evaluation and Official Investigation. This rule is being proposed pursuant to SB993 of the 87th Regular Legislative Session. This new rule sets forth the preliminary evaluation and official investigation process for all complaints received by the agency related

to the treatment of glaucoma after September 1, 2021. SB993 required collaboration with the Texas Medical Board and all input received has been considered by the Texas Optometry Board for the proposal of this new rule.

Kelly Parker, Executive Director, has determined that for the first five-year period the proposed rule is in effect, there will be fiscal implications for the state and local governments as a result of proposing this new rule. Specifically, the agency will be required to contract with and pay for expert witness services for all jurisdictional cases that involve the treatment of glaucoma after September 1, 2021. The agency was not funded for this expense. Therefore, the agency previously proposed an increase in licensing and renewal fees. The agency plans to collect the fees and seek additional appropriations based on the collected fees.

Kelly Parker, Executive Director, has determined that for each of the first five years the proposed rule is in effect, the public benefit anticipated is agency efficiency in its ability to carry out its programs.

Legal counsel for the Board has reviewed the new rule and has found it to be within the Board's authority to propose.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS ON SMALL BUSINESSES AND RURAL COMMUNITIES

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

ENVIRONMENT AND TAKINGS IMPACT ASSESSMENT

The agency has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code §2001.0225. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. The agency has determined that the proposed rule does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action, and therefore does not constitute a taking under Texas Government Code §2007.043.

GOVERNMENT GROWTH IMPACT STATEMENT

During the first five years that the proposed rule will be in effect, it is anticipated that the proposed rule will not create or eliminate a government program as no program changes are proposed. Further, implementation of the proposed rule will not require the creation of a new employee position or the elimination of an existing employee position. The agency is required to contract with and pay for expert witness services for all complaints related to the treatment of glaucoma and received after September 1, 2021. The agency was not funded for this expense. Therefore, the agency previously proposed an increase in licensing and renewal fees. The agency plans to collect the fees and seek additional appropriations based on the collected fees.

PUBLIC COMMENTS

Comments on the proposed rule may be submitted electronically to: kelly.parker@tob.texas.gov, Kelly Parker, Executive Director, Texas Optometry Board, 333 Guadalupe Street, Suite 2-420,

Austin, Texas 78701-3942. The deadline for furnishing comments is thirty days after publication in the *Texas Register*.

Proposed §277.13 is proposed under the Texas Optometry Act, Texas Occupations Code, §351.151 and §351.165. No other sections are affected by this proposal.

§277.13. Complaints Resulting From Glaucoma Treatment - Preliminary Evaluation and Official Investigation.

(a) Each complaint received by the Board related to a therapeutic optometrist's treatment of a patient for glaucoma shall be subject to a two-step review and investigation process as set forth more thoroughly in this Rule. Each relevant complaint will be initially subjected to a Preliminary Evaluation which may then result in an Official Investigation overseen by the Expert Panel as contemplated in §277.14 of this chapter (relating to Complaints Resulting From Glaucoma Treatment-Use of Case Review Consultant and Expert Panel).

(b) Upon receipt of a complaint regarding glaucoma treatment, for which the Board has jurisdiction, such complaint shall undergo a Preliminary Evaluation by the Board including an initial review by a Board-approved, qualified physician licensed in this state who specializes in ophthalmology (such qualified licensed physician being hereinafter referred to as the "Case Review Consultant"). Each complaint referred to the Case Review Consultant shall be provided to the Texas Medical Board.

(c) During the Preliminary Evaluation, the Case Review Consultant shall review the complaint and determine if the treatment of the patient for glaucoma violated the standard of care applicable to a physician specializing in ophthalmology. The Case Review Consultant shall submit a written report to the Board.

(d) The Preliminary Evaluation will be completed and shall at least include:

(1) The history of the licensee collected and maintained by the Board;

(2) Reasonable efforts to contact the complainant concerning the complaint. Any additional information received from the complainant will be added to the information maintained on the complaint;

(3) All relevant and reasonably available medical records related to the complaint; and

(4) Any and all communication or response to the complaint from the therapeutic optometrist (the "Respondent").

(e) At the conclusion of the Preliminary Evaluation, if it is determined that the standard of care was violated, the Board shall commence the Official Investigation procedure contemplated in §277.14 of this chapter.

(f) At the conclusion of the Preliminary Evaluation, if it is not determined that the Respondent violated the relevant standard of care, the matter shall not be opened as an Official Investigation, the Texas Medical Board shall be advised of the same, and the Preliminary Evaluation shall be closed and recorded as "Jurisdictional-Not Filed". The Board shall receive a quarterly report of all "Jurisdictional-Not Filed" glaucoma complaint cases.

(g) The Board shall use reasonable efforts to ensure that any information shared with the Case Review Consultant and/or Expert Panel contemplated in this rule and §277.14 of this chapter hereof shall be redacted and de-identified so as to maintain anonymity of the licensee that is the subject of the complaint.

(h) In all events, if the complaint regarding glaucoma treatment reflects that the continued practice by a licensee or the continued performance by a licensee of a procedure for which the person holds

a glaucoma certification would constitute a clear, imminent, or continuing threat to a patient's health or well-being the Board shall appoint a three-member disciplinary panel consisting of board members to determine whether the license issued should be temporarily suspended or restricted pursuant to 351.5015 of the Texas Optometry Act.

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

Filed with the Office of the Secretary of State on November 23, 2021.

TRD-202104701

Kelly Parker

Executive Director

Texas Optometry Board

Earliest possible date of adoption: January 9, 2022

For further information, please call: (512) 305-8502



22 TAC §277.14

The Texas Optometry Board proposes new §277.14, Complaints Resulting from Glaucoma Treatment - Use of Case Review Consultant and Expert Panel. This rule is being proposed pursuant to SB993 of the 87th Regular Legislative Session. This new rule sets forth the selection process for the Case Review Consultant and Expert Panel as required by SB993 of the 87th Regular Legislative Session. SB993 required collaboration with the Texas Medical Board and all input received has been considered by the Texas Optometry Board for the proposal of this new rule.

Kelly Parker, Executive Director, has determined that for the first five-year period the proposed rule is in effect, there will be fiscal implications for the state and local governments as a result of proposing this new rule. Specifically, the agency will be required to contract with and pay for expert witness services for all jurisdictional cases that involve the treatment of glaucoma after September 1, 2021. The agency was not funded for this expense. Therefore, the agency previously proposed an increase in licensing and renewal fees. The agency plans to collect the fees and seek additional appropriations based on the collected fees.

Kelly Parker, Executive Director, has determined that for each of the first five years the proposed rule is in effect, the public benefit anticipated is agency efficiency in its ability to carry out its programs.

Legal counsel for the Board has reviewed the new rule and has found it to be within the Board's authority to propose.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS ON SMALL BUSINESSES AND RURAL COMMUNITIES

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

ENVIRONMENT AND TAKINGS IMPACT ASSESSMENT

The agency has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code §2001.0225. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. The agency has determined that the proposed rule does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action, and therefore does not constitute a taking under Texas Government Code §2007.043.

GOVERNMENT GROWTH IMPACT STATEMENT

During the first five years that the proposed rule will be in effect, it is anticipated that the proposed rule will not create or eliminate a government program as no program changes are proposed. Further, implementation of the proposed rule will not require the creation of a new employee position or the elimination of an existing employee position. The agency is required to contract with and pay for expert witness services for all complaints related to the treatment of glaucoma and received after September 1, 2021. The agency was not funded for this expense. Therefore, the agency previously proposed an increase in licensing and renewal fees. The agency plans to collect the fees and seek additional appropriations based on the collected fees.

PUBLIC COMMENTS

Comments on the proposed rule may be submitted electronically to: kelly.parker@tob.texas.gov, Kelly Parker, Executive Director, Texas Optometry Board, 333 Guadalupe Street, Suite 2-420, Austin, Texas 78701-3942. The deadline for furnishing comments is thirty days after publication in the *Texas Register*.

Section 277.14 is proposed under the Texas Optometry Act, Texas Occupations Code, §351.151 and §351.165.

No other sections are affected by this proposal.

§277.14 Complaints Resulting From Glaucoma Treatment - Use of Case Review Consultant and Expert Panel.

(a) Composition. Upon a determination under §277.13 of this chapter (relating to Complaints Resulting From Glaucoma Treatment - Preliminary Evaluation and Official Investigation) by the Case Review Consultant that a Respondent has violated the standard of care for the treatment of glaucoma, the Board shall cause an Expert Panel to be convened. Each Expert Panel convened shall be constituted of at least one licensed physician qualified to practice in Texas who specializes in ophthalmology and has been previously named to a pool of ophthalmologists approved by the Texas Medical Board for such purposes and at least one licensed therapeutic optometrist certified as an optometric glaucoma specialist, qualified to practice in Texas, who has been approved by the Texas Optometry Board.

(b) Qualifications. To be eligible to serve as a Case Review Consultant or as a member of the Expert Panel, an application shall be made to the Board. An applicant may be considered if they meet the following criteria:

(1) Currently licensed and practicing in Texas as an optometric glaucoma specialist or as a physician specializing in ophthalmology for at least the last five (5) years;

(2) Have no disciplinary action taken by any healthcare regulatory board in Texas or in another state within the last ten (10) years;

(3) Is not a member of the faculty or board of trustees of an optometry school or an institution of higher education with an affiliated school of optometry; or

(4) Is not an officer, nor a spouse who is an officer, employee, or paid consultant of a Texas trade association, as defined by 351.053 of the Optometry Act, in the field of health care.

(c) Payment. The Board shall pay a reasonable, contracted, fee to each Case Review Consultant and Expert Panel member.

(d) Term; Resignation; Removal. A Case Review Consultant or Expert Panel member shall serve until resignation or removal or non-renewal of contract. A Case Review Consultant or Expert Panel member may resign at any time with at least five (5) business days' advance notice to the Board and, if necessary, the Texas Medical Board. A Case Review Consultant or Expert Panel member may be removed for good cause at any time on order of the Executive Director. Good cause for removal may include without limitation:

(1) Failure to maintain eligibility requirements;

(2) Failure to inform the Board of potential or apparent conflicts of interest;

(3) Repeated failure to timely review complaints or timely submit reports to the Board;

(4) Sharing of confidential information regarding complaints; or

(5) Direct contact with the Complainant or Respondent.

(e) Vacancy on Expert Panel. A vacancy of the optometrist serving on the Expert Panel shall be filled by Board Chair of the Texas Optometry Board, and a vacancy of an ophthalmologist serving on the Expert Panel shall be filled by the Texas Medical Board, each of which, as relevant, shall make an interim appointment and/or recommendation of any replacement Expert Panel member.

(f) Conflict of Interest. If a Case Review Consultant or Expert Panel member has a personal or professional interest that might reasonably tend to influence the discharge of the individual's duties in the review of case, he shall disclose that conflict immediately to the Executive Director for assignment to a different Case Review Consultant or Expert Panel member.

(1) A potential professional conflict of interest exists if the reviewer lives or practices optometry and/or ophthalmology in the same geographical market as the Respondent in the filed complaint and is in direct competition with the licensee.

(2) A potential personal conflict of interest exists if the reviewer has a personal relationship with the Respondent and/or complainant. A personal relationship is considered to be a situation in which the Case Review Consultant or Expert Panel member has personal interests such as financial interests, family or social factors that could impair one's ability to act impartially.

(g) Expert Panel Review of Case. The Expert Panel members will be provided with the Preliminary Evaluation Report, all relevant information related to the complaint, including records collected by the agency, during the Official Investigation. The Expert Panel members will submit to the Board a written report (or separate reports in the event the members of the panel do not have consensus) as to whether the Respondent should be subject to disciplinary action and, if so, whether the disciplinary action should include suspension or revocation of the Respondent's license issued under 351.3581(a) of the Optometry Act.

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

Filed with the Office of the Secretary of State on November 23, 2021.

TRD-202104702

Kelly Parker

Executive Director

Texas Optometry Board

Earliest possible date of adoption: January 9, 2022

For further information, please call: (512) 305-8502



22 TAC §277.15

The Texas Optometry Board proposes new §277.15 Complaints Relating to Glaucoma Treatment - Disciplinary Actions and Reporting. This rule is being proposed pursuant to SB993 of the 87th Regular Legislative Session. This new rule sets forth the disciplinary action process and public reporting of data related to jurisdictional complaints received related to the treatment of glaucoma after September 1, 2021. SB993 required collaboration with the Texas Medical Board and all input received has been considered by the Texas Optometry Board for the proposal of this new rule.

Kelly Parker, Executive Director, has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for the state and local governments as a result of proposing this new rule.

Kelly Parker, Executive Director, has determined that for each of the first five years the proposed rule is in effect, the public benefit anticipated is agency efficiency in its ability to carry out its programs.

Legal counsel for the Board has reviewed the new rule and has found it to be within the Board's authority to propose.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS ON SMALL BUSINESSES AND RURAL COMMUNITIES

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

ENVIRONMENT AND TAKINGS IMPACT ASSESSMENT

The agency has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code §2001.0225. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. The agency has determined that the proposed rule does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action, and therefore does not constitute a taking under Texas Government Code §2007.043.

GOVERNMENT GROWTH IMPACT STATEMENT

During the first five years that the proposed rule will be in effect, it is anticipated that the proposed rule will not create or eliminate a government program as no program changes are proposed. Further, implementation of the proposed rule will not require the creation of a new employee position or the elimination of an existing employee position; and implementation of the proposed rule will not require an increase or decrease in fees paid to the agency. There will be no effect on the state's economy.

PUBLIC COMMENTS

Comments on the proposed rule may be submitted electronically to: kelly.parker@tob.texas.gov, Kelly Parker, Executive Director, Texas Optometry Board, 333 Guadalupe Street, Suite 2-420, Austin, Texas 78701-3942. The deadline for furnishing comments is thirty days after publication in the *Texas Register*.

Proposed §277.15 is proposed under the Texas Optometry Act, Texas Occupations Code, §351.151 and §351.165.

No other sections are affected by this proposal.

§277.15. Complaints Relating to Glaucoma Treatment - Disciplinary Actions and Reporting.

(a) Upon receipt of an Expert Panel Report the Investigations-Enforcement Committee may evaluate the complaint and determine whether an informal conference with the Respondent pursuant to §277.2 of this chapter (relating to Disciplinary Proceedings) should take place. Any final recommendations for disciplinary actions shall be decided by the Board.

(b) The Board shall maintain and make publicly available de-identified data related to the number of glaucoma complaints filed with the Board and the disposition of the complaints.

(c) Pursuant to 351.2034(a)(4) of the Optometry Act, the agency will notify the Texas Medical Board of the disposition of a complaint related to the treatment of glaucoma.

(d) Public disciplinary actions related to complaints involving the treatment of glaucoma will be associated with the license number through a public licensee search. A searchable list of all licensees whose certificate under Section 351.3581(a) of the Optometry Act was suspended or revoked by the Board shall be posted publicly.

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

Filed with the Office of the Secretary of State on November 23, 2021.

TRD-202104703

Kelly Parker

Executive Director

Texas Optometry Board

Earliest possible date of adoption: January 9, 2022

For further information, please call: (512) 305-8502



PART 30. TEXAS STATE BOARD OF EXAMINERS OF PROFESSIONAL COUNSELORS

CHAPTER 681. PROFESSIONAL COUNSELORS

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §681.6

The Texas Behavioral Health Executive Council proposes the repeal of §681.6, relating to Minutes.

Overview and Explanation of the Proposed Rule. The proposed repeal is necessary since recordings of entire meetings of the Texas State Board of Examiners of Professional Counselors will be posted on a publicly accessible website; therefore this rule is no longer necessary.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed repeal is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the repeal. Additionally, Mr. Spinks has determined that enforcing or administering the repeal does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect there will be a benefit to licensees, applicants, and the general public because all will have greater and easier access to Board meeting deliberations and determinations. Mr. Spinks has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no additional economic costs to persons required to comply with this repeal.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed repeal will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed repeal will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed repeal does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed repeal is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed repeal is in effect, the Executive Council estimates that the proposed repeal will have no effect on govern-

ment growth. The proposed repeal does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to the agency; it does not require an increase or decrease in fees paid to this agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed repeal. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed repeal may be submitted to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 333 Guadalupe, Ste. 3-900, Austin, Texas 78701, or by email to rules@bhec.texas.gov. The deadline for receipt of comments is 5:00 p.m., Central Time, on January 10, 2022, which is at least 30 days from the date of publication in the *Texas Register*.

Statutory Authority. The repeal is proposed 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 proposes this repeal 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 Texas State Board of Examiners of Professional Counselors previously voted and, by a majority, approved to propose this repeal to the Executive Council. The repeal 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 proposes this repeal 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 repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Texas Occupations Code and may propose this repeal.

Lastly, the Executive Council proposes this repeal 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.

§681.6. *Minutes.*

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

Filed with the Office of the Secretary of State on November 29, 2021.

TRD-202104731

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Professional Counselors

Earliest possible date of adoption: January 9, 2022

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



SUBCHAPTER D. SCHEDULE OF SANCTIONS

22 TAC §681.205

The Texas Behavioral Health Executive Council proposes amendments to §681.205, relating to Schedule of Sanctions.

Overview and Explanation of the Proposed Rule. The proposed amendment is necessary to match other corresponding rule amendments made or proposed that are referenced in this rule. Substantively this schedule of sanctions is not changing, none of the sanctions are proposed to be changed. But the duplicative language that mirrors the language in each rule is being repealed as it is unnecessary and must be changed each time a corresponding rule is changed. Additionally, §681.91(l) is proposed to be deleted from this schedule since it has previously been proposed to be repealed.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to licensees, applicants, and the general public because the proposed rule will provide greater clarity and consistency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the

Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed rule may be submitted to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 333 Guadalupe, Ste. 3-900, Austin, Texas 78701, or by email to rules@bhec.texas.gov. The deadline for receipt of comments is 5:00 p.m., Central Time, on January 10, 2022, which is at least 30 days from the date of publication in the *Texas Register*.

Statutory Authority. The rule is proposed 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 proposes 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 Texas State Board of Examiners of Professional Counselors previously voted and, by a majority approved to propose 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 proposes 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 propose this rule.

Lastly, the Executive Council proposes 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.

No other code, articles or statutes are affected by this section.

§681.205. Schedule of Sanctions.

The following standard sanctions shall apply to violations of the Act and these rules.

Figure: 22 TAC §681.205

~~[Figure: 22 TAC §681.205]~~

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

Filed with the Office of the Secretary of State on November 29, 2021.

TRD-202104732

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Professional Counselors

Earliest possible date of adoption: January 9, 2022

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



PART 41. TEXAS BEHAVIORAL HEALTH EXECUTIVE COUNCIL

CHAPTER 881. GENERAL PROVISIONS

SUBCHAPTER C. PERSONNEL

22 TAC §881.33

The Texas Behavioral Health Executive Council proposes new §881.33, relating to Family Leave Pool.

Overview and Explanation of the Proposed Rule. The proposed new rule is necessary to implement H.B. 2063, 87th Leg., R.S. (2021), which codified new Subchapter A-1 of Chapter 661 of the Government Code. These new statutes require state agencies to adopt rules to develop a program where agency employees can voluntarily transfer sick or vacation leave earned by the employee to a family leave pool, and eligible employees can apply for leave under this pool.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state

or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to applicants, licensees, and the general public because the proposed rule will provide greater clarity and consistency in the Executive Council's rules with existing statutory requirements. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation, because the requirements of this rule already exist in statute; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed rule may be submitted to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 333 Guadalupe, Ste. 3-900, Austin, Texas 78701, or by email to rules@bhec.texas.gov. The deadline for receipt of comments is 5:00 p.m., Central Time, on January 10, 2022, which is at least 30 days from the date of publication in the *Texas Register*.

The Executive Council specifically invites comments from the public on the issues of whether or not the proposed rule will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Executive Council may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See §2006.002(c) and (c-1) of the Tex. Gov't Code.

Statutory Authority. The rule is proposed 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 proposes 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 also proposes 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.

No other code, articles or statutes are affected by this section.

§881.33. Family Leave Pool.

(a) The Council hereby establishes a family leave pool to provide eligible employees more flexibility in bonding with and caring for children during a child's first year following birth, adoption, or foster placement, and to care for themselves or family members suffering from serious illness, including pandemic-related illnesses or complications caused by a pandemic.

(b) The Council's family leave pool shall be administered by the Executive Director in accordance with Chapter 661 of the Government Code and the Texas Human Resources Statutes Inventory manual published by the Texas State Auditor's Office.

(c) The Executive Director shall develop and prescribe procedures for the operation of the family leave pool and include such procedures in the Council's personnel manual.

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

Filed with the Office of the Secretary of State on November 29, 2021.

TRD-202104733

Darrel D. Spinks
Executive Director
Texas Behavioral Health Executive Council
Earliest possible date of adoption: January 9, 2022
For further information, please call: (512) 305-7706



CHAPTER 882. APPLICATIONS AND LICENSING

SUBCHAPTER B. LICENSE

22 TAC §882.21

The Texas Behavioral Health Executive Council proposes amendments to §882.21, relating to License Statuses.

Overview and Explanation of the Proposed Rule. The proposed amendment is necessary to reflect the change in process whereby requests to reactivate a license must now be submitted through the online licensing system.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to applicants, licensees, and the general public because the proposed rule will provide greater clarity and consistency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is

required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed rule may be submitted to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 333 Guadalupe, Ste. 3-900, Austin, Texas 78701, or by email to rules@bhec.texas.gov. The deadline for receipt of comments is 5:00 p.m., Central Time, on January 10, 2022, which is at least 30 days from the date of publication in the *Texas Register*.

The Executive Council specifically invites comments from the public on the issues of whether or not the proposed rule will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Executive Council may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See §2006.002(c) and (c-1) of the Tex. Gov't Code.

Statutory Authority. The rule is proposed 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 proposes 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 also proposes 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.

No other code, articles or statutes are affected by this section.

§882.21. *License Statuses.*

(a) Active Status. Any licensee with a license on active status may practice pursuant to that license, subject to any restrictions imposed by the Council. Active status is the only status under which a licensee may engage in the practice of the licensee's respective profession.

(b) Inactive Status.

(1) A licensee with an unrestricted active license may elect inactive status through the Council's online licensing system. A licensee who elects inactive status must pay the associated fee.

(2) A licensee with an inactive license is not required to comply with continuing education requirements while the license is inactive.

(3) The inactive status period for a license shall coincide with the license renewal period. At the end of the renewal period, if the inactive status has not been renewed or the license returned to active status, the license will expire.

(4) In order to continue on inactive status, an inactive licensee must renew the inactive status each renewal period. Licensees may renew their inactive status through the Council's online licensing system by completing the online renewal requirements and paying the associated fee.

(5) A licensee with a pending complaint may not place a license on inactive status. If disciplinary action is taken against a licensee's inactive license, the licensee must reactivate the license until the terms of the disciplinary action or restricted status have been terminated. Failure to reactivate a license when required by this paragraph shall constitute grounds for further disciplinary action.

(6) An inactive license may be reactivated at any time by applying for [submitting a written request to return to] active status through the online licensing system [to the Council's office]. When reactivating a license, a licensee must pay the renewal fee associated with the license. A license that has been reactivated is subject to the standard renewal schedule and requirements, including renewal and late fees. Notwithstanding the foregoing, a license that is reactivated within 60 days of its renewal date will be considered as having met all renewal requirements and will be renewed for the next renewal period.

(7) Any licensee reactivating a license from inactive status must provide proof of completion of the continuing education requirements for renewal of that particular license before reactivation will occur.

(8) A licensee wishing to reactivate a license that has been on inactive status for four years or more must take and pass the relevant jurisprudence exam with the minimum acceptable score, unless the licensee holds another license on active status within the same profession.

(c) Delinquent Status. A licensee who fails to renew a license for any reason when required is considered to be on delinquent status. Any license delinquent for more than 12 consecutive months shall expire. A licensee may not engage in the practice of the licensee's respective profession under a delinquent license. The Council may sanction a delinquent licensee for violations of its rules.

(d) Restricted Status. Any license that is currently suspended, on probated suspension, or is currently required to fulfill some requirements in an agency order is a restricted license.

(e) Retirement Status. A licensee who is on active or inactive status may retire the license by notifying the Council in writing prior to the renewal date for the license. A licensee with a delinquent status may also retire the license by notifying the Council in writing prior to

the license expiring. However, a licensee with a pending complaint or restricted license may not retire the license. A licensee who retires a license shall be reported to have retired in good standing.

(f) Resignation Status. A licensee may resign only upon express agreement with the Council.

(g) Expired Status. A license that has been delinquent for more than 12 consecutive months or any inactive license that is not renewed or reactivated is considered to be expired.

(h) Revoked Status. A revoked status results from a license being revoked pursuant to an agency order.

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

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Darrel D. Spinks

Executive Director

Texas Behavioral Health Executive Council

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



SUBCHAPTER F. LICENSING PROVISIONS RELATED TO MILITARY SERVICE MEMBERS, VETERANS, AND MILITARY SPOUSES

22 TAC §882.60

The Texas Behavioral Health Executive Council proposes amendments to §882.60, relating to Special Provisions Applying to Military Service Members, Veterans and Spouses.

Overview and Explanation of the Proposed Rule. The proposed amendment is necessary to reflect recent changes to Section 55.004 of the Occupations Code following passage of H.B. 139, 87th Leg., R.S. (2021).

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to applicants, licensees, and the general public because the proposed rule will provide greater clarity and consistency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed rule may be submitted to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 333 Guadalupe, Ste. 3-900, Austin, Texas 78701, or by email to rules@bhec.texas.gov. The deadline for receipt of comments is 5:00 p.m., Central Time, on January 10, 2022, which is at least 30 days from the date of publication in the *Texas Register*.

The Executive Council specifically invites comments from the public on the issues of whether or not the proposed rule will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Executive Council may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally describe how the health, safety, environmental and economic welfare of

the state will be impacted by the various proposed methods. See §2006.002(c) and (c-1) of the Tex. Gov't Code.

Statutory Authority. The rule is proposed 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 proposes 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 also proposes 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.

No other code, articles or statutes are affected by this section.

§882.60. *Special Provisions Applying to Military Service Members, Veterans and Spouses.*

(a) The Council adopts by reference the definitions set forth in Chapter 55 of the Occupations Code.

(b) A license may be issued to a military service member, military veteran, or military spouse upon proof of one of the following:

(1) the applicant holds a current license in another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the license sought in this state; or

(2) within the five years preceding the application date, the applicant held the license sought in this state.

(c) An applicant applying as a military spouse must submit proof of marriage to a military service member.

(d) Each member board shall develop and maintain a method for determining substantial equivalency under subsection (b) of this section.

(e) As part of the application process, the Executive Director may waive any prerequisite for obtaining a license, other than the requirements in subsection (b) of this section, the jurisprudence examination, and the fingerprint criminal history background check, if it is determined that the applicant's education, training, and experience provide reasonable assurance that the applicant has the knowledge and skills necessary for entry-level practice under the license sought. When making this determination, the Executive Director must consult with the relevant member board or its designated application or licensing committee and consider the board's or committee's input and recommendations. In the event the Executive Director does not follow a recommendation of the board or committee, the Executive Director must submit a written explanation to the board or committee explaining why its recommendation was not followed. No waiver may be granted where a military service member or military veteran holds a license issued by another jurisdiction that has been restricted, or where the applicant has a disqualifying criminal history.

(f) Each member board may develop and maintain alternate methods for a military service member, military veteran, or military spouse to demonstrate competency in meeting the requirements for obtaining a license, including receiving appropriate credit for training, education, and professional experience.

(g) Each member board shall develop and maintain a method for applying credit toward license eligibility requirements for appli-

cants who are military service members or military veterans with verifiable military service, training, or education. An applicant may not receive credit toward licensing requirements under this subsection if the applicant holds another license that has been restricted, or the applicant has a disqualifying criminal history.

(h) The initial renewal date for a license issued pursuant to this rule shall be set in accordance with the agency's rule governing initial renewal dates.

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

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Darrel D. Spinks

Executive Director

Texas Behavioral Health Executive Council

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



22 TAC §882.61

The Texas Behavioral Health Executive Council proposes amendments to §882.61, relating to Special Licensing Provisions for Military Spouses.

Overview and Explanation of the Proposed Rule. The proposed amendment is necessary to correct a typographical error and reflect recent changes to Section 55.004 of the Occupations Code following passage of H.B. 139, 87th Leg., R.S. (2021).

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to applicants, licensees, and the general public because the proposed rule will provide greater clarity and consistency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the

Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed rule may be submitted to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 333 Guadalupe, Ste. 3-900, Austin, Texas 78701, or by email to rules@bhec.texas.gov. The deadline for receipt of comments is 5:00 p.m., Central Time, on January 10, 2022, which is at least 30 days from the date of publication in the *Texas Register*.

The Executive Council specifically invites comments from the public on the issues of whether or not the proposed rule will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Executive Council may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See §2006.002(c) and (c-1) of the Tex. Gov't Code.

Statutory Authority. The rule is proposed 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 proposes 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 also proposes 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.

No other code, articles or statutes are affected by this section.

§882.61. *Special Licensing Provisions for Military Spouses.*

(a) A military spouse shall be issued a license to practice marriage and family therapy, professional counseling, [practice] psychology, or social work if the person meets each of the following requirements:

(1) the spouse notifies the Council on an agency approved form, of the spouse's intent to practice a particular profession in this state;

(2) the spouse provides verification of licensure in good standing in another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for licensure in this state;

(3) the spouse submits a copy of the law reflecting the current licensing standards for the relevant profession in the state where the spouse is licensed, with the relevant portions highlighted for easy reference;

(4) the spouse submits proof of residency in this state (e.g. copy of a permanent change of station order) and a copy of the spouse's military identification card; and

(5) the Council provides confirmation to the spouse that it has verified the spouse's license in the other jurisdiction and that the spouse is authorized to practice a particular profession.

(b) The Council shall determine substantial equivalency based upon the determinations made by the member boards under [subsection] §882.60(d) of this chapter (relating to Special Provisions Applying to Military Service Members, Veterans, and Spouses).

(c) The Council may rely upon the following when verifying licensure under this subsection: official verification received directly from the other jurisdiction, a government website reflecting active licensure and good standing, or verbal or email verification directly from the other jurisdiction.

(d) A military spouse issued a license under this rule is subject to all laws and regulations in the same manner as a regularly licensed provider.

(e) A license issued under this rule is valid while the holder's spouse is stationed at a military installation in this state or for three years from the date of issuance, whichever is less. A license issued under this rule cannot be renewed or extended.

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

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 11. TEXAS JUVENILE JUSTICE DEPARTMENT

CHAPTER 380. RULES FOR STATE-OPERATED PROGRAMS AND FACILITIES

The Texas Juvenile Justice Department (TJJD) proposes to amend §§380.8501, 380.8545, 380.8555, 380.8557, 380.8559, 380.8565, and 380.8569, concerning admission, placement, release, and discharge. TJJD also proposes to amend §380.8703, concerning rehabilitation program stage requirements and assessment.

SUMMARY OF CHANGES

The amendments to §380.8501, concerning Definitions, include: 1) deleting the terms *Community Re-Integration Plan*, *Exit Review*, and *Multi-Disciplinary Team*; 2) removing the requirement for youth with determinate sentences and youth with committing offenses of high severity to participate in a face-to-face interview as part of the process used to determine if the youth meets criteria for transition or release; 3) adding definitions for the terms *Determinate Sentence Review*, *Final Decision Authority*, *Program Completion Review*, and *Transition Review*; and 4) modifying the definitions of the terms *Committing Offense* and *Risk and Protective Factors*.

The amendments to §380.8545, concerning Movement Before Program Completion, include removing: 1) the requirement for a youth to have completed a draft community reintegration plan in order to be eligible to transition to a less restrictive placement before the initial or revocation minimum length of stay is completed; 2) the description of certain youth actions and behaviors that would qualify the youth for assignment to the second-highest stage in the agency's rehabilitation program; 3) the designations of which staff members serve as the final decision authority for approving various types of movements described in this rule; 4) the section that refers to the documents TJJD provides to juvenile courts at least 30 days before a youth's release; 5) the section that refers to the notices TJJD provides to various entities at least 10 days before a youth's transition or release, with the exception of the notice provided to any entity that has an active warrant for the youth; 6) a reference to which staff members assign a youth to a particular stage in the rehabilitation program; and 7) a reference to which staff determine that a conditional placement would be in a youth's best interests.

The amendments to §380.8545 also include: 1) clarifying that disciplinary transfers always require a due process hearing; 2) renaming the *exit review* as the *transition review*; 3) replacing the term *mental retardation* with *intellectual disability*; and 4) clarifying that major rule violations are *proven* (rather than *confirmed*) at Level II due process hearings.

The amendments to §380.8555, concerning Program Completion for Non-Sentenced Offenders, will make numerous changes in several areas.

Amendments to §380.8555 related to program completion criteria include removing: 1) the requirement for a youth to have completed a community reintegration plan in order to be eligible for parole; 2) the description of certain youth actions and behaviors that would qualify the youth for assignment to the highest stage in the agency's rehabilitation program; 3) a reference to which staff members assign a youth to a particular stage in the rehabilitation program.

Amendments to §380.8555 related to exit review include renaming the *exit review* and *release review* as the *program completion review*, as well as removing: 1) the requirement that the program completion review be conducted by the treatment team; 2) the requirement to notify various parties before this review is held and to notify various parties of the result of the review; and 3) the specific number of days before expiration of the minimum length of stay that a youth must be reviewed to determine if program completion requirements have been met.

Amendments to §380.8555 related to the process for approving release or referral to the Release Review Panel include: 1) clarifying that the process for reviewing a youth upon completion of the initial minimum length of stay is used also when a youth completes an extension to the minimum length of stay and when a youth completes the minimum length of stay given upon parole revocation; 2) clarifying that a youth's case is referred to the final decision authority if the youth *appears to meet* (rather than *does meet*) program completion criteria; 3) adding that, when a youth's case is referred to the panel, staff will discuss with the youth the reasons for that decision; 4) removing the designation of which staff members serve as the final decision authority for approving release to parole under this rule; and 5) specifying that one reason a youth's case will be referred to the panel is *if the youth loses eligibility for release after the program completion review and before release to parole* (rather than losing eligibility before the minimum length of stay date and requiring that the treatment team confirm the youth no longer meets criteria).

Other amendments to §380.8555 include: 1) removing the section that refers to the documents TJJJD provides to juvenile courts at least 30 days before a youth's release; 2) removing the section that refers to notices TJJJD provides to various entities at least 10 days before a youth's release, with the exception of the notice provided to any entity that has an active warrant for the youth; and 3) clarifying that major rule violations are *proven* (rather than *confirmed*) at Level II due process hearings.

The amendments to §380.8557, concerning Release Review Panel, will make numerous changes in several areas.

Amendments to §380.8557 related to definitions include: 1) adding a definition for the term *Victim*; and 2) removing the definition of *Progress Review Team*.

Amendments to §380.8557 related to general provisions include: 1) removing the statement that allowed only factors *other than rule violations* to be considered by the Release Review Panel irrespective of the form of the evidence. Added that the panel may review any information relevant to the youth's progress and rehabilitation, *irrespective of the form of the information*; 2) adding that documented behaviors that do not result in a rule violation being proven true in a due process hearing may still provide evidence of continuing conduct that the panel may consider in making its decision; 3) removing *any advocate chosen by the*

youth from the list of people who may submit information for the panel's consideration and from the list of people from whom a youth may request assistance in communicating with the panel; 4) clarifying that, when notified that *an attorney or other representative* (rather than *"a representative"*) is assisting the youth with the review, the panel must notify the representative of any scheduled interviews with the youth prior to conducting the interview; 5) specifying that, if the panel approves a request from a parent/guardian, victim, or youth representative to have personal communication with a member of the panel, the panel will schedule the communication, which may be in person, via telephone, or via videoconference (rather than stating the panel will establish the time, place, and manner of communication); and 6) clarifying that the deadline for releasing or discharging a youth may be extended when a request for reconsideration of the release or discharge order has been filed.

Amendments to §380.8557 related to completion of the minimum length of stay include: 1) removing information regarding the facility-level review that is held before referring a youth to the Release Review Panel, which is addressed, in part, in §380.8555; 2) removing the designations of which staff members are responsible for notifying certain parties that a youth's case has been referred to the panel and for providing the panel with information about the youth; 3) removing a reference to the requirement for staff to discuss with the youth the reasons the youth's case was referred to the panel; 4) adding that the panel's determination may include an assessment of whether there are any public safety issues related to releasing or discharging the youth; 5) adding that the youth, parent/guardian, victim, and any attorney or representative of the youth are notified of the panel's determination regarding extension of stay, release, or discharge; and 6) clarifying that, if the panel extends the length of a youth's stay, *any attorney or representative of the youth* (rather than a *designated advocate*) is among those who will receive a written report explaining the reason for the extension.

Amendments to §380.8557 related to completion of extension length of stay include: 1) removing the requirement to notify the victim when a youth is referred to the Release Review Panel upon completion of an extension length of stay; 2) adding the youth's representative or attorney, if any, to the list of individuals who must be notified when a youth's case is pending review by the panel upon completion of an extension length of stay. Removed references to which staff members are responsible for sending these notices, and removed the deadline for sending them; 3) removing information regarding the facility-level review that is held before referring a youth to the panel upon completion of an extension length of stay. Information is being added to §380.8555 to address this item; 4) adding a statement requiring staff, before the expiration of a youth's extension length of stay, to make available to the panel any information relevant to the decision on whether the youth needs additional rehabilitation in a residential placement; and 5) adding that the panel will *send* (rather than *mail*) notification to *the youth, the youth's parent/guardian, any victims, and the attorney or representative of the youth* (rather than *"all parties"*) of the panel's decision regarding a youth who has completed an extension of stay.

Amendments to §380.8557 related to requests for reconsideration of an extension order include: 1) clarifying that one of the individuals who may request a reconsideration of an extension order is *an attorney or other representative for the youth* (rather than *the youth's designated advocate*); 2) adding that the TJJJD ombudsman may request a reconsideration of an extension order; 3) adding that requests for reconsideration *must* (rather than

should) be received no later than the stated deadline, and that any requests for reconsideration received after the stated deadline may be considered at the discretion of the Release Review Panel; 4) removing *advocate* from the list of individuals from whom the youth may request assistance in completing a request for reconsideration; 5) clarifying that, when the panel conducts a reconsideration of an extension order, the panel shall provide the youth, the youth's parent/guardian, the attorney or representative of the youth, and the person who submitted the request for reconsideration (rather than *all parties*) with a written explanation of the panel's decision; and 6) adding that, if the reconsideration results in a decision to release or discharge the youth, any victims shall be notified.

Amendments to §380.8557 related to requests for reconsideration of a release or discharge order include: 1) adding that, for youth in a high-restriction facility, a release or discharge order is considered conditional until the youth has been physically released from the facility; 2) adding that, for youth in a medium-restriction facility, a release order is considered conditional until the youth's status has been changed from institutional to parole status, and a discharge order is considered conditional until the youth has been physically released from the facility; 3) adding that the executive director, chief inspector general, general counsel, deputy executive director for state services, chief of staff, staff designated by the executive director, and TJJJ ombudsman (in addition to the facility administrator and contract-care monitoring staff) may request a reconsideration of a release or discharge order; 4) specifying that a request for reconsideration of a release or discharge order may be made *as long as the release or discharge order is still conditional* (rather than any time prior to the youth's release or discharge); 5) adding that staff designated by the executive director must request reconsideration of a release or discharge order if, while the release or discharge order is still conditional, the youth is alleged to have committed a major rule violation or new information becomes available that indicates the youth is likely in need of further rehabilitation at a TJJJ facility. Such requests are no longer at the discretion of the facility administrator or contract-care monitoring staff; 6) removing a reference to which staff members are responsible providing the youth with a copy of a request for reconsideration of a release or discharge order; 7) adding that the youth shall be provided a copy of the request for reconsideration *before the Release Review Panel makes its decision regarding the reconsideration*. If the youth is represented by an attorney or other representative, that person shall also be provided with a copy of the request for reconsideration and given an opportunity to provide information to the panel; 8) adding that the panel shall provide the youth, the youth's parent/guardian, the requestor, and facility staff with a written explanation of the panel's decision no later than 15 calendar days after receipt of the request. The reply shall include an indication that the panel has considered the information submitted in the request. If the reconsideration results in a change in the original panel decision, any victims shall be notified; and 9) adding that, if reconsideration of a release or discharge order results in a decision to extend the youth's length of stay, a request for reconsideration of the new extension order may be filed according to procedures previously mentioned in this rule. That reconsideration decision exhausts all administrative remedies.

The amendments to §380.8559, concerning Program Completion for Sentenced Offenders, will make numerous changes in several areas.

Amendments to §380.8559 related to program completion criteria include removing: 1) the requirement for a youth to have completed a community reintegration plan in order to be eligible for parole; 2) the description of certain youth actions and behaviors that would qualify the youth for assignment to the highest stage in the agency's rehabilitation program; and 3) a reference to which staff members assign a youth to a particular stage in the rehabilitation program.

Amendments to §380.8559 related to exit review include: 1) renaming the *exit review* and *exit interview* as the *program completion review*; 2) removing the requirement to notify the victim and any designated advocate for the youth before TJJJ holds a program completion review; 3) removing the specific number of days in advance TJJJ must notify certain individuals of a pending review; 4) removing the specific number of days after a youth meets program completion criteria that TJJJ must hold the review; and 5) adding that the notice provided to the youth and parent/guardian of a pending program completion review includes, among other items, the date by which a request to present in-person information must be submitted.

Amendments to §380.8559 related to the process for approving release or transfer include: 1) removing the provision stating that any information received from a youth's family members, victims, local officials, staff, or the general public is considered by TJJJ and included in the release/transfer packet; 2) removing the designation of which staff member serves as the final decision authority for approving release or transfer to parole under this rule; and 3) adding that, for youth who will be released to TJJJ parole, the youth must be released within 60 days *after the youth is approved for release* (rather than 60 days after the youth met program completion criteria).

Amendments to §380.8559 related to losing eligibility for release or transfer include: 1) clarifying that one reason a youth would lose eligibility for release or transfer is if the youth is *no longer assigned to the highest stage in the rehabilitation program* (rather than no longer meeting *the required rehabilitation program criteria*); 2) removing the reference to which staff members would determine that a youth no longer meets required rehabilitation criteria; and 3) removing the requirement for a subsequent exit review/interview to confirm that a youth is again eligible for release or transfer after eligibility was lost.

Other amendments to §380.8559 include: 1) clarifying that the provision allowing the executive director to waive the requirement for a youth to complete the entire minimum period of confinement in a high-restriction facility does not allow a youth to be placed on parole status; 2) adding that TJJJ reviews a youth's progress when the youth is past the minimum period of confinement and appears to meet program completion criteria; 3) removing the provision stating that the scheduled progress reviews are for the purpose of determining each youth's eligibility for release or transfer; 4) removing the section that refers to the documents TJJJ provides to juvenile courts at least 30 days before a youth's release; 5) removing the section that refers to the notices TJJJ provides to various entities at least 10 days before a youth's release, with the exception of the notice provided to any entity that has an active warrant for the youth; and 6) clarifying that major rule violations are *proven* (rather than *confirmed*) at Level II due process hearings.

The amendments to §380.8565, concerning Discharge of Sentenced Offenders upon Transfer to TDCJ or Expiration of Sentence, will make numerous changes in several areas.

Amendments to §380.8565 related to exit review include: 1) renaming the *exit review* as the *determinate sentence review*; 2) adding that a determinate sentence review is held before a recommendation is made to transfer a youth to prison or to adult parole; 3) removing the requirement to notify the victim and any designated advocate for the youth before TJJJ holds a determinate sentence review; and 4) removing the specific number of days in advance TJJJ must notify certain individuals of a pending review

Amendments to §380.8565 related to the process for approving transfer include: 1) removing the provision stating that any information received from a youth's family members, victims, local officials, staff, or the general public is considered by TJJJ and included in the release packet; 2) adding that approval from the final TJJJ decision authority is required before staff requests a hearing with the committing juvenile court or initiating a transfer to the adult parole system (rather than stating that the executive director or designee approves the staff request for a hearing when a determination has been made that the youth meets criteria for requesting a hearing for transfer to the adult prison system or that the youth cannot complete the minimum period of confinement before age 19); 3) specifying that TJJJ requests a hearing with the committing juvenile court when a youth cannot complete the minimum period of confinement before age 19; and 4) clarifying that the TJJJ final decision authority ensures the youth's community reentry/transition plan adequately addresses risk factors before approving transfer to the adult parole system (rather than stating that TJJJ does not transfer youth to adult parole until the executive director or designee determines the plan adequately addresses risk factors).

Other amendments to §380.8565 include: 1) adding that the other relevant factors that may be considered by TJJJ when forming a recommendation for the committing court include the youth's participation in statutorily required programming, including the reading improvement program, the positive behavior support system, and gang intervention education; 2) clarifying that the provision allowing the executive director to waive the requirement for a youth to complete the entire minimum period of confinement in a high-restriction facility does not allow a youth to be placed on parole status; 3) removing the sections that refer to the notices TJJJ provides to various entities at least 10 days before a youth's transfer or release, with the exception of the notice provided to any entity that has an active warrant for the youth; and 4) clarifying that major rule violations are *proven* (rather than *confirmed*) at Level II due process hearings.

The amendments to §380.8569, concerning Transfer of Sentenced Offenders Adjudicated for Capital Murder, will make numerous changes in several areas.

Amendments to §380.8569 related to program completion criteria include: 1) removing the requirement for TJJJ to review youth adjudicated for capital murder to determine if the youth have completed the TJJJ program; 2) adding that the factors listed in the rule are used by TJJJ when forming a recommendation to the committing court *before a youth turns 19* (rather than being used when youth do not meet program completion criteria)

Amendments to §380.8569 related to exit review include: 1) removing the terms *exit review* and *exit interview* and instead used the term *determinate sentence review*; 2) adding that a determinate sentence review is held before a recommendation is made to transfer a youth to prison or to adult parole; 3) removing the requirement to notify the victim and any designated advocate for

the youth before TJJJ holds a determinate sentence review; and 4) removing the specific number of days in advance TJJJ must notify certain individuals of a pending review.

Amendments to §380.8569 related to the process for approving transfer include: 1) removing the provision stating that any information received from a youth's family members, victims, local officials, staff, or the general public is considered by TJJJ and included in the transfer packet; 2) adding that approval from the final TJJJ decision authority is required before staff request a hearing with the committing juvenile court; 3) removing a provision that requires the executive director or designee to do the following at least five months before a youth reaches age 19: (a) determine whether the youth meets criteria for transfer to prison or to adult parole and to approve a staff request for a hearing; and (b) approve staff's request for a juvenile court hearing to request transfer to prison or to adult parole; 4) adding that a youth may not be transferred to prison unless the committing court orders the transfer (rather than stating that the court is the final decision authority for transferring a youth to adult parole or prison); and 5) adding that the final TJJJ decision authority ensures the youth's community reentry/transition plan adequately addresses risk factors before approving the transfer from a high-restriction TJJJ facility to adult parole.

Other amendments to §380.8569 include: 1) adding that the other relevant factors that may be considered by TJJJ when forming a recommendation for the committing court include the youth's participation in statutorily required programming, including the reading improvement program, the positive behavior support system, and gang intervention education; 2) removing the requirement for TJJJ to review each youth's progress when the minimum period of confinement is complete, as youth adjudicated for capital murder cannot complete the minimum period of confinement while at TJJJ; and 3) clarifying that major rule violations are *proven* (rather than *confirmed*) at Level II due process hearings.

The amendments to §380.8703, concerning Rehabilitation Program Stage Requirements and Assessment, include: 1) clarifying that this rule does not apply to youth on parole status; 2) removing all requirements for a youth to develop and complete a community reintegration plan in order to attain various stages within the rehabilitation program; 3) clarifying that the youth's participation in *development* of the case plan or case plan objectives is not a part of stage promotion criteria, but *completing* the case plan objectives is a part of those criteria; 4) removing references to which staff members conduct stage assessments and determine whether individual requirements for completing a stage have been met; 5) removing a description of the duties of the multi-disciplinary team, the case manager, and other staff in conducting stage assessments; 6) removing a requirement to interview the youth to confirm stage progression; 7) removing a reference to which staff member contacts the parent/guardian and parole officer before each stage assessment meeting; 8) clarifying that the parent/guardian and parole officer are *allowed to provide input* into stage assessment meetings (rather than the case manager *ensuring* that they provide input); 9) specifying that the youth and the parent/guardian are notified of the results of the stage assessment, but this notification is not required to take place *after* the meeting; 10) adding that youth who return to a TJJJ facility due to parole revocation, recommitment, or disciplinary transfer may be promoted more than one stage at the first stage assessment following the return or recommitment; 11) specifying that, when a youth appeals the results of a stage assessment or the lack of opportunity to complete require-

ments of a stage, the person assigned to respond must *not be a staff member who was involved in the assessment being grieved* (rather than not being a member of the multi-disciplinary team or a person has been involved in the youth's current assessment); 12) removing the reference to which staff members a youth must work with in targeting specific skills for development on Stage 2; 13) removing the reference to which staff members assign skill lessons to youth on Stage 3; 14) specifying that Stage 4 is considered the second-highest stage for purposes of youth being eligible to transition to a less restrictive placement under §380.8545; 15) specifying that Stage YES-Active is considered the highest stage for purposes of youth meeting program completion requirements under §380.8555 and §380.8559; and 16) specifying that the objectives on Stage YES for "other areas of programming" are the same as those for Stages 1 - 4.

RULE REVIEW

Simultaneously with these proposed rulemaking actions, TJJD also publishes this notice of intent to review §§380.8501, 380.8545, 380.8555, 380.8557, 380.8559, 380.8565, 380.8569, and 380.8703 as required by Texas Government Code §2001.039. Comments on whether the reasons for originally adopting these rules continue to exist may be submitted to TJJD by following the instructions provided later in this notice.

FISCAL NOTE

Emily Anderson, Chief Financial and Operating Officer, has determined that, for each year of the first five years the amended sections are in effect, there will be no significant fiscal impact for state government or local governments as a result of enforcing or administering the sections.

PUBLIC BENEFITS/COSTS

Shandra Carter, Deputy Executive Director for State Services, has determined that, for each year of the first five years the amended sections are in effect, the public benefit anticipated as a result of administering the sections will be more precisely defined staff transition and program completion reviews, which will eliminate administrative redundancy, streamline the review process, and provide for appropriate transition of youth to the community.

Ms. Anderson has also determined that there will be no effect on small businesses, micro-businesses, or rural communities. There is no anticipated economic cost to persons who are required to comply with the sections as proposed. No private real property rights are affected by adoption of these sections.

GOVERNMENT GROWTH IMPACT

TJJD has determined that, during the first five years the proposed rules are in effect, the rules will have the following impacts.

- (1) The proposed rules do not create or eliminate a government program.
- (2) The proposed rules do not require the creation or elimination of employee positions at TJJD.
- (3) The proposed rules do not require an increase or decrease in future legislative appropriations to TJJD.
- (4) The proposed rules do not impact fees paid to TJJD.
- (5) The proposed rules do not create a new regulation.

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

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

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

PUBLIC COMMENTS

Comments on the proposal and/or rule review may be submitted within 30 days after publication of this notice to Josh Bauermeister, Policy Writer, Texas Juvenile Justice Department, P.O. Box 12757, Austin, Texas, 78711, or email to policy.proposals@tjjd.texas.gov.

SUBCHAPTER A. ADMISSION, PLACEMENT, RELEASE, AND DISCHARGE DIVISION 1. DEFINITIONS

37 TAC §380.8501

STATUTORY AUTHORITY

The amended section is proposed under Human Resources Code §242.003, which requires the Board to adopt rules appropriate to properly accomplish TJJD's functions and to adopt rules for governing TJJD schools, facilities, and programs.

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

§380.8501. *Definitions.*

As used in this chapter, the [The] following words and terms [; as used in this chapter,] shall have the following meanings unless the context clearly indicates otherwise.

(1) Assessment Rating--a score derived from evidence-based criminogenic factors in a youth's history used to assess the danger a youth poses to the community.

(2) Committing Offense--the most serious of the relevant offenses found at the youth's commitment proceeding and any probated offense(s) modified by the commitment order. If a committing offense is a violation of a federal statute, the offense will be treated as a violation of a state statute which prohibits the same conduct as the relevant federal offense. ~~[The committing offense is a significant factor in determining the restriction level of the initial placement, initial minimum length of stay, transition criteria, approvals needed for release, and length of time on parole.]~~

(3) Community Reentry/Transition [Re-entry/Transition] Plan [(CRP-T)]--an individual case plan that includes conditions of parole or placement for youth who are moving to a less restrictive environment. The community reentry/transition plan [(CRP-T)] summarizes the youth's progress to date, identifies risk factors and protective factors, provides referrals to community services and supports, and identifies objectives for the youth to complete at the next placement.

~~[(4) Community Re-Integration Plan--a workbook-style document that a youth revises over the course of his/her rehabilitation program based on feedback from the case manager, group, family members, and multi-disciplinary team. The document demonstrates the youth's understanding of his/her risk and protective factors; development of skills, abilities, and knowledge to reduce risk factors and increase protective factors; identification of goals and a plan of action to achieve goals; and identification of obstacles that may hinder successful community re-entry and plans to deal with those obstacles.]~~

(4) ~~[(5)]~~ Conditional Placement--a trial living arrangement at a lower restriction level without changing the youth's currently assigned placement. Conditional placements may be to medium-restriction ~~[medium restriction]~~ facilities or approved home placements. Continued placement at the lower restriction level is dependent on meeting pre-established conditions.

(5) Determinate Sentence Review--a review conducted for youth with determinate sentences who have not met program completion criteria in which staff determines the appropriate action (e.g., request a transfer hearing under Section 54.11, Family Code, transfer to TDCJ parole).

(6) Discharge--an action that ends the Texas Juvenile Justice Department's (TJJD's) jurisdiction over a youth.

(7) Final Decision Authority--the TJJD executive director or a staff member designated by the executive director in writing (e.g., operational manual, administrative directive).

~~[(7)]~~ Exit Review--a process by which staff determines whether the youth meets transition criteria or program completion criteria and whether the community re-entry/transition plan adequately addresses the youth's identified risk factors for re-offending. As part of the exit review, a face-to-face interview is required for sentenced offenders and youth with a committing offense of high severity, along with review and approval of the release documents.

(8) High Restriction and Medium Restriction--see definitions in §380.8527 of this chapter ~~[title]~~.

(9) Home Placement--a placement in the home of the parent, other relative or individual acting in the role of parent, managing conservator, or guardian, or in an independent living arrangement (excluding contract independent living programs), for youth who have earned parole status.

(10) Home Substitute Placement--a program placement in the community that is not high restriction for youth who have earned parole status.

(11) Indicator--tasks that clarify and show evidence of completing the stage objective. These tasks are completed by the youth and involve discussion with the youth's case manager, group, multi-disciplinary team, and/or family/adult mentor. To complete an objective, all indicators must be completed.

(12) Initial Placement--a placement to which youth are assigned following a period of assessment at a TJJD orientation and assessment unit upon being committed to TJJD.

(13) Minimum Length of Stay--the predetermined minimum period of time established by TJJD that a youth will be assigned to live in a high- ~~[high]~~ or medium-restriction ~~[medium restriction]~~ placement before being placed on parole status.

(14) Minimum Period of Confinement--the predetermined minimum period of time established by law that a youth committed to TJJD on a determinate sentence must remain confined in a high-restriction ~~[high restriction]~~ placement.

(15) Most Serious of the Relevant Offenses--the offense that carries the most severe consequences, which are, from most to least severe:

(A) an offense which carries a determinate sentence;

(B) the offense for which the designated minimum length of stay will produce the longest time in the physical custody of TJJD;

(C) the offense which requires the highest level of restriction in placement;

(D) the offense which carries the most severe criminal penalty; and

(E) the most recently adjudicated offense.

~~[(16)]~~ Multi-Disciplinary Team (MDT)--a group of staff in TJJD-operated residential facilities who partner with the youth to facilitate his/her progress in the rehabilitation program. In high restriction facilities, the MDT consists of, at a minimum, the youth's assigned educator, the youth's case manager, and a juvenile correctional officer IV, V, or VI familiar with the youth. In medium restriction facilities, the MDT includes an administrator, the youth's case manager, and a juvenile correctional officer. The youth's family, along with other relevant staff members (psychologist, program specialist, principal, medical staff, etc.) involved in the youth's treatment and rehabilitation are encouraged to attend and participate in MDT meetings.

(16) ~~[(17)]~~ Non-Sentenced Offender--a youth who is committed to TJJD for an indeterminate period of time, not to exceed age 19.

(17) ~~[(18)]~~ Objective--the most important concepts or skills necessary to earn a stage and to progress in the rehabilitation program. Each objective has one or more indicators of completion.

(18) ~~[(19)]~~ Offense Severity--a rating of high, moderate, or low based on the degree of the committing or revocation offense as defined by the ~~[Texas]~~ Penal Code or relevant federal statute and any of the following applicable aggravating factors:

(A) sex offense as identified in Section ~~[§]~~62.001, ~~[of the Texas]~~ Code of Criminal Procedure;

(B) felony against a person;

(C) possession or use of a weapon or firearm during the commission of the committing offense.

(19) ~~[(20)]~~ Parole Status ~~[status]~~--a status assigned to a youth when program completion criteria have been met or the Release Review Panel orders the youth's release under supervision. Parole status qualifies the youth for placement in the home or a home substitute and ensures that the youth may not be moved to a high-restriction ~~[high restriction]~~ placement without the highest level of due process afforded to TJJD youth.

(20) ~~[(21)]~~ Program Completion--occurs when a youth has met specific requirements established by rule in order to earn release from a residential program.

(21) Program Completion Review--a review in which staff determines whether a youth appears to meet program completion criteria.

(22) Release Under Supervision (or Release)--the act of placing a youth on parole status. The youth remains under the jurisdiction of TJJD and is subject to the conditions of parole supervision.

(23) Revocation Offense--the offense on which a youth's minimum length of stay is based following a parole revocation hearing. It is the most serious of the relevant offenses found at a parole revocation hearing.

(24) Risk and Protective Factors--risk factors are aspects of a youth's environment, behavior, and mental processes that contribute to potential for further delinquent activity. Protective factors are positive aspects of individual youth situations that keep a youth away from delinquent activity. ~~[These factors are used as the foundation to design~~

individual rehabilitation plans so that youth can learn to reduce their risk factors and increase their protective factors.]

(25) Sentenced Offender--a youth committed to TJJD pursuant to Section 54.04(d)(3) or Section 54.05(f), Family Code, [§54.04(d)(3) or §54.05(f)] with a fixed sentence assigned by the committing court. Depending on the length of the sentence, a youth may be transferred to the Texas Department of Criminal Justice (TDCJ) to complete the sentence.

(26) Stage--measure of progress through TJJD's rehabilitation program. The youth's stage assignment reflects the stage objectives the youth [he/she] is currently working on.

(27) Transfer--a movement of a sentenced offender to the TDCJ - Institutional Division or TDCJ - Parole Division.

(28) Transition--the act of moving a youth from a high-restriction [high restriction] facility to a medium-restriction [medium restriction] facility without placing the youth on parole status. Transitions are used to facilitate the youth's adjustment to the community.

(29) Transition Review--a review in which staff determines whether a youth meets criteria for transition under §380.8545 of this chapter.

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

Filed with the Office of the Secretary of State on November 29, 2021.

TRD-202104722

Christian von Wupperfeld

General Counsel

Texas Juvenile Justice Department

Earliest possible date of adoption: January 9, 2022

For further information, please call: (512) 490-7278



DIVISION 4. MOVEMENT BEFORE PROGRAM COMPLETION

37 TAC §380.8545

STATUTORY AUTHORITY

The amended section is proposed under Human Resources Code §242.003, which requires the Board to adopt rules appropriate to properly accomplish TJJD's functions and to adopt rules for governing TJJD schools, facilities, and programs.

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

§380.8545. *Movement before [Before] Program Completion.*

(a) Purpose. The purpose of this rule is to establish criteria and procedures for moving youth who have not met program completion requirements to placements of equal or lesser restriction.

(b) General Provisions. Prior to a transition, a youth may request and in doing so will be granted a Level II hearing.

(c) Transition Movements before [Before] Initial or Revocation Minimum Length of Stay.

(1) Eligibility. The following youth are not eligible for transition movement before completion of the initial or revocation minimum length of stay:

(A) sentenced offenders; and

(B) sex offenders with court orders deferring their sex offender registration requirements who have not successfully completed an assigned sexual behavior treatment program.

(2) Transition Movement Criteria. Youth in a high-restriction [high restriction] facility may be eligible for transition to a medium-restriction [medium restriction] facility before completion of the initial or revocation minimum length of stay when the following criteria have been met:

(A) no major rule violations proven at [~~confirmed through~~] a Level II due process hearing:

(i) within 60 days before the transition [exit] review or during the approval process, for youth with committing offenses of low or moderate severity; or

(ii) within 120 days before the transition [exit] review or during the approval process, for youth with committing offenses of high severity; and

(B) completion of the following:

(i) for youth who have not completed the initial minimum length of stay:

(I) [youth with a committing offense of low severity ~~must complete~~] six months of the initial minimum length of stay in high-restriction [high restriction] facilities if the youth has a committing offense of low severity; or

(II) [youth with a committing offense of moderate severity ~~must complete~~] nine months of the initial minimum length of stay in high-restriction [high restriction] facilities if the youth has a committing offense of moderate severity; or

(III) [youth with a committing offense of high severity ~~must complete~~] all but six months of the initial minimum length of stay in high-restriction [high restriction] facilities if the youth has a committing offense of high severity; or

(ii) for youth placed in a high-restriction [high restriction] facility following revocation of parole, [the youth ~~must complete~~] at least two-thirds [2/3] of the revocation minimum length of stay; and

(C) participation in or completion of assigned specialized treatment programs or curriculum as required under §380.8751 of this chapter [title]; and

(D) completion of the following rehabilitation program requirements:

(i) for TJJD-operated facilities, assignment [by the ~~multi-disciplinary team~~] to the second-highest [second highest] stage in the assigned rehabilitation program as described in §380.8703 of this chapter; or [title, which reflects that the youth is currently:]

~~{(I)}~~ consistently participating in academic and/or workforce development programs commensurate with abilities as reflected in the youth's educational plan; and

~~{(II)}~~ consistently participating in skills development groups, as reflected in the youth's individual case plan; and

~~{(III)}~~ consistently demonstrating learned skills, as reflected in the documentation of the youth's behavior; or

(ii) for facilities operated under contract with TJJD, completion of requirements for transition to a community residential

placement as defined in the TJJD-approved [approved] rehabilitation program; and

~~[(E) completion of a draft community reintegration plan (or equivalent in a contract facility), to be finalized at the medium restriction facility, that demonstrates the youth's:]~~

~~[(i) understanding of his/her risk and protective factors; and]~~

~~[(ii) development of skills, abilities, and knowledge to reduce risk factors and increase protective factors; and]~~

~~[(iii) identification of goals and a plan of action to achieve goals in the medium restriction placement; and]~~

~~[(iv) identification of obstacles that may hinder successful community re-entry and plans to deal with those obstacles in the medium restriction placement; and]~~

~~[(E) [(F)] completion of a criminal street gang intervention program, if required by court order.~~

(3) Decision Authority for Approval of Transition. The final decision authority ensures, before approving the transition, that the youth meets all transition criteria and the community reentry/transition [re-entry/transition] plan adequately addresses risk factors.

~~[(A) For youth with committing offenses of low or moderate severity, the final decision authority is the:]~~

~~[(i) facility administrator if the youth is assigned to a TJJD-operated facility; or]~~

~~[(ii) division director over residential services or his/her designee if the youth is assigned to a facility operated under contract with TJJD.]~~

~~[(B) For youth with a committing offense of high severity, the final decision authority is the division director over residential services or his/her designee.]~~

(d) Transition Movements after Completion of Initial or Revocation Minimum Length of Stay.

(1) Eligibility. The following youth are not eligible for transition movement after completion of the initial or revocation minimum length of stay:

(A) sentenced offenders; and

(B) sex offenders with court orders deferring their sex offender registration requirements who have not successfully completed an assigned sexual behavior treatment program.

(2) Transition Movement Criteria. Youth in a high-restriction [high restriction] facility may be eligible for transition to a medium-restriction [medium restriction] facility after completion of the initial or revocation minimum length of stay when the following criteria have been met:

(A) no major rule violations proven at [confirmed through] a Level II due process hearing within 30 days before the transition [exit] review or during the approval process;

(B) participation in or completion of assigned specialized treatment programs or curriculum as required under §380.8751 of this chapter [title]; and

(C) completion of a criminal street gang intervention program, if required by court order.

(3) Decision Authority for Approval of Transition. The final decision authority ensures, before approving the transition, that the

youth meets all transition criteria and the community reentry/transition [re-entry] plan adequately addresses risk factors. [The final decision authority for approving transitions after completion of the initial or revocation minimum length of stay is:]

~~[(A) the staff member identified in subsection (e)(3) of this section if the youth meets all criteria in subsection (e)(2) of this section but is past his/her minimum length of stay; or]~~

~~[(B) the division director over residential services or his/her designee for all other youth.]~~

(e) Population Control Movements.

(1) When overpopulation occurs in a high-restriction [high restriction] facility and other remedial actions are not successful in managing facility populations, non-sentenced offender youth who do not otherwise qualify may be released or transitioned. In such cases, the executive director establishes the criteria, taking into account factors including, but not limited to, the following:

(A) progress in the rehabilitation program;

(B) amount of the minimum length of stay completed;

(C) severity of the committing offense;

(D) completion of required specialized treatment programs;

(E) participation in or completion of any statutorily required rehabilitation programming; and

(F) current risk assessment.

(2) Youth will be transitioned to a suitable TJJD-operated medium-restriction [medium restriction] placement or contract-care [contract care] facility or will be released to a suitable home or home substitute.

(f) Administrative Transfers. Administrative transfers may be made for non-disciplinary, programmatic purposes among facilities of equal restriction without a due process hearing. An administrative transfer may not be made in lieu of a disciplinary transfer [for which a due process hearing is mandatory]. A due process hearing is required for a disciplinary transfer.

(g) Reassignment of Youth Initially Eligible for Placement in a Medium-Restriction [Medium Restriction] Facility.

~~[(1)]~~ A youth may be reassigned to a medium-restriction [medium restriction] facility if the youth was initially eligible for such placement under §380.8521 of this chapter [title] but was placed in a high-restriction [high restriction] facility in order to address one or more placement system factors that could not be appropriately addressed in a medium-restriction [medium restriction] facility. These [Such] youth are not required to meet transition criteria set forth in subsections (c) or (d) of this section.

~~[(2) The division director over residential services or his/her designee is the final decision authority for approving the facility reassignment.]~~

(h) Conditional Placements.

(1) Eligibility. The following youth are not eligible for conditional placement:

(A) sentenced offenders; and

(B) sex offenders with court orders deferring their sex offender registration requirements who have not successfully completed an assigned sexual behavior treatment program.

(2) Criteria for Conditional Placement.

(A) Before the Initial Minimum Length of Stay. To be considered for a conditional placement before completing the initial minimum length of stay, a youth must meet all program completion criteria set forth in §380.8555 of this chapter [title], with the exception of the requirement to complete the minimum length of stay.

(B) After the Initial Minimum Length of Stay. A youth may be considered for a conditional placement after completing the initial minimum length of stay when the following criteria have been met:

(i) staff have [the youth's treatment team has] determined that, due to the youth's treatment needs, the conditional placement would be in the youth's best interests;

(ii) the youth has participated in or completed assigned specialized treatment as required under §380.8751 of this chapter [title]; and

(iii) the youth has completed a criminal street gang intervention program, if required by court order.

~~[(3) Decision Authority for Approval of Conditional Placement. The division director over residential services or his/her designee is the final decision authority for approving the conditional placement.]~~

(3) [(4)] Conclusion of Conditional Placement. A conditional placement ends when:

(A) the youth is assigned to a medium-restriction [medium restriction] facility or home placement because the youth:

(i) earns parole status under §380.8555 of this chapter [title] or is placed on parole status under §380.8557 of this chapter [title];

(ii) is transitioned to a medium-restriction [medium restriction] facility under subsection (c) or (d) of this section; or

(iii) is reassigned to a medium-restriction [medium restriction] facility under subsection (g) of this section;

(B) the youth is discharged under §380.8557 or §380.8595 of this chapter [title]; or

(C) the youth is returned to the sending facility through a Level II due process hearing held in accordance with §380.9555 of this chapter [title] for reasons including, but not limited to:

(i) commission of a rule violation listed in §380.9503 or §380.9504 of this chapter [title];

(ii) violation of the conditional placement agreement; or

(iii) the conditional placement is no longer viable.

(i) Hardship Cases. In hardship cases, the executive director or [his/her] designee may approve placing a non-sentenced offender youth on parole status without meeting program completion criteria.

(j) Youth with Mental Illness or Intellectual Disability [Mental Retardation]. Pursuant to §380.8779 of this chapter [title], certain youth may be discharged following application for appropriate services to address their mental illness or intellectual disability [mental retardation].

(k) Active Warrants [Notification]. At least ten calendar days before the youth's transition or release, TJJJD notifies any entity that has issued an active warrant for the youth.

[(1) TJJJD provides the committing juvenile court a copy of the youth's community re-entry/transition plan and a report concerning the youth's progress while committed to TJJJD no later than 30 days before the date of the youth's release. Additionally, if on release the youth is placed in another state or a county other than a county served by the committing juvenile court, TJJJD provides the community re-entry/transition plan and progress report to a juvenile court having jurisdiction over the county of the youth's residence.]

[(2) TJJJD notifies the following at least ten calendar days before the youth's release or transition:]

[(A) the committing juvenile court;]

[(B) the prosecuting attorney;]

[(C) the youth's parole officer;]

[(D) the chief juvenile probation officer in the county to which the youth is being moved; and]

[(E) any entity that has issued an active warrant for the youth.]

(l) Individual Exceptions. The executive director or [his/her] designee may make exceptions to provisions of this rule on a case-by-case basis, based on a consideration of the youth's best interests and public safety.

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

Filed with the Office of the Secretary of State on November 29, 2021.

TRD-202104723

Christian von Wupperfeld

General Counsel

Texas Juvenile Justice Department

Earliest possible date of adoption: January 9, 2022

For further information, please call: (512) 490-7278



DIVISION 5. PROGRAM COMPLETION AND RELEASE

37 TAC §§380.8555, 380.8557, 380.8559, 380.8565, 380.8569 STATUTORY AUTHORITY

The amended sections are proposed under Human Resources Code §242.003, which requires the Board to adopt rules appropriate to properly accomplish TJJJD's functions and to adopt rules for governing TJJJD schools, facilities, and programs.

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

§380.8555. *Program Completion for Non-Sentenced Offenders.*

(a) Purpose. The purpose of this rule is to establish criteria and the approval process for release of youth upon program completion.

(b) Applicability.

(1) This rule does not apply to sentenced offenders.

(2) This rule does not apply to decisions by the Release Review Panel. See §380.8557 of this chapter [title] for more information on the Release Review Panel.

(c) General Provisions. A detainer or bench warrant is not an automatic bar to earned release. The Texas Juvenile Justice Department (TJJD) releases youth to authorities pursuant to a warrant.

(d) Program Completion Criteria. Youth in high- or medium-restriction [~~high or medium restriction~~] facilities are eligible for release to TJJD parole when the following criteria have been met:

(1) no major rule violations proven at [~~confirmed through~~] a Level I ~~or~~ II due process hearing within 30 days before the program completion [~~exit~~] review or during the approval process; and

(2) completion of the minimum and/or extension length of stay; and

(3) participation in or completion of assigned specialized treatment programs or curriculum as required under §380.8751 of this chapter [~~title~~]; and

(4) completion of the following rehabilitation program requirements:

(A) for TJJD-operated facilities, assignment [~~by the multi-disciplinary team~~] to the highest stage in the assigned rehabilitation program as described in §380.8703 of this chapter; ~~or [title, which reflects that the youth is currently:]~~

~~[(i) consistently participating in academic and workforce development programs commensurate with abilities as reflected in the youth's educational plan;]~~

~~[(ii) consistently participating in skills development groups, as reflected in the youth's individual case plan;]~~

~~[(iii) consistently demonstrating learned skills, as reflected in the documentation of the youth's behavior; or]~~

(B) for facilities operated under contract with TJJD, completion of requirements for release to parole as defined in the TJJD-approved rehabilitation program; and

~~[(5) completion of a community re-integration plan (or equivalent in a contract facility); approved by the youth's treatment team, that demonstrates the youth's:]~~

~~[(A) understanding of his/her risk and protective factors;]~~

~~[(B) development of skills, abilities, and knowledge to reduce risk factors and increase protective factors;]~~

~~[(C) identification of goals and a plan of action to achieve those goals; and]~~

~~[(D) identification of obstacles that may hinder successful re-entry and plans to deal with those obstacles; and]~~

(5) ~~[(6)]~~ participation in or completion of any statutorily required rehabilitation programming, including but not limited to:

(A) participation in a reading improvement program for identified youth to the extent required under §380.9155 of this chapter [~~title~~];

(B) participation in a positive behavior support [~~behavioral interventions and supports~~] system to the extent required under §380.9155 of this chapter [~~title~~]; and

(C) completion of at least 12 hours of a gang intervention education program, if required by court order.

(e) Review and Approval Process.

(1) Program Completion Review [~~Treatment Team Review~~].

(A) Before the expiration of a youth's initial or revocation minimum length of stay and before the expiration of an extension length of stay, a program completion review is conducted to determine [~~the youth's treatment team reviews and determines~~] whether the youth appears to meet [~~meets~~] program completion criteria.

~~[(B) The review and determination must occur at least:]~~

~~[(i) 30 days before the expiration of the minimum length of stay for youth with a committing offense of low or moderate severity; or]~~

~~[(ii) at least 90 days in advance for youth classified as Type A violent offenders before February 1, 2009, or youth with a committing or revocation offense of high severity.]~~

(B) ~~[(C)]~~ If it is determined [~~the treatment team determines~~] the youth does not meet program completion criteria, the youth's case is referred to the Release Review Panel [~~for decision in accordance with §380.8557 of this title~~]. Staff will discuss with the youth the reasons for the decision to refer the youth's case to the panel.

~~[(C) [(D)] If it is determined [the treatment team determines] the youth appears to [does] meet program completion criteria, the youth's case is referred to the final decision authority.~~

(2) Final Decision Authority for Approval of Release.

(A) The final decision authority shall confirm whether [~~will ensure~~] the youth meets all release criteria and ensure the community reentry/transition [~~re-entry/transition~~] plan adequately addresses risk factors prior to approving the release.

~~[(B) The final decision authority for youth classified as Type A violent offenders before February 1, 2009, and youth with a committing offense of high severity is the executive director or his/her designee.]~~

~~[(C) The final decision authority for all other non-sentenced offender youth is:]~~

~~[(i) the facility administrator for youth assigned to a TJJD-operated facility; or]~~

~~[(ii) the division director over residential services or his/her designee for youth assigned to a facility operated under contract with TJJD.]~~

(B) ~~[(D)]~~ If the final decision authority approves the release, the youth must be placed on parole or parole status no later than 15 calendar days after the minimum length of stay date.

(C) ~~[(E)]~~ If the final decision authority does not approve the release, [~~or if the youth loses release eligibility before the minimum length of stay date and the treatment team confirms that the youth no longer meets program completion criteria,~~] the youth's case is referred to the Release Review Panel.

(f) Loss of Release Eligibility. If a youth loses release eligibility after the program completion review and before release to parole, the youth's case is referred to the Release Review Panel.

(g) Active Warrants. At least ten calendar days before the youth's release, TJJD notifies any entity that has issued an active warrant for the youth.

~~[(f) Notifications.]~~

~~[(1) TJJD notifies the youth, the youth's parent/guardian, any designated advocate for the youth, and any identified victim(s) of the treatment team's pending release review at least 15 days before the date of the review.]~~

~~[(2) TJJJ notifies the youth, the youth's parent/guardian, and any designated advocate for the youth of the review decision at least 30 days before the expiration of the minimum length of stay.]~~

~~[(3) TJJJ provides the committing juvenile court a copy of the youth's community re-entry/transition plan and a report concerning the youth's progress while committed to TJJJ no later than 30 days before the date of the youth's release. Additionally, if on release the youth is placed in another state or a county other than a county served by the committing juvenile court, TJJJ provides the community re-entry/transition plan and progress report to a juvenile court having jurisdiction over the county of the youth's residence.]~~

~~[(4) TJJJ notifies the following at least ten calendar days before the youth's release:]~~

~~[(A) the committing juvenile court;]~~

~~[(B) the prosecuting attorney;]~~

~~[(C) the youth's parole officer;]~~

~~[(D) the chief juvenile probation officer in the county to which the youth is being moved; and]~~

~~[(E) any entity that has issued an active warrant for the youth.]~~

§380.8557. Release Review Panel.

(a) Purpose. This rule establishes a Release Review Panel to determine whether a youth who has completed the his/her minimum length of stay should be discharged from the custody of the Texas Juvenile Justice Department (TJJJ), released under supervision, or given an extended length of stay. This rule also establishes a process to request reconsideration of an order issued by the Release Review Panel.

(b) Applicability. This rule applies to all youth committed to the TJJJ without a determinate sentence who have completed the minimum length of stay and have not been approved for release under §380.8555 of this chapter [title].

(c) Definitions. Except as specified in this subsection, see §380.8501 of this chapter [title] for definitions of terms used in this rule. The following terms, as used in this rule, have the following meanings unless the context clearly indicates otherwise.

(1) Clear and Convincing Evidence--a standard of proof meaning that measure or degree which will produce in the mind of the trier of facts a firm belief or conviction as to the position sought to be established; more than a preponderance of the evidence, but less than beyond a reasonable doubt.

(2) Extension Length of Stay--a period of time in addition to the minimum length of stay that a youth is required to remain in residential placements. [An extension length of stay may only be assigned by the Release Review Panel in accordance with provisions of this rule.]

(3) Major Rule Violation--a violation in the most serious category of rule violations for residential facilities, as listed in §380.9503 of this chapter [title].

~~[(4) Progress Review Team--the multi-disciplinary team as defined in §380.8501 of this title or TJJJ contract placement monitoring staff who are designated to assess a youth's progress in treatment programming.]~~

(4) ~~[(S)]~~ Release Review Panel (or Panel)--the TJJJ Central Office staff members appointed to determine if a youth who has completed the his/her minimum length of stay will be discharged, released, or given an extension [extended] length of stay.

~~[(5) [(6)] Residential Placement--a high- or medium-restriction [- a high or medium restriction] facility, as defined in §380.8527 of this chapter [title].~~

~~[(6) Victim--any victim who has requested notification of release or discharge proceedings.]~~

(d) General Provisions.

(1) Panel Members.

(A) The panel must consist of an odd number of members appointed by the executive director for terms of at least two years.

(B) Each member of the panel must be a TJJJ employee who works at the TJJJ Central Office. Panel members may not be involved in any supervisory decisions concerning youth in the custody of TJJJ.

(2) Evidence Used by the Panel.

(A) The panel may review any information relevant to the youth's progress and rehabilitation, irrespective of the form of the information.

~~[(B) Evidence of factors other than rule violations may be considered by the panel irrespective of its form.]~~

~~[(B) [(C)] The [A] youth, the parent/guardian [parents/guardian] of the [a] youth, or victims of the [a] youth [; or any advocate chosen by a youth] may submit information for the panel's consideration. Information and arguments should be submitted to the panel in writing on or before the expiration of the youth's minimum length of stay [;] or, if applicable, the expiration of the extension length of stay. The [A] youth may request assistance from any TJJJ staff member or [;] volunteer [; or advocate] in communicating with the panel.~~

~~[(C) [(D)] The [A] parent/guardian, victim, or person representing the [a] youth, if any, may make a written request for personal communication with a member of the panel before the expiration of the youth's minimum length of stay[;] or, if applicable, the expiration of the extension length of stay. If the panel approves the request, the panel will schedule the communication, which may be in person, via telephone, or via videoconference. [The time, place, and manner of communication will be established by the panel.]~~

~~[(D) [(E)] The panel may, at its discretion, interview the youth or any other individual who may have information relevant to the youth's rehabilitation needs. When notified that an attorney or other [a youth has a] representative is assisting the youth [him/her] with the review, the panel must notify the representative of any scheduled interviews with the youth prior to conducting the interview. A youth's refusal to speak to the panel is not held against the youth when making the release decision.~~

~~[(E) [(F)] To be considered as a factor in a determination to extend a youth's stay, a violation of the rules of conduct must have been proven via due process that [; which] provides advance written notice of the alleged violation, a written statement by the fact finder of the evidence relied upon and the reason for the decision, an opportunity to call witnesses and present evidence, and a neutral decision maker. Documented behaviors that do not result in a rule violation being proven true in a due process hearing may still provide evidence of continuing conduct that the panel may consider in making its decision.~~

(3) Deadline for Release or Discharge.

(A) If the panel determines that a youth's length of stay should not be extended, TJJJ must release or discharge the youth no

later than ~~[within]~~ 15 calendar days after the date of the panel decision, except as provided by subparagraph (B) of this paragraph.

(B) A request for reconsideration of a release or discharge order may temporarily delay the release or discharge of the youth until the panel reaches a decision on the request in accordance with timeframes established in subsection ~~(h)~~ ~~[(g)(7)]~~ of this section.

(4) Extension Length of Stay. An extension length of stay may be assigned only by the panel and only in accordance with the provisions of this rule.

(c) Completion of Minimum Length of Stay.

(1) Referral to the Panel [by the Progress Review Team]. Upon receipt of a referral regarding a youth who has not met program completion criteria as set out in §380.8555 of this chapter, the following actions shall occur. [At least 30 calendar days prior to the expiration of a youth's minimum length of stay, the progress review team must determine whether or not the youth meets program completion criteria as established in §380.8555 of this title or is likely to meet such criteria on or before his/her minimum length of stay date. If the progress review team determines the youth does not meet program completion criteria, is not likely to meet program completion criteria on or before his/her minimum length of stay date, or recommends discharge of the youth, the following actions must occur:]

(A) The ~~[progress review team or facility designee must notify the]~~ youth, parent/guardian, and any ~~[identified]~~ victims shall be notified that the case has been referred to the panel for review.

~~[(B) The progress review team must discuss with the youth the reasons for the decision to refer the youth's case to the panel.]~~

(B) [(C)] Before the date the minimum length of stay expires, staff will make available [the progress review team must submit] to the panel any information relevant to the decision on whether the youth is in need of additional rehabilitation in a residential placement.

(2) Panel Decision.

(A) ~~No~~ ~~[Not]~~ later than 30 calendar days after expiration of the youth's minimum length of stay, the panel shall [must] make a determination as to whether TJJD will discharge the youth, release the youth, or extend the youth's stay in a residential placement.

(B) The panel may extend the youth's stay only if the panel determines by majority vote that there is [and on the basis of] clear and convincing evidence that:

(i) the youth is in need of additional rehabilitation from TJJD; and

(ii) a residential placement will provide the most suitable environment for that rehabilitation.

(C) The panel's determination may include assessments of factors including, but not limited to, the following:

(i) the youth's efforts to reduce individual risk factors and increase individual protective factors;

(ii) the degree and quality of the youth's participation in available treatment programs, including statutorily required or court-ordered treatment programs;

(iii) the youth's behavior while at TJJD [during the youth's length of stay]; and

(iv) whether there are any public safety issues related to releasing or discharging the youth [participation in and/or completion of statutorily required or court-ordered treatment programs].

(D) The youth, parent/guardian, victim, and any attorney or representative of the youth are notified of the panel's determination regarding extension of stay, release, or discharge.

(E) [~~(D)~~] If the panel extends the length of a youth's stay, the panel shall [must]:

(i) specify the additional period of time that the youth is required to ~~[must]~~ remain in residential placements; and

(ii) provide a written report explaining the reason for the extension to the youth, parent/guardian, and any attorney or representative of the youth [designated advocate]. The report must be provided no later than [within] ten calendar days after the date of the panel decision.

(f) Completion of Extension Length of Stay.

(1) Referral to the Panel. Upon receipt of a referral regarding a youth who has not met program completion criteria as set out in §380.8555 of this chapter, the following actions shall occur.[Facility Review. Before a youth completes an extension length of stay, the progress review team must review whether the youth has met or is likely to meet program completion criteria on or before the completion of his/her extension length of stay. If the youth has not met or is not likely to meet program completion criteria, the facility must refer the youth's case to the panel. The progress review team or facility designee must notify any identified victims that the case has been referred to the panel for review.]

~~[(2)] [Notification.]~~

(A) The [At least seven calendar days before the expiration of an extension length of stay, the panel must notify the] youth, [and] the youth's parent/guardian, and the attorney or representative of the youth, if any, shall be notified [parents/guardian] that the youth's case is pending review before the panel.

(B) Before the date the extension length of stay expires, staff will make available to the panel any information relevant to the decision on whether the youth is in need of additional rehabilitation in a residential placement.

(2) [(3)] Panel Decision. No [Not] later than 30 calendar days after expiration of the youth's extension length of stay, the panel will conduct a review and make a determination to discharge the youth, release the youth, or extend the length of stay in a residential placement. The panel shall send [must mail] notification to the youth, the youth's parent/guardian, any victims, and the attorney or representative of the youth, if any, [all parties] of the decision within ten calendar days after the date of the decision.

(g) Request for Reconsideration of an Extension Order.

(1) A request for reconsideration of an extension order may be submitted by:

(A) the youth;₂[₇]

(B) the youth's parent/guardian;₂[₇]

(C) an attorney or representative for the youth; [the youth's designated advocate;₂]

(D) the youth's victim(s);₂[₇]

(E) a TJJD employee;₂[₇]

(F) an employee of a TJJD contractor;₂[₇ or]

(G) a person who provides volunteer services at a TJJD facility; or₂[₇]

(H) the TJJD ombudsman.

(2) The request for reconsideration must be in writing and must [should] be received by the panel no later than [within] 15 calendar days after the date of the written notice explaining the reason for the extension. Requests for reconsideration received after that time may be considered at the discretion of the panel.

(3) The youth may request assistance from any TJJD staff member or [;] volunteer [; or advöcate] in completing a request for reconsideration.

(4) The person submitting the request for reconsideration must state in the request the reason for the request. The request should relate to the reasons given for the extension or be based on relevant information concerning the youth's programming and treatment progress.

(5) Upon receipt of a request for reconsideration, the panel [must reconsider an extension order that]:

(A) shall reconsider an extension order that extends the youth's stay in TJJD custody by six months or more or that, when combined with previous extension orders, results in an extension of the youth's stay in TJJD custody by six months or more; and [or]

(B) may, at its discretion, reconsider extension orders other than those addressed in subparagraph (A) of this paragraph [will result in an extension of the youth's stay in TJJD eustody by six months or more when combined with previous extension orders].

~~[(6) The panel may, at its discretion, accept requests for reconsideration other than those described in paragraph (5) of this subsection.]~~

~~(6) [(7)] When the panel conducts a reconsideration, the panel shall provide the youth, the youth's parent/guardian, the attorney or representative of the youth, and the person who submitted the request for reconsideration with a written [For reconsideration requests accepted by the panel, the panel must provide a written reply to all parties with an] explanation of the panel's decision no later than 15 calendar days after receipt of the request. The reply shall [must] include an indication that the panel has considered the information submitted in the request. If the reconsideration results in a decision to release or discharge the youth, any victims shall be notified.~~

~~(7) [(8)] A reconsideration decision by the panel exhausts all administrative remedies regarding release after expiration of the minimum length of stay.~~

(h) Request for Reconsideration of a Release or Discharge Order. [The facility administrator or appropriate contract care monitoring staff may request reconsideration of a release or discharge order at any time prior to the youth's release or discharge if new information becomes available or the youth is alleged to have committed a major rule violation of which the panel was unaware at the time of its original decision. The facility must provide the youth a copy of the request for reconsideration. The youth may provide information to the panel concerning the reason(s) for the request.]

(1) For youth in a high-restriction facility, a release or discharge order is considered conditional until the youth has been physically released from the facility.

(2) For youth in a medium-restriction facility, including a halfway house:

(A) a release order is considered conditional until the youth's status has been changed from institutional to parole status; and

(B) a discharge order is considered conditional until the youth has been physically released from the facility.

(3) The executive director, the chief inspector general, the general counsel, the deputy executive director for state services, the chief of staff, the facility administrator, appropriate contract-care monitoring staff, staff designated by the executive director, or the TJJD ombudsman may request a reconsideration of a release or discharge order as long as the release or discharge order is still conditional, as provided by paragraphs (1) and (2) of this subsection.

(4) If, while the release or discharge order is still conditional, the youth is alleged to have committed a major rule violation or new information becomes available that indicates the youth is likely in need of further rehabilitation at a TJJD facility, staff designated by the executive director must request reconsideration of the release or discharge order.

(5) The youth shall be provided a copy of the request for reconsideration before the panel makes its decision regarding the reconsideration. The youth shall be given the opportunity to provide information to the panel concerning the reason(s) for the request. If the youth is represented by an attorney or other representative, that person shall also be provided with a copy of the request for reconsideration and given an opportunity to provide information to the panel.

(6) The panel shall provide the youth, the youth's parent/guardian, the requestor, and facility staff with a written explanation of the panel's decision no later than 15 calendar days after receipt of the request. The reply shall include an indication that the panel has considered the information submitted in the request. If the reconsideration results in a change in the original panel decision, any victims shall be notified.

(7) If reconsideration of a release or discharge order results in a decision to extend the youth's length of stay, a person listed in subsection (g) of this section may request reconsideration according to the process established in that subsection. That reconsideration decision exhausts all administrative remedies.

§380.8559. Program Completion for Youth with Determinate Sentences [Senteneed Offenders].

(a) Purpose. This rule establishes criteria and the approval process for youth with determinate sentences [senteneed offenders] to qualify for release or transfer to parole by completing required programming.

(b) Applicability.

(1) This rule applies only to youth with a determinate sentence who have not been adjudicated for capital murder [senteneed offenders]. See §380.8569 for youth adjudicated for capital murder.

(2) This rule does not apply to sentenced offenders who are~~[:]~~

~~[(A)] discharged due to expiration of the sentence or transferred to the Texas Department of Criminal Justice (TDCJ) by court order or by aging out of the Texas Juvenile Justice Department (TJJD). See §380.8565 of this chapter. [title; or]~~

~~[(B)] adjudicated for capital murder. See §380.8569 of this title.]~~

(c) General Requirements.

(1) A detainer or bench warrant is not an automatic bar to earned release. TJJD releases youth to authorities pursuant to a warrant.

(2) ~~[To determine eligibility for release or transfer,]~~ TJJD reviews each youth's progress:

(A) six months after admission to TJJD;

(B) when the minimum period of confinement is complete;

(C) when the youth becomes 16 years of age;

(D) when the youth becomes 18 years of age and again at 18 years and six months of age to determine eligibility or make a recommendation for transfer to TDCJ-Correctional Institutions Division (TDCJ-CID) or TDCJ-Parole Division (TDCJ-PD);

(E) within 45 days after revocation of parole, if applicable; [and]

(F) when a youth who is past the minimum period of confinement appears to meet program completion criteria; and

(G) [(F)] at other times as appropriate, such as after a major rule violation is proven at [has been confirmed through] a Level II hearing.

[(3) TJJJ notifies the youth, the youth's parent/guardian, any designated advocate for the youth, and any identified victim(s) of a pending exit review/interview at least 30 days before the date of the review. The notification informs the recipients that they have the opportunity to submit written comments to TJJJ and specifies the date by which the comments must be received. The notification also informs the parent/guardian and any identified victim(s) that they may present information in person during the youth's exit review process. Any information received from a youth's family members, victims, local officials, staff, or the general public is considered by TJJJ and included in the release/transfer packet.]

(3) [(4)] The [A] youth must serve the entire minimum period of confinement applicable to the committing offense in a high-restriction facility unless:

(A) the youth is transferred to TDCJ-CID by the committing court. See §380.8565 of this chapter [title];

(B) the youth is approved by the committing court to attain parole status before completing the minimum period of confinement;

(C) the youth's sentence expires before the minimum period of confinement expires; or

(D) the executive director waives the requirement that the youth be assigned to a high-restriction facility [such placement]. This subparagraph does not allow a youth to be placed on parole status.

(d) Program Completion Criteria.

(1) The [A] youth may be considered for release or transfer to parole when the following criteria have been met:

(A) no major rule violations proven at [confirmed through] a Level II due process hearing within 90 days prior to the program completion review [exit interview] or during the approval process;

(B) participation in or completion of assigned specialized treatment programs or curriculum as required under §380.8751 of this chapter [title];

(C) assignment [by the Multi-disciplinary Team] to the highest stage in the rehabilitation program as described in §380.8703 of this chapter; [title, which reflects that the youth:]

[(i) is consistently participating in academic and workforce development programs commensurate with abilities as reflected in the youth's educational plan;]

[(ii) is consistently participating in skills development groups, as reflected in the youth's individual case plan;]

[(iii) is consistently demonstrating learned skills, as reflected in the documentation of the youth's behavior; and]

[(iv) has completed a community reintegration plan, approved by the multi-disciplinary team, that demonstrates the youth's:]

[(i) understanding of his/her risk and protective factors;]

[(ii) development of skills, abilities, and knowledge to reduce risk factors and increase protective factors;]

[(iii) identification of goals and a plan of action to achieve those goals; and]

[(iv) identification of obstacles that may hinder successful re-entry and plans to deal with those obstacles;]

(D) participation in or completion of any statutorily required rehabilitation programming, including but not limited to:

(i) participation in a reading improvement program for identified youth to the extent required under §380.9155 of this chapter [title];

(ii) participation in a positive behavior support [behavioral interventions and supports] system to the extent required under §380.9155 of this chapter [title]; and

(iii) completion of at least 12 hours of a gang intervention education program, if required by court order; and

(E) completion of:

(i) all but nine months of the sentence if the sentence expires before or simultaneously with the minimum period of confinement; or

(ii) the entire minimum period of confinement if the sentence expires after the minimum period of confinement.

(2) Youth are released to TJJJ parole unless the youth meets program completion criteria within two months before the [his/her] 19th birthday, in which case the youth will be transferred to TDCJ-PD.

(e) Approval Process for Release or Transfer [Approval].

(1) TJJJ notifies the youth and the youth's parent/guardian of a pending program completion review. The notification informs the recipients that they have the opportunity to present information in person or to submit written comments to TJJJ. The notification also specifies the date by which the comments or the request to present in-person information must be received.

(2) [For sentenced offenders, the executive director or his/her designee is the final decision authority for release or transfer.] The final decision authority confirms whether [ensures that] the youth meets all program completion criteria and ensures that the community reentry/transition [re-entry/transition] plan adequately addresses risk before approving the release or transfer.

(f) Loss of Release or Transfer Eligibility.

(1) Eligibility for release or transfer is lost when either of the following occurs after the program completion review [exit interview]:

(A) the youth commits a major rule violation that is proven at [confirmed through] a Level II due process hearing; or

(B) the [youth's Multi-Disciplinary Team determines that the] youth is no longer assigned to the highest stage in the agency's rehabilitation program [meets the required rehabilitation program criteria].

(2) Except as described in paragraph (3) of this subsection, a youth who loses release or transfer eligibility will not be eligible for release or transfer until it is confirmed that [such time as] the youth again meets program completion criteria [and a subsequent exit review/interview confirms eligibility].

(3) If a youth is being considered for release or transfer nine months before completion of the [his/her] sentence and the youth [he/she] loses eligibility for release or transfer, the youth must remain in high restriction until the sentence has expired.

(g) Release or Transfer Date.

{(1) TJJD holds the exit interview within 14 calendar days after the date a youth meets program completion criteria as set forth in this rule.}

{(2) If the youth is approved for release or transfer to parole [meets program completion criteria], the youth is:

(1) [(A)] released to TJJD parole within 60 calendar days [after the date the youth met program completion criteria] unless the youth loses release eligibility. If the youth loses release eligibility, [in which case] the release process is reinitiated [re-initiated] when the youth again meets program completion criteria; or

(2) [(B)] transferred to TDCJ-PD on or before the youth's 19th birthday.

(h) Active Warrants. At least ten calendar days before the youth's transfer or release, TJJD notifies any entity that has issued an active warrant for the youth [Notification].

{(1) TJJD provides the committing juvenile court a copy of the youth's community re-entry/transition plan and a report concerning the youth's progress while committed to TJJD no later than 30 days before the date of the youth's release or transfer. Additionally, if on release the youth is placed in another state or a county other than a county served by the committing juvenile court, TJJD provides the community re-entry/transition plan and progress report to a juvenile court having jurisdiction over the county of the youth's residence.}

{(2) TJJD notifies the following at least ten calendar days before the youth's release:}

{(A) the committing juvenile court;}

{(B) the prosecuting attorney;}

{(C) the youth's parole officer;}

{(D) the chief juvenile probation officer in the county to which the youth is being moved; and}

{(E) any entity that has issued an active warrant for the youth.}

§380.8565. Discharge of Youth with Determinate Sentences [Sentenced Offenders] upon Transfer to TDCJ or Expiration of Sentence.

(a) Purpose. This rule establishes criteria and an approval process for:

(1) requesting court approval to transfer sentenced offenders to adult prison; and

(2) discharging sentenced offenders:

(A) whose sentences have expired; or

(B) who did not previously qualify for release or transfer by completing required programming.

(b) Applicability.

(1) This rule applies only to the disposition of a youth's determinate sentence(s).

(2) This rule applies only to sentenced offenders.

(3) This rule does not apply to:

(A) sentenced offenders who qualify for release or transfer to parole by completing required programming. See §380.8559 of this chapter [title]; or

(B) sentenced offenders adjudicated for capital murder. See §380.8569 of this chapter [title].

(c) General Requirements.

(1) By law, a sentenced offender is transferred from the custody of the Texas Juvenile Justice Department (TJJD) no later than the youth's 19th birthday.

(2) The [A] youth must serve the entire minimum period of confinement that applies to the committing offense in a high-restriction facility unless:

(A) the youth is transferred by the committing court to the Texas Department of Criminal Justice - Correctional Institutions Division (TDCJ-CID);

(B) the youth is approved by the committing court to attain parole status before completing the minimum period of confinement;

(C) the youth's sentence expires before the minimum period of confinement expires; or

(D) the executive director waives the requirement that the youth be assigned to a high-restriction facility [such placement]. This subparagraph does not allow a youth to be placed on parole status.

(3) TJJD reviews each youth's progress:

(A) six months after admission to TJJD;

(B) when the minimum period of confinement is complete;

(C) when the youth becomes 16 years of age;

(D) when the youth becomes 18 years of age and again at 18 years and six months of age to determine eligibility or make a recommendation for transfer to TDCJ-CID or to the Texas Department of Criminal Justice - Parole Division (TDCJ-PD);

(E) within 45 days after revocation of parole, if applicable; and

(F) at other times as appropriate, such as after a major rule violation is proven at [has been confirmed through] a Level II hearing.

{(4) TJJD notifies the youth, the youth's parent/guardian, any designated advocate for the youth, and any identified victim(s) of a pending exit review at least 30 days before the date of the review. The notification informs the recipients that they have the opportunity to submit written comments to TJJD and specifies the date by which the comments must be received. The notification also informs the parent/guardian and any identified victim(s) that they may present information in person during the youth's exit review process and specifies the date by which a request to present in-person information must be received. Any information received from a youth's family members, vic-

tims, local officials, staff, or the general public is considered by TJJD and included in the release packet.]

(4) [(5)] TJJD jurisdiction is terminated and a youth is discharged when:

(A) the youth is transferred to TDCJ; or

(B) the youth's sentence has expired, except when the youth is committed to TJJD under concurrent determinate and indeterminate commitment orders as described in §380.8525 of this chapter [title].

(d) Transfer Criteria.

(1) Transfer to TDCJ-CID for Youth Whose Conduct Occurs While on Parole Status. TJJD may request a juvenile court hearing to recommend transfer of a youth to TDCJ-CID if all of the following criteria are met:

(A) the youth's parole has been revoked or the youth has been adjudicated or convicted of a felony offense occurring while on parole status;

(B) the youth is at least age 16;

(C) the youth has not completed the [his/her] sentence; and

(D) the youth's conduct indicates that the welfare of the community requires the transfer.

(2) Transfer to TDCJ-CID for Youth Whose Conduct Occurs While in a High-Restriction Facility. TJJD may request a juvenile court hearing to recommend transfer of a youth in a high-restriction facility to TDCJ-CID if the following criteria are met:

(A) the youth is at least age 16; and

(B) the youth has spent at least six months in high-restriction facilities, which is counted as follows:

(i) if the youth received a determinate sentence for conduct that occurred in the community, the six months begins upon admission to TJJD; or

(ii) if the youth received a determinate sentence for conduct that occurred in a TJJD or contract facility, the six months begins upon the youth's initial admission to TJJD, regardless of whether the initial admission resulted from a determinate or indeterminate commitment; and

(C) the youth has not completed the [his/her] sentence; and

(D) the youth meets at least one of the following behavior criteria:

(i) the youth has committed a felony or Class A misdemeanor while assigned to a residential facility; or

(ii) the youth has committed major rule violations as proven at [e~~on~~firm~~ed~~ through] a Level II due process hearing on three or more occasions; or

(iii) the youth has engaged in conduct that has resulted in at least five security program [Security Program] admissions or extensions in one month or ten in three months (see §380.9740 of this chapter [title] for information on the security program [Security Program]); or

(iv) the youth has demonstrated an unwillingness to progress in the [his/her] rehabilitation program due to persistent non-compliance with objectives; and

(E) alternative interventions have been tried without success; and

(F) the youth's conduct indicates that the welfare of the community requires the transfer.

(3) Transfer to TDCJ-PD for Youth in Residential Facilities. A youth in a residential facility who has not met program completion criteria in §380.8559 of this chapter [title] and who has not received court approval for transfer to TDCJ-CID must be transferred to TDCJ-PD [to complete his/her sentence] no later than the youth's 19th birthday.

(4) Transfer to TDCJ-PD for Youth on TJJD Parole. A youth on TJJD parole [who has not completed his/her sentence] must be transferred to TDCJ-PD no later than the youth's 19th birthday.

(e) Transfer Recommendation for Youth Who Will Not Complete the Minimum Period of Confinement before Age 19. TJJD requests a court hearing for any youth who cannot complete the [his/her] minimum period of confinement by the [his/her] 19th birthday. The purpose of the hearing is to determine whether the youth will be transferred to TDCJ-CID or to TDCJ-PD. Notwithstanding the criteria in subsection (d)(2) of this section, TJJD considers the following factors in forming a recommendation for the committing court:

(1) length of stay in TJJD;

(2) youth's progress in the rehabilitation program;

(3) youth's behavior while in TJJD;

(4) youth's offense/delinquent history; and

(5) any other relevant factors, such as:

(A) risk factors and protective factors the youth possesses as identified in the youth's [his/her] psychological evaluation; [and]

(B) the welfare of the community; and[-]

(C) participation in or completion of statutorily required rehabilitation programming, including but not limited to:

(i) participation in a reading improvement program for identified youth to the extent required under §380.9155 of this chapter;

(ii) participation in a positive behavior support system to the extent required under §380.9155 of this chapter; and

(iii) completion of at least 12 hours of a gang intervention education program, if required by court order.

(f) Discharge Criteria. TJJD discharges youth from its jurisdiction when one of the following occurs:

(1) expiration of the sentence imposed by the juvenile court, unless the youth is under concurrent commitment orders as described in §380.8525 of this chapter [title]; or

(2) the youth has been transferred to TDCJ-CID under court order or transferred to TDCJ-PD.

(g) Approval Process for Transfer to TDCJ-CID or TDCJ-PD [Decision Authority for Approval to Transfer].

(1) Before staff submit a recommendation for transfer to TDCJ-CID or TDCJ-PD, a determinate sentence review shall be held.

(2) TJJD notifies the youth and the youth's parent/guardian of a pending determinate sentence review. The notification informs the recipients that they have the opportunity to present information in person or to submit written comments to TJJD. The notification also spec-

ifies the date by which the comments or the request to present in-person information must be received.

(3) Approval from the final decision authority is required before requesting a hearing with the committing juvenile court or initiating a transfer to TDCJ-PD.

(4) A hearing with the committing juvenile court shall be requested when a youth cannot complete the minimum period of confinement before age 19.

(5) [(4)] The final decision authority ensures [TJJD does not transfer youth from a high-restriction facility to TDCJ-PD until the executive director or his/her designee determines] the youth's community reentry/transition [re-entry/transition] plan adequately addresses risk factors before approving the transfer from a high-restriction facility to TDCJ-PD.

[(2)] When a determination has been made that the youth meets criteria for requesting a hearing for transfer to TDCJ-CID or cannot complete his/her minimum period of confinement before age 19, the executive director or his/her designee approves the staff request for a hearing by the committing juvenile court.}]

(6) [(3)] A youth may not be transferred to TDCJ-CID unless the [The] committing juvenile court orders the transfer [is the final decision authority for transferring a youth to TDCJ-CID].

(h) Active Warrants [Notification].

[(1)] TJJD notifies the following at least ten calendar days before the youth's discharge due to expiration of sentence or transfer to TDCJ-PD without a transfer/release hearing:}]

[(A)] the committing juvenile court;}]

[(B)] the prosecuting attorney;}]

[(C)] the youth's TJJD parole officer;}]

[(D)] the chief juvenile probation officer in the county to which the youth is being moved; and}]

[(E)] any entity that has issued an active warrant for the youth.}]

[(2)] At least ten calendar days before the youth's transfer or release, TJJD notifies any entity that has issued an active warrant for the youth. [at least ten calendar days before:}]

[(A)] the youth's transfer to TDCJ-PD resulting from a transfer/release hearing; or}]

[(B)] the youth's transfer to TDCJ-CID.}]

§380.8569. *Transfer of Youth with Determinate Sentences [Sentenced Offenders] Adjudicated for Capital Murder.*

(a) Purpose. This rule establishes criteria and the approval process for transferring sentenced offenders adjudicated for capital murder to the Texas Department of Criminal Justice-Parole Division (TDCJ-PD) or the Texas Department of Criminal Justice-Correctional Institutions Division (TDCJ-CID).

(b) Applicability. This rule applies only to sentenced offenders adjudicated for capital murder.

(c) General Provisions.

(1) A detainer or bench warrant is not an automatic bar to earned release. The Texas Juvenile Justice Department (TJJD) releases youth to authorities pursuant to a warrant.

(2) TJJD reviews each youth's progress:

(A) six months after admission to TJJD;

[(B)] when the minimum period of confinement is complete;}]

(B) [(C)] when the youth becomes 16 years of age;

(C) [(D)] when the youth becomes 18 years of age and again at 18 years and six months of age to determine eligibility or make a recommendation for transfer to TDCJ-CID or TDCJ-PD; and

(D) [(E)] at other times as appropriate, such as after a major rule violation has been proven at [confirmed through] a Level II hearing.

[(3)] TJJD notifies the youth, the youth's parent/guardian, any designated advocate for the youth, and any identified victim(s) of a pending exit review at least 30 days before the date of the review. The notification informs the recipients that they have the opportunity to submit written comments to TJJD and specifies the date by which the comments must be received. The notification also informs the parent/guardian and any identified victim(s) that they may present information in person during the youth's exit review process and specifies the date by which a request to present in-person information must be received. Any information received from a youth's family members, victims, local officials, staff, or the general public is considered by TJJD and included in the transfer packet.}]

(3) [(4)] Youth whose committing offense is capital murder must serve the entire minimum period of confinement applicable to the youth's committing offense in high-restriction facilities unless:

(A) the youth is transferred by the committing court to TDCJ-CID; [or]

(B) the youth is approved by the committing court to attain parole status before completion of the minimum period of confinement; or

(C) the youth's sentence expires before the minimum period of confinement expires.

(4) [(5)] A youth who has not received court approval to transfer to TDCJ-CID must be transferred to TDCJ-PD no later than age 19.

(5) [(6)] TJJD jurisdiction is terminated and a youth is discharged when:

(A) the youth is transferred to TDCJ; or

(B) the youth's sentence has expired, except when the youth is committed to TJJD under concurrent determinate and indeterminate commitment orders as described in §380.8525 of this chapter [title].

[(d)] Program Completion Criteria. TJJD reviews youth for program completion and possible transfer to TDCJ-PD when the following criteria have been met:}]

[(1)] no major rule violations confirmed through a Level II due process hearing within 90 days before the exit interview or during the approval process; and}]

[(2)] completion of at least three years toward the minimum period of confinement; and}]

[(3)] participation in or completion of assigned specialized treatment programs or curriculum as required under §380.8751 of this title; and}]

[(4)] assignment by the Multi-disciplinary Team to the highest stage in the rehabilitation program as described in §380.8703 of this title, which reflects that the youth:}]

~~[(A) is consistently participating in academic and workforce development programs commensurate with abilities as reflected in the youth's educational plan;]~~

~~[(B) is consistently participating in skills development groups, as reflected in the youth's individual case plan;]~~

~~[(C) is consistently demonstrating learned skills, as reflected in the documentation of the youth's behavior; and]~~

~~[(D) has completed a community reintegration plan approved by the Multi-disciplinary Team that demonstrates the youth's:]~~

~~[(i) understanding of his/her risk and protective factors;]~~

~~[(ii) development of skills, abilities, and knowledge to reduce risk factors and increase protective factors;]~~

~~[(iii) identification of goals and a plan of action to achieve those goals; and]~~

~~[(iv) identification of obstacles that may hinder successful re-entry and plans to deal with those obstacles; and]~~

~~[(E) participation in or completion of statutorily required rehabilitation programming, including but not limited to:]~~

~~[(i) participation in a reading improvement program for identified youth to the extent required under §380.9155 of this title;]~~

~~[(ii) participation in a positive behavioral interventions and supports system to the extent required under §380.9155 of this title; and]~~

~~[(iii) completion of at least 12 hours of a gang intervention education program, if required by court order.]~~

~~(d) [(e) Recommendation for Committing Court upon Termination of TJJD's Jurisdiction. TJJD makes a recommendation to the committing court for transfer to TDCJ-PD or TDCJ-CID before a youth turns 19 [Youth Who Do Not Meet Program Completion Criteria]. TJJD [If a youth does not meet the criteria in subsection (d) of this section, TJJD recommends transfer to TDCJ-PD or TDCJ-CID to the committing juvenile court and] considers the following factors in forming its recommendation:~~

- ~~(1) length of stay in TJJD;~~
- ~~(2) youth's progress in the rehabilitation program;~~
- ~~(3) youth's behavior while in TJJD;~~
- ~~(4) youth's offense/delinquent history; and~~
- ~~(5) any other relevant factors, such as:~~

~~(A) risk factors and protective factors the youth possesses, as identified in the [his/her] psychological evaluation; [and]~~

~~(B) the welfare of the community; and[-.]~~

~~(C) participation in or completion of statutorily required rehabilitation programming, including but not limited to:~~

~~(i) participation in a reading improvement program for identified youth to the extent required under §380.9155 of this chapter;~~

~~(ii) participation in a positive behavior support system to the extent required under §380.9155 of this chapter; and~~

~~(iii) completion of at least 12 hours of a gang intervention education program, if required by court order.~~

~~(e) [(f) Transfer to TDCJ-CID before Termination of TJJD's Jurisdiction. TJJD may request a juvenile court hearing to recommend transfer of a youth in a high-restriction facility to TDCJ-CID if the following criteria are met:~~

~~(1) the youth is at least age 16; and~~

~~(2) the youth has spent at least six months in high-restriction facilities, which is counted as follows:~~

~~(A) if the youth received a determinate sentence for conduct that occurred in the community, the six months begins upon admission to TJJD; or~~

~~(B) if the youth received a determinate sentence for conduct that occurred in a TJJD or contract facility, the six months begins upon the youth's initial admission to TJJD, regardless of whether the initial admission resulted from a determinate or indeterminate commitment; and~~

~~(3) the youth has not completed the [his/her] sentence; and~~

~~(4) the youth meets at least one of the following behavior criteria:~~

~~(A) the youth has committed a felony or Class A misdemeanor while assigned to a residential facility; or~~

~~(B) the youth has committed major rule violations as proven at [confirmed through] a Level II [due process] hearing on three or more occasions; or~~

~~(C) the youth has engaged in conduct that has resulted in at least five security program [Security Program] admissions or extensions in one month or ten in three months (see §380.9740 of this chapter [title] for information on the security program [Security Program]); or~~

~~(D) the youth has demonstrated an unwillingness to progress in the [his/her] rehabilitation program due to persistent non-compliance with objectives; and~~

~~(5) alternative interventions have been tried without success; and~~

~~(6) the youth's conduct indicates that the welfare of the community requires the transfer.~~

~~(f) Approval Process for Transfer to TDCJ-CID or TDCJ-PD.~~

~~(1) Before staff submit a recommendation for transfer to TDCJ-CID or TDCJ-PD, a determinate sentence review shall be held.~~

~~(2) TJJD notifies the youth and the youth's parent/guardian of a pending determinate sentence review. The notification informs the recipients that they have the opportunity to present information in person or to submit written comments to TJJD. The notification also specifies the date by which the comments or the request to present in-person information must be received.~~

~~(3) Approval from the final decision authority is required before requesting a hearing with the committing juvenile court.~~

~~(4) The final decision authority ensures the youth's community reentry/transition plan adequately addresses risk factors before approving the transfer from a high-restriction facility to TDCJ-PD.~~

~~(5) A youth may not be transferred to TDCJ-CID unless the committing juvenile court orders the transfer.~~

~~[(g) Decision Authority for Approval to Transfer].~~

~~[(1) No later than five months before a youth reaches age 19, the executive director or his/her designee must:]~~

~~{(A) determine whether the youth meets criteria under this rule for transfer to TDCJ-PD or transfer to TDCJ-CID; and}~~

~~{(B) approve the staff request for a hearing by the committing juvenile court to request transfer of the youth to TDCJ-PD or TDCJ-CID.}~~

~~{(2) The committing juvenile court is the final decision authority for transferring a youth to TDCJ-PD or TDCJ-CID.}~~

(g) [(h) Active Warrants [Notification]. At least ten calendar days before the youth's transfer, TJJJ notifies any entity that has issued an active warrant for the youth [at least ten calendar days before the youth's transfer].

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

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SUBCHAPTER B. TREATMENT DIVISION 1. PROGRAM PLANNING

37 TAC §380.8703

STATUTORY AUTHORITY

The amended section is proposed under Human Resources Code §242.003, which requires the Board to adopt rules appropriate to properly accomplish TJJJ's functions and to adopt rules for governing TJJJ schools, facilities, and programs.

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

§380.8703. *Rehabilitation Program Stage Requirements and Assessment.*

(a) Purpose. Texas Juvenile Justice Department (TJJJ) youth earn the ability to move to less restrictive placements by progressing through a stage system that measures progress in the rehabilitation program. The purpose of this rule is to provide a general outline of the areas in which a youth must demonstrate progress and to describe the process for assessing progress.

(b) Applicability. This rule applies to all residential facilities operated by TJJJ. This rule does not apply to youth in contract care programs that are not required to provide the TJJJ rehabilitation program. This rule does not apply to youth on parole status.

(c) Definitions. See §380.8501 of this chapter [title] for definitions of terms used in this rule.

(d) General Themes in the Rehabilitation Program. For each stage, a youth completes objectives around the following [four] general themes:

(1) demonstrate an understanding of risk and protective factors and show a decrease in risk factors and an increase in protective factors over the course of the rehabilitation program;

(2) demonstrate increased understanding of how those personal risk factors relate to success/lack of success in the community and an understanding of how the youth's committing offense was related to risk factors; and

~~{(3) move toward developing a concrete community reintegration plan from the time of admission; and}~~

~~(3) [(4)] engage the youth's family in programming.~~

(c) Process for Stage Assessment.

(1) A [The multi-disciplinary team (MDT) conducts a] stage assessment shall be conducted when the youth completes the required objectives for the stage or within 90 days from the previous stage assessment, whichever occurs first.

~~{(2) Members of the MDT make stage decisions collaboratively, providing input in their areas of expertise. The MDT facilitates and confirms stage progression by reviewing progress and interviewing the youth. The youth's case manager serves as the MDT facilitator and is responsible for contacting additional professional resources as appropriate to discuss the youth's individualized needs and abilities and to provide information regarding strategies to assist the youth to progress in the program.}~~

~~(2) [(3)] Each stage assessment [meeting] includes a [an integrated and] comprehensive assessment of the youth's progress in the rehabilitation program.~~

~~{(A) Prior to the meeting, assigned staff members are responsible for collecting specific information in their area of expertise and making it available for the meeting.}~~

~~(A) [(B)] The [case manager is responsible for contacting the] parent/guardian and parole officer are invited to each meeting and allowed to provide input [to invite them to the meeting and ensuring their input into the process].~~

~~(B) [(C)] The youth is responsible for being prepared to discuss information related to the youth's [his/her] program and preparing any information the youth [he/she] is required to present for stage progression.~~

~~(C) [(D)] During the stage assessment:~~

~~(i) the youth's general progress in the program and on specific case plan objectives is reviewed;~~

~~(ii) risk and protective factors are reviewed;~~

~~(iii) medical and mental health information is discussed (if applicable);~~

~~(iv) feedback is provided to the youth on areas of strength and areas needing improvement;~~

~~(v) interventions to assist the youth's progress are discussed and developed; and~~

~~(vi) community reentry [re-entry] planning is discussed.~~

~~{(4) If the MDT determines the stage objectives have been met, the MDT also evaluates whether the youth has consistently participated in the following other areas of programming:}~~

~~{(A) participation in development and completion of case plan objectives;}~~

~~{(B) participation in groups and individual counseling sessions;}~~

~~[(C) participation in specialized treatment programs (if applicable);]~~

~~[(D) participation in academic and workforce development programs; and]~~

~~[(E) application of learned skills in daily behavior.]~~

~~(3) [(5) If it is determined [the MDT determines] that the [a] youth meets the requirements for completing the stage [required indicators for the stage and has consistently participated in the other areas of programming], the youth is promoted to the next stage.~~

~~(4) [(6) If it is determined that [the MDT determines] the youth does not meet the requirements for completing the stage [has not met the indicators required for the stage or has not consistently participated in the other areas of programming], the youth remains on the [his/her] current stage [until the next stage assessment].~~

~~(5) [(7) Youth may not be demoted in stage, except when:~~

~~(A) stage demotion is assigned as a disciplinary consequence following a due process hearing, in accordance with §380.9503 of this chapter [title]; or~~

~~(B) a youth is returned to a high- or medium-restriction [high or medium restriction] facility, in accordance with subsection (h) of this section.~~

~~(6) [(8) The [After the stage assessment meeting, the] youth and the youth's parent/guardian are notified of the results of the stage assessment. If appropriate, an updated individual case plan must [shall] be developed following the meeting.~~

~~(f) Requirements for Stage Promotion.~~

~~(1) Stage 1--this stage is completed when TJJD [the MDT] determines that the youth has demonstrated basic knowledge of the stage objectives. The youth attends the foundational skills development groups and participates in individual sessions with the [his/her] case manager to develop an assessment of risk and protective factors. To complete stage 1, the youth must:~~

~~(A) complete the following objectives in accordance with the specified indicators for each objective:~~

~~(i) understand the definition of risk and protective factors;~~

~~(ii) explore risk factors related to TJJD commitment;~~

~~(iii) attempt to involve a family member or an adult mentor, with assistance from the family liaison and case manager; and~~

~~(iv) establish a personal goal and identify strategies to achieve that goal;~~

~~(B) present and discuss the youth's [his/her] progress with the staff [MDT] as specified in the stage indicators; [and]~~

~~(C) complete case plan objectives; and~~

~~(D) [(C)] consistently participate in the following other areas of programming: [as described in subsection (e)(4) of this section.]~~

~~(i) groups and individual counseling sessions;~~

~~(ii) specialized treatment programs (if applicable);~~

~~(iii) academic and workforce development programs; and~~

~~(iv) application of learned skills in daily behavior.~~

(2) Stage 2--this stage is completed when TJJD [the MDT] determines that the youth has identified and discussed [his/her] personal risk and protective factors; identified patterns in the youth's [his/her] thoughts, feelings, attitudes, values, and beliefs that relate to TJJD commitment and ongoing behaviors; [created an initial community reintegration plan;] and participated with staff [the MDT] in targeting specific skills for development based on the youth's [his/her] risk and protective factors. To complete stage 2, the youth must:

(A) complete the following objectives in accordance with the specified indicators for each objective:

~~(i) explore personal risk and protective factors;~~

~~(ii) share identified risk and protective factors with the youth's [his/her] family or adult mentor; and~~

~~(iii) identify patterns in thoughts, feeling, attitudes, beliefs, and values; [and]~~

~~[(iv) create an initial community reintegration plan;]~~

(B) present and discuss the youth's [his/her] progress with the evaluating staff [MDT] as specified in the stage indicators; [and]

(C) complete case plan objectives; and

(D) [(C)] consistently participate in other areas of programming as described in paragraph (1)(D) of this subsection [(e)(4) of this section].

(3) Stage 3--this stage is completed when TJJD [the MDT] determines that the youth has completed assigned skill lessons designed [assigned by the case manager and MDT necessary] to reduce risk factors [risks] and enhance protective factors. The youth is expected to take responsibility for the committing offense, identify patterns in thinking, and be able to discuss the impact of the offense on direct and indirect victims. The youth is expected to incorporate the new skills learned while in the facility into daily living situations [and into a community reintegration plan]. To complete stage 3, the youth must:

(A) complete the following objectives in accordance with the specified indicators for each objective:

~~(i) show a reduction of risk factors and an increase in protective factors;~~

~~(ii) take responsibility for the committing offense; and~~

~~(iii) share progress on reducing risk factors and increasing protective factors with the youth's [his/her] family member or adult mentor; [and]~~

~~[(iv) complete the community reintegration plan;]~~

(B) present and discuss the youth's [his/her] progress with the evaluating staff [MDT] as specified in the stage indicators; [and]

(C) complete case plan objectives; and

(D) [(C)] consistently participate in other areas of programming as described in paragraph (1)(D) of this subsection [(e)(4) of this section].

(4) Stage 4--this stage is completed when TJJD [the MDT] determines that the youth demonstrates and practices skills learned in skills groups through daily application in situations that present increased risk for the youth. Youth are expected to engage in responsible behaviors that are consistent with identified protective factors on a regular basis. Additional skills are learned as assigned. This stage

is considered the second-highest stage for purposes of eligibility for transition under §380.8545 of this chapter. [and the community reintegration plan is revised as needed and reviewed. The community reintegration plan is considered complete when the case manager, youth, and the youth's parent/guardian/adult mentor approve the document.] To complete stage 4, the youth must:

(A) complete the following objectives in accordance with the specified indicators for each objective:

(i) show a reduction of risk factors and an increase in protective factors; and

(ii) identify new thoughts, feelings, attitudes, beliefs, and values that might increase success in the community;

{(iii) share the community reintegration plan with his/her family or adult mentor; and}

{(iv) finalize the community reintegration plan;}

(B) present and discuss the youth's [his/her] progress with the evaluating staff [MDT] as specified in the stage indicators; [and]

(C) complete case plan objectives; and

(D) [(C)] consistently participate in other areas of programming as described in paragraph (1)(D) of this subsection [(e)(4) of this section].

(5) Youth Empowerment Status (YES)--youth who complete stage 4 and remain in a residential facility are assigned to Youth Empowerment Status. This status requires youth to continue to work in the program to maintain their gains, continue to reduce risk factors and increase protective factors, continue their skills development, [update their community reintegration plan as circumstances change,] and contribute positively to their living environment. If TJJD [the MDT] determines that the [a] youth meets [has met] all objectives, the youth is placed on active ["active"] status. If TJJD [the MDT] determines that the youth does not meet [has not met] all objectives, the youth is placed on inactive ["inactive"] status. Stage YES-Active is considered the highest stage for purposes of program completion under §380.8555 and §380.8559 of this chapter. The youth's objectives are:

(A) show a reduction of risk factors and an increase in protective factors;

(B) complete case plan objectives; and [review and revise the community reintegration plan;]

(C) consistently participate in other areas of programming as described in paragraph (1)(D) of this subsection. [comply with the community reintegration plan (only for youth in medium restriction facilities);]

{(D) share the revised community reintegration plan with his/her family or adult mentor (only for youth in medium restriction facilities);}

{(E) participate in the development and completion of the case plan;}

{(F) attend all scheduled groups;}

{(G) participate in specialized treatment program(s) or supplemental groups, if applicable;}

{(H) participate in academic and workforce development programs commensurate with abilities; and}

{(I) consistently apply learned skills in daily behavior.}

(g) Opportunity to Demonstrate Completion of Requirements.

(1) Some objectives may be completed in a single month. Completion of all stage requirements for promotion is demonstrated primarily through consistent participation in scheduled activities and development of skills to address risk factors, which will generally take longer than one month to achieve. The stage requirements are generally sequential.

(2) During each monthly assessment period, the youth is provided an equal opportunity, as the youth's behavior warrants, to participate in the scheduled activities needed to progress. With reasonable effort by the youth, the requirements of the highest stage will be completed within the youth's initial minimum length of stay or minimum period of confinement. For youth whose minimum length of stay or minimum period of confinement exceeds 12 months, the schedule must provide an opportunity for completion of the highest stage within one year.

(h) Stage Assessment upon [Upon] Return to a High- or Medium-Restriction [High or Medium Restriction] Facility.

(1) If a youth is returned to a high-restriction [high restriction] facility for disciplinary reasons through a due process hearing other than a parole revocation hearing, the youth is placed on stage 3 or retained on the current stage if currently assigned to stage 1 or 2.

(2) If a youth is returned to a high-restriction [high restriction] facility as a result of a parole revocation hearing, the youth is placed on stage 1.

(3) If a youth is recommitted to TJJD for a new offense committed while in the community, the youth is placed on stage 1.

(4) If a youth is recommitted to TJJD for a new offense committed in a TJJD-operated or TJJD-contracted facility, the youth is reassessed by TJJD [the MDT] and placed on the most appropriate stage for the youth's [his/her] current behavior and progress in the rehabilitation program.

(5) If a youth is returned to a high- or medium-restriction [high or medium restriction] facility for non-disciplinary reasons, the youth is reassessed by TJJD [the MDT] and placed on the most appropriate stage for the youth's [his/her] current behavior and progress in the rehabilitation program.

(6) A youth whose stage is assigned under paragraphs (1) - (3) of this subsection may be promoted more than one stage at the first stage assessment following the return or recommitment.

(i) Appeal of Assessment. A youth may appeal the results of a stage assessment or of the lack of opportunity to demonstrate completion of requirements by filing a grievance in accordance with §380.9331 of this chapter [title]. The person assigned to respond to the grievance must not be a [member of the MDT or a] staff member who was [has been] involved in the [youth's current] assessment being grieved.

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

Filed with the Office of the Secretary of State on November 29, 2021.

TRD-202104725

Christian von Wupperfeld

General Counsel

Texas Juvenile Justice Department

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For further information, please call: (512) 490-7278

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CHAPTER 385. AGENCY MANAGEMENT
AND OPERATIONS
SUBCHAPTER B. INTERACTION WITH THE
PUBLIC

37 TAC §385.8135

The Texas Juvenile Justice Department (TJJD) proposes to amend §385.8135, concerning the rights of victims.

SUMMARY OF CHANGES

The amendments to §385.8135, concerning Rights of Victims, include adding that: 1) the invitation extended by TJJD is for the victim to participate in the *release review process* (rather than in TJJD's Special Services Committee or Release Review Panel review); 2) if a victim requests permission to provide input in person *or by videoconference or teleconference* and that request is granted, the victim is provided an opportunity to do so, *but this opportunity is no longer tied to participating in the staff meeting where release under supervision is considered*; 3) information provided to TJJD by a victim shall be considered, not just before a youth is released under supervision, released to a community placement, or transferred to prison or adult parole, but more specifically: (a) when evaluating the youth's progress in the rehabilitation program, to include when determining if the youth has successfully completed the rehabilitation program or should be transitioned to a placement of less than high restriction; (b) by the Release Review Panel when determining if the youth should be paroled, discharged, or extended in a facility; and (c) when making decisions about possible transfer to prison or adult parole; and 4) any information obtained from or about a victim may not be shared with youth and may be disclosed only as provided by law (rather than stating that *any victim involvement while the youth is in TJJD custody is confidential*).

Amendments to §385.8135 also included adding the following, based on recently enacted statutes: 1) any information that identifies an individual as a victim of an offense under Section 20A.02, 20A.03, 21.02, 21.11, 22.011, 22.021, 43.05, or 43.25, Penal Code, or of any other offense that is part of the same criminal episode as one of those offenses is confidential and may be disclosed only as provided by law; and 2) any information that identifies an individual as a victim of an offense that was committed when the victim was younger than 18 is confidential and may be disclosed only as provided by law.

RULE REVIEW

Simultaneously with this proposed rulemaking action, TJJD also publishes this notice of intent to review §385.8135 as required by Texas Government Code §2001.039. Comments on whether the reasons for originally adopting this rule continue to exist may be submitted to TJJD by following the instructions provided later in this notice.

FISCAL NOTE

Emily Anderson, Chief Financial and Operating Officer, has determined that, for each year of the first five years the amended section is in effect, there will be no significant fiscal impact for state government or local governments as a result of enforcing or administering the section.

PUBLIC BENEFITS/COSTS

Shandra Carter, Deputy Executive Director for State Services, has determined that, for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of administering the section will be (1) providing increased opportunities for victim participation through videoconference and teleconference, in addition to the opportunity to provide input in-person, and (2) ensuring that information provided during victim participation is considered by TJJD during progress evaluation, Release Review Panel reviews, and when making decisions regarding possible transfer of youth with determinant sentences to TDCJ, rather than only before a youth is released or transferred to TDCJ.

Ms. Anderson has also determined that there will be no effect on small businesses, micro-businesses, or rural communities. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this section.

GOVERNMENT GROWTH IMPACT

TJJD has determined that, during the first five years the proposed rule is in effect, the rule will have the following impacts.

- (1) The proposed rule does not create or eliminate a government program.
- (2) The proposed rule does not require the creation or elimination of employee positions at TJJD.
- (3) The proposed rule does not require an increase or decrease in future legislative appropriations to TJJD.
- (4) The proposed rule does not impact fees paid to TJJD.
- (5) The proposed rule does not create a new regulation.
- (6) The proposed rule does not expand, limit, or repeal an existing regulation.
- (7) The proposed rule does not increase or decrease the number of individuals subject to the rule's applicability.
- (8) The proposed rule will not positively or adversely affect this state's economy.

PUBLIC COMMENTS

Comments on the proposal and/or rule review may be submitted within 30 days after publication of this notice to Josh Bauermeister, Policy Writer, Texas Juvenile Justice Department, P.O. Box 12757, Austin, Texas 78711, or email to policy.proposals@tjjd.texas.gov.

STATUTORY AUTHORITY

The amended section is proposed under Human Resources Code §242.003, which requires the Board to adopt rules appropriate to properly accomplish TJJD's functions and to adopt rules for governing TJJD schools, facilities, and programs.

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

§385.8135. Rights of Victims.

(a) Purpose. This rule addresses the rights of victims as described in Texas Family Code Chapter 57 and Texas Code of Criminal Procedure Article 56.02 and allows victims to provide input into the release process of youth committed to the Texas Juvenile Justice Department (TJJD).

(b) Applicability. All of the rules and procedures afforded to a victim of a youth in TJJD custody, as indicated by the use of the term

victim in this section, are equally afforded to the guardian of a victim or close relative of a deceased victim.

(c) Definitions.

(1) Victim--a person who as the result of the delinquent conduct of a child [juvenile] suffers a pecuniary [financial] loss or personal injury or harm.

(2) Close relative of a deceased victim--a person who was the spouse of a deceased victim at the time of the victim's death or who is a parent or adult brother, sister, or child of the deceased victim.

(3) Guardian of a victim--a person who is the legal guardian of the victim, whether or not the legal relationship between the guardian and victim exists because of the age of the victim or the physical or mental incompetency [incompetence] of the victim.

(d) Victim Confidentiality.

(1) Information in a Juvenile Victim Impact Statement [statement (JVIS)] or information submitted in the preparation of this statement [a JVIS] is confidential with regard to the victim's name, social security number, address, telephone number, and any other information which would identify or tend to identify the victim.

(2) Any information obtained from or about a victim may not be shared with youth and may be disclosed only as provided by law. [Any victim involvement while the youth is in TJJJ custody is confidential.]

(3) Any information that identifies an individual as a victim of an offense under Section 20A.02, 20A.03, 21.02, 21.11, 22.011, 22.021, 43.05, or 43.25, Penal Code, or of any other offense that is part of the same criminal episode as one of those offenses is confidential and may be disclosed only as provided by law.

(4) Any information that identifies an individual as a victim of an offense that was committed when the victim was younger than 18 is confidential and may be disclosed only as provided by law.

(e) Victim's Right to Information.

(1) A victim may request, in writing, any of the information listed below:

(A) information concerning the procedures for release or transfer of the youth from one program placement to another, including to the custody of the Texas Department of Criminal Justice (TDCJ);

(B) notification of:

(i) [release under supervision, including] release to TJJJ parole;

(ii) placement in a facility of less than high restriction; and [release to a non-institutional community placement;]

~~(iii) transfer to TDCJ; and~~

~~(iii) [(iv)] discharge from TJJJ supervision, including discharge upon transfer to the TDCJ Correctional Institutions Division (TDCJ-CID) or TDCJ Parole Division (TDCJ-PD).~~

(2) If there is a signed request from the victim, the information is sent to the victim's [victim at his or her] most current address on file.

(3) For a victim who has requested information concerning a youth, TJJJ staff may reveal only the following:

(A) that the youth is under TJJJ's supervision;

(B) the youth's minimum length of stay and/or [the] minimum period of confinement;

(C) the committing offense in which the victim was involved;

(D) the youth's conditions of parole supervision (except specialized treatment) and, if the youth is living at a TJJJ residential placement, the physical address of that [if the youth is living at a TJJJ residential] placement;

(E) information about TJJJ's release review process and an invitation to participate in that process [in TJJJ's Special Services Committee or Release Review Panel review for the offense in which the victim was involved];

(F) that the youth has been transferred to another location and the name of that location, unless the program is only for substance abuse and/or mental health treatment;

(G) the name of the youth's caseworker and/or parole officer; and

(H) general information about the agency's rehabilitation program without revealing specific information regarding the youth's treatment.

(f) Victim's Right to Participation.

(1) A victim may provide information to be considered by TJJJ. Information provided by the victim shall be considered: [before the youth is released under supervision (including release to TJJJ parole); released to a non-institutional community placement; or transferred to prison or TDCJ parole.]

(A) when evaluating the youth's progress in the rehabilitation program, to include when determining if the youth has successfully completed the rehabilitation program or should be transitioned to a placement of less than high restriction;

(B) by the Release Review Panel when determining if the youth should be paroled, be discharged, or remain in a TJJJ or contract facility on institutional status for further rehabilitation; and

(C) when making decisions regarding the possible transfer of a youth with a determinate sentence to TDCJ-CID or TDCJ-PD.

(2) If the victim requests in writing and receives permission to provide input in person or by videoconference or teleconference, the victim will be provided the opportunity to do so. [; he or she may participate in the staff meeting where release under supervision is considered. The victim is not allowed to attend the entire meeting regarding the youth.]

(3) Victims who provide input in person [in-person input] are provided a waiting area separate from any location where they might encounter the youth.

(g) Victim Appeal. The victim has no right of appeal in any TJJJ decision.

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

Filed with the Office of the Secretary of State on November 29, 2021.

TRD-202104726



PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 455. MINIMUM STANDARDS FOR WILDLAND FIRE PROTECTION CERTIFICATION

37 TAC §455.3

The Texas Commission on Fire Protection (commission) proposes amendments to 37 Texas Administrative Code Chapter 455, Minimum Standards for Wildland Fire Protection Certification, concerning §455.3, Minimum Standards for Basic Wildland Fire Protection Certification.

BACKGROUND AND PURPOSE

The purpose of the proposed amendments to rule §455.3 is to add language that would allow individuals to complete an on-line course to satisfy some of the requirements necessary for obtaining a Wildland Certification.

FISCAL NOTE IMPACT ON STATE AND LOCAL GOVERNMENT

Michael Wisko, Agency Chief, has determined that for each year of the first five-year period the proposed amendments are in effect, there will be no significant fiscal impact to state government or local governments as a result of enforcing or administering these amendments as proposed under Texas Government Code §2001.024(a)(4).

PUBLIC BENEFIT AND COST NOTE

Mr. Wisko has also determined under Texas Government Code §2001.024(a)(5) that for each year of the first five years the amendments are in effect the public benefit will be an additional avenue for obtaining a wildland certification.

LOCAL ECONOMY IMPACT STATEMENT

There is no anticipated effect on the local economy for the first five years that the proposed amendments are in effect; therefore, no local employment impact statement is required under Texas Government Code §2001.022 and 2001.024(a)(6).

ECONOMIC IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES AND RURAL COMMUNITIES

Mr. Wisko has determined there will be no impact on rural communities, small businesses, or micro-businesses as a result of implementing these amendments. Therefore, no economic impact statement or regulatory flexibility analysis, as provided by Texas Government Code §2006.002, is required.

GOVERNMENT GROWTH IMPACT STATEMENT

The agency has determined under Texas Government Code §2006.0221 that during the first five years the amendments are in effect:

(1) the rules will not create or eliminate a government program;

(2) the rules will not create or eliminate any existing employee positions;

(3) the rules will not require an increase or decrease in future legislative appropriation;

(4) the rules will not result in a decrease in fees paid to the agency;

(5) the rules will not create a new regulation;

(6) the rules will not expand a regulation;

(7) the rules will not increase the number of individuals subject to the rule; and

(8) the rules are not anticipated to have an adverse impact on the state's economy.

TAKINGS IMPACT ASSESSMENT

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

COSTS TO REGULATED PERSONS

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

ENVIRONMENTAL IMPACT STATEMENT

The commission has determined that the proposed amendments do not require an environmental impact analysis because the amendments are not major environmental rules under Texas Government Code §2001.0225.

REQUEST FOR PUBLIC COMMENT

Comments regarding the proposed amendments may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register*, to Michael Wisko, Agency Chief, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768 or e-mailed to deborah.cowan@tcfp.texas.gov.

STATUTORY AUTHORITY

The amended rule is proposed under Texas Government Code §419.008, which authorizes the commission to adopt or amend rules to perform the duties assigned to the commission. The rule is also proposed under Texas Government Code §419.032, which authorizes the commission to adopt rules establishing the requirements for certification.

CROSS REFERENCE TO STATUTE

No other statutes, articles, or codes are affected by these amendments.

§455.3. *Minimum Standards for Basic Wildland Fire Protection Certification.*

In order to be certified as Basic Wildland Fire Protection personnel, an individual must:

(1) possess valid documentation of accreditation from the International Fire Service Accreditation Congress as Wildland Fire Fighter Level I; or

(2) complete a commission approved Basic Wildland Fire Protection program and successfully pass the commission examination as specified in Chapter 439 of this title (relating to Examinations for Certification). An approved Basic Wildland Fire Protection training program shall consist of one of the following:

(A) completion of the commission approved Basic Wildland Fire Fighter training program, as specified in the applicable chapter of the commission's Certification Curriculum Manual; or

(B) completion of the following National Wildfire Coordinating Group (NWCG) courses:

(i) S-130: Firefighter Training;

(ii) S-190: Introduction to Wildland Fire Behavior;

(iii) L-180: Human Factors on the Fireline; and

(iv) I-100: Introduction to the Incident Command System, or an equivalent basic incident command system course such as NIMS IS-100; or[-]

(C) Completion of a Texas A&M Forest Service approved online Hybrid (I-100, S-130, S-190 & L-180) with in-person test and field day.

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

Filed with the Office of the Secretary of State on November 22, 2021.

TRD-202104695

Michael Wisko

Agency Chief

Texas Commission on Fire Protection

Earliest possible date of adoption: January 9, 2022

For further information, please call: (512) 936-3812

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