

ADOPTED RULES

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

TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 1. AGENCY ADMINISTRATION SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §1.6

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §1.6 concerning Advisory Committees without changes to the proposed text as published in the February 12, 2016, issue of the *Texas Register* (41 TexReg 1063). Specifically, the amendment to §1.6(g) provides a nomination process for non-higher education institutional representatives on certain Coordinating Board advisory committees. This section is also amended to specify that the Board may replace a member who becomes unassociated with the nominating institution or entity.

There were no comments received concerning these amendments.

The amendments are adopted under the Texas Government Code, Chapter 2110, which provides the Coordinating Board with the authority to create advisory committees.

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

Filed with the Office of the Secretary of State on May 17, 2016.

TRD-201602402

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Effective date: June 6, 2016

Proposal publication date: February 12, 2016

For further information, please call: (512) 427-6114



19 TAC §1.18

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §1.18 concerning the status of the Education Research Center Advisory Board as a governmental body without changes to the proposed text as published in the February 5, 2016, issue of the *Texas Register* (41 TexReg 886). Specifically, the amendments to this section add Texas Education Code, §1.006(b), where the Education Research Center Advisory Board is considered to be a governmental body.

There were no comments received concerning the amendments to this section.

The amendments address the changes to Texas Education Code, §1.006(b), as amended by Senate Bill 685, 84th legislature.

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

Filed with the Office of the Secretary of State on May 17, 2016.

TRD-201602403

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Effective date: June 6, 2016

Proposal publication date: February 5, 2016

For further information, please call: (512) 427-6114



SUBCHAPTER E. STUDENT COMPLAINT PROCEDURE

19 TAC §§1.110, 1.113 - 1.115

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §§1.110, 1.113, 1.114, and 1.115 concerning the Student Complaint Procedure without changes to the proposed text as published in the February 12, 2016, issue of the *Texas Register* (41 TexReg 1064). The amended rules clarify and update the procedures for filing a student complaint against an institution of higher education. The new language provides for the use of a more efficient online student complaint form, updates the mailing address for complaints mailed to the Agency, and specifies that the evaluation of a student's academic performance is under the sole purview of the student's institution and its faculty.

There were no comments received concerning the amendments to these sections.

The amendments are adopted under the Texas Education Code, §61.031, which provides the Coordinating Board with the authority to adopt rules for handling student complaints concerning higher education institutions.

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

Filed with the Office of the Secretary of State on May 17, 2016.

TRD-201602404

Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: June 6, 2016
Proposal publication date: February 12, 2016
For further information, please call: (512) 427-6114



SUBCHAPTER K. FORMULA ADVISORY COMMITTEE - COMMUNITY AND TECHNICAL COLLEGES

19 TAC §§1.156, 1.158, 1.161

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §§1.156, 1.158, and 1.161, concerning the Formula Advisory Committee - Community and Technical Colleges, without changes to the proposed text as published in the February 5, 2016, issue of the *Texas Register* (41 TexReg 887). Specifically, the amendment to §1.156 adds Texas Education Code, §61.059(b-1), as part of the statutory authority for Subchapter K. Specifically, the amendment to §1.158 allows the formula advisory committee to appoint workgroups or subcommittees (which are currently allowed). Specifically, the amendment to §1.161 corrects the citation regarding the state's higher education master plan from §61.051(a)(2) to §61.051(a)(1).

There were no comments received concerning the amendments to these sections.

The amendments are adopted under the Texas Education Code, §61.059(b), which provides the Coordinating Board with authority to review and revise formula recommendations for institutions of higher education.

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

Filed with the Office of the Secretary of State on May 17, 2016.

TRD-201602405
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: June 6, 2016
Proposal publication date: February 5, 2016
For further information, please call: (512) 427-6114



SUBCHAPTER L. FORMULA ADVISORY COMMITTEE - GENERAL ACADEMIC INSTITUTIONS

19 TAC §1.164, §1.169

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §1.164 and §1.169, concerning the Formula Advisory Committee - General Academic Institutions, without changes to the proposed text as published in the February 5, 2016, issue of the *Texas Register* (41 TexReg 887). Specifically, the amendment to §1.164 adds Texas Education

Code, §1.059(b-1), as part of the statutory authority for Subchapter K. Specifically, the amendment to §1.169 corrects the citation regarding the state's higher education master plan from Texas Education Code, §61.051(a-2) to §61.051(a-1).

There were no comments received concerning the amendments to these sections.

The amendments are adopted under the Texas Education Code, §61.059(b), which provides the Coordinating Board with authority to review and revise formula recommendations for institutions of higher education.

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

Filed with the Office of the Secretary of State on May 17, 2016.

TRD-201602406
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: June 6, 2016
Proposal publication date: February 5, 2016
For further information, please call: (512) 427-6114



SUBCHAPTER M. FORMULA ADVISORY COMMITTEE - HEALTH-RELATED INSTITUTIONS

19 TAC §1.176

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §1.176, concerning the Formula Advisory Committee - Health-Related Institutions, without changes to the proposed text as published in the February 5, 2016, issue of the *Texas Register* (41 TexReg 888). Specifically, the amendment corrects the citation regarding the state's higher education master plan from Texas Education Code §61.051(a-2) to §61.051(a-1).

There were no comments received concerning the amendments to this section.

The amendments are adopted under the Texas Education Code, §61.059(b), which provides the Coordinating Board with authority to review and revise formula recommendations for institutions of higher education.

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

Filed with the Office of the Secretary of State on May 17, 2016.

TRD-201602407
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: June 6, 2016
Proposal publication date: February 5, 2016
For further information, please call: (512) 427-6114



SUBCHAPTER CC. FINANCIAL LITERACY ADVISORY COMMITTEE

19 TAC §§1.9521 - 1.9527

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new §§1.9521 - 1.9527, concerning the creation of the Financial Literacy Advisory Committee, without changes to the proposed text as published in the February 19, 2016, issue of the *Texas Register* (41 TexReg 1197). The new rules are in accordance with Senate Bill 215 passed by the 83rd Texas Legislature, Regular Session. Specifically, these new rules govern the purpose, membership, meeting requirements, tasks, reporting requirements, and abolishment date of the Financial Literacy Advisory Committee.

There were no comments received regarding these new sections.

The new rules are adopted under Texas Education Code, Chapter 61, §61.026(c) and Government Code, Chapter 2110, which provides the Coordinating Board with the authority to create advisory committees.

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

Filed with the Office of the Secretary of State on May 17, 2016.

TRD-201602408

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Effective date: June 6, 2016

Proposal publication date: February 19, 2016

For further information, please call: (512) 427-6114



CHAPTER 4. RULES APPLYING TO ALL PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN TEXAS SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §4.11

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §4.11 concerning the Common Admission Application Forms without changes to the proposed text as published in the February 12, 2016, issue of the *Texas Register* (41 TexReg 1065). The amendments add needed definitions and reorganize old provisions of the rules to better group related topics. Old language is amended to reflect the multiple common admissions applications that are available and to reflect that two-year public institutions are now required to accept Apply Texas applications. New language indicates institutions failing to pay their share of the cost by the due date may be denied access to incoming application data until such time that payments are received.

There were no comments received concerning the amendments to this section.

The amendments are adopted under the Texas Education Code, §51.762, which provides the Coordinating Board with the au-

thority to adopt rules for the Apply Texas Admission Application Forms.

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

Filed with the Office of the Secretary of State on May 17, 2016.

TRD-201602409

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Effective date: June 6, 2016

Proposal publication date: February 12, 2016

For further information, please call: (512) 427-6114



SUBCHAPTER Q. APPROVAL OF OFF-CAMPUS AND SELF-SUPPORTING COURSES AND PROGRAMS FOR PUBLIC INSTITUTIONS

19 TAC §4.278

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §4.278 concerning Approval of Off-Campus and Self-Supporting Courses and Program for Public without changes to the proposed text as published in the February 5, 2016, issue of the *Texas Register* (41 TexReg 890). The intent of these amendments is to clarify the approval authority of higher education regional councils over dual credit partnerships between secondary schools and Texas public colleges and universities.

One comment was received concerning these amendments as follows:

Comment: The University of Texas at Rio Grande Valley commented in support of the proposed change and stated the change clarified the rules.

Response: No changes were made to the proposed text as a result of this comment.

The amendments are adopted under Texas Education Code, Chapter 61, Subchapter C, §61.0512, which authorized the Coordinating Board to approve courses for credit and distance education programs, including off-campus and self-supporting programs, and Chapter 130, Subchapter A, §130.001 and Chapter 28, Subchapter A, §28.009, which provide for the offering of dual credit courses by public institutions of higher education.

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

Filed with the Office of the Secretary of State on May 17, 2016.

TRD-201602410

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Effective date: June 6, 2016

Proposal publication date: February 5, 2016

For further information, please call: (512) 427-6114

◆ ◆ ◆

CHAPTER 6. HEALTH EDUCATION,
TRAINING, AND RESEARCH FUNDS
SUBCHAPTER K. AUTISM GRANT
PROGRAM

19 TAC §§6.210 - 6.218

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new §§6.210 - 6.218, concerning the Autism Grant Program, without changes to the proposed text as published in the February 26, 2016, issue of the *Texas Register* (41 TexReg 1319). The intent of these new sections is to specify the Board's criteria and process for awarding grants under the program to existing Autism Research Centers to increase parent-directed treatment; training for teachers/paraprofessionals; and research, development, and evaluation of innovative autism treatment models. In addition, Senate Bill 215, 83rd Texas Legislature, Regular Session, called for the Board to engage institutions of higher education in a negotiated rulemaking process as described in Chapter 2008, Government Code in the development of such rules. The new Autism Grant Program rules were reviewed and approved by the Negotiated Rulemaking Committee on the Autism Grant Program on February 3, 2016.

There were no comments received concerning these new sections.

The new rules are adopted under Texas Education Code, Chapter 61, §61.0331, which provides the Coordinating Board with the authority to engage institutions of higher education in a negotiated rulemaking process, when adopting a policy, procedure, or rule relating to the allocation or distribution of funds.

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

Filed with the Office of the Secretary of State on May 17, 2016.

TRD-201602411

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Effective date: June 6, 2016

Proposal publication date: February 26, 2016

For further information, please call: (512) 427-6114

◆ ◆ ◆

CHAPTER 13. FINANCIAL PLANNING
SUBCHAPTER A. DEFINITIONS

19 TAC §13.1

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §13.1 concerning Definitions without changes to the proposed text as published in the February 5, 2016, issue of the *Texas Register* (41 TexReg 891). Specifically, the amendments expand the definition of functional categories to include scholarships and fellowships, depreciation, and auxiliary enterprises. The citation for the definition of General Academic Institutions is corrected from Chapter 61 to §61.003(3). The term "Higher Education Assistance

Fund (HEAF)" is changed to "Higher Education Fund (HEF)" to conform to the General Appropriations Act. The definition of independent institutions of higher education is expanded to include the citation Texas Education Code, §61.003(15), which lists the criteria for being an independent institution of higher education, and the citation regarding exemption from taxation is corrected from Article V of the Texas Constitution to Article VIII. The definition of Institution of Higher Education or Institution is expanded to include public state colleges to conform to Texas Education Code, §61.003(8). In the definition of Local Funds, "educational general" is changed to "educational and general" to conform to the Texas Education Code. The definition of Non-Degree-Credit Developmental Courses is deleted because this term is not used in Chapter 13. Definition numbers (22), (23), and (24) are renumbered to (21), (22), and (23), respectively, because definition number (21), Non-Degree-Credit Developmental Courses, is deleted.

There were no comments received concerning the amendments to this section.

The amendments are adopted under the Texas Education Code, §61.065, which provides the Coordinating Board and the Comptroller of Public Accounts with the authority to prescribe a uniform system of financial accounting and reporting for institutions of higher education.

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

Filed with the Office of the Secretary of State on May 17, 2016.

TRD-201602412

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Effective date: June 6, 2016

Proposal publication date: February 5, 2016

For further information, please call: (512) 427-6114

◆ ◆ ◆

SUBCHAPTER C. BUDGETS

19 TAC §§13.42, 13.43, 13.47

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §§13.42, 13.43, and 13.47 concerning clarification of terms of the rules on budgets without changes to the proposed text as published in the February 5, 2016, issue of the *Texas Register* (41 TexReg 892). Specifically, the amendments change "Higher Education Assistance Fund (HEAF)" to "Higher Education Fund (HEF)", "HEAF" to "HEF", and "HEAF-backed" to "HEF-backed" to conform to the General Appropriations Act.

There were no comments received concerning the amendments to these sections.

The amendments are adopted under the Texas Education Code, §61.065, which provides the Coordinating Board and the Comptroller of Public Accounts with the authority to prescribe a uniform system of financial accounting and reporting for institutions of higher education.

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

Filed with the Office of the Secretary of State on May 17, 2016.

TRD-201602413

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Effective date: June 6, 2016

Proposal publication date: February 5, 2016

For further information, please call: (512) 427-6114



CHAPTER 15. NATIONAL RESEARCH
UNIVERSITIES
SUBCHAPTER C. NATIONAL RESEARCH
UNIVERSITY FUND

19 TAC §15.43

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §15.43 concerning the eligibility criteria to receive distributions from the National Research University Fund with changes to the proposed text as published in the February 5, 2016, issue of the *Texas Register* (41 TexReg 893). The intent of the amendments is to clarify the academic achievement of a freshman class; faculty distinctions are counted for each of two years measured; and faculty awards of distinction are counted only in the year the award was given.

One comment was received from Texas State University.

Comment: The comment noted that awards and not faculty should be counted in §15.43(b)(3)(E)(ii), since a single faculty may receive multiple awards in a given year.

Response: Staff agree with this change. Coordinating Board practice in previous years has been to count multiple awards by a single faculty. The change based on the comment received is adopted for §15.43(b)(3)(E)(i) and (ii).

The rule is adopted under Texas Education Code, Chapter 62, Subchapter G, §62.146, which authorizes the Coordinating Board to prescribe standard methods of reporting for determining the eligibility of institutions to receive distributions from the National Research University Fund.

§15.43. Eligibility.

(a) The eligibility criteria for a general academic teaching institution to receive distributions from the Fund include: having an entering freshman class of high academic achievement; receiving recognition of research capabilities and scholarly attainment of the institution; having a high-quality faculty; and demonstrating commitment to high-quality graduate education.

(b) A general academic teaching institution is eligible to receive an initial distribution from the Fund appropriated for each state fiscal year if:

(1) the institution is designated as an emerging research university under the coordinating board's accountability system;

(2) in each of the two state fiscal years preceding the state fiscal year for which the appropriation is made, the institution expended at least \$45 million in restricted research funds; and

(3) the institution satisfies at least four of the following six criteria:

(A) the value of the institution's endowment funds is at least \$400 million in each of the two state fiscal years preceding the state fiscal year for which the appropriation is made;

(B) the institution awarded at least 200 doctor of philosophy degrees during each of the two academic years preceding the state fiscal year for which the appropriation is made;

(C) in each of the two academic years preceding the state fiscal year for which the appropriation is made, the entering freshman class of the institution demonstrated high academic achievement as reflected in the following criteria:

(i) At least 50 percent of the first-time entering freshman class students at the institution are in the top 25 percent of their high school class; or

(ii) The average SAT score of first-time entering freshman class students at or above the 75th percentile of SAT scores was equal to or greater than 1210 (consisting of the Critical Reading and Mathematics Sections) or the average ACT score of first-time entering freshman class students at or above the 75th percentile of ACT scores was equal to or greater than 26; and

(iii) The composition of the institution's first-time entering freshman class demonstrates progress toward reflecting the population of the state or the institution's region with respect to underrepresented students and shows a commitment to improving the academic performance of underrepresented students. One way in which this could be accomplished is by active participation in one of the Federal TRIO Programs, such as having one or more McNair Scholars in a particular cohort.

(D) the institution is designated as a member of the Association of Research Libraries, has a Phi Beta Kappa chapter, or is a member of Phi Kappa Phi;

(E) in each of the two academic years preceding the state fiscal year for which the appropriation is made, the faculty of the institution was of high quality as reflected in the following:

(i) The cumulative number of national or international distinctions tenured/tenure-track faculty achieved through recognition as a member of one of the National Academies (including National Academy of Science, National Academy of Engineering, Academy of Arts and Sciences, and Institute of Medicine) or are Nobel Prize recipients is equal to or greater than 5 for each year; or

(ii) The annual number of awards of national and international distinction received by tenured/tenure-track faculty during a given academic year in any of the following categories is equal to or greater than 7 for each year.

(I) American Academy of Nursing Member

(II) American Council of Learned Societies

(ACLS) Fellows

(III) American Law Institute

(IV) Beckman Young Investigators

(V) Burroughs Wellcome Fund Career Awards

(VI) Cottrell Scholars

(VII) Getty Scholars in Residence

(VIII) Guggenheim Fellows

(IX) Howard Hughes Medical Institute Investi-

gators

(X) Lasker Medical Research Awards

- (XI) MacArthur Foundation Fellows
- (XII) Andrew W. Mellon Foundation Distinguished Achievement Awards
- (XIII) National Endowment for the Humanities (NEH) Fellows
- (XIV) National Humanities Center Fellows
- (XV) National Institutes of Health (NIH) MERIT
- (XVI) National Medal of Science and National Medal of Technology winners
- (XVII) NSF CAREER Award winners (excluding those who are also PECASE winners)
- (XVIII) Newberry Library Long-term Fellows
- (XIX) Pew Scholars in Biomedicine
- (XX) Pulitzer Prize Winners
- (XXI) Winners of the Presidential Early Career Awards for Scientists and Engineers (PECASE)
- (XXII) Robert Wood Johnson Policy Fellows
- (XXIII) Searle Scholars
- (XXIV) Sloan Research Fellows
- (XXV) Woodrow Wilson Fellows

(iii) In lieu of meeting either clause (i) or (ii) of this subparagraph, an institution may request that a comprehensive review of the faculty in five of the institution's Doctoral degree programs be conducted by external consultants selected by Coordinating Board staff in consultation with the institution and said review must demonstrate that the faculty are comparable to and competitive with faculty in similar programs at public institutions in the Association of American Universities. Costs for the review shall be borne by the institution. This review is only available if the institution has already met or, as determined by Coordinating Board staff, is on track to meet three of the other eligibility criteria listed in subparagraphs (A) - (D) of this paragraph;

(F) in each of the two academic years preceding the state fiscal year for which the appropriation is made, the institution has demonstrated a commitment to high-quality graduate education as reflected in the following:

- (i) The number of Graduate-level programs at the institution is equal to or greater than 50;
- (ii) The Master's Graduation Rate at the institution is 56 percent or higher and the Doctoral Graduation Rate is 58 percent or higher; and
- (iii) The institution must demonstrate that the overall commitment to five Doctoral degree programs, including the financial support for Doctoral degree students, is competitive with that of comparable high-quality programs at public institutions in the Association of American Universities. The five Doctoral degree programs selected for this review must be those selected in subparagraph (E)(iii) of this paragraph or, if subparagraph (E)(iii) of this paragraph is not chosen by the institution, then any five Doctoral degree programs at the institution. Costs for the review shall be borne by the institution.

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

Filed with the Office of the Secretary of State on May 17, 2016.

TRD-201602414
 Bill Franz
 General Counsel
 Texas Higher Education Coordinating Board
 Effective date: June 6, 2016
 Proposal publication date: February 5, 2016
 For further information, please call: (512) 427-6114



CHAPTER 21. STUDENT SERVICES

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §21.1

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §21.1 concerning General Provisions without changes to the proposed text as published in the February 12, 2016, issue of the *Texas Register* (41 TexReg 1066). Specifically, this section regarding the interest and sinking fund was identified for adjustment during the agency's four-year rule review process and is amended to reflect current student loan bond covenants, statute, and industry standards. Outdated language has been removed. Language has been provided regarding the deposits into the interest and sinking fund to ensure coverage of the ensuing fiscal year's bond obligations (interest and principal). Language has also been provided regarding the Board's ability to transfer excess funds out of the interest and sinking fund and into the Texas Opportunity Plan Fund or the Student Loan Auxiliary Fund.

No comments were received regarding the amendments to this section.

The amendments are adopted under Texas Education Code, Chapter 52, Subchapter A, which provides the Coordinating Board with the authority to adopt rules to implement the General Provisions of the Student Financial Assistance Act of 1975.

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

Filed with the Office of the Secretary of State on May 17, 2016.

TRD-201602417
 Bill Franz
 General Counsel
 Texas Higher Education Coordinating Board
 Effective date: June 6, 2016
 Proposal publication date: February 12, 2016
 For further information, please call: (512) 427-6114



19 TAC §§21.9 - 21.11

The Texas Higher Education Coordinating Board (Coordinating Board) adopts the repeal of §§21.9 - 21.11 concerning General Provisions without changes to the proposed text as published in the February 12, 2016, issue of the *Texas Register* (41 TexReg 1067). Section 21.9 is repealed and is no longer relevant, due to the elimination of tuition set asides to fund the B-On-Time Loan Program (House Bill 700, 84th Texas Legislature).

Section 21.10 and §21.11 are repealed and readopted to reflect renumbering and new language.

There were no comments received regarding the repeal of these sections.

The repeal is adopted under Texas Education Code, Chapter 52, Subchapter A, which provides the Coordinating Board with the authority to adopt rules to implement the General Provisions of the Student Financial Assistance Act of 1975.

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

Filed with the Office of the Secretary of State on May 17, 2016.

TRD-201602415

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Effective date: June 6, 2016

Proposal publication date: February 12, 2016

For further information, please call: (512) 427-6114



19 TAC §21.9, §21.10

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new §21.9 and §21.10 concerning General Provisions without changes to the proposed text as published in the February 12, 2016, issue of the *Texas Register* (41 TexReg 1068). These new sections are readopted to reflect renumbering and new language. New §21.10 is amended to eliminate reference to the first academic year (2013-2014, or later) to which the financial aid priority application deadline was applicable.

No comments were received regarding the new sections.

The new sections are adopted under Texas Education Code, Chapter 52, Subchapter A, which provides the Coordinating Board with the authority to adopt rules to implement the General Provisions of the Student Financial Assistance Act of 1975.

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

Filed with the Office of the Secretary of State on May 17, 2016.

TRD-201602416

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Effective date: June 6, 2016

Proposal publication date: February 12, 2016

For further information, please call: (512) 427-6114



SUBCHAPTER D. HINSON-HAZLEWOOD COLLEGE STUDENT LOAN PROGRAM: ALL LOANS MADE BEFORE FALL SEMESTER, 1971, NOT SUBJECT TO THE FEDERALLY INSURED STUDENT LOAN PROGRAM

19 TAC §21.100

The Texas Higher Education Coordinating Board (Coordinating Board) adopts the repeal of §21.100, concerning the Hinson-Hazlewood College Student Loan Program: All Loans Made Before Fall Semester, 1971, Not Subject To The Federally Insured Student Loan Program, without changes to the proposed text as published in the February 12, 2016, issue of the *Texas Register* (41 TexReg 1068). Specifically, Senate Bill 215, 83rd Texas Legislature, repealed Texas Education Code, §52.56, which required the Coordinating Board to provide an annual report on the operations of the Texas Opportunity Plan Fund. Since §52.56 has been repealed, it is appropriate to delete §21.100 from the rules.

No comments were received regarding the repeal of this section.

The repeal is adopted under Texas Education Code, Chapter 52, which provides the Coordinating Board with the authority to adopt rules to implement the Hinson-Hazlewood College Student Loan Program: All Loans Made Before Fall Semester, 1971, Not Subject To The Federally Insured Student Loan Program

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

Filed with the Office of the Secretary of State on May 17, 2016.

TRD-201602418

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Effective date: June 6, 2016

Proposal publication date: February 12, 2016

For further information, please call: (512) 427-6114



SUBCHAPTER E. TEXAS B-ON-TIME LOAN PROGRAM

19 TAC §21.134

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §21.134 (Allocation and Reallocation of Funds for Private or Independent Institutions of Higher Education) concerning the Texas B-On-Time Loan Program without changes to the proposed text as published in the February 26, 2016, issue of the *Texas Register* (41 TexReg 1321). House Bill 1, 84th Texas Legislature, Article III Provision 56, requires funds appropriated for the BOT Program be for renewal awards only. The intent of the amendments is to incorporate into existing rule changes and provisions developed by the Negotiated Rule-Making Committee. Language has been changed for the methodology used to determine institutional allocations. The newly amended statute will affect students enrolling in private and independent institutions, community colleges, and health-related institutions. Changes to this section are made in accordance with Senate Bill 215, passed by the 83rd Texas Legislature, Regular Session, which called for the Board to engage institutions of higher education in a negotiated rulemaking process as described by Chapter 2008, Government Code, "when adopting a policy, procedure, or rule relating to...the allocation or distribution of funds, including financial aid or other trusteed funds under §61.07761."

Specifically, §21.134(a) is amended to include the methodology with which institutional allocations will be determined. Amend-

ments to §21.134(b), concerning reallocations, change the calendar month and day in which institutions have to encumber and spend program funds allocated to them and add language as to the methodology used to handle institutions' request for additional funds. Amendments to §21.134(c) clarify the impact of funding reductions during the biennium.

No comments were received regarding the proposed amendments.

The amendments are adopted under Texas Education Code, §61.07761 and former §56.463, which provided the Coordinating Board with the authority to adopt rules to implement the Texas B-On-Time Loan Program.

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

Filed with the Office of the Secretary of State on May 17, 2016.

TRD-201602419

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Effective date: June 6, 2016

Proposal publication date: February 26, 2016

For further information, please call: (512) 427-6114



19 TAC §21.136

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §21.136 (Allocation and Reallocation of Funds for Eligible Public Institutions of Higher Education) concerning the Texas B-On-Time Loan Program without changes to the proposed text as published in the February 26, 2016, issue of the *Texas Register* (41 TexReg 1322).

House Bill 1, 84th Texas Legislature, Article III Provision 44, requires that funds appropriated for the Texas B-On-Time Loan Program be for renewal awards only. The intent of the amendments is to incorporate into existing rule changes and provisions developed by the Negotiated Rule-Making Committee. Language has been changed for the methodology used to determine institutional allocations. The newly amended statute will affect students enrolling in public four-year institutions. Changes to this section are made in accordance with Senate Bill 215, passed by the 83rd Texas Legislature, Regular Session, which called for the Board to engage institutions of higher education in a negotiated rulemaking process as described by Chapter 2008, Government Code, "when adopting a policy, procedure, or rule relating...to the allocation or distribution of funds, including financial aid or other trustee funds under §61.07761."

Specifically, §21.136(a) is amended to include the methodology with which institutional allocations will be determined. Amendments to §21.136(b), concerning reallocations, indicate the calendar month and day in which institutions have to encumber program funds allocated to them and add language as to the methodology used to handle institutions' request for additional funds. Amendments to §21.136(c) clarify the impact of funding reductions during the biennium.

No comments were received regarding the proposed amendments.

The amendments are adopted under Texas Education Code, §61.07761 and former §56.463, which provided the Coordinating Board with the authority to adopt rules to implement the Texas B-On-Time Loan Program.

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

Filed with the Office of the Secretary of State on May 17, 2016.

TRD-201602420

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Effective date: June 6, 2016

Proposal publication date: February 26, 2016

For further information, please call: (512) 427-6114



SUBCHAPTER G. TEACH FOR TEXAS LOAN REPAYMENT ASSISTANCE PROGRAM

19 TAC §§21.171 - 21.176

The Texas Higher Education Coordinating Board adopts the repeal of §§21.171 - 21.176 concerning the Teach for Texas Loan Repayment Assistance Program without changes to the proposed text as published in the January 1, 2016, issue of the *Texas Register* (41 TexReg 71). The Board also adopts new rules that will add definitions, eliminate redundant language, add clarifying language, and renumber sections, as appropriate.

No comments were received regarding the repeal of these sections.

The repeal is adopted under the Texas Education Code, §56.352, which authorizes the Coordinating Board to provide repayment assistance to qualifying persons, in accordance with the statute and Board rules.

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

Filed with the Office of the Secretary of State on May 17, 2016.

TRD-201602422

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Effective date: June 6, 2016

Proposal publication date: January 1, 2016

For further information, please call: (512) 427-6114



19 TAC §§21.171 - 21.176

The Texas Higher Education Coordinating Board adopts new §§21.171 - 21.176 concerning the Teach for Texas Loan Repayment Assistance Program without changes to the proposed text as published in the January 1, 2016, issue of the *Texas Register* (41 TexReg 71).

Section 21.171 regarding authority and purpose does not include any changes.

Section 21.172 introduces new definitions for certified educator, shortage communities, shortage teaching fields, and teaching full time.

Section 21.173 (formerly §21.174) regarding teacher eligibility requirements excludes language that is provided in proposed new definitions, making the section more concise.

Section 21.174 (formerly §21.173), regarding priorities of application acceptance and ranking of applications, provides more details on the criteria for ranking applications. The financial need component, the final criterion considered in the ranking process if funds remain available after applying other ranking criteria, is adopted to be based on the applicant's adjusted gross income reported on the most recent federal income tax return, rather than being based on the amount of student loan indebtedness. To date, the financial need criterion has not been a factor because funds have not been available after the preceding four ranking criteria have been applied. However, should financial need become a factor in the ranking process, adjusted gross income is a more appropriate reflection of general financial need than the amount of student loan debt.

Section 21.175 regarding eligible lender and eligible education loan adds language stating that credit card debt, equity loans, and other similar personal loan products are not considered educational loans eligible for repayment.

Section 21.176 regarding repayment of education loans does not include any changes.

No comments were received regarding the new rules.

The new rules are adopted under the Texas Education Code, §56.352, which authorizes the Coordinating Board to provide repayment assistance to qualifying persons, in accordance with the statute and Board rules.

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

Filed with the Office of the Secretary of State on May 17, 2016.

TRD-201602421

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Effective date: June 6, 2016

Proposal publication date: January 1, 2016

For further information, please call: (512) 427-6114



SUBCHAPTER H. TEACHER EDUCATION LOAN PROGRAM

19 TAC §§21.191 - 21.207

The Texas Higher Education Coordinating Board (Coordinating Board) adopts the repeal of §§21.191 - 21.207 concerning the Teacher Education Loan Program without changes to the proposed text as published in the February 12, 2016, issue of the *Texas Register* (41 TexReg 1069). Specifically, the 71st Texas Legislature repealed the Teacher Education Loan Program in 1989, and there are no remaining loans in repayment. Since this is no longer an active program, it is appropriate to delete the rules.

No comments were received regarding the repeal of these sections.

The repeal is adopted under Texas Education Code, Chapter 54, §54.101 which provided the Coordinating Board with the authority to adopt rules to implement the Teacher Education Loan Program.

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

Filed with the Office of the Secretary of State on May 17, 2016.

TRD-201602423

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Effective date: June 6, 2016

Proposal publication date: February 12, 2016

For further information, please call: (512) 427-6114



SUBCHAPTER I. FUTURE TEACHER LOAN PROGRAM

19 TAC §§21.221 - 21.241

The Texas Higher Education Coordinating Board (Coordinating Board) adopts the repeal of §§21.221 - 21.241 concerning the Future Teacher Loan Program without changes to the proposed text as published in the February 12, 2016, issue of the *Texas Register* (41 TexReg 1069). Specifically, the 71st Texas Legislature repealed the program in 1989, and there are no remaining loans in repayment. Since this is no longer an active program, it is appropriate to delete the rules.

No comments were received regarding the repeal of these sections.

The repeal is adopted under Texas Education Code, §60.03 which, prior to the program's repeal in 1989, provided the Coordinating Board with the authority to adopt rules to implement the Future Teacher Loan Program.

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

Filed with the Office of the Secretary of State on May 17, 2016.

TRD-201602424

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Effective date: June 6, 2016

Proposal publication date: February 12, 2016

For further information, please call: (512) 427-6114



SUBCHAPTER L. PAUL DOUGLAS TEACHER SCHOLARSHIP PROGRAM

19 TAC §§21.301 - 21.325

The Texas Higher Education Coordinating Board (Coordinating Board) adopts the repeal of §§21.301 - 21.325 concerning the Paul Douglas Teacher Scholarship Program without changes to the proposed text as published in the February 12, 2016, issue of the *Texas Register* (41 TexReg 1070). Specifically, federal legislation rescinded funding for this program in 1995, and there are no remaining loans in repayment. Since this is no longer an active program, it is appropriate to delete the rules.

No comments were received regarding the repeal of these sections.

The repeal is adopted under Title V Part C (formerly Part D), of the Higher Education Act of 1965, as amended, which provides the Coordinating Board with the authority to adopt rules to implement the Paul Douglas Teacher Scholarship Program.

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

Filed with the Office of the Secretary of State on May 17, 2016.

TRD-201602425

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Effective date: June 6, 2016

Proposal publication date: February 12, 2016

For further information, please call: (512) 427-6114



SUBCHAPTER O. EARLY CHILDHOOD CARE PROVIDER STUDENT LOAN REPAYMENT PROGRAM

19 TAC §§21.465 - 21.477

The Texas Higher Education Coordinating Board (Coordinating Board) adopts the repeal of §§21.465 - 21.477 concerning the Early Childhood Care Provider Student Loan Repayment Program without changes to the proposed text as published in the February 12, 2016, issue of the *Texas Register* (41 TexReg 1071). Specifically, no funds have been appropriated for this program since FY2005. Since this is no longer an active program, it is appropriate to delete the rules.

No comments were received regarding the repeal of these sections.

The repeal is adopted under Texas Education Code, Chapter 61, §61.871, which provided the Coordinating Board with the authority to adopt rules to implement the Early Childhood Care Provider Student Loan Repayment Program.

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

Filed with the Office of the Secretary of State on May 17, 2016.

TRD-201602426

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Effective date: June 6, 2016

Proposal publication date: February 12, 2016

For further information, please call: (512) 427-6114



SUBCHAPTER S. BORDER COUNTY DOCTORAL FACULTY EDUCATION LOAN REPAYMENT PROGRAM

19 TAC §§21.590 - 21.596

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §§21.590 - 21.596, concerning the Border County Doctoral Faculty Education Loan Repayment Program. Section 21.590 is adopted with changes to the proposed text as published in the February 12, 2016, issue of the *Texas Register* (41 TexReg 1071). Sections 21.591 - 21.596 are adopted without changes.

Specifically, the intent of these amendments is to clarify the definition of eligible institution, align the description of eligible lender and eligible loans with the description used for other loan repayment program rules, and provide more information on the application process.

Section 21.590 is renamed "Authority and Purpose" and amended to eliminate the redundant scope statement and add the words "eligible" and "Texas" to the purpose statement.

Section 21.591 regarding eligible institution is amended to state that medical and dental units are not considered eligible institutions for purposes of this program. Additionally, for institutions that are not the main campus, both the main campus and the campus where the faculty member works must be located in a Texas county that borders Mexico to qualify a faculty member for participation in the program. A definition for Board is also added.

Section 21.592 is renamed "Application Process". The amendments to this section provide a description of the application process, whereby institutional presidents and/or their designees (1) invite faculty to apply, (2) rank the initial-year applications according to objective criteria they have developed, and (3) submit the applications to the Board in priority order, with a description of the ranking criteria.

Section 21.593 is renamed "Priority Applications and Ranking Criteria." This amendment suggests possible ranking criteria, mirroring criteria documented by officials at some participating institutions in recent years. The statement regarding prior conditional approval is deleted because it is no longer applicable.

Section 21.594 is renamed "Eligible Lender and Eligible Education Loan," and amended to align with the description that appears for this section in other state loan repayment programs.

Section 21.595 is amended to state that the faculty member must have received a doctoral degree from an institution that is accredited by a recognized accrediting agency. Paragraph (2) is shortened to state "eligible institution", which is defined. Paragraph (3) clarifies that applications are submitted by faculty to institutional officials. This section's outline format is also amended to conform with that of other sections.

Section 21.596 is amended to state that the annual repayment shall be payable to the servicer(s) or holder(s) of the loan(s), in keeping with the procedure for all loan repayment programs. The statutory maximum number of years allowed for loan repayment is added.

No comments were received regarding the amendments.

The amendments are adopted under Texas Education Code, Chapter 61, §61.708, which provided the Coordinating Board with the authority to adopt rules to implement the Border County Doctoral Faculty Education Loan Repayment Program.

§21.590. *Authority and Purpose.*

(a) Authority. Authority for this subchapter is provided in the Texas Education Code, §§61.701 - 61.708.

(b) Purpose. The purpose of these rules is to implement the Border County Doctoral Faculty Education Loan Repayment Program in order to recruit and retain persons holding a doctoral degree to become and/or remain full-time faculty with instructional duties in eligible institutions of higher education located in Texas counties that border Mexico.

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

Filed with the Office of the Secretary of State on May 17, 2016.

TRD-201602427

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Effective date: June 6, 2016

Proposal publication date: February 12, 2016

For further information, please call: (512) 427-6114



SUBCHAPTER DD. MINORITY DOCTORAL INCENTIVE PROGRAM OF TEXAS

19 TAC §§21.970 - 21.980

The Texas Higher Education Coordinating Board (Coordinating Board) adopts the repeal of §§21.970 - 21.980 concerning the Minority Doctoral Incentive Program of Texas without changes to the proposed text as published in the February 12, 2016, issue of the *Texas Register* (41 TexReg 1073). Specifically, no funds have been appropriated for this program since the 2004-2005 biennium. Since this is no longer an active program, it is appropriate to delete the rules.

No comments were received regarding the repeal of these sections.

The repeal is adopted under Texas Education Code, §56.162, which provided the Coordinating Board with the authority to adopt rules to implement the Minority Doctoral Incentive Program of Texas.

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

Filed with the Office of the Secretary of State on May 17, 2016.

TRD-201602428

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Effective date: June 6, 2016

Proposal publication date: February 12, 2016

For further information, please call: (512) 427-6114



SUBCHAPTER II. EDUCATIONAL AIDE EXEMPTION PROGRAM

19 TAC §21.1084, §21.1086

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §21.1084 (The Application) and §21.1086 (Allocations for Institutions), concerning the Educational Aide Exemption Program. Section 21.1084 is adopted with changes to the proposed text as published in the February 26, 2016, issue of the *Texas Register* (41 TexReg 1323). Section 21.1086 is adopted without changes.

The intent of the amendments is to incorporate into existing rule changes and provisions developed by the Negotiated Rule-Making Committee. Language has been changed for the methodology used to determine institutional allocations. The newly amended statute will affect students enrolling in public institutions. Changes to these sections are made in accordance with Senate Bill 215, passed by the 83rd Texas Legislature, Regular Session, which called for the Board to engage institutions of higher education in a negotiated rulemaking process as described by Chapter 2008, Government Code, "when adopting a policy, procedure, or rule relating to...the allocation or distribution of funds, including financial aid or other trustee funds under §61.07761".

Specifically, §21.1084 regarding application forms and instructions is amended to remove unnecessary language.

Section 21.1086(a) removes language as to the source of funding regarding allocations for institutions and updates language identifying the funding source as funds made available by the Legislature. Section 21.1086(b) removes language regarding requesting reimbursements and amends language to include the methodology with which institutional allocations will be determined. Section 21.1086(c) removes language regarding disbursements by the Board and adds language regarding the comment period for participating institutions, as well as institutions' opportunity to confirm their continued interest in program participation.

No comments were received regarding the amendments.

The amendments are adopted under Texas Education Code, §54.363(e) (formerly §54.214), which provides the Coordinating Board with the authority to adopt rules to implement the Educational Aide Exemption Program.

§21.1084. *The Application.*

(a) Institutions are not required to provide exemptions under this subchapter beyond those funded through appropriations specifically designated for this purpose. The Board shall advise institutions of the availability of funds as soon as possible after funding is known.

(b) Application forms and instructions developed by the Board will be distributed to financial aid offices of Institutions of Higher Education.

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

Filed with the Office of the Secretary of State on May 17, 2016.

TRD-201602429

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Effective date: June 6, 2016

Proposal publication date: February 26, 2016

For further information, please call: (512) 427-6114



SUBCHAPTER LL. EARLY CHILDHOOD CARE PROVIDER STUDENT LOAN REPAYMENT PROGRAM

19 TAC §§21.2050 - 21.2056

The Texas Higher Education Coordinating Board (Coordinating Board) adopts the repeal of §§21.2050 - 21.2056 concerning the Early Childhood Care Provider Student Loan Repayment Program without changes to the proposed text as published in the February 12, 2016, issue of the *Texas Register* (41 TexReg 1073). Specifically, no funds have been appropriated for this program since FY2005. Since this is no longer an active program, it is appropriate to delete the rules.

No comments were received regarding the repeal.

The repeal is adopted under Texas Education Code, Chapter 61, §61.871, which provided the Coordinating Board with the authority to adopt rules to implement the Early Childhood Care Provider Student Loan Repayment Program.

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

Filed with the Office of the Secretary of State on May 17, 2016.

TRD-201602430

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Effective date: June 6, 2016

Proposal publication date: February 12, 2016

For further information, please call: (512) 427-6114



CHAPTER 22. GRANT AND SCHOLARSHIP PROGRAMS

SUBCHAPTER L. TOWARD EXCELLENCE, ACCESS, AND SUCCESS (TEXAS) GRANT PROGRAM

19 TAC §22.236

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §22.236 (Allocation and Reallocation of Funds), concerning the Toward EXcellence, Access,

and Success (TEXAS) Grant Program, without changes to the proposed text as published in the February 26, 2016, issue of the *Texas Register* (41 TexReg 1324). The intent of the amendments is to incorporate into existing rule changes and provisions developed by the Negotiated Rule-Making Committee. Language has been changed for the methodology used to determine institutional allocations. The newly amended statute will affect students enrolling in public four-year and health-related institutions. Changes to this section are made in accordance with Senate Bill 215, passed by the 83rd Texas Legislature, Regular Session, which called for the Board to engage institutions of higher education in a negotiated rulemaking process as described by Chapter 2008, Government Code, "when adopting a policy, procedure, or rule relating to...the allocation or distribution of funds, including financial aid or other trusteed funds under §61.07761." Specifically, this section is amended to include the methodology with which institutional allocations will be determined for FY 2017 and later.

No comments were received regarding the proposed amendments.

The amendments are adopted under Texas Education Code, §56.303(a), which provides the Coordinating Board with the authority to adopt rules to implement the Toward EXcellence, Access, and Success (TEXAS) Grant Program.

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

Filed with the Office of the Secretary of State on May 17, 2016.

TRD-201602431

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Effective date: June 6, 2016

Proposal publication date: February 26, 2016

For further information, please call: (512) 427-6114



CHAPTER 26. PROGRAMS OF STUDY SUBCHAPTER I. HOSPITALITY AND TOURISM PROGRAMS OF STUDY ADVISORY COMMITTEE

19 TAC §§26.261 - 26.267

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new §§26.261 - 26.267 concerning the creation of an advisory committee to develop programs of study specific to the Hospitality and Tourism Career Cluster without changes to the proposed text as published in the February 5, 2016, issue of the *Texas Register* (41 TexReg 894). The new rules will affect students when programs of study developed by the committee are adopted by the Board.

There were no comments received regarding these new rules.

The new rules are adopted under Texas Education Code, Chapter 61, Subchapter S, §61.8235 and Texas Government Code, Chapter 2110, §2110.0012 and §2110.005, which provide the Coordinating Board with the authority to develop programs of study curricula with the assistance of advisory committees.

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

Filed with the Office of the Secretary of State on May 17, 2016.

TRD-201602432

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Effective date: June 6, 2016

Proposal publication date: February 5, 2016

For further information, please call: (512) 427-6114



SUBCHAPTER J. HUMAN SERVICES PROGRAMS OF STUDY ADVISORY COMMITTEE

19 TAC §§26.281 - 26.287

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new §§26.281 - 26.287 concerning the creation of an advisory committee to develop programs of study specific to the Human Services Career Cluster without changes to the proposed text as published in the February 5, 2016, issue of the *Texas Register* (41 TexReg 895). The new rules will affect students when programs of study developed by the committee are adopted by the Board.

There were no comments received concerning these new rules.

The new rules are adopted under Texas Education Code, Chapter 61, Subchapter S, §61.8235 and Texas Government Code, Chapter 2110, §2110.0012 and §2110.005, which provide the Coordinating Board with the authority to develop programs of study curricula with the assistance of advisory committees.

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

Filed with the Office of the Secretary of State on May 17, 2016.

TRD-201602433

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Effective date: June 6, 2016

Proposal publication date: February 5, 2016

For further information, please call: (512) 427-6114



SUBCHAPTER K. INFORMATION TECHNOLOGY PROGRAMS OF STUDY ADVISORY COMMITTEE

19 TAC §§26.301 - 26.307

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new §§26.301 - 26.307 concerning the creation of an advisory committee to develop programs of study specific to the Information Technology Career Cluster without changes to the proposed text as published in the February 5, 2016, issue

of the *Texas Register* (41 TexReg 896). The new rules will affect students when programs of study developed by the committee are adopted by the Board.

There were no comments received concerning these new rules.

The rules are adopted under Texas Education Code, Chapter 61, Subchapter S, §61.8235 and Texas Government Code, Chapter 2110, §2110.0012 and §2110.005, which provide the Coordinating Board with the authority to develop programs of study curricula with the assistance of advisory committees.

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

Filed with the Office of the Secretary of State on May 17, 2016.

TRD-201602434

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Effective date: June 6, 2016

Proposal publication date: February 5, 2016

For further information, please call: (512) 427-6114



SUBCHAPTER L. LAW, PUBLIC SAFETY, CORRECTIONS, AND SECURITY PROGRAMS OF STUDY ADVISORY COMMITTEE

19 TAC §§26.321 - 26.327

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new §§26.321 - 26.327 concerning the creation of an advisory committee to develop programs of study specific to the Law, Public Safety, Corrections, and Security Career Cluster without changes to the proposed text as published in the February 5, 2016, issue of the *Texas Register* (41 TexReg 897). The new rules will affect students when programs of study developed by the committee are adopted by the Board.

There were no comments received concerning these new rules.

The new rules are adopted under Texas Education Code, Chapter 61, Subchapter S, §61.8235 and Texas Government Code, Chapter 2110, §2110.0012 and §2110.005, which provide the Coordinating Board with the authority to develop programs of study curricula with the assistance of advisory committees.

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

Filed with the Office of the Secretary of State on May 17, 2016.

TRD-201602435

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Effective date: June 6, 2016

Proposal publication date: February 5, 2016

For further information, please call: (512) 427-6114



SUBCHAPTER M. MANUFACTURING
PROGRAMS OF STUDY ADVISORY
COMMITTEE

19 TAC §§26.341 - 26.347

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new §§26.341 - 26.347 concerning the creation of an advisory committee to develop programs of study specific to the Manufacturing Career Cluster without changes to the proposed text as published in the February 5, 2016, issue of the *Texas Register* (41 TexReg 898). The new rules will affect students when programs of study developed by the committee are adopted by the Board.

There were no comments received concerning these new rules.

The rules are adopted under Texas Education Code, Chapter 61, Subchapter S, §61.8235 and Texas Government Code, Chapter 2110, §2110.0012 and §2110.005, which provide the Coordinating Board with the authority to develop programs of study curricula with the assistance of advisory committees.

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

Filed with the Office of the Secretary of State on May 17, 2016.

TRD-201602436

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Effective date: June 6, 2016

Proposal publication date: February 5, 2016

For further information, please call: (512) 427-6114



SUBCHAPTER N. MARKETING PROGRAMS
OF STUDY ADVISORY COMMITTEE

19 TAC §§26.361 - 26.367

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new §§26.361 - 26.367 concerning the creation of an advisory committee to develop programs of study specific to the Marketing Career Cluster without changes to the proposed text as published in the February 5, 2016, issue of the *Texas Register* (41 TexReg 900). The new rules will affect students when programs of study developed by the committee are adopted by the Board.

There were no comments received concerning these new rules.

The rules are adopted under Texas Education Code, Chapter 61, Subchapter S, §61.8235 and Texas Government Code, Chapter 2110, §2110.0012 and §2110.005, which provide the Coordinating Board with the authority to develop programs of study curricula with the assistance of advisory committees.

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

Filed with the Office of the Secretary of State on May 17, 2016.

TRD-201602437

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Effective date: June 6, 2016

Proposal publication date: February 5, 2016

For further information, please call: (512) 427-6114



SUBCHAPTER O. SCIENCE, TECHNOLOGY,
ENGINEERING AND MATHEMATICS
PROGRAMS OF STUDY ADVISORY
COMMITTEE

19 TAC §§26.381 - 26.387

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new §§26.381 - 26.387 concerning the creation of an advisory committee to develop programs of study specific to the Science, Technology, Engineering, and Mathematics Career Cluster without changes to the proposed text as published in the February 5, 2016, issue of the *Texas Register* (41 TexReg 901). The new rules will affect students when programs of study developed by the committee are adopted by the Board.

There were no comments received concerning these new rules.

The new rules are adopted under Texas Education Code, Chapter 61, Subchapter S, §61.8235 and Texas Government Code, Chapter 2110, §2110.0012 and §2110.005, which provide the Coordinating Board with the authority to develop programs of study curricula with the assistance of advisory committees.

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

Filed with the Office of the Secretary of State on May 17, 2016.

TRD-201602438

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Effective date: June 6, 2016

Proposal publication date: February 5, 2016

For further information, please call: (512) 427-6114



SUBCHAPTER P. TRANSPORTATION,
DISTRIBUTION, AND LOGISTICS PROGRAMS
OF STUDY ADVISORY COMMITTEE

19 TAC §§26.401 - 26.407

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new §§26.401 - 26.407 concerning the creation of an advisory committee to develop programs of study specific to the Transportation, Distribution and Logistics Career Cluster without changes to the proposed text as published in the February 5, 2016, issue of the *Texas Register* (41 TexReg 902). The new rules will affect students when programs of study developed by the committee are adopted by the Board.

There were no comments received concerning these new rules.

The new rules are adopted under Texas Education Code, Chapter 61, Subchapter S, §61.8235 and Texas Government Code, Chapter 2110, §2110.0012 and §2110.005, which provide the Coordinating Board with the authority to develop programs of study curricula with the assistance of advisory committees.

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

Filed with the Office of the Secretary of State on May 17, 2016.

TRD-201602439

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Effective date: June 6, 2016

Proposal publication date: February 5, 2016

For further information, please call: (512) 427-6114



PART 2. TEXAS EDUCATION AGENCY

CHAPTER 150. COMMISSIONER'S RULES

CONCERNING EDUCATOR APPRAISAL

SUBCHAPTER BB. ADMINISTRATOR

APPRAISAL

The Texas Education Agency (TEA) adopts the repeal of §150.1021 and §150.1022 and new §§150.1021-150.1028, concerning administrator appraisal. The repeal of §150.1021 and §150.1022 and new §§150.1021-150.1027 are adopted without changes to the proposed text as published in the March 4, 2016 issue of the *Texas Register* (41 TexReg 1638) and will not be republished. Section 150.1028 is adopted with changes to the proposed text as published in the March 4, 2016 issue of the *Texas Register* (41 TexReg 1638). Sections 150.1021 and 150.1022 reflect the state-recommended appraisal system for administrators. The adopted new sections reflect the new state-recommended principal appraisal system, the Texas Principal Evaluation and Support System (T-PESS), which will be effective July 1, 2016, for implementation during the 2016-2017 school year.

REASONED JUSTIFICATION. The rules in 19 TAC Chapter 150, Subchapter BB, capture the commissioner's state-recommended appraisal process for administrators, which has been in place since 1997.

With the 2011 legislative session, the Texas Education Code (TEC), §21.3541, tasked the commissioner with creating a state-recommended appraisal system for principals. Since the spring of 2012, the TEA has worked with stakeholders, including principals, district administrators, higher education representatives, and regional education service centers, to build and refine a new state-recommended principal appraisal system that can be utilized effectively for principal development and growth. The new system, the T-PESS, was piloted in approximately 55 districts during the 2014-2015 school year and refined throughout the year based on educator feedback. During the 2015-2016 school year, the T-PESS is being piloted in 214 districts that have adopted the system as a locally developed appraisal option.

The T-PESS will replace the 1997 commissioner's recommended appraisal process beginning July 1, 2016. The adopted rule actions repeal the rules for the 1997 appraisal process and replace them with the rules for the T-PESS. Besides describing and detailing the process for the T-PESS, the adopted new rules acknowledge a district's ability to develop a local system for appraising principals and the need for districts to annually appraise campus administrators other than principals.

In response to public comment, new 19 TAC §150.1028 was modified at adoption to add the word "campus" prior to each instance of the phrase "administrators other than principals" to clarify that §150.1028 applies to campus administrators only.

SUMMARY OF COMMENTS AND AGENCY RESPONSES. The public comment period on the proposal began March 4, 2016, and ended April 4, 2016. Following is a summary of public comments received on the proposal and corresponding agency responses.

Comment: The Texas Association of School Boards (TASB) commented that proposed new §150.1028 should either allow local districts to define which personnel fall under the definition of "an administrator other than principals" or that the rule should be amended to clarify that the administrators in question are campus administrators.

Agency Response: The agency agrees and has added the word "campus" before the phrase "administrators other than principals" to indicate that proposed new §150.1028 applies to campus administrators only.

Comment: TASB commented that, since current 19 TAC Chapter 150, Subchapter BB, references superintendents in appraisal rules, clarification should be made in proposed new §150.1028 to indicate that appraisal of superintendents is not subject to proposed new §150.1028.

Agency Response: The agency agrees and has added the word "campus" before the phrase "administrators other than principals" to indicate that proposed new §150.1028 applies to campus administrators only.

19 TAC §150.1021, §150.1022

STATUTORY AUTHORITY. The repeal is adopted under the Texas Education Code (TEC), §21.3541, which requires the commissioner of education to adopt a state-recommended appraisal process for principals and details the local role for school districts as it relates to adopting a locally developed principal appraisal process, and the TEC, §21.354, which requires the commissioner of education to adopt a state-recommended appraisal process for school administrators other than principals and details the local role for school districts as it relates to adopting a locally developed appraisal process for school administrators other than principals.

CROSS REFERENCE TO STATUTE. The repeal implements the TEC, §21.3541 and §21.354.

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

Filed with the Office of the Secretary of State on May 17, 2016.

TRD-201602398

Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: July 1, 2016
Proposal publication date: March 4, 2016
For further information, please call: (512) 475-1497



19 TAC §§150.1021 - 150.1028

STATUTORY AUTHORITY. The new sections are adopted under the Texas Education Code (TEC), Texas Education Code (TEC), §21.3541, which requires the commissioner of education to adopt a state-recommended appraisal process for principals and details the local role for school districts as it relates to adopting a locally developed principal appraisal process, and the TEC, §21.354, which requires the commissioner of education to adopt a state-recommended appraisal process for school administrators other than principals and details the local role for school districts as it relates to adopting a locally developed appraisal process for school administrators other than principals.

CROSS REFERENCE TO STATUTE. The new sections implement the TEC, §21.3541 and §21.354.

§150.1028. *Appraisal of Campus Administrators other than Principals.*

(a) Each school district shall evaluate campus administrators other than principals annually.

(b) A school district may use the Texas Principal Evaluation and Support System (T-PESS) to appraise campus administrators other than principals provided the school district makes appropriate modifications to ensure that the T-PESS rubric and components fit the job descriptions of the campus administrators other than principals evaluated with the T-PESS.

(c) Each school district wanting to select or develop a local appraisal system for campus administrators other than principals must follow the TEC, §21.354(c)(2).

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

Filed with the Office of the Secretary of State on May 17, 2016.

TRD-201602399
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: July 1, 2016
Proposal publication date: March 4, 2016
For further information, please call: (512) 475-1497



CHAPTER 157. HEARINGS AND APPEALS SUBCHAPTER EE. INFORMAL REVIEW, FORMAL REVIEW, AND REVIEW BY STATE OFFICE OF ADMINISTRATIVE HEARINGS DIVISION 1. INFORMAL REVIEW

19 TAC §157.1123

The Texas Education Agency (TEA) adopts an amendment to §157.1123, concerning hearings and appeals. The amendment is adopted without changes to the proposed text as published in the January 15, 2016 issue of the *Texas Register* (41 TexReg 567) and will not be republished. The section addresses informal reviews requested by a school district, open-enrollment charter school, or any person who is subject to an investigation, assignment, determination, or decision identified in 19 TAC §157.1121, Applicability. The adopted amendment modifies the rule to increase the ability of an open-enrollment charter school to participate in the TEA's informal review of its investigation of alleged misconduct by the charter.

REASONED JUSTIFICATION. The Texas Education Code (TEC), §12.116, requires that the commissioner adopt an informal procedure for revoking the charter of an open-enrollment charter school or reconstituting the governing body of a charter holder. Section 157.1123, Informal Review, implements the requirement by providing an open-enrollment charter school the opportunity for an informal review of an investigation, assignment, determination, or decision identified under 19 TAC §157.1121.

The 84th Texas Legislature, Regular Session, 2015, passed House Bill (HB) 1842, which modified the informal review for certain actions required by the TEC, §12.116(a). The statutory changes require additional procedures for informal reviews of decisions to deny the renewal of a charter under the TEC, §12.1141(c), and decisions to revoke a charter or reconstitute the charter's governing board under the TEC, §12.115(a). The procedures must allow representatives of the charter holder to meet with the commissioner to discuss the commissioner's decision and must allow the charter holder to submit additional information relating to the decision. In addition, in a final decision, the commissioner must provide a written response to any additional information submitted by the charter holder. The TEC, §7.055(b)(5), authorizes the commissioner to delegate ministerial and executive functions to agency staff.

The adopted amendment to 19 TAC §157.1123 implements HB 1842 by making the following changes.

Subsection (c) is modified to specify that for purposes of a non-renewal under TEC, §12.1141(c), or revocation/reconstitution under TEC, §12.115(a), at the request of an open-enrollment charter school, a TEA representative will meet with representatives of the charter school in person at the TEA headquarters or by telephone if requested by the charter school. In addition, subsection (c) is amended to state that the meeting is not a contested-case hearing and will not include the examination of any witnesses and that the rules of civil procedure and evidence do not apply since the TEC, §12.116(a), requires that the procedure to be used for non-renewal under TEC, §12.1141(c), or revocation/reconstitution under TEC, §12.115(a), be an "informal" procedure.

Subsection (f) is amended to specify that the commissioner's final decision will provide a written response to any information the charter holder submits at the informal review.

SUMMARY OF COMMENTS AND AGENCY RESPONSES. The public comment period on the proposal began on January 15, 2016, and ended February 16, 2016. No public comments were received.

STATUTORY AUTHORITY. The amendment is adopted under the Texas Education Code (TEC), §7.055(b)(5), which authorizes the commissioner to delegate ministerial and executive

functions to agency staff and may employ division heads and any other employees and clerks to perform the duties of the agency; TEC, §12.1141, which authorizes the commissioner to adopt rules for the procedure and criteria for renewal, denial of renewal, or expiration of a charter of an open-enrollment charter school; TEC, §12.115, which authorizes the commissioner to adopt rules necessary for the administration of the basis for charter revocation and the reconstitution of the charter holder's governing body; and TEC, §12.116, as amended by House Bill 1842, 84th Texas Legislature, Regular Session, 2015, which authorizes the commissioner to adopt an informal procedure to be used for revoking the charter of an open-enrollment charter school or for reconstituting the governing body of the charter holder. The procedure must allow representatives of the charter holder to meet with the commissioner to discuss the commissioner's decision and must allow the charter holder to submit additional information relating to the commissioner's decision. In a final decision, the commissioner must provide a written response to the additional information.

CROSS REFERENCE TO STATUTE. The amendment implements the Texas Education Code, §§7.055(b)(5); 12.1141; 12.115; and 12.116, as amended by House Bill 1842, 84th Texas Legislature, Regular Session, 2015.

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

Filed with the Office of the Secretary of State on May 20, 2016.

TRD-201602482

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: June 9, 2016

Proposal publication date: January 15, 2016

For further information, please call: (512) 475-1497



TITLE 22. EXAMINING BOARDS

PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

CHAPTER 78. RULES OF PRACTICE

22 TAC §78.6

The Texas Board of Chiropractic Examiners (Board) adopts amendment to Chapter 78, §78.6, concerning Required Fees and Charges, without changes to the proposed text as published in the March 4, 2016, issue of the *Texas Register* (41 TexReg 1641). The rule will not be republished.

This section establishes requirements and procedures related to the rules of chiropractic practice.

The amendment permits the Board to remove an obsolete reference and update the rule concerning application of monetary funds to outstanding balances. The amendment affects subsection (b).

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to regulate the practice of chiropractic to protect the public health and safety.

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

Filed with the Office of the Secretary of State on May 18, 2016.

TRD-201602454

Bryan Snoddy

General Counsel

Texas Board of Chiropractic Examiners

Effective date: September 1, 2016

Proposal publication date: March 4, 2016

For further information, please call: (512) 305-6715



22 TAC §78.8

The Texas Board of Chiropractic Examiners (Board) adopts amendments to Chapter 78, §78.8, concerning Complaint Procedures, without changes to the proposed text as published in the November 20, 2015, issue of the *Texas Register* (40 TexReg 8092). The rule will not be republished.

This section establishes requirements and procedures related to rules of practice.

The amendment permits the Board to remove a requirement for a hearing that is unsupported by statutory provisions and allows the use of electronic-mail for purposes of notice and service upon the consent of the parties.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to regulate the practice of chiropractic to protect the public health and safety.

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

Filed with the Office of the Secretary of State on May 18, 2016.

TRD-201602453

Bryan Snoddy

General Counsel

Texas Board of Chiropractic Examiners

Effective date: September 1, 2016

Proposal publication date: November 20, 2015

For further information, please call: (512) 305-6715



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 133. HOSPITAL LICENSING

SUBCHAPTER J. HOSPITAL LEVEL OF CARE DESIGNATIONS FOR NEONATAL AND MATERNAL CARE

25 TAC §§133.181 - 133.190

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts new §§133.181 - 133.190, concerning the neonatal level of care designation for hospitals. New §§133.182 - 133.190 are adopted with changes to the proposed text as published in the November 20, 2015, issue of the *Texas Register* (40 TexReg 8095). Section 133.181 is adopted without changes, and therefore, the section will not be republished.

BACKGROUND AND PURPOSE

The purpose of the new sections is to comply with House Bill (HB) 15, 83rd Legislature, Regular Session, 2013, which added Health and Safety Code, Subchapter H, Hospital Level of Care Designations for Neonatal and Maternal Care, §§241.181 - 241.187. HB 3433, 84th Legislature, Regular Session, 2015, amended Health and Safety Code, Chapter 241 and requires the development of initial rules to create the neonatal/maternal level of care designation by March 1, 2018. This rulemaking process addresses the neonatal level of care designation only. The maternal level of care designation rule development will be addressed in a future rulemaking. The designation for neonatal level of care is an eligibility requirement for Medicaid reimbursement. It is estimated that approximately 225 - 250 facilities will apply for one or both designations.

SECTION-BY-SECTION SUMMARY

Section 133.181 and §133.182 address the purpose and definitions for Subchapter J.

Section 133.183, General Requirements, identifies the four levels of neonatal care; the role of the Office of Emergency Medical Services/Trauma Services Coordination (office) in the designation process; states that facilities seeking neonatal designation for Levels II - IV shall be surveyed through a department-approved organization; and also establishes Perinatal Care Regions.

Section 133.184, Designation Process, addresses the application submittal; designation fee schedule; surveyor credentials; and an appeal process. Initial applications will receive staggered designations. Renewals will be for the full three-year designation term.

Section 133.185, Program Requirements, provides an outline of the general requirements each facility must meet.

The criteria for the four levels of neonatal designation are included in §133.186, Neonatal Designation Level I; §133.187, Neonatal Designation Level II; §133.188, Neonatal Designation Level III; and §133.189, Neonatal Designation Level IV. Conversely to the Trauma Designation requirements found in Chapter 157 of this title, Subchapter G, Emergency Medical Services Trauma Systems, in the Neonatal Levels of Care, Level IV is the highest level of care and Level I is the lowest level of care.

Section 133.190, Survey Team, addresses the composition of the on-site survey team, criteria for surveyor credentials, conflict of interest, and confidentiality and privilege protection.

COMMENTS

The department, on behalf of the commission, has reviewed and prepared responses to the comments received regarding the proposed rules during the comment period, which the commission has reviewed and accepts. The department received comments from Baylor Scott and White, Children's Memorial Hermann, CHRISTUS Health, East Texas Medical Center (ETMC), Harlingen Medical Center, Knapp Medical Center, McLane Children's Hospital, Northwest Texas Healthcare System, Odessa Regional Medical Center, Southwest General Hospital, Tenet Healthcare, Texas Children's Hospital, The Medical Center of Southeast Texas, Tomball Regional Medical Center, Wadley Regional Medical Center, American Academy of Pediatrics (AAP), Hospital Corporation of America (HCA), Pediatric Medical Group, Mednax, March of Dimes, Texas Hospital Association (THA), Texas Medical Association (TMA), Texas Pediatric Society (TPS), Texas Association of Obstetricians and Gynecologists, American Congress of Obstetricians and Gynecologists (ACOG), Texas Academy of Family Physicians (TAFP), Texas Organization of Rural and Community Hospitals (TORCH), Perinatal Advisory Council (PAC), and seven individuals. In addition to the aforementioned commenters, the department received comments from State Representative Brooks Landgraf, District 81, supporting the comments submitted by Odessa Regional Medical Center. The commenters were not against the rules in their entirety; however, the commenters suggested recommendations for change as discussed in the summary of comments.

COMMENT: Concerning §133.183(c)(1)(A), TMA, TPS, Texas Association of Obstetricians and Gynecologists, ACOG, and TAFP recommended revising the rules to provide additional flexibility for rural Level I neonatal facilities. They are concerned that lack of discretion in the rules could result in small hospitals discontinuing obstetrical services, which would impede access to services for all women in the community. The commenters support revisions to the rule to allow additional flexibility to rural facilities located at a distance of an hour or more from a higher level facility, provided those facilities have formal protocols and the requisite experience and expertise to manage these neonates and monitor their outcomes.

While the commenters support providing some additional discretion to rural Level I nurseries, there is consensus that these facilities should transfer babies born less than 34 weeks gestational age to a higher level facility.

The PAC recommended that they would strongly prefer that Level I facilities care for neonates at or above 35 weeks gestation for patient safety reasons. However, if a rural Level I hospital chooses to care for neonates between 34 to 35 weeks, then the PAC asserts they should do so in a formal written fashion and demonstrate the expertise, personnel, and support staff that would be within the level of care that would be delivered at a higher level facility. This statement is also true for §133.186(a)(1).

RESPONSE: The commission agrees with the comments and as a result has added "generally" to the description of the Level I, Well Nursery at both §133.183(c)(1)(A) and §133.186(a)(1). Also, a new subparagraph was added at §133.183(c)(1)(C) and a new paragraph was added at §133.186(a)(3) to both state "If an infant <35 weeks gestational age is retained, the facility shall provide the same level of care that the neonate would receive at a higher level designated neonatal facility and shall, through the QAPI Program, complete an in depth critical review of the care provided."

COMMENT: Concerning §133.183(c)(3)(B), Texas Children's Hospital requested that the term "access" be defined to ensure that the survey team has clear guidance on what "access" may entail.

RESPONSE: The commission agrees with the comment and has revised §133.183(c)(3)(B).

COMMENT: Concerning §133.183(c)(4)(A), the PAC stated that a single facility cannot take care of any and all medical problems; and recommended that the rule should be consistent with the national guidelines of a Level IV facility.

RESPONSE: The commission agrees with the comment and has removed the rule text "with any medical problems" from §133.183(c)(4)(A).

COMMENT: Concerning §133.183(d), Texas Children's Hospital was concerned about the vague nature of the phrase "an organization approved by the office" and requested further clarification on which organizations may be qualified and considered to conduct the hospital surveys. The commenter recommended that a qualifying organization will utilize surveyors with neonatal expertise and will consult AAP's standards of care.

RESPONSE: The commission disagrees with the comment because the approved organizations performing surveys will be evaluating the compliance of facilities with the Health and Safety Code, Subchapter H, Hospital Level of Care Designations for Neonatal and Maternal Care, §241.182, not the AAP guidelines. No change to the rule was made as a result of this comment.

COMMENT: Concerning §133.183(e)(2), Wadley Regional Medical Center, Odessa Regional Medical Center, Harlingen Medical Center, Baylor Scott and White, Knapp Medical Center, McLane Children's Hospital, Southwest General Hospital, The Medical Center of Southeast Texas and four individuals commented that despite concerns raised by members of the PAC, the department has required that the regional PCRs be a sub-set of the existing Trauma RAC system which is located in 25 TAC, Chapter 157. Commenters are concerned that this has the potential to drive unwanted and unnecessary transfers.

RESPONSE: The commission disagrees with the comments, as written the rule language is sufficient and consistent with Health and Safety Code, §241.183(a)(5) and (6), and the department's ability to implement a regionalized system. No change to the rule was made as a result of this comment.

COMMENT: Concerning §133.184(a) and §133.184(a)(3), Odessa Regional Medical Center, Harlingen Medical Center, Baylor Scott and White and two individuals commented that the rules are unclear as to whether the application for designation, the application fee and the completed survey are to be submitted separately or at the same time. It is also unclear how and when to request an on-site inspection.

RESPONSE: The commission agrees with the comments and has replaced "submittal" with "packet" and added "within 120 days of the facility's survey date" in §133.184(a). The rule text in §133.184(a)(3) was revised to state "a completed neonatal attestation and self-survey report for Level I applicants or a designation survey report, including patient care reviews if required by the office, for Level II, III and IV applicants."

COMMENT: Concerning §133.184(a)(5), Texas Children's Hospital requested that more details be provided about the expectations and requirements of participation for each Perinatal Care Region (PCR).

RESPONSE: The commission acknowledges the comment, however for the purposes of these rules, participation is defined by the members of each individual PCR. The integration of the PCR into the Regional Advisory Council will be a collaborative process. No change to the rule was made as a result of this comment.

COMMENT: Concerning §133.184(c), Baylor Scott and White inquired that if a facility seeking a designation fails to meet the requirements, can the facility be designated at a lower level, from the same survey, if they meet those rules?

RESPONSE: The commission acknowledges the comment which is addressed in §133.184(g)(3). No change to the rule was made as a result of this comment.

COMMENT: Concerning §133.184(d)(1)(A) and (B), an individual inquired as to why the application fee for Level I facilities is based on the number of licensed beds?

RESPONSE: The commission acknowledges the comment. The fee amounts were determined to cover the cost of the neonatal and maternal programs, yet keep the application cost low to all facilities involved and not place a burden upon the Critical Access Hospitals and the small rural facilities. No change to the rule was made as a result of this comment.

COMMENT: Concerning §133.184(d)(4)(B), Wadley Regional Medical Center, Children's Memorial Hermann, Odessa Regional Medical Center, Harlingen Medical Center, Baylor Scott and White, Knapp Medical Center, McLane Children's Hospital, Tenet Healthcare, Southwest General Hospital, The Medical Center of Southeast Texas, Pediatrix Medical Group, Mednax and four individuals commented that the current rules will assign a temporary level of care designation of Level I, but do not clarify that the temporary designation may change once the site inspection is complete. They are concerned that a hospital with a temporary Level I designation awaiting the on-site inspection could be denied payment for treating infants above authorized parameters for a Level I facility.

The PAC stated Level II, III or IV facilities may not have had their site survey and will be designated as a Level I. They recommended adding "until the survey is completed" to the rule text.

RESPONSE: The commission disagrees with the comments because the Health and Safety Code, §241.183(a)(7) which requires payment, other than quality or outcome-based funding to be based on services provided by the facility, regardless of the facility's level of care designation. The department offers the Level I designation with the prorated fees and flexible time frames to ensure that all facilities can achieve designation, at some level, by the September 1, 2018 deadline. Obtaining a Level I designation will ensure the facility is held harmless for Medicaid reimbursement and will allow the department to equitably distribute the workload in the program, in subsequent years. Section 133.184(d)(4)(E) states an application for a higher or lower level designation may be submitted at any time. Thus allowing the facility to reapply for a higher or lower level designation at any time during the designation cycle. No change to the rule was made as a result of these comments.

COMMENT: Concerning §133.184(e), the PAC commented that Regions or RACs should not be influencing a facility's designation or the appeal process, but decisions should be made on the basis of whether requirements are met or not met. The commenter requested to add what may be included in the written appeal "as to why the facility believes it meets the requirements

for the designation level." The commenter also suggested deleting references about PCR, RACs or EMS and removing the following language from §133.184(e)(1), "The written appeal may include a signed letter(s) from the executive board of its PCR or individual healthcare facilities and/or EMS providers within the affected PCR with an explanation as to why designation at the level determined by the office would not be in the best interest of the citizens of the affected PCR or the citizens of the State of Texas."

RESPONSE: The commission agrees with the comment and as a result has changed §133.184(e) and (e)(1).

COMMENT: Concerning §133.185(a), an individual stated that higher level facilities may perform invasive procedures as well as surgical procedures at the bedside which may restrict access to patients in the room. The commenter suggested that parents shall have reasonable access to their infants "within reason" instead of "at all times."

RESPONSE: The commission acknowledges the comment; however, the rule language is sufficient. No change to the rule was made as a result of this comment.

COMMENT: Concerning §133.185(b)(2)(C), the PAC recommended adding "and ensure appropriate follow-up for at risk infants" as a requirement.

RESPONSE: The commission agrees with the comment and as a result added §133.185(b)(2)(D).

COMMENT: Concerning §133.185(b)(2)(F), Texas Children's Hospital commented that they were concerned about leaving the discretion of selecting quality indicators and aspects of performance up to each facility. They believe that the state would be better served by establishing uniform criteria.

RESPONSE: The commission acknowledges the comment and may develop a policy with a minimum standard of quality indicators for a future date. No change to the rule was made as a result of this comment.

COMMENT: Concerning §133.185(e)(5), Texas Children's Hospital requested the definition of "collaborative relationships."

RESPONSE: The commission acknowledges the comment; however, the rule language is sufficient. No change to the rule was made as a result of this comment.

COMMENT: Concerning §133.186, an individual is concerned that a Level I cannot keep infants <36 weeks gestation, nor with birthweights <2500 grams, nor infants requiring mechanical respiratory support.

RESPONSE: The commission acknowledges the comment; however, the rule language is sufficient. No change to the rule was made as a result of this comment.

COMMENT: Concerning §133.186(a)(1), ETMC and TORCH are concerned that the Level I reads as if it is an absolute and no baby less than 35 weeks could remain at that facility even if they are believed to be otherwise healthy. Yet, the description for the Level II includes "generally" more or equal to 32 weeks. In this section, the word "generally" projects the age/weight range to be a recommendation or suggestion. Without "generally" associated with Level I, we believe there could be an interpretation that this is mandatory and it would remove medical judgment from the physician. A mandatory cutoff with no opportunity for physician evaluation of the newborn's actual development and health can be inaccurate, usurp the decision-making ability of

the physician, and cause unnecessary transfers of healthy newborns without good reason. Such a result would negate the savings to the Medicaid program because it would require a higher level of care than deemed necessary by the physician.

RESPONSE: The commission agrees with the comments and as a result has added "generally" to the description of the Level I, Well Nursery in §133.186(a)(1). A new paragraph was added at §133.186(a)(3) to state "If an infant <35 weeks gestational age is retained, the facility shall provide the same level of care that the neonate would receive at a higher level designated neonatal facility and shall, through the QAPI Program, complete an in depth critical review of the care provided." Additional language was added to the Program Requirements in §133.185(b)(2)(D) for all facilities to state "ensure appropriate follow up for all neonates/infants."

COMMENT: Concerning §133.186(c)(4), the PAC stated that the Neonatal Medical Director often does not approve privileges, but rather reviews credentials and recommended revising the rule language as such. This should also be changed in the rule text in Level II, §133.187(c)(4), Level III, §133.188(d)(4), and Level IV, §133.189(d)(4).

RESPONSE: The commission agrees with the comment and as a result has revised the rule text in §133.186(c)(4), §133.187(c)(4), §133.188(d)(4), and §133.189(d)(4).

COMMENT: Concerning §133.186(c)(7)(B), an individual is concerned that most Level I - II hospitals do not have the financial resources to pay for in house on-site neonatal intubation and vascular access skills personnel. It is recommended that the language should be eliminated or state "when possible" or at least "available via personnel with 30 minute call in." This should also be changed in Level II, §133.187(c)(12)(B).

RESPONSE: The commission disagrees with the comment, as written the rule language does not mandate personnel be in house 24 hours per day, 7 days per week, and does not prohibit the use of on call personnel. No change to the rule was made as a result of this comment.

COMMENT: Concerning §133.187(b)(1), Texas Children's Hospital recommended that the neonatologist and pediatrician should be required to be eligible/certified per the American Board of Medical Specialties board eligibility policy.

RESPONSE: The commission disagrees with the comment because this was not recommended through an extensive vetting process during the rule development. No change to the rule was made as a result of this comment.

COMMENT: Concerning §133.187(b)(1), the PAC suggested to delete "or board eligible/certified pediatrician" from the Neonatal Medical Director criteria in paragraph (1), and the pediatrician Neonatal Medical Director is allowed via criteria in paragraph (2).

RESPONSE: The commission agrees with the comment and revised §133.187(b)(1).

COMMENT: Concerning §133.187(c)(5), the PAC suggested clarifying that neonatal surgery or complicated invasive procedures should require Level III or higher care.

RESPONSE: The commission agrees with the comment and as a result has added "if the facility performs neonatal surgery, the facility shall provide the same level of care that the neonate would receive at a higher level designated facility and shall, through the QAPI Program, complete an in depth critical review of the care provided" to §133.187(a)(1)(B).

COMMENT: Concerning §133.187(c)(6), Baylor Scott and White stated it is not necessary to have a dietitian or nutritionist available at all times.

RESPONSE: The commission disagrees with the comment, as written there is no requirement for the dietitian or nutritionist to be available at all times. No change to the rule was made as a result of this comment.

COMMENT: Concerning §133.187(c)(10)(D), Baylor Scott and White stated it is not necessary to have the capability to interpret all ultrasound studies available at all times.

RESPONSE: The commission disagrees with the comment. Neonatal and maternal ultrasounds can be and are frequently interpreted by the attending physician or a neonatologist. No change to the rule was made as a result of this comment.

COMMENT: Concerning §133.187(c)(12)(B), Tenet Health Care stated the proposed language will require 4.2 full time employees in addition to existing personnel to provide these services on a 24 hours a day, 7 days a week basis. The current workforce will make this a difficult requirement for hospitals.

RESPONSE: The commission acknowledges the comment; however, as written the rule language does not mandate personnel be in house 24 hours per day, 7 days per week, and does not prohibit the use of on call personnel. No change to the rule was made as a result of these comments.

COMMENT: Concerning §133.187(c)(16), Baylor Scott and White stated it is not necessary to have a lactation consultant available at all times.

RESPONSE: The commission disagrees with the comment, as written there is no requirement for a lactation consultant in §133.187(c)(16). No change to the rule was made as a result of this comment.

COMMENT: Concerning §133.188(a)(2), Wadley Regional Medical Center, Children's Memorial Hermann, Odessa Regional Medical Center, Harlingen Medical Center, Baylor Scott and White, McLane Children's Hospital, Tenet Healthcare, Southwest General Hospital, The Medical Center of Southeast Texas, Pediatrix Medical Group, Mednax, and four individuals recommended that this language be consistent with the existing language in §133.183(c)(3)(B) General Requirements.

The PAC recommended transfers to "an appropriate level" and not "higher level" because the transfer may be to another Level III with surgical capability.

RESPONSE: The commission agrees with the comments that the language should be consistent and has changed §133.188(a)(2).

COMMENT: Concerning §133.188(a)(5), one individual commented that every Level III neonatal intensive care unit should be neonatal education providers at some level, but if the Level III does not have a transport team nor accept referrals from other lower level nurseries, then why would they be required to do neonatal education to those hospitals with which they have no relationship?

RESPONSE: The commission acknowledges the comment. Education can only make the system better, one facility at a time. The higher level facilities should be leaders within their respective PCR with the goal of improving the overall care. No change to the rule was made as a result of this comment.

COMMENT: Concerning §133.188(d)(4), Texas Children's Hospital requested to include "physician assistants" in the rule text.

The PAC recommended to add "and available" concerning a neonatal provider.

RESPONSE: The commission agrees with the comments and as a result has revised §133.188(d)(4).

COMMENT: Concerning §133.188(d)(4)(C), CHRISTUS Health stated that in some communities, there is only one neonatologist in the area, and coverage is provided by one agency during the neonatologist's time off. This may potentially be a barrier to offering the neonatal provider service to hospitals in close proximity.

RESPONSE: The commission acknowledges the comment; however, a Level III neonatal intensive care unit is expected to provide comprehensive care of infants of all gestational ages with mild to critical illnesses or requiring sustained life support. No change to the rule was made as a result of this comment.

COMMENT: Concerning §133.188(d)(5), Wadley Regional Medical Center, Children's Memorial Hermann, Odessa Regional Medical Center, Harlingen Medical Center, Baylor Scott and White, McLane Children's Hospital, Tenet Healthcare, Southwest General Hospital, The Medical Center of Southeast Texas, CHRISTUS Health, Pediatrix Medical Group, Mednax, and three individuals stated that the rule as written could be interpreted to mean that an anesthesiologist is required for invasive procedures performed at the bedside, however there are many bedside "invasive" procedures that do not require anesthesia. They recommended clarifying the language to reflect that not all invasive procedures require anesthesia.

The PAC commented that simple invasive procedures do not require an anesthesiologist and recommended to specify "complicated invasive procedures."

RESPONSE: The commission agrees with the comments and has revised §133.188(d)(5).

COMMENT: Concerning §133.188(d)(5), Texas Children's Hospital stated to clarify the definition of the term "pediatric expertise" within the rule text.

RESPONSE: The commission acknowledges the comment; however, it finds the rule language to be sufficient and consistent with the AAP Guidelines for Perinatal Care, Capabilities of Neonatal Level III providers, from which these rules were developed. No change to the rule was made as a result of this comment.

COMMENT: Concerning §133.188(d)(6), two individuals stated having a dietitian on the care team is vital but it is not necessary to have one in house 24 hours a day, 7 days a week. One individual suggested changing the rule language to have a dietitian or nutritionist "available to meet the needs of the population served."

RESPONSE: The commission disagrees with the comments, as written the rule language does not mandate personnel be in house 24 hours per day, 7 days per week. No change to the rule was made as a result of this comment.

COMMENT: Concerning §133.188(d)(10)(A), Wadley Regional Medical Center, Children's Memorial Hermann, Odessa Regional Medical Center, Harlingen Medical Center, Baylor Scott and White, McLane Children's Hospital, Tenet Healthcare, Tomball Regional Medical Center, Southwest General Hospital,

The Medical Center of Southeast Texas, Pediatrix Medical Group, Mednax, and four individuals stated that in Level III and IV settings, only portable x-ray technicians, magnetic resonance imaging technicians and potentially fluoroscopy technicians need to be in-house 24 hours a day, 7 days a week. Other technicians may be on call within one hour of an urgent request. They recommended clarifying the rules as to whether it is the imaging equipment or the imaging personnel that need to be on-site and available at all times. The comments are also true for §133.189(d)(11)(A).

The PAC commented that personnel trained in imaging need to be available at all times but not on-site all times; personnel who use x-rays should be on-site and available at all times. The comment is also true for §133.189(d)(11)(A).

Texas Hospital Association recommended striking the requirement to be on-site and simply requiring professionals to be available at all times.

CHRISTUS Health, Northwest Texas Healthcare System, and one individual recommended requiring personnel trained in the use of x-ray equipment be on-site 24/7, and personnel trained in ultrasound, computed tomography, magnetic resonance imaging and/or cranial ultrasound and echocardiography be available at all times through an on-call process with expected response times within 30 - 60 minutes.

RESPONSE: The commission agrees with the comments and as a result has changed §133.188(d)(10)(A) and §133.189(d)(11)(A) to state "personnel appropriately trained in the use of x-ray equipment shall be on-site and available at all times; personnel appropriately trained in ultrasound, computed tomography, magnetic resonance imaging, echocardiography and/or cranial ultrasound equipment shall be on-site within one hour of an urgent request; fluoroscopy shall be available."

COMMENT: Concerning §133.188(d)(11), CHRISTUS Health stated that limiting this role to a speech language pathologist in a smaller community hospital would be prohibitive and suggested that it should be acceptable to use an occupational therapist with previous neonatal intensive care unit training and experience.

The PAC and an individual recommended adding an "occupational or physical therapist with neonatal/infant experience" as an alternate to a speech language pathologist.

RESPONSE: The commission agrees with the comments and has revised §133.188(d)(11).

COMMENT: Concerning §133.188(d)(14), the PAC recommended for the Perinatal Educator to have neonatal intensive care unit experience, not just perinatal experience.

RESPONSE: The commission agrees with the comment and as a result has revised §133.188(d)(14).

COMMENT: Concerning §133.188(d)(18), one individual recommended that a certified lactation consultant be available on a daily basis to meet the needs of the population served.

Another individual stated that lactation services shall be available at all times.

RESPONSE: The commission acknowledges the comments; however, the rule language is sufficient as written. No change to the rule was made as a result of these comments.

COMMENT: Concerning §133.189, CHRISTUS Health wants to ensure that vulnerable patients receive the appropriate care in the appropriate setting as quickly as possible and minimize pa-

tient transfers. They recommended that the rules should more clearly delineate between Level III and Level IV neonatal intensive care units.

An individual recommended that Level IV neonatal intensive care units in the state should have mandated the highest levels of support for neonatal severe respiratory failure and cardiac patients to include requirements of inhaled nitric oxide, extracorporeal membrane oxygenation, pediatric cardiac surgery, pediatric neurosurgery, and cooling.

RESPONSE: The commission disagrees with the comments, as written the rule language is sufficient and consistent with Health and Safety Code, §241.183. The rule was developed by consensus through input from an extensive stakeholder vetting processes, with recommendations from the PAC, and in consideration of the current AAP guidelines for neonatal care. No change to the rule was made as a result of this comment.

COMMENT: Concerning §133.189(a)(2), one individual stated that the words "complex conditions" and "major pediatric surgery" could have many different interpretations.

RESPONSE: The commission acknowledges the comment; however, the rule language as written is sufficient and consistent with the current national guidelines published by AAP, of which these rules were developed. No change to the rule was made as a result of this comment.

COMMENT: Concerning §133.189(d)(5), the PAC recommended that anesthesiologists at Level IV need to be pediatric anesthesiologists, not simply "with expertise," because these are the most complex infants and complex surgeries.

RESPONSE: The commission agrees with the comment and has revised §133.189(d)(5).

COMMENT: Concerning §133.189(d)(7), McLane Children's Hospital is concerned that in none of the public meetings was a prescriptive definition of "complex range of pediatric surgical subspecialist available for on-site..." discussed. The commenter suggested that the state be less directive on this issue and leave this to the site surveyors to determine.

RESPONSE: The commission disagrees with the comment, as written the rule language is sufficient for the Neonatal Designation Level IV as stated in §133.189(d)(7). A comprehensive range of pediatric medical subspecialists and pediatric surgical subspecialists will be immediately available to arrive on-site for face to face consultation and care for an urgent request. No change to the rule was made as a result of this comment.

COMMENT: Concerning §133.189(d)(15), the PAC recommended for the Perinatal Educator to have neonatal intensive care unit experience, not just perinatal experience.

RESPONSE: The commission agrees with the comment and has revised §133.189(d)(15).

COMMENT: Concerning §133.189(d)(17), Wadley Regional Medical Center, Odessa Regional Medical Center, Harlingen Medical Center, Baylor Scott and White, McLane Children's Hospital, Southwest General Hospital, The Medical Center of Southeast Texas, Pediatrix Medical Group, Mednax, the PAC, and three individuals recommended that for a Level IV facility, the treating physician should be a pediatric ophthalmologist or retinal specialist with expertise in retinopathy of prematurity.

RESPONSE: The commission agrees with the comments and has revised §133.189(d)(18).

COMMENT: Concerning §133.190(a), Tenet Healthcare recommended adding a "hospital administrator" to the survey team.

RESPONSE: The commission disagrees with the comment because the survey is a peer review process which requires surveyors that are active in the management of neonatal patients and have direct experience in the preparation for and successful completion of neonatal facility verification/designation as cited in §133.190(a) and (b)(3). No change to the rule was made as a result of this comment.

COMMENT: Concerning §133.190(a)(2), (3), and (4), the PAC recommended revising (a)(2), (3) and (4) to specify that "survey members practicing at the same or higher level;" for Level IV, it must be at the same level.

RESPONSE: The commission agrees with the comment that the qualification for the survey team composition should be as consistent as possible across all levels, and has changed §133.190(a)(2), (3), and (4).

COMMENT: Concerning §133.190(b)(4), HCA stated that the language attempts to sustain a stable roster of qualified surveyors, it falters due to the ambiguity of tense and phrasing. Ideally, the second clause of that sentence will be deleted.

RESPONSE: The commission disagrees with the comment, as written in the rule the re-credentialing of the surveyor every four years is to ensure that all surveyors are in compliance with the requirements of the position. No change to the rule was made as a result of this comment.

COMMENT: Concerning §133.190(b)(5), HCA requested that the rules specify that a registered nurse or a board certified physician be eligible to serve on the survey teams.

RESPONSE: The commission agrees with the comment and as a result has changed §133.190(b)(5)(A), (B), and (C).

COMMENT: AAP recommended to not include a surgeon with Neonatal Resuscitation Program experience on the Level IV survey team.

RESPONSE: The commission agrees with the comment and as a result has changed §133.190(b)(5)(C).

COMMENT: March of Dimes submitted a comment in support of the proposed rules for neonatal care. March of Dimes believes the rules will provide a framework in Texas that will allow hospitals to work with and learn from one another in order to provide the best quality of care to mothers and babies across the state.

After the effective date of the rules, the department will provide education on the designation process to facilities that wish to seek designation at some level. This may include webinar trainings, stakeholder meetings, and posted guidance on the designation program webpage. The application will then be released for the facilities and technical assistance provided regarding the application and survey process to achieve designation. The department is currently working with external organizations to develop a survey process for Level II, III, and IV facilities.

DEPARTMENT COMMENT

A minor clarification was made to the definition of "QAPI Program" in §133.182(27), §133.186, §133.187, and §133.190 to be consistent throughout the rule text.

LEGAL CERTIFICATION

The Department of State Health Services, General Counsel, Lisa Hernandez, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

STATUTORY AUTHORITY

The new sections are authorized by Health and Safety Code, Chapter 241, which provides the department with the authority to adopt rules establishing the levels of care for neonatal care, establish a process for assignment or amendment of the levels of care to hospitals, divide the state into neonatal care regions, and facilitate transfer agreements through regional coordination; and by Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

§133.182. Definitions.

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

(1) Attestation--A written statement, signed by the Chief Executive Officer of the facility, verifying the results of a self-survey represent a true and accurate assessment of the facility's capabilities required in this subchapter.

(2) Birth weight--The weight of the neonate recorded at time of birth.

(A) Low birth weight--Birth weight less than 2500 grams (5 lbs., 8 oz.);

(B) Very low birth weight (VLBW)--Birth weight less than 1500 grams (3 lbs., 5 oz.); and

(C) Extremely low birth weight (ELBW)--Birth weight less than 1000grams (2 lbs., 3 oz.).

(3) CAP--Corrective Action(s) Plan. A plan for the facility developed by the Office of EMS/Trauma Systems Coordination that describes the actions required of the facility to correct identified deficiencies to ensure compliance with the applicable designation requirements.

(4) Commission--The Health and Human Services Commission.

(5) Department--The Department of State Health Services.

(6) Designation--A formal recognition by the executive commissioner of a facility's neonatal or maternal care capabilities and commitment, for a period of three years.

(7) EMS--Emergency medical services used to respond to an individual's perceived need for immediate medical care.

(8) Executive commissioner--The executive commissioner of the Health and Human Services Commission.

(9) Gestational age--The age of a fetus or embryo at a specific point during a woman's pregnancy.

(10) High-risk Infant--A newborn that has a greater chance of complications because of conditions that occur during fetal development, pregnancy conditions of the mother, or problems that may occur during labor and/or birth.

- (11) Immediate supervision--The supervisor is actually observing the task or activity as it is performed.
- (12) Immediately--Without delay.
- (13) Infant--A child from birth to 1 year of age.
- (14) Lactation consultant--A health care professional who specializes in the clinical management of breastfeeding.
- (15) Maternal--Pertaining to the mother.
- (16) NCPAP--Nasal continuous positive airway pressure.
- (17) Neonate--An infant from birth through 28 completed days after.
- (18) NMD--Neonatal Medical Director.
- (19) NPM--Neonatal Program Manager.
- (20) Neonatal Resuscitation Program (NRP)--A resuscitation course that was developed and is administered jointly by the American Heart Association/American Academy of Pediatrics.
- (21) Office--Office of Emergency Medical Services (EMS)/Trauma Systems Coordination.
- (22) PCR--Perinatal Care Region.
- (23) Perinatal--Of, relating to, or being the period around childbirth, especially the five months before and one month after birth.
- (24) POC--Plan of Correction. A report submitted to the office by the facility detailing how the facility will correct any deficiencies cited in the survey report or documented in the self-attestation.
- (25) Premature/prematurity--Birth at less than 37 weeks of gestation.
- (26) Postpartum--The six-week period following delivery.
- (27) QAPI Program--Quality Assessment and Performance Improvement Program.
- (28) RAC--Regional Advisory Council as described in §157.123 of this title (relating to Regional Emergency Medical Services/Trauma Systems).
- (29) Supervision--Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity with initial direction and periodic inspection of the actual act of accomplishing the function or activity.
- (30) TSA--Trauma Service Area as described in §157.122 of this title relating to (Trauma Service Areas).
- (31) Urgent--Requiring immediate action or attention.

§133.183. *General Requirements.*

- (a) The Office of Emergency Medical Services (EMS)/Trauma Systems Coordination (office) shall recommend to the Executive Commissioner of the Health and Human Services Commission (executive commissioner) the designation of an applicant/healthcare facility as a neonatal facility at the level for each location of a facility, which the office deems appropriate.
- (b) A healthcare facility is defined under this subchapter as a single location where inpatients receive hospital services or each location if there are multiple buildings where inpatients receive hospital services and are covered under a single hospital license.
- (c) Each location shall be considered separately for designation and the office will determine the designation level for that location, based on, but not limited to, the location's own resources and level of care capabilities; Perinatal Care Region (PCR) capabilities; compli-

ance with Chapter 133 of this title, concerning Hospital Licensing. A stand-alone children's facility that does not provide obstetrical services is exempt from obstetrical requirements. The final determination of the level of designation may not be the level requested by the facility.

(1) Level I (Well Nursery). The Level I neonatal designated facility will:

(A) provide care for mothers and their infants generally of ≥ 35 weeks gestational age who have routine, transient perinatal problems;

(B) have skilled personnel with documented training, competencies and continuing education specific for the patient population served; and

(C) if an infant < 35 weeks gestational age is retained, the facility shall provide the same level of care that the neonate would receive at a higher level designated neonatal facility and shall, through the QAPI Program, complete an in depth critical review of the care provided.

(2) The Level II (Special Care Nursery). The Level II neonatal designated facility will:

(A) provide care for mothers and their infants of generally ≥ 32 weeks gestational age and birth weight ≥ 1500 grams who have physiologic immaturity or who have problems that are expected to resolve rapidly and are not anticipated to require subspecialty services on an urgent basis; and

(B) either provide care, including assisted endotracheal ventilation for less than 24 hours or nasal continuous positive airway pressure (NCPAP) until the infant's condition improves, or arrange for appropriate transfer to a higher level designated facility; and

(C) provide skilled personnel that have documented training, competencies and annual continuing education specific for the patient population served.

(3) Level III (Neonatal Intensive Care Unit (ICU)). The Level III neonatal designated facility will:

(A) provide care for mothers and comprehensive care of their infants of all gestational ages with mild to critical illnesses or requiring sustained life support;

(B) provide for consultation to a full range of pediatric medical subspecialists and pediatric surgical specialists, and the capability to perform major pediatric surgery on-site or at another appropriate designated facility;

(C) have skilled medical staff and personnel with documented training, competencies and continuing education specific for the patient population served;

(D) facilitate transports; and

(E) provide outreach education to lower level designated facilities.

(4) Level IV (Advanced Neonatal ICU). The Level IV neonatal designated facility will:

(A) provide care for mothers and comprehensive care of their infants of all gestational ages with the most complex and critically ill neonates/infants and/or requiring sustained life support;

(B) have a comprehensive range of pediatric medical subspecialists and pediatric surgical subspecialists available to arrive on-site for face to face consultation and care, and the capability to perform major pediatric surgery including the surgical repair of complex conditions;

(C) have skilled personnel with documented training, competencies and continuing education specific for the patient population served;

(D) facilitate transports; and

(E) provide outreach education to lower level designated facilities.

(d) Facilities seeking neonatal facility designation shall be surveyed through an organization approved by the office to verify that the facility is meeting office-approved relevant neonatal facility requirements. The facility shall bear the cost of the survey.

(e) PCRs.

(1) The PCRs are established for descriptive and regional planning purposes and not for the purpose of restricting patient referral.

(2) The PCR will consider and facilitate transfer agreements through regional coordination.

(3) A written plan identifies all resources available in the PCRs for perinatal care including resources for emergency and disaster preparedness.

(4) The PCRs are geographically divided by counties and are integrated into the existing 22 TSAs and the applicable Regional Advisory Council (RAC) of the TSA provided in §157.122 and §157.123 of this title; will be administratively supported by the RAC; and will have fair and equitable representation on the board of the applicable RAC.

(5) Multiple PCRs can meet together for the purposes of mutual collaboration.

§133.184. Designation Process.

(a) Designation application packet. The applicant shall submit the packet, inclusive of the following documents to the Office of EMS/Trauma Systems Coordination (office) within 120 days of the facility's survey date:

(1) an accurate and complete designation application form for the appropriate level of designation, including full payment of the designation fee as listed in subsection (d) of this section;

(2) any subsequent documents submitted by the date requested by the office;

(3) a completed neonatal attestation and self-survey report for Level I applicants or a designation survey report, including patient care reviews if required by the office, for Level II, III and IV applicants;

(4) a plan of correction (POC), detailing how the facility will correct any deficiencies cited in the survey report, to include: the corrective action; the title of the person responsible for ensuring the correction(s) is implemented; how the corrective action will be monitored; and the date by which the POC will be completed; and

(5) evidence of participation in the applicable Perinatal Care Region (PCR).

(b) Renewal of designation. The applicant shall submit the documents described in subsection (a)(1) - (5) of this section to the office not more than 180 days prior to the designation expiration date and at least 60 days prior to the designation expiration date.

(c) If a facility seeking designation fails to meet the requirements in subsection (a)(1) - (5) of this section, the application shall be denied.

(d) Non-refundable application fees for the three year designation period are as follows:

(1) Level I neonatal facility applicants, the fees are as follows:

(A) ≤100 licensed beds, the fee is \$250.00; or

(B) >100 licensed beds, the fee is \$750.00.

(2) Level II neonatal facility applicants, the fee is \$1,500.00.

(3) Level III neonatal facility applicants, the fee is \$2,000.00.

(4) Level IV neonatal facility applicants, the fee is \$2,500.00.

(A) All completed applications, received on or before July 1, 2018, including the application fee, evidence of participation in the PCR, an appropriate attestation if required, survey report, and that meet the requirements of the requested designation level, will be issued a designation for the full three-year term.

(B) Any facility that has not completed an on-site survey to verify compliance with the requirements for a Level II, III or IV designation at the time of application must provide a self-survey and attestation and will receive a Level I designation. The office, at its sole discretion may recommend a designation for less than the full three-year term. A designation for less than the full three-year term will have a pro-rated application fee consistent with the one, two or three-year term length.

(C) A facility applying for Level I designation requiring an attestation may receive a shorter term designation at the discretion of the office. A designation for less than the full three-year term will have a pro-rated application fee.

(D) The office, at its discretion, may designate a facility for a shorter term designation for any application received prior to September 1, 2018.

(E) An application for a higher or lower level designation may be submitted at any time.

(e) If a facility disagrees with the level(s) determined by the office to be appropriate for initial designation or re-designation, it may make an appeal in writing not later than 60 days to the director of the office. The written appeal must include a signed letter from the facility's governing board with an explanation of how the facility meets the requirements for the designation level.

(1) If the office upholds its original determination, the director of the office will give written notice of such to the facility not later than 30 days of its receipt of the applicant's complete written appeal.

(2) The facility may, not later than 30 days of the office's sending written notification of its denial, submit a written request for further review. Such written appeal shall then go to the Assistant Commissioner of the Division for Regulatory Services (assistant commissioner).

(f) The surveyor(s) shall provide the facility with a written, signed survey report regarding their evaluation of the facility's compliance with neonatal program requirements. This survey report shall be forwarded to the facility no later than 30 days of the completion date of the survey. The facility is responsible for forwarding a copy of this report to the office if it intends to continue the designation process.

(g) The office shall review the findings of the survey report and any POC submitted by the facility, to determine compliance with the neonatal program requirements.

(1) A recommendation for designation shall be made to the executive commissioner based on compliance with the requirements.

(2) A neonatal level of care designation shall not be denied to a facility that meets the minimum requirements for that level of care designation.

(3) If a facility does not meet the requirements for the level of designation requested, the office shall recommend designation for the facility at the highest level for which it qualifies and notify the facility of the requirements it must meet to achieve the requested level of designation.

(4) If a facility does not comply with requirements, the office shall notify the facility of deficiencies and required corrective action(s) plan (CAP).

(A) The facility shall submit to the office reports as required and outlined in the CAP. The office may require a second survey to ensure compliance with the requirements. The cost of the survey will be at the expense of the facility.

(B) If the office substantiates action that brings the facility into compliance with the requirements, the office shall recommend designation to the executive commissioner.

(C) If a facility disagrees with the office's decision regarding its designation application or status, it may request a secondary review by a designation review committee. Membership on a designation review committee will:

(i) be voluntary;

(ii) be appointed by the office director;

(iii) be representative of neonatal care providers and appropriate levels of designated neonatal facilities; and

(iv) include representation from the office and the Perinatal Advisory Council.

(D) If a designation review committee disagrees with the office's recommendation for corrective action, the records shall be referred to the assistant commissioner for recommendation to the executive commissioner.

(E) If a facility disagrees with the office's recommendation at the end of the secondary review, the facility has a right to a hearing, in accordance with a hearing request referenced in §133.121(9) of this title (relating to Enforcement Action), and Government Code, Chapter 2001.

§133.185. *Program Requirements.*

(a) Designated facilities shall have a family centered philosophy. Parents shall have reasonable access to their infants at all times and be encouraged to participate in the care of their infants. The facility environment for perinatal care shall meet the physiologic and psychosocial needs of the mothers, infants, and families.

(b) Program Plan. The facility shall develop a written plan of the neonatal program that includes a detailed description of the scope of services available to all maternal and neonatal patients, defines the neonatal patient population evaluated and/or treated, transferred, or transported by the facility, that is consistent with accepted professional standards of practice for neonatal and maternal care, and ensures the health and safety of patients.

(1) The written plan and the program policies and procedures shall be reviewed and approved by the facility's governing body. The governing body shall ensure that the requirements of this section are implemented and enforced.

(2) The written neonatal program plan shall include, at a minimum:

(A) standards of neonatal practice that the program policies and procedures are based upon that are adopted, implemented and enforced for the neonatal services it provides;

(B) a periodic review and revision schedule for all neonatal care policies and procedures;

(C) written triage, stabilization and transfer guidelines for neonates and/or pregnant/postpartum women that include consultation and transport services;

(D) ensure appropriate follow up for all neonates/in-fants;

(E) provisions for disaster response to include evacuation of mothers and infants to appropriate levels of care;

(F) a QAPI Program as described in §133.41(r) of this title (relating to Hospital Functions and Services). The facility shall demonstrate that the neonatal program evaluates the provision of neonatal care on an ongoing basis, identify opportunities for improvement, develop and implement improvement plans, and evaluate the implementation until a resolution is achieved. The neonatal program shall measure, analyze, and track quality indicators or other aspects of performance that the facility adopts or develops that reflect processes of care and is outcome based. Evidence shall support that aggregate patient data is continuously reviewed for trends and data is submitted to the department as requested;

(G) requirements for minimal credentials for all staff participating in the care of neonatal patients;

(H) provisions for providing continuing staff education; including annual competency and skills assessment that is appropriate for the patient population served;

(I) a perinatal staff registered nurse as a representative on the nurse staffing committee under §133.41(o)(2)(F) of this title;

(J) the availability of all necessary equipment and services to provide the appropriate level of care and support of the patient population served; and

(K) the availability of personnel with knowledge and skills in breastfeeding.

(c) Medical Staff. The facility shall have an organized, effective neonatal program that is recognized by the medical staff and approved by the facility's governing body. The credentialing of the medical staff shall include a process for the delineation of privileges for neonatal care.

(d) Medical Director. There shall be an identified Neonatal Medical Director (NMD) and/or Transport Medical Director (TMD) as appropriate, responsible for the provision of neonatal care services and credentialed by the facility for the treatment of neonatal patients.

(1) The NMD and/or TMD shall have the authority and responsibility to monitor neonatal patient care from admission, stabilization, operative intervention(s) if applicable, through discharge, inclusive of the QAPI Program.

(2) The responsibilities and authority of the NMD and/or TMD shall include but are not limited to:

(A) examining qualifications of medical staff requesting neonatal privileges and makes recommendations to the appropriate committee for such privileges;

(B) assuring staff competency in resuscitation techniques;

(C) participating in ongoing staff education and training in the care of the neonatal patient;

(D) oversight of the inter-facility neonatal transport;

(E) participating in the development, review and assurance of the implementation of the policies, procedures and guidelines of neonatal care in the facility including written criteria for transfer, consultation or higher level of care;

(F) regular and active participation in neonatal care at the facility where medical director services are provided;

(G) ensuring that the QAPI Program is specific to neonatal/infant care, is ongoing, data driven and outcome based; and regularly participates in the neonatal QAPI meeting; and

(H) maintaining active staff privileges as defined in the facility's medical staff bylaws.

(e) Neonatal Program Manager (NPM). The NPM responsible for the provision of neonatal care services shall be identified by the facility and:

(1) be a registered nurse;

(2) have successfully completed and is current in the Neonatal Resuscitation Program (NRP) or an office-approved equivalent;

(3) have the authority and responsibility to monitor the provision of neonatal patient care services from admission, stabilization, operative intervention(s) if applicable, through discharge, inclusive of the QAPI Program as defined in subsection (b)(2)(E) of this section.

(4) collaborate with the NMD in areas to include, but not limited to: developing and/or revising policies, procedures and guidelines; assuring staff competency, education, and training; the QAPI Program; and regularly participates in the neonatal QAPI meeting; and

(5) develop collaborative relationships with other NPM(s) of designated facilities within the applicable Perinatal Care Region.

§133.186. Neonatal Designation Level I.

(a) Level I (Well Nursery). The Level I neonatal designated facility will:

(1) provide care for mothers and their infants generally of ≥ 35 weeks gestational age who have routine, transient perinatal problems;

(2) have skilled personnel with documented training, competencies and continuing education specific for the patient population served; and

(3) if an infant < 35 weeks gestational age is retained, the facility shall provide the same level of care that the neonate would receive at a higher level designated neonatal facility and shall, through the QAPI Program complete an in depth critical review of the care provided.

(b) Neonatal Medical Director (NMD). The NMD shall be a physician who:

(1) is a currently practicing pediatrician, family medicine physician, or physician specializing in obstetrics and gynecology with experience in the care of neonates/infants;

(2) demonstrates a current status on successful completion of the Neonatal Resuscitation Program (NRP);

(3) demonstrates effective administrative skills and oversight of the QAPI Program; and

(4) has completed continuing medical education annually specific to the care of neonates.

(c) Program Functions and Services.

(1) Triage and assessment of all patients admitted to the perinatal service with identification of pregnant patients who are at high risk of delivering a neonate that requires a higher level of care who will be transferred to a higher level facility prior to delivery unless the transfer would be unsafe.

(2) Supportive and emergency care delivered by appropriately trained personnel for unanticipated maternal-fetal problems that occur during labor and delivery through the disposition of the patient.

(3) The ability to perform an emergency cesarean delivery.

(4) The primary physician, advanced practice nurse and/or physician assistant with special competence in the care of neonates, whose credentials have been reviewed by the NMD and is on call, and:

(A) shall demonstrate a current status on successful completion of the American Heart Association/American Academy of Pediatrics for the resuscitation of all infants NRP;

(B) has completed continuing education annually, specific to the care of neonates;

(C) shall arrive at the patient bedside within 30 minutes of an urgent request;

(D) if not immediately available to respond or is covering more than one facility, be provided appropriate backup coverage who shall be available, documented in an on call schedule and readily available to facility staff; and

(E) if the physician, advanced practice nurse and/or physician assistant is providing backup coverage, shall arrive at the patient bedside within 30 minutes of an urgent request.

(5) Availability of appropriate anesthesia, laboratory, radiology, ultrasonography and blood bank services on a 24 hour basis as described in §133.41(a), (h), and (s) of this title, respectively.

(A) If preliminary reading of imaging studies pending formal interpretation is performed, the preliminary findings must be documented in the medical record.

(B) There must be regular monitoring of the preliminary versus final reading in the QAPI Program.

(6) A pharmacist shall be available for consultation on a 24 hour basis.

(A) If medication compounding is done by a pharmacy technician for neonates/infants, a pharmacist will provide immediate supervision of the compounding process.

(B) If medication compounding is done for neonates/infants, the pharmacist will develop checks and balances to ensure the accuracy of the final product.

(7) Resuscitation. The facility shall have appropriately trained staff, policies and procedures for the stabilization and resuscitation of neonates based on current standards of professional practice; shall ensure the availability of personnel who can stabilize distressed neonates including those < 35 weeks gestation until they can be transferred to a higher level facility.

(A) Each birth shall be attended by at least one person who demonstrates a current status of successful completion of the NRP

whose primary responsibility is for the management of the neonate and initiating resuscitation.

(B) At least one person must be immediately available on-site with the skills to perform a complete neonatal resuscitation including endotracheal intubation, establishment of vascular access and administration of medications.

(C) Additional providers with current status of successful completion of the NRP shall be on-site and immediately available upon request;

(D) Basic NRP equipment and supplies shall be immediately available for trained staff to perform resuscitation and stabilization on any neonate/infant.

(8) Perinatal Education. A registered nurse with experience in neonatal and/or perinatal care shall provide supervision and coordination of staff education.

(9) Ensures the availability of support personnel with knowledge and skills in breastfeeding to meet the needs of new mothers.

(10) Social services and pastoral care shall be provided as appropriate to meet the needs of the patient population served.

§133.187. *Neonatal Designation Level II.*

(a) Level II (Special Care Nursery).

(1) The Level II neonatal designated facility will:

(A) provide care for mothers and their infants of generally ≥ 32 weeks gestational age and birth weight ≥ 1500 grams who have physiologic immaturity or who have problems that are expected to resolve rapidly and are not anticipated to require subspecialty services on an urgent basis; and

(B) either provide care, including assisted endotracheal ventilation for less than 24 hours or nasal continuous positive airway pressure (NCPAP) until the infant's condition improves, or arrange for appropriate transfer to a higher level designated facility. If the facility performs neonatal surgery, the facility shall provide the same level of care that the neonate would receive at a higher level designated facility and shall, through the QAPI Program, complete an in depth critical review of the care provided; and

(C) provide skilled personnel that have documented training, competencies and annual continuing education specific for the patient population served.

(2) If a facility is located more than 75 miles from the nearest Level III or IV designated neonatal facility, and retains a neonate between 30 and 32 weeks of gestation having a birth weight of between 1250 - 1500 grams, the facility shall provide the same level of care that the neonate would receive at a higher level designated neonatal facility and shall, through the QAPI Program, complete an in depth critical review of the care provided.

(b) Neonatal Medical Director (NMD). The NMD shall be a physician who is:

(1) a board eligible/certified neonatologist, with experience in the care of neonates/infants and demonstrates a current status on successful completion of the Neonatal Resuscitation Program (NRP); or

(2) by the effective date of this rule, a pediatrician or neonatologist who:

(A) has continuously provided neonatal care for the last consecutive two years; has experience and training in the care

of neonates/infants including assisted endotracheal ventilation and NCPAP management;

(B) maintains a consultative relationship with a board eligible/certified neonatologist;

(C) demonstrates effective administrative skills and oversight of the QAPI Program;

(D) demonstrates a current status on successful completion of the NRP; and

(E) has completed continuing medical education annually specific to the care of neonates.

(c) Program Functions and Services.

(1) Triage and assessment of all patients admitted to the perinatal service with the identification of pregnant women with a high likelihood of delivering a neonate requiring a higher level of care be transferred prior to delivery unless the transfer is unsafe.

(2) Supportive and emergency care delivered by appropriately trained personnel, for unanticipated maternal-fetal problems that occur during labor and delivery through the disposition of the patient.

(3) The ability to perform an emergency cesarean delivery.

(4) The physician, advanced practice nurse and/or physician assistant with special competence in the care of neonates, whose credentials have been reviewed by the NMD and is on call, and:

(A) shall demonstrate a current status on successful completion of the NRP;

(B) shall have completed continuing education annually specific to the care of neonates;

(C) shall arrive at the patient bedside within 30 minutes of an urgent request;

(D) if not immediately available to respond or is covering more than one facility, appropriate back-up coverage shall be available, documented in an on call schedule and readily available to facility staff;

(E) the physician, advanced practice nurse and/or physician assistant providing backup coverage shall arrive at the patient bedside within 30 minutes of urgent request; and

(F) shall be on-site to provide ongoing care and to respond to emergencies when a neonate/infant is maintained on endotracheal ventilation.

(5) Anesthesia services with pediatric experience will be provided in compliance with the requirements found in §133.41(a) of this title (relating to Hospital Functions and Services).

(6) Dietitian or nutritionist with sufficient training and experience in neonatal and maternal nutrition, appropriate to meet the needs of the population served, shall be available and in compliance with the requirements found in §133.41(d) of this title.

(7) Laboratory services shall be in compliance with the requirements found in §133.41(h) of this title and shall have:

(A) personnel on-site at all times when a neonate/infant is maintained on endotracheal ventilation;

(B) a blood bank capable of providing blood and blood component therapy; and

(C) neonatal/infant blood gas monitoring capabilities.

(8) Pharmacy services shall be in compliance with the requirements found in §133.41(q) of this title and shall have a pharmacist with experience in neonatal/perinatal pharmacology available at all times.

(A) If medication compounding is done by a pharmacy technician for neonates/infants, a pharmacist will provide immediate supervision of the compounding process.

(B) If medication compounding is done for neonates/infants, the pharmacist will develop checks and balances to ensure the accuracy of the final product.

(C) Total parenteral nutrition appropriate for neonates/infants shall be available.

(9) An occupational or physical therapist with sufficient neonatal expertise shall be available to meet the needs of the population served.

(10) Medical Imaging. Radiology services shall be in compliance with the requirements found in §133.41(s) of this title and will incorporate the "As Low as Reasonably Achievable" principle when obtaining imaging in neonatal and maternal patients; and shall have:

(A) personnel appropriately trained, in the use of x-ray and ultrasound equipment;

(B) personnel at the bedside within 30 minutes of an urgent request;

(C) appropriately trained personnel shall be available on-site to provide ongoing care and to respond to emergencies when an infant is maintained on endotracheal ventilation; and

(D) interpretation capability of neonatal and perinatal x-rays and ultrasound studies available at all times.

(11) A respiratory therapist, with experience and specialized training in the respiratory support of neonates/infants, whose credentials have been reviewed by the NMD, shall be immediately available on-site when:

(A) a neonate/infant is on a respiratory ventilator to provide ongoing care and to respond to emergencies; or

(B) a neonate/infant is on a Continuous Positive Airway Pressure (CPAP) apparatus.

(12) Resuscitation. The facility shall have written policies and procedures specific to the facility for the stabilization and resuscitation of neonates based on current standards of professional practice.

(A) Each birth shall be attended by at least one provider who demonstrates current status of successful completion of the NRP whose primary responsibility is the management of the neonate and initiating resuscitation.

(B) At least one person must be immediately available on-site with the skills to perform a complete neonatal resuscitation including endotracheal intubation, establishment of vascular access and administration of medications.

(C) Additional providers with current status of successful completion of the NRP shall be on-site and immediately available upon request.

(D) Additional providers who demonstrate current status of successful completion of the NRP shall attend each neonate in the event of multiple births.

(E) A full range of NRP equipment and supplies shall be immediately available for trained staff to perform resuscitation and stabilization on any neonate/infant.

(13) Perinatal Education. A registered nurse with experience in neonatal care, including special care nursery, and/or perinatal care shall provide supervision and coordination of staff education.

(14) Social services and pastoral care shall be provided as appropriate to the patient population served.

(15) Ensure the timely evaluation of retinopathy of prematurity, monitoring, referral for treatment and follow-up, in the case of an at-risk infant.

(16) Ensure the availability of support personnel with knowledge and expertise in lactation to meet the needs of new mothers while breastfeeding.

(17) Ensure provisions for follow up care at discharge for infants at high risk for neurodevelopmental, medical or psychosocial complications.

§133.188. Neonatal Designation Level III.

(a) Level III (Neonatal Intensive Care Unit (ICU)). The Level III neonatal designated facility will:

(1) provide care for mothers and comprehensive care of their infants of all gestational ages with mild to critical illnesses or requiring sustained life support;

(2) provide for consultation to a full range of pediatric medical subspecialists and pediatric surgical specialists, and the capability to perform major pediatric surgery on-site or at another appropriate designated facility;

(3) have skilled medical staff and personnel with documented training, competencies and continuing education specific for the patient population served;

(4) facilitate transports; and

(5) provide outreach education to lower level designated facilities.

(b) Neonatal Medical Director (NMD). The NMD shall be a physician who is a board eligible/certified neonatologist and demonstrates a current status on successful completion of the Neonatal Resuscitation Program (NRP).

(c) If the facility has its own transport program, there shall be an identified Transport Medical Director (TMD). The TMD or Co-Director shall be a physician who is a board eligible/certified neonatologist or pediatrician with expertise and experience in neonatal/infant transport.

(d) Program Functions and Services.

(1) Triage and assessment of all patients admitted to the perinatal service with identification of pregnant patients who are at high risk of delivering a neonate that requires a higher level of care who will be transferred to a higher level facility prior to delivery unless the transfer is unsafe.

(2) Supportive and emergency care shall be delivered by appropriately trained personnel, for unanticipated maternal-fetal problems that occur during labor and delivery through the disposition of the patient.

(3) The ability to perform an emergency cesarean delivery within 30 minutes.

(4) At least one of the following neonatal providers shall be on-site and available at all times and includes pediatric hospitalists, neonatologists, and/or neonatal nurse practitioners or neonatal physician assistants, as appropriate, who have demonstrated competence in management of severely ill neonates/infants, whose credentials have been reviewed by the NMD and is on call, and:

(A) has a current status of successful completion of the NRP;

(B) has completed continuing education annually, specific to the care of neonates;

(C) if the on-site provider is not a neonatologist, a neonatologist shall be available for consultation at all times and shall arrive on-site within 30 minutes of an urgent request;

(D) if the neonatologist is covering more than one facility, the facility must ensure that a back-up neonatologist be available, documented in an on call schedule and readily available to facility staff; and

(E) ensure that the neonatologist providing back-up coverage shall arrive on-site within 30 minutes.

(5) Anesthesiologists with pediatric expertise, shall directly provide the anesthesia care to the neonate, in compliance with the requirements found in §133.41(a) of this title (relating to Hospital Functions and Services).

(6) A dietitian or nutritionist who has special training in perinatal and neonatal nutrition and can plan diets that meet the special needs of neonates/infants is available at all times, in compliance with the requirements found in §133.41(d) of this title.

(7) Laboratory services shall be in compliance with the requirements found at §133.41(h) of this title and shall have:

(A) laboratory personnel on-site at all times;

(B) perinatal pathology services available;

(C) a blood bank capable of providing blood and blood component therapy; and

(D) neonatal blood gas monitoring capabilities.

(8) Pharmacy services shall be in compliance with the requirements found in §133.41(q) of this title and will have a pharmacist, with experience in neonatal/pediatric and perinatal pharmacology, available at all times.

(A) If medication compounding is done by a pharmacy technician for neonates/infants, a pharmacist will provide immediate supervision of the compounding process;

(B) If medication compounding is done for neonates/infants, the pharmacist will develop checks and balances to ensure the accuracy of the final product.

(C) Total parenteral nutrition appropriate for neonates/infants shall be available.

(9) An occupational or physical therapist with sufficient neonatal expertise shall be available to meet the needs of the population served.

(10) Medical Imaging. Radiology services shall be in compliance with the requirements found in §133.41(s) of this title; will incorporate the "As Low as Reasonably Achievable" principle when obtaining imaging in neonatal and maternal patients; and shall have:

(A) personnel appropriately trained in the use of x-ray equipment shall be on-site and available at all times; personnel appro-

riately trained in ultrasound, computed tomography, magnetic resonance imaging, echocardiography, and/or cranial ultrasound equipment shall be on-site within one hour of an urgent request; fluoroscopy shall be available;

(B) interpretation of neonatal and perinatal diagnostic imaging studies by radiologists with pediatric expertise at all times; and

(C) pediatric echocardiography with pediatric cardiology interpretation and consultation within one hour of an urgent request.

(11) Speech language pathologist, an occupational therapist, or a physical therapist with neonatal/infant experience shall be available to evaluate and manage feeding and/or swallowing disorders.

(12) A respiratory therapist, with experience and specialized training in the respiratory support of neonates/infants, whose credentials have been reviewed by the NMD, shall be immediately available on-site.

(13) Resuscitation. Written policies and procedures shall be specific to the facility for the stabilization and resuscitation of neonates based on current standards of professional practice.

(A) Each birth shall be attended by at least one provider who demonstrates current status of successful completion of the NRP whose primary responsibility is the management of the neonate and initiating resuscitation.

(B) At least one person must be immediately available on-site with the skills to perform a complete neonatal resuscitation including endotracheal intubation, establishment of vascular access and administration of medications.

(C) Additional providers who demonstrate current status of successful completion of the NRP shall attend each neonate in the event of multiple births.

(D) Each high-risk delivery shall have in attendance at least two providers who demonstrate current status of successful completion of the NRP whose only responsibility is the management of the neonate.

(E) A full range of resuscitative equipment, supplies, and medications shall be immediately available for trained staff to perform complete resuscitation and stabilization on each neonate/infant.

(14) Perinatal education. A registered nurse with experience in neonatal care, including neonatal intensive care, shall provide supervision and coordination of staff education.

(15) Pastoral care and/or counseling shall be provided as appropriate to the patient population served.

(16) Social services shall be provided as appropriate to the patient population served.

(17) Ensure the timely evaluation of retinopathy of prematurity, monitoring, referral for treatment and follow-up, in the case of an at-risk infant.

(18) A certified lactation consultant shall be available at all times.

(19) Ensure provisions for follow up care at discharge for infants at high risk for neurodevelopmental, medical, or psychosocial complications.

§133.189. *Neonatal Designation Level IV.*

(a) Level IV (Advanced Neonatal Intensive Care Unit). The Level IV neonatal designated facility will:

(1) provide care for the mothers and comprehensive care of their infants of all gestational ages with the most complex and critically ill neonates/infants with any medical problems, and/or requiring sustained life support;

(2) ensure that a comprehensive range of pediatric medical subspecialists and pediatric surgical subspecialists are available to arrive on-site for face to face consultation and care, and the capability to perform major pediatric surgery including the surgical repair of complex conditions;

(3) have skilled personnel with documented training, competencies and continuing education specific for the patient population served;

(4) facilitate transports; and

(5) provide outreach education to lower level designated facilities.

(b) Neonatal Medical Director (NMD). The NMD shall be a physician who is a board eligible/certified neonatologist and demonstrates a current status on successful completion of the Neonatal Resuscitation Program (NRP).

(c) If the facility has its own transport program, there shall be an identified Transport Medical Director (TMD). The TMD and/or Co-Director shall be a physician who is a board eligible/certified neonatologist.

(d) Program Functions and Services.

(1) Triage and assessment of all patients admitted to the perinatal service with identification of pregnant patients who are at high risk of delivering a neonate that requires a higher level of care who will be transferred to another facility prior to delivery unless the transfer is unsafe.

(2) Supportive and emergency care shall be delivered by appropriately trained personnel, for unanticipated maternal-fetal problems that occur during labor and delivery, through the disposition of the patient.

(3) The ability to perform an emergency cesarean delivery within 30 minutes.

(4) Board certified/board eligible neonatologists whose credentials have been reviewed by the NMD and is on call, and who:

(A) shall demonstrate a current status on successful completion of the NRP;

(B) have completed continuing education annually, specific to the care of neonates; and

(C) shall be on-site and immediately available at the neonate/infant bedside as requested.

(5) Pediatric anesthesiologists shall directly provide anesthesia care to the neonate, in compliance with the requirements in §133.41(a) of this title.

(6) A dietitian or nutritionist who has special training in perinatal and neonatal nutrition and can plan diets that meet the special needs of neonates in compliance with the requirements in §133.41(d) of this title.

(7) A comprehensive range of pediatric medical subspecialists and pediatric surgical subspecialists will be immediately available to arrive on-site for face to face consultation and care for an urgent request.

(8) Laboratory services shall be in compliance with the requirements in §133.41(h) of this title and shall have:

(A) appropriately trained and qualified laboratory personnel on-site at all times;

(B) perinatal pathology services;

(C) a blood bank capable of providing blood and blood component therapy; and

(D) neonatal/infant blood gas monitoring capabilities.

(9) Pharmacy services shall be in compliance with the requirements in §133.41(q) of this title and shall have a pharmacist, with experience in neonatal/pediatric and perinatal pharmacology available on-site at all times.

(A) If medication compounding is done by a pharmacy technician for neonates/infants, a pharmacist will provide immediate supervision of the compounding process.

(B) If medication compounding is done for neonates/infants, the pharmacist shall develop and implement checks and balances to ensure the accuracy of the final product.

(C) Total parenteral nutrition appropriate for neonates/infants shall be available.

(10) An occupational or physical therapist with neonatal expertise shall be available to meet the needs of the population served.

(11) Medical Imaging. Radiology services shall be in compliance with the requirements in §133.41(s) of this title will incorporate the "As Low as Reasonably Achievable" principle when obtaining imaging in neonatal and maternal patients; and shall have:

(A) personnel appropriately trained in the use of x-ray equipment shall be on-site and available at all times; personnel appropriately trained in ultrasound, computed tomography, magnetic resonance imaging, echocardiography and/or cranial ultrasound equipment shall be on-site within one hour of an urgent request; and fluoroscopy shall be available at all times;

(B) neonatal and perinatal diagnostic imaging studies available at all times with interpretation by radiologists with pediatric expertise, available within one hour of an urgent request; and

(C) pediatric echocardiography with pediatric cardiology interpretation and consultation within one hour of an urgent request.

(12) Speech language pathologist with neonatal expertise shall be available to evaluate and manage feeding and/or swallowing disorders.

(13) A respiratory therapist, with experience and specialized training in the respiratory support of neonates/infants, whose credentials have been reviewed by the Neonatal Medical Director, shall be on-site and immediately available.

(14) Resuscitation. The facility shall have written policies and procedures specific to the facility for the stabilization and resuscitation of neonates/infants based on current standards of professional practice.

(A) Each birth shall be attended by at least one provider who demonstrates current status of successful completion of the NRP whose primary responsibility is the management of the neonate and initiating resuscitation.

(B) At least one person must be immediately available on-site with the skills to perform a complete neonatal resuscitation in-

cluding endotracheal intubation, establishment of vascular access and administration of medications.

(C) Additional providers who demonstrate current status of successful completion of the NRP shall attend each neonate in the event of multiple births.

(D) Each high-risk delivery shall have in attendance at least two providers who demonstrate current status of successful completion of the NRP whose only responsibility is the management of the neonate.

(E) A full range of resuscitative equipment, supplies and medications shall be immediately available for trained staff to perform resuscitation and stabilization on each neonate/infant.

(15) Perinatal Education. A registered nurse with experience in neonatal care, including neonatal intensive care, shall provide supervision and coordination of staff education.

(16) Pastoral care and/or counseling shall be provided as appropriate to the patient population served.

(17) Social services shall be provided as appropriate to the patient population served.

(18) The facility must ensure the timely evaluation and treatment of retinopathy of prematurity on-site by a pediatric ophthalmologist or retinal specialist with expertise in retinopathy of prematurity in the event that an infant at risk is present, and a documented policy for the monitoring, treatment and follow-up of retinopathy of prematurity.

(19) A certified lactation consultant shall be available at all times.

(20) Ensure provisions for follow up care at discharge for infants at high risk for neurodevelopmental, medical, or psychosocial complications.

§133.190. *Survey Team.*

(a) The survey team composition shall be as follows:

(1) Level I facilities neonatal program staff shall conduct a self-survey, documenting the findings on the approved office survey form. The office may periodically require validation of the survey findings, by an on-site review conducted by department staff.

(2) Level II facilities shall be surveyed by a team that is multi-disciplinary and includes at a minimum of one neonatologist and one neonatal nurse, all approved in advance by the office and currently active in the management of neonatal patients at a facility providing the same or a higher level of neonatal care.

(3) Level III facilities shall be surveyed by a team that is multi-disciplinary and includes at a minimum of one neonatologist and one neonatal nurse, all approved in advance by the office and currently active in the management of neonatal patients at a facility providing the same or a higher level of neonatal care. An additional surveyor may be requested by the facility or at the discretion of the office.

(4) Level IV facilities shall be surveyed by a team that is multi-disciplinary and includes at a minimum of one neonatologist, a surgeon with pediatric expertise and one neonatal nurse, all approved in advance by the office and currently active in the management of neonatal patients at a facility providing the same level of neonatal care. If the facility holds a current pediatric surgery verification by the American College of Surgeons, the facility may be exempted from having a pediatric surgeon as a member of the survey team.

(b) Office-credentialed surveyors must meet the following criteria:

(1) have at least three years of experience in the care of neonatal patients;

(2) be currently employed/practicing in the coordination of care for neonatal patients;

(3) have direct experience in the preparation for and successful completion of neonatal facility verification/designation;

(4) have successfully completed an office-approved neonatal facility site surveyor course and be successfully re-credentialed every four years; and

(5) have current credentials as follows:

(A) a registered nurse who is current in the NRP and has successfully completed an office approved site survey internship; or

(B) a physician who is board certified in the respective specialty, current in the NRP, and has successfully completed an office approved site survey internship; or

(C) a surgeon who is board certified, has demonstrated expertise in pediatric surgery, and has successfully completed an office approved site survey internship.

(c) All members of the survey team, except department staff, shall come from a Perinatal Care Region outside the facility's location and at least 100 miles from the facility. There shall be no business or patient care relationship or any potential conflict of interest between the surveyor or the surveyor's place of employment and the facility being surveyed.

(d) The survey team shall evaluate the facility's compliance with the designation criteria by:

(1) reviewing medical records; staff rosters and schedules; documentation of QAPI Program activities including peer review; the program plan; policies and procedures; and other documents relevant to neonatal care;

(2) reviewing equipment and the physical plant;

(3) conducting interviews with facility personnel; and

(4) evaluating appropriate use of telemedicine capabilities where applicable.

(e) All information and materials submitted by a facility to the office under Health and Safety Code, §241.183(d), are subject to confidentiality as articulated in Health and Safety Code, §241.184, Confidentiality; Privilege, and are not subject to disclosure under Government Code, Chapter 552, or discovery, subpoena, or other means of legal compulsion for release to any person.

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

Filed with the Office of the Secretary of State on May 20, 2016.

TRD-201602481

Lisa Hernandez

General Counsel

Department of State Health Services

Effective date: June 9, 2016

Proposal publication date: November 20, 2015

For further information, please call: (512) 776-6972



PART 11. CANCER PREVENTION AND RESEARCH INSTITUTE OF TEXAS

CHAPTER 702. INSTITUTE STANDARDS ON ETHICS AND CONFLICTS, INCLUDING THE ACCEPTANCE OF GIFTS AND DONATIONS TO THE INSTITUTE

25 TAC §702.11

The Cancer Prevention and Research Institute of Texas ("CPRIT" or "the Institute") adopts amendments to §702.11 regarding professional conflicts of interest without changes to the proposed text as published in the March 4, 2016, issue of the *Texas Register* (41 TexReg 1648).

Reasoned Justification

The amendment to §702.11 clarifies that a professional conflict of interest includes serving as a consultant or contractor to a grant applicant. It also expands the applicability of the rule to include the time that the individual is actively seeking to represent a grant applicant. Finally, the amendment provides examples of activities that constitute "actively seeking to represent" such that the rule is invoked.

Summary of Public Comments and Staff Recommendation

No public comments germane to the proposed rule amendment were received.

The rule changes are adopted under the authority of the Texas Health and Safety Code Annotated, §102.108 and §102.251, which provides the Institute with broad rulemaking authority to administer the chapter, including rules for awarding grants.

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

Filed with the Office of the Secretary of State on May 23, 2016.

TRD-201602503

Heidi McConnell

Chief Operating Officer

Cancer Prevention and Research Institute of Texas

Effective date: June 12, 2016

Proposal publication date: March 4, 2016

For further information, please call: (512) 463-3190



CHAPTER 703. GRANTS FOR CANCER PREVENTION AND RESEARCH

25 TAC §703.12, §703.21

The Cancer Prevention and Research Institute of Texas ("CPRIT" or "the Institute") adopts amendments to §703.12 and §703.21 regarding unallowable grantee expenses and the process to appeal a waiver of reimbursement of project costs without changes to the proposed text as published in the March 25, 2016, issue of the *Texas Register* (41 TexReg 2301).

Reasoned Justification

The adopted change to §703.12 specifies that fees and expenses associated with acquiring or maintaining a visa are not

authorized expenses to be paid with grant funds. The adopted change to §703.21 adds an appeal process if a grantee's reimbursement of project expenses is waived by CPRIT. Project costs are waived when a grantee fails to submit a financial status report within the required timeframe.

Summary of Public Comments and Staff Recommendation

CPRIT received one comment regarding the proposed change to §703.21 from The University of Texas at Dallas (UTD). UTD did not disagree with the proposed change but requested more information on the process to appeal the waiver of a grantee's right to reimbursement of project costs, including information on the appropriate tab to use to submit the request through CPRIT's electronic grant management system.

CPRIT declines to make a change to the rule as originally proposed. Information requested by the commenter is ministerial. CPRIT will provide instructions to grantees regarding how to submit and document an appeal. The submittal process instructions will not alter the policy behind the proposed rule change.

The amendments are adopted under the authority of the Texas Health and Safety Code Annotated, §102.108 and §102.251, which provides the Institute with broad rulemaking authority to administer the chapter, including rules for awarding grants.

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

Filed with the Office of the Secretary of State on May 23, 2016.

TRD-201602502

Heidi McConnell

Chief Operating Officer

Cancer Prevention and Research Institute of Texas

Effective date: June 12, 2016

Proposal publication date: March 25, 2016

For further information, please call: (512) 463-3190



TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 21. TRADE PRACTICES

SUBCHAPTER KK. HEALTH CARE

REIMBURSEMENT RATE INFORMATION

28 TAC §§21.4501 - 21.4507

The Texas Department of Insurance adopts amendments to 28 TAC §§21.4501 - 21.4507, concerning health care reimbursement rate information. The amendments are adopted with changes to the proposed text published in the November 20, 2015, issue of the *Texas Register* (40 TexReg 8158).

TDI modified "§21.4705" to "§21.4505" in §21.4507(c)(1)(C), (c)(2)(B), (c)(3), (c)(4)(C), (c)(5)(B), (c)(6)(B), (c)(6)(C), and (d)(1) of the proposal text to correct the citation. The adopted rules reference the correct citation.

TDI modified "subchapter" to "title" in §§21.4502(a), 21.4505(b), 21.4507(c)(1)(C), 21.4507(c)(2)(C), 21.4507(c)(3),

21.4507(c)(4)(C), 21.4507(c)(5)(B), 21.4507(c)(6)(B) - (C), and 21.4507(d)(1).

In response to a comment, TDI removed §21.4502(e). TDI will explain issuers' ability to include self-funded data in data collection instructions provided to issuers prior to the due date of each annual data call, instead of including it in the rule text. Because of the removal of subsection (e), TDI changed §21.4502(f) to §21.4502(e) and §21.4502(g) to §21.4502(f).

In response to a comment, TDI modified the definition of "allowed amount" at §21.4503(1) to use the term "payment" instead of "reimbursement."

TDI added the words "and §38.353, which is" and "or a state employee health plan under Insurance Code Chapters 1551, 1575, 1579, and 1601" to the definition of applicable health benefit plan at §21.4503(3). These plans are included in the applicability section of Insurance Code §38.353, and including them in the definition adds clarity.

In response to a comment, TDI modified the definition of "free-standing emergency medical care facility" at §21.4503(6) as one that is "required to be licensed under Health and Safety Code Chapter 254."

In response to a comment, TDI modified the definition of "in-network claims" under §21.4503(10) to clarify that the provider must be contracted "under the plan."

TDI made minor changes to terminology in order to consistently use the term "applicable health benefit plan issuer" in §21.4503(18) and §21.4506(a).

In response to a comment, TDI made minor changes to terminology in order to consistently use the term "health care services" in §§21.4503(4), 21.4503(10), 21.4503(12), and 21.4505(b).

In response to a comment, TDI made minor changes to terminology in order to consistently use the term "provider" in §21.4503(16) and §21.4504.

TDI removed the words "in §21.4506 of this subchapter" from §21.4505(a).

TDI removed the words "for in-network and out-of-network claims" from §21.4507(b).

TDI reordered the list of services at §21.4507(c)(1)(C) by moving "back surgery - laminectomy" from §21.4507(c)(1)(C)(vi) to §21.4507(c)(1)(C)(vii) in order to group services together that are collected for both inpatient and outpatient.

TDI added the words "pathology claims" and "as applicable" to §21.4507(c)(2)(B). The changes modify specifications for outpatient professional claims data in order to align the requirements for professional outpatient claims with those for professional inpatient claims.

TDI removed the words "free-standing clinic" from §21.4507(c)(2)(B) because the place-of-service codes used for professional claims data do not include a code for free-standing clinics.

TDI reordered and renumbered the list of outpatient services at §21.4507(c)(2)(C) and added "back surgery - laminectomy" to the list at §21.4507(c)(2)(C)(i). TDI reordered and renumbered the list of services to accommodate the additional service and to group the services by those collected in both inpatient and outpatient settings. "Back surgery - laminectomy" was added because

it is on the list of procedures collected for inpatient, but the procedure is also commonly performed on an outpatient basis.

TDI renamed "myringotomy" to "tympanostomy" and renumbered it from §21.4507(c)(2)(C)(vii) to §21.4507(c)(2)(C)(ix). The term tympanostomy provides a more accurate description of the service for which data is collected.

TDI added a space between (ii) and "evocative suppression testing" at §21.4507(c)(5)(B)(ii).

TDI removed the word "lab" at §21.4507(c)(6) to clarify data for rural health clinic office visits is not limited to laboratory services.

TDI added the words "by time or complexity" to the description of office visits under §21.4507(c)(6)(B)(i) - (iii). The change clarifies that data for office visits should be specific to the level of time or complexity involved.

TDI changed §21.4507(b) and §21.4507(c)(1)(C) to insert the words "of this title" following a references to other sections.

TDI changed capitalization in the introductory phrases in §§21.4507(c)(2) - (6), 21.4503(1) - (5), 21.4503(7) - (16), and 21.4507 for consistency with TDI rule drafting style for introductory phrases.

TDI removed the introductory phrase "Data submission requirements" in §21.4507(d) for consistency within the section.

In response to a comment, TDI deleted §21.4507(d)(4)(C) to remove reference to "self-funded employer group plans." As a result of this change, §21.4507(d)(4)(D) was changed to §21.4507(d)(4)(C) and §21.4507(d)(4)(E) was changed to §21.4507(d)(4)(D).

These changes do not introduce new subject matter, create additional costs, or affect persons other than those previously on notice from the proposal.

REASONED JUSTIFICATION. The amendments to §§21.4501 - 21.4507 are necessary because data collected under the previously adopted rules do not produce a consistent and accurate representation of average market prices for health care services.

In 2007, the Legislature adopted Insurance Code Chapter 38, Subchapter H, which authorized TDI to collect annually data concerning health benefit plan reimbursement rates. On January 9, 2011, TDI adopted rules that created a data collection methodology to collect certain information related to reimbursement rates, and TDI annually published the information collected in a Reimbursement Rate Guide on its website. The purpose of the guide is to help consumers estimate costs in advance of planned procedures and mitigate balance billing.

TDI found that much of the data submitted by carriers under the rules adopted in 2011 did not accurately reflect costs that consumers are likely to face. In collaboration with the University of Texas School of Public Health, TDI improved the data collection methodology, which is adopted in these rules. The methodology will improve the quality and relevance of data provided to consumers through the Reimbursement Rate Guide.

Past data was orientated around single medical billing codes, which could not provide consumers with a clear picture of treatment event costs because the full cost of a procedure may include multiple claims, each including multiple lines of billing codes. The adopted methodology presents more accurate procedure costs by using key target codes. For any claim that includes a target code, the issuer will provide the full cost of the claim, inclusive of the target code and other services provided.

In addition to collecting a more comprehensive set of claims costs, the adopted amendments also include an explicit method for grouping different claims related to the same medical service into a treatment event. This will allow TDI to present cost estimates to consumers that represent the total cost of care, rather than separately presenting facility costs, physician costs, and anesthesiologist costs.

The adopted methodology: (i) improves accuracy of price estimates for inpatient and outpatient procedures by collecting data at the claim level (rather than the line level); (ii) makes data more meaningful by grouping separate cost components by treatment event; (iii) mitigates the influence of outliers by collecting median amounts; and (iv) allows TDI to present a likely range of costs by collecting minimum/maximum and 25th/75th percentiles.

TDI hosted stakeholder meetings on April 15, 2014, and November 13, 2014, to discuss changes to the data collection methodology and potential changes to TDI's data collection rules at 28 TAC §§21.4501 - 21.4507. TDI posted an informal draft of the rule text on its website April 17, 2015, and invited further public comment. Originally set to expire May 15, 2015, TDI extended the informal comment period until September 1, 2015, to coincide with the due date for the reimbursement rate data call. TDI issued the annual reimbursement rate data call bulletin on June 5, 2015, and invited issuers to submit a limited set of test data using the methodology proposed in the informal draft of the rule, instead of the full reporting of the 2015 reimbursement rate information under Form LHL616 and the current rule. Issuers were encouraged to communicate problems or concerns with the methodology as well as costs associated with compliance.

In selecting procedures for purposes of data collection, TDI considered several factors. First, TDI considered services that are widely used and that consumers usually plan for in advance of receiving the service. TDI surveyed existing price transparency websites for the services to include. TDI prioritized services, such as imaging, for which the price may vary significantly based on the place of service. TDI also considered consumers' need for data on fair market prices for services for which they may be balance billed, such as pathology or emergency care.

As referenced in adopted §21.4505(b), the medical billing codes and instructions for the data filing for the calendar year 2015 reporting period are currently available on TDI's website. The medical billing codes on the website have not changed since being posted on December 29, 2015.

The following discussion provides an overview of and explains additional reasoned justification for the adopted amendments to the rules.

Section 21.4501. Purpose. The adopted amendment to §21.4501(3) deletes reference to the Department of State Health Services' publication.

Section 21.4502. Applicability. The adopted amendments to §21.4502 delete the word "group" and insert "applicable" before "health benefit plan" to conform to adopted amendments at §21.4503(3). Adopted amendments add new subsection (e), which exempts an applicable health benefit plan issuer with fewer than 20,000 covered lives in comprehensive health coverage, as reported on Part 1 of the National Association of Insurance Commissioners Supplemental Health Care Exhibit at the end of the applicable reporting period, from reporting requirements under §21.4506, as provided in Insurance Code §38.353(e). Adopted amendments add new subsection (f)(1) and (2), which provide that, under Insurance Code §38.353(e),

the subchapter does not apply to a Medicare supplemental policy as defined in §1882(g)(1), Social Security Act (42 U.S.C. §1395ss) or a Medicare Advantage plan offered under a contract with the federal Centers for Medicare and Medicaid Services.

Section 21.4503. Definitions. The adopted amendments to §21.4503 add new definitions, update current definitions, and delete definitions no longer relevant to the adopted rule.

Adopted §21.4503(1) defines "allowed amount" as an amount that the applicable health benefit plan issuer allows as payment for a health care service or group of services, including amounts for which a patient is responsible due to deductibles, copayments, or coinsurance.

Adopted §21.4503(2) defines "ambulatory surgical center" as a facility licensed under Health and Safety Code Chapter 243.

Adopted §21.4503(3) changes "group health benefit plan," previously defined at §21.4503(1), to "applicable health benefit plan" and updates current text to include an exclusive provider benefit plan consistent with Insurance Code §1301.0042 and state employee health benefit plans under Insurance Code Chapters 1551, 1575, 1579, and 1601.

Adopted §21.4503(4) defines "billed amount" as the amount charged for health care services on a claim submitted by a provider.

Adopted §21.4503(5) defines "facility claims" as any claim for health care services provided by a facility as defined in 28 TAC §3.3702.

Adopted §21.4503(6) adds "freestanding emergency medical care facility" and defines it as a freestanding emergency medical care facility required to be licensed under Health and Safety Code Chapter 254.

Adopted §21.4503(7) adds "geographic regions" and defines it as a three-digit ZIP code, representing the collection of ZIP codes that share the same first three digits. For purposes of data submitted under this subchapter, a geographic region must be located in Texas, in full or in part.

Adopted §21.4503(8) adds "imaging claims" and defines it as claims for radiological services furnished in a provider's office, outpatient hospital, or other outpatient environment.

Adopted §21.4503(9) adds "inpatient procedure claims" and defines it as claims for health care services furnished in a hospital, as defined by Insurance Code §1301.001, to a patient who is formally admitted.

Adopted §21.4503(10) adds "in-network claims" and defines it as claims filed with an applicable health benefit plan for health care treatment, services, or supplies furnished by a provider that is contracted as an in-network or preferred provider under the plan.

Adopted §21.4503(11) adds "medical billing codes" and defines it as standard code sets used to bill for specific medical services including the Healthcare Common Procedure Coding System (HCPCS) and Diagnosis-Related Group (DRG) system established by the Centers for Medicare and Medicaid Services (CMS), the Current Procedural Terminology (CPT) code set maintained by the American Medical Association, and the International Classification of Diseases (ICD) code sets developed by the World Health Organization.

Adopted §21.4503(12) adds "out-of-network claims" and defines it as claims filed with an applicable health benefit plan for health

care treatment, services, or supplies furnished by a provider who is not contracted as an in-network provider or preferred provider under the plan.

Adopted §21.4503(13) adds "outpatient facility procedure claims" and defines it as claims for health care services provided in an ambulatory surgical center or a hospital, as defined by Insurance Code §1301.001, to a patient who is not formally admitted.

Adopted §21.4503(14) adds "place-of-service code" and defines it as a health care claim code in which "place of service" refers to the type of entity where services were rendered, as specified by a two-digit place-of-service code on a professional health care claim, consistent with the ASC X12N standard for electronic transactions. CMS maintains place-of-service codes.

Adopted §21.4503(15) adds "primary plan" and defines it as it is defined in 28 TAC §3.3503(17).

Adopted §21.4503(16) adds "professional claims" and defines it as any claim for health care services provided by a physician or provider that is not an institutional provider, as defined in Insurance Code §1301.001.

Adopted §21.4503(17) redesignates the current definition of "provider" previously found at §21.4503(4) and adds the word "physician" to the definition.

Adopted §21.4503(18) redesignates the current definition of "reporting period" previously found at §21.4503(5) and replaces "six" with "12," inserts the words "each year," and replaces "June 30" with "December 31." The definition is, "The 12-month interval of time for which a plan or health benefit plan issuer must submit data each year, beginning each January 1 and ending the following December 31."

Adopted §21.4503(19) adds "TDI" and defines it as the Texas Department of Insurance.

Adopted amendments to §21.4503 also delete the definition for "institutional provider" at current §21.4503(2) and "physician" at current §21.4503(3). "Physician" is included in the definition of "provider" in adopted amendment §21.4503(16).

Section 21.4504. Geographic Regions. The adopted amendment requires issuers to report data collected under this subchapter according to the three-digit ZIP code in which the health care service was provided. TDI also notes that publication of health care reimbursement rate information derived from the data may be aggregated across broader geographic regions, if necessary to ensure, consistent with Insurance Code §38.357, that the published information does not reveal the name of any health care provider or health benefit plan issuer.

Section 21.4505. Requirement to Collect Data. The adopted amendments to §21.4505(a) remove the word "group" preceding "health benefit plan" and insert the word "applicable" to conform to adopted amendments at §21.4503(3), add the requirement to collect the data annually, and delete text referring to Form LHL616 to conform to the adopted amendments to §21.4507.

Adopted §21.4505(b) requires that data elements and medical services specified under adopted amendments to §21.4507(b) and (c) must be collected with respect to medical billing codes specified by TDI. The current set of medical billing codes will be available to issuers in a Microsoft Excel template on TDI's website and will be updated no more than annually to account for any changes in standard medical practice and medical billing codes

related to the services specified in the adopted amendment to §21.4507(c).

Adopted §21.4505 deletes subsection (c), related to an exemption that is based on the number of covered lives to conform to adopted amendment §21.4502(e).

Section 21.4506. Submission of Report. The adopted amendments to §21.4506(a) add that, in addition to each plan and health benefit plan issuer identified in §21.4502(a) and (b), the plan or issuer's authorized agent may submit the required data. Adopted amendments to §21.4506(a) also change the deadline for the submission of the required data in annual reporting subsequent to the initial filing to no later than May 1, rather than September 1. Adopted amendments to §21.4506(a) also delete language referencing Form LHL616 to conform with adopted §21.4507.

Adopted §21.4506(b) requires the data be filed electronically as a Microsoft Excel form and emailed to TDI, or uploaded by secure File Transfer Protocol.

Adopted §21.4506(c) alerts issuers that they may use a Microsoft Excel template available on TDI's website to meet the requirements of adopted §21.4501 - 21.4507.

Adopted §21.4506 deletes subsections (d) and (f), both relating to procedures for accessing the report form and acceptance of the End User Agreement to conform to adopted amendments to §21.4507.

Adopted §21.4506 deletes subsection (e) related to an exemption based on the number of covered lives to conform to adopted amendments to §21.4502(e).

Section 21.4507. Data Required. The adopted amendments change the title of the section from "Report Form" to "Data Required," to more accurately describe the section. The adopted amendment to §21.4507 deletes §21.4507(1) - (3) to conform with adopted §21.4507(a) - (d).

Adopted §21.4507(a) requires applicable health benefit plans to include a cover page with each report, and adopted §21.4507(a)(1) - (8) describe the elements to include on the cover page.

Adopted §21.4507(b) requires applicable health benefit plans to submit in-network and out-of-network claims data for each geographic region, as defined by adopted §21.4503, for each service identified in adopted subsection (c) in data columns in the order of the adopted amendments to §21.4507(b)(1) - (17).

Adopted §21.4507(b)(1) adds a data column to report network status of the claims data, using "IN" to indicate in-network claims and "OON" to indicate out-of-network claims. Adopted §21.4507(b)(2) adds a data column to report the geographic region of the claims data, using the three-digit ZIP code to indicate the applicable region. Adopted §21.4507(b)(3) adds a data column to report total number of unique claim identifiers for all claim types. Adopted §21.4507(b)(4) adds a data column to report inpatient procedure facility claims, including total number of discharges. Adopted §21.4507(b)(5) - (18) add 14 additional data columns to the report: total amount billed; total amount allowed; mean amount billed; mean amount allowed; median amount billed; median amount allowed; maximum amount billed; maximum amount allowed; minimum amount billed; minimum amount allowed; lower quartile amount billed, representing the 25th percentile of all amounts billed; lower quartile amount allowed, representing the 25th percentile of all

amounts allowed; upper quartile amount billed, representing the 75th percentile of all amounts billed; and upper quartile amount allowed, representing the 75th percentile of all amounts allowed.

Adopted §21.4507(c) requires issuers to report the data elements identified in adopted §21.4507(b) in the specified manner for each category of services listed in adopted §21.4507(c).

Adopted §21.4507(c)(1) relates to inpatient procedures and requires issuers to report the data separately for facility claims and professional claims. Adopted §21.4507(c)(1)(A) - (C) describe the data to report and adopted §21.4507(c)(1)(C)(i) - (xi) list the services to include.

Adopted §21.4507(c)(2) relates to outpatient procedures and requires issuers to report facility claims and professional claims separately. Adopted §21.4507(c)(2)(A) - (C) describe the data to report for outpatient procedures and adopted §21.4507(c)(2)(C)(i) - (xix) list the services to include.

Adopted §21.4507(c)(3) relates to emergency services and requires issuers to report data on emergency room visits for professional claims for which the place of service is an emergency room or outpatient hospital. Adopted §21.4507(c)(3)(A) - (E) describe the different kinds of emergency room visits to report.

Adopted §21.4507(c)(4) relates to imaging services and requires issuers to report the data separately for facility claims and professional claims. Adopted §21.4507(c)(4)(A) - (C) describe the data to report for imaging services, and adopted §21.4507(c)(4)(C)(i) - (xxvi) list the services to include.

Adopted §21.4507(c)(5) relates to pathology services and requires issuers to report the data only for professional claims for which the place of service is an independent lab. Adopted §21.4507(c)(5)(A) - (B) describe the data to report, and adopted §21.4507(c)(5)(B)(i) - (x) list the services to include.

Adopted §21.4507(c)(6) relates to office visits and requires issuers to report data only for professional claims for which the place of service is an office or rural health clinic. Adopted §21.4507(c)(6)(A) - (C) describe the data to report for office visits, and adopted §21.4507(c)(6)(B)(i) - (x) list the types of office visits to include.

Adopted §21.4507(d) specifies that issuers must submit data required in accordance with adopted §21.4507(d)(1) - (4). Adopted §21.4507(d)(1) requires issuers to report data elements according to medical billing codes specified by TDI. Adopted §21.4507(d)(2) requires issuers to separately report data for insurance and HMO, and to exclude any HMO claims paid through a capitation agreement. Adopted §21.4507(d)(3) requires issuers to separately report data for in-network and out-of-network claims. Adopted §21.4507(d)(4) requires that issuers filter claims, and adopted §21.4507(d)(4)(A) - (D) describes the filters to apply.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

General Comment.

Comment: A commenter expressed concern regarding the lack of consistency in referring to health care services and recommended separately specifying "medical care," in order to separately reference physician-only services where the rules generally reference "health care services." This change was recommended for §§21.4501(1), 21.4501(3), 21.4503(1), 21.4503(9), 21.4503(13), 21.4503(16), 21.4503(17), 21.4504, and 21.4505(b).

Agency Response: TDI agrees with the recommendation for consistency, but instead of the requested changes has made nonsubstantive changes to §§21.4503(4), 21.4503(10), 21.4503(12), and 21.4505(b) to consistently use the term "health care services." "Health care services" broadly includes services provided by physicians, facilities, and other health care practitioners so TDI declines to make a change to distinguish physician-only services.

Comment on §21.4502(e).

Comment: One commenter expressed concern that the flexibility provided to allow issuers to report data for self-insured plans could lead to an interpretation that the state has authority over self-insured plans and recommends removing this subsection from the rule text.

Agency Response: TDI agrees that the statutory authority for this rule limits the applicability to plans included under Insurance Code §38.353, and deletes both §21.4502(e) and §21.4507(d)(4)(C) to remove reference to self-insured plans. While the rule does not require issuers to report data for self-insured plans, in the interest of developing a strong data set that reflects the Texas health care market, TDI will accept data for self-insured plans from any entity that wishes to submit that information. TDI will explain this flexibility in the data collection instructions, instead of including it in the rule text.

Comment on §21.4503.

Comment: A commenter requested that TDI retain the definition of "physician," which is deleted under the rule proposal.

Agency Response: TDI disagrees that this definition is necessary and declines to make the change.

Comment on §21.4503(1).

Comment: One commenter challenged the term "reimbursement" within the definition for "allowed amount," noting that "reimbursement" implies the plan is making the patient whole, and recommended instead using the term "payment," which more accurately describes the potential for an allowed amount to encompass cost-sharing for which the plan does not reimburse the patient.

Agency Response: TDI agrees and revises the rule text to make this change.

Comment on §21.4503(6).

Comment: A commenter questioned the proposed definition of "freestanding emergency medical care facility," which tracks the statutory definition in the Health and Safety Code, but which is very broad. The commenter recommended that the term instead be defined as a "freestanding emergency medical care facility required to be licensed under Health and Safety Code Chapter 254."

Agency Response: TDI agrees that the definition as proposed may be overly broad, and revises the definition as suggested. The term "freestanding emergency medical care facility" is used in §21.4507(c)(3) to make clear that data should not be limited to claims for services provided in an emergency room that is physically attached to a hospital. Generally, issuers should provide data based on the place of service indicated on the claim, and existing place-of-service codes do not distinguish between freestanding and hospital-based emergency rooms.

Comment on §21.4503(10).

Comment: A commenter recommended a change to the definition of "in-network claims," to clarify that the provider must be in-network "under the plan." The commenter also recommends striking "contracted as an," from the definition, noting that some providers may be contracted with the issuer, but out-of-network for certain plans offered by the issuer.

Agency Response: TDI accepts the comment in part, and adds the term, "under the plan," to the definition, while retaining "contracted as an." This makes clear that in-network claims are those with which the provider is contracted as an in-network or preferred provider under the plan.

Comment on §21.4504.

Comment: One commenter recommended that the qualifier "health care," be removed from the term "health care provider," since the defined term is simply "provider."

Agency Response: TDI accepts this comment, and for consistency, also strikes the term "health care" from §21.4503(16).

Comment on §21.4507(c)(2).

Comment: A commenter requested clarification on the types of facilities considered to be a "freestanding clinic," under §21.4507(c)(2).

Agency Response: Generally, the environment in which services were provided is indicated by the standard codes used on claim forms. For a facility claim, the bill code would indicate the facility type (clinic), and the bill classification (freestanding). A freestanding clinic is only an applicable service environment for facility claims for certain outpatient procedures. TDI deletes the term "free standing clinic" from §21.4507(c)(2)(B), which references place-of-service codes for professional claims, because there is not a place-of-service code for freestanding clinics.

NAMES OF THOSE COMMENTING FOR AND AGAINST THE PROPOSAL.

For with Changes: The Texas Association of Health Plans and the Texas Medical Association.

Against: None.

STATUTORY AUTHORITY. The amendments are adopted under Insurance Code §§38.351, 38.352, 1301.001, 1301.0042, 843.002, 38.353, 38.354, 38.355, 38.357, 38.358, and 36.001.

Section 38.351 provides that the purpose of Subchapter H is to authorize TDI to collect data concerning health benefit plan reimbursement rates in a uniform format; and disseminate, on an aggregate basis for geographical regions in the state, information concerning health care reimbursement rates derived from the data.

Section 38.352 provides that in Subchapter H, "group health benefit plan" means a preferred provider benefit plan as defined by §1301.001 or an evidence of coverage for a health care plan that provides basic health care services as defined by §843.002.

Section 1301.001 provides at paragraph (9) that preferred provider benefit plan means a benefit plan in which an insurer provides, through its health insurance policy, for the payment of a level of coverage that is different from the basic level of coverage provided by the health insurance policy if the insured person uses a preferred provider. Section 1301.001 provides at paragraph (2) that health insurance policy means a group or individual insurance policy, certificate, or contract providing

benefits for medical or surgical expenses incurred as a result of an accident or sickness.

Section 1301.0042 provides that a provision of the Insurance Code or another insurance law of this state that applies to a preferred provider benefit plan applies to an exclusive provider benefit plan except to the extent that the commissioner determines the provision to be inconsistent with the function and purpose of an exclusive provider benefit plan.

Section 843.002(9) provides that evidence of coverage means any certificate, agreement, or contract, including a blended contract, that is issued to an enrollee and that states the coverage to which the enrollee is entitled.

Section 38.353(e) permits the commissioner to exclude a type of health benefit plan from the requirements of Subchapter H if the commissioner finds that data collected in relation to the health benefit plan would not be relevant to accomplishing the purposes of the subchapter.

Section 38.354 grants the commissioner authority to adopt rules as provided by Insurance Code Chapter 36, Subchapter A to implement Subchapter H.

Section 38.355(a) requires each health benefit plan issuer to submit aggregate reimbursement rates by region paid by the health benefit plan issuer for health care services identified by TDI, in the form and manner and at the time required by TDI. Section 38.355(b) requires that TDI establish a standardized format by rule for the submission of the data submitted under the section to permit comparison of health care reimbursement rates. The section also requires TDI, to the extent feasible, to develop the data submission requirements in a manner that allows collection of reimbursement rates as a dollar amount and not by comparison to other standard reimbursement rates. Section 38.355(c) requires TDI to specify the period for which reimbursement rates must be filed.

Section 38.357 provides that the published information may not reveal the name of any health care provider or health benefit plan issuer and authorizes TDI to make the aggregate health care reimbursement rate information available through TDI's website.

Section 38.358 provides that health plan issuers that fail to submit data as required are subject to an administrative penalty under Chapter 84.

Section 36.001 authorizes the commissioner to adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

§21.4501. *Purpose.*

The purpose of this subchapter is to:

- (1) prescribe the data collection and submission requirements for the submission of data related to health care reimbursement rates by health benefit plan issuers;
- (2) specify the definitions necessary to implement Insurance Code Chapter 38, Subchapter H; and
- (3) facilitate TDI's publication of aggregate health care reimbursement rate information derived from the data collected under this subchapter.

§21.4502. *Applicability.*

- (a) This subchapter applies to the issuer of an applicable health benefit plan as defined in §21.4503 of this title and as provided by Insurance Code §38.353(a):

- (1) an insurance company;
- (2) a group hospital service corporation;
- (3) a fraternal benefit society;
- (4) a stipulated premium company;
- (5) a reciprocal or interinsurance exchange; and
- (6) a health maintenance organization (HMO).

(b) As provided in Insurance Code §38.353(b), and notwithstanding any provision in Insurance Code Chapters 1551, 1575, 1579, or 1601 or any other law, this subchapter applies to:

- (1) a basic coverage plan under Insurance Code Chapter 1551;
- (2) a basic plan under Insurance Code Chapter 1575;
- (3) a primary care coverage plan under Insurance Code Chapter 1579; and
- (4) basic coverage under Insurance Code Chapter 1601.

(c) Under Insurance Code §38.353(d), this subchapter does not apply to:

- (1) standard health benefit plans provided under Insurance Code Chapter 1507;
- (2) childrens' health benefit plans provided under Insurance Code Chapter 1502;
- (3) health care benefits provided under a workers' compensation insurance policy;
- (4) Medicaid managed care programs operated under Government Code Chapter 533;
- (5) Medicaid programs operated under Human Resources Code Chapter 32; or
- (6) the state child health plan operated under Health and Safety Code Chapters 62 or 63.

(d) Notwithstanding subsection (c)(1) of this section, an applicable health benefit plan issuer is not prohibited from electively including data concerning reimbursement rates for standard health benefit plans provided under Insurance Code Chapter 1507 in its submission of the report required in §21.4506 of this title for purposes of administrative convenience. Data from all other plans identified in subsection (c) of this section must be excluded from the report.

(e) An applicable health benefit plan issuer with fewer than 20,000 covered lives in comprehensive health coverage as reported on Part 1 of the National Association of Insurance Commissioners Supplemental Health Care Exhibit as of the end of the applicable reporting period is not required to submit a report under §21.4506.

(f) Under §38.353(e), this subchapter does not apply to:

- (1) a Medicare supplemental policy as defined by §1882(g)(1), Social Security Act (42 U.S.C. §1395ss); or
- (2) a Medicare Advantage plan offered under a contract with the federal Centers for Medicare and Medicaid Services.

§21.4503. *Definitions.*

The following words and terms when used in this subchapter have the following meanings unless the context clearly indicates otherwise:

(1) Allowed amount--The amount that the applicable health benefit plan issuer allows as payment for a health care service or

group of services, including amounts for which a patient is responsible due to deductibles, copayments, or coinsurance.

(2) Ambulatory surgical center--A facility licensed under Health and Safety Code Chapter 243.

(3) Applicable health benefit plan--A group health benefit plan as specified in Insurance Code §38.352 and §38.353, which is a preferred provider benefit plan as defined by Insurance Code §1301.001, including an exclusive provider benefit plan consistent with Insurance Code §1301.0042, or an evidence of coverage for a health care plan that provides basic health care services as defined by Insurance Code §843.002, or a state employee health plan under Insurance Code Chapters 1551, 1575, 1579, and 1601. The term does not include an HMO plan providing routine dental or vision services as a single health care service plan or a preferred provider benefit plan providing routine vision services as a single health care service plan.

(4) Billed amount--The amount charged for health care services on a claim submitted by a provider.

(5) Facility claims--Any claim for health care services provided by a facility as defined in §3.3702 of this title.

(6) Freestanding emergency medical care facility--A freestanding emergency medical care facility required to be licensed under Health and Safety Code Chapter 254.

(7) Geographic region--A three-digit ZIP code representing the collection of ZIP codes that share the same first three digits. For purposes of data submitted under this subchapter, a geographic region must be located in Texas, in full or in part.

(8) Imaging claims--Claims for radiological services furnished in a provider office, outpatient hospital, or other outpatient environment.

(9) Inpatient procedure claims--Claims for health care services furnished in a hospital, as defined by Insurance Code §1301.001, to a patient who is formally admitted.

(10) In-network claims--Claims filed with an applicable health benefit plan for health care treatment, services, or supplies furnished by a provider contracted as an in-network or preferred provider under the plan.

(11) Medical billing codes--Standard code sets used to bill for specific medical services, including the Healthcare Common Procedure Coding System (HCPCS) and Diagnosis-Related Group (DRG) system established by the Centers for Medicare and Medicaid Services (CMS), the Current Procedural Terminology (CPT) code set maintained by the American Medical Association, and the International Classification of Diseases (ICD) code sets developed by the World Health Organization.

(12) Out-of-network claims--Claims filed with an applicable health benefit plan for health care treatment, services, or supplies furnished by a provider that is not an in-network provider or preferred provider under the plan. Claims paid on an out-of-network basis are considered out-of-network regardless of whether the provider is reimbursed based on an agreed on rate.

(13) Outpatient facility procedure claims--Claims for health care services furnished in an ambulatory surgical center or a hospital, as defined by Insurance Code §1301.001, to a patient who is not formally admitted.

(14) Place-of-service code--A health care claim code where "place of service" refers to the type of entity where services were rendered, as specified by a two-digit place-of-service code on a professional health care claim consistent with the ASC X12N standard

for electronic transactions. Place-of-service codes are maintained by CMS.

(15) Primary plan--As defined in paragraph (17) of this section.

(16) Professional claims--Any claim for health care services provided by a physician or provider that is not an institutional provider, as defined in Insurance Code §1301.001.

(17) Provider--Any physician, practitioner, institutional provider, or other person or organization that furnishes health care services and is licensed or otherwise authorized to practice in this state.

(18) Reporting period--The 12-month interval of time for which a plan or applicable health benefit plan issuer must submit data each year, beginning each January 1 and ending the following December 31.

(19) TDI--Texas Department of Insurance.

§21.4504. *Geographic Regions.*

Issuers must report data collected under this subchapter according to the three-digit ZIP code in which the health care service was provided. Publication of health care reimbursement rate information derived from the data collected under this subchapter may be aggregated by TDI across broader geographic regions if necessary to ensure, consistent with Insurance Code §38.357, that the published information does not reveal the name of any provider or health benefit plan issuer.

§21.4505. *Requirement to Collect Data.*

(a) Each applicable health benefit plan issuer and plan specified in §21.4502(a) and (b) of this title must annually collect the data specified under §21.4507 of this title and prepare and file data as provided.

(b) Data elements and health care services specified under §21.4507(b) and (c) of this title must be collected with respect to medical billing codes specified by TDI. The current set of medical billing codes will be available to issuers in a Microsoft Excel template on TDI's website at www.tdi.texas.gov/health/reimbursement.html. If there are changes in standard medical practice or medical billing codes that necessitate changing the identified billing codes for the services specified in §21.4507(c) of this title, the billing codes on TDI's website will be updated and affected carriers notified, but in no event will these updates occur more often than annually or less than six months before the May 1 reporting deadline.

§21.4506. *Submission of Report.*

(a) Not later than May 1 of each year, each plan and applicable health benefit plan issuer identified in §21.4502(a) and (b) of this title, or the plan or issuer's authorized agent must submit to TDI the data required under §21.4507 of this title.

(b) The data filed under this section is required to be filed electronically as a Microsoft Excel form and emailed to TDI at ReimbursementRates@tdi.texas.gov, or uploaded by secure File Transfer Protocol (FTP).

(c) Issuers may meet the requirements of this subchapter by submitting data using the Microsoft Excel template available on TDI's website at www.tdi.texas.gov/health/reimbursement.html.

§21.4507. *Data Required.*

(a) Applicable health benefit plans must include the following information as a cover page to each report:

- (1) reporting period;
- (2) company or plan name;

(3) NAIC number, issued to the company by the National Association of Insurance Commissioners;

(4) TDI company number;

(5) contact information for the person designated to discuss the report with TDI staff, including name, telephone number, and email address;

(6) an indication of whether the report is for insurance business or HMO business, consistent with subsection (d) of this section, or "NA" for reports limited to self-insured business;

(7) an indication of whether the report includes data on self-insured business, including data for certain governmental plans required to report under Insurance Code Chapter 38, Subchapter H; and

(8) a certification that the information provided is a full and true statement of the data required under this subchapter.

(b) Applicable health benefit plans must submit the following data, for in-network and out-of-network claims, for each geographic region, as defined by §21.4503 of this title, for each service identified in subsection (c) of this section, with data columns reported in the following order:

(1) network status of the claims data, using "IN" to indicate in-network claims and "OON" to indicate out-of-network claims;

(2) geographic region of the claims data, using the three-digit ZIP code to indicate the applicable region;

(3) total number of unique claim identifiers for all claim types;

(4) for inpatient procedure facility claims, the total number of discharges;

(5) total amount billed;

(6) total amount allowed;

(7) mean amount billed;

(8) mean amount allowed;

(9) median amount billed;

(10) median amount allowed;

(11) maximum amount billed;

(12) maximum amount allowed;

(13) minimum amount billed;

(14) minimum amount allowed;

(15) lower quartile amount billed, representing the 25th percentile of all amounts billed;

(16) lower quartile amount allowed, representing the 25th percentile of all amounts allowed;

(17) upper quartile amount billed, representing the 75th percentile of all amounts billed; and

(18) upper quartile amount allowed, representing the 75th percentile of all amounts allowed.

(c) Data elements identified in subsection (b) of this section must be reported in the specified manner for each category of services in this subsection.

(1) Inpatient procedures. Data on inpatient procedure claims must be reported separately for facility claims and professional claims.

(A) Facility claims data must be grouped by discharge and only include claims that occurred in an inpatient hospital.

(B) Professional claims data must be reported separately for surgical claims, radiology claims, pathology claims, and anesthesia claims, as applicable, and only include claims for which the place-of-service code indicates inpatient hospital.

(C) Inpatient procedure claims data must be reported for the full cost of any claim, or the full cost of any discharge for facility claims, for the following services, using the medical billing codes specified by TDI consistent with §21.4505(b) of this title:

- (i) cesarean section delivery;
- (ii) vaginal delivery;
- (iii) hysterectomy;
- (iv) hip replacement;
- (v) knee replacement;
- (vi) coronary artery bypass grafting;
- (vii) back surgery - laminectomy;
- (viii) inguinal hernia repair, unilateral;
- (ix) inguinal hernia repair, bilateral;
- (x) laparoscopic cholecystectomy; and
- (xi) appendectomy.

(2) Outpatient procedures. Data on outpatient facility procedure claims must be reported separately for facility claims and professional claims.

(A) Facility claims data must be reported separately for outpatient procedures that occurred in an outpatient hospital and those that occurred in an ambulatory surgical center or freestanding clinic.

(B) Professional claims data must only include claims for which the place-of-service code indicates outpatient hospital or ambulatory surgical center, and be reported separately for surgical claims, radiology claims, pathology claims, and anesthesia claims, as applicable.

(C) Data on outpatient procedure facility claims must be reported for the full cost of any claim for the following services, using the medical billing codes specified by TDI, consistent with §21.4505(b) of this title:

- (i) back surgery - laminectomy
- (ii) inguinal hernia repair, unilateral;
- (iii) inguinal hernia repair, bilateral;
- (iv) laparoscopic cholecystectomy;
- (v) appendectomy;
- (vi) tonsillectomy;
- (vii) adenoidectomy;
- (viii) tonsillectomy and adenoidectomy;
- (ix) tympanostomy;
- (x) colonoscopy;
- (xi) upper GI endoscopy;
- (xii) upper and lower GI endoscopy;
- (xiii) bunion repair;

- (xiv) ACL repair;
- (xv) rotator cuff repair;
- (xvi) cardiac catheterization, left;
- (xvii) cardiac catheterization, right;
- (xviii) cardiac catheterization, left and right; and
- (xix) percutaneous transluminal coronary angioplasty.

(3) Emergency services. Data on emergency room visits must be reported only for professional claims for which the place of service is an emergency room or outpatient hospital. An emergency room includes both a hospital emergency room and a freestanding emergency medical care facility. Data must be reported at the claim-line level for the following types of emergency room visits, using the medical billing codes specified by TDI, consistent with §21.4505(b) of this title:

- (A) emergency department visit, self-limited or minor problem;
- (B) emergency department visit, low to moderately severe problem;
- (C) emergency department visit, moderately severe problem;
- (D) emergency department visit, problem of high severity; and
- (E) emergency department visit, problem with significant threat to life or function.

(4) Imaging services. Data on imaging services must be reported separately for facility claims and professional claims.

(A) Facility claims must include only claims that occurred in an outpatient hospital, and for which units of service equal one.

(B) Professional claims must be reported only for claims for which units of service equal one. Data must be reported separately for claims billed with CPT code modifiers for the professional component (26), technical component (TC), and a missing or null modifier. Data must be reported separately by place-of-service code:

- (i) outpatient hospital;
- (ii) office; and
- (iii) all other place-of-service codes, excluding office, inpatient hospital, outpatient hospital, and emergency room.

(C) Data must be reported at the claim-line level for the following imaging services, using the medical billing codes specified by TDI, consistent with §21.4505(b) of this title:

- (i) CT abdomen and pelvis;
- (ii) CT scan abdomen;
- (iii) CT scan pelvis;
- (iv) CT scan head/brain;
- (v) CT scan mouth, jaw, and neck;
- (vi) CT scan soft tissue neck;
- (vii) CT scan chest;
- (viii) CT scan lumbar lower spine;
- (ix) CT scan lower extremity;

- (x) MRI brain;
- (xi) MRI head, orbit/face/neck;
- (xii) MRI angiography head;
- (xiii) MRI neck spine;
- (xiv) MRI spine;
- (xv) MRI lumbar spine;
- (xvi) MRI lower limb;
- (xvii) MRI upper limb, other than joint;
- (xviii) MRI lower limb with joint;
- (xix) MRI upper limb with joint;
- (xx) MRI abdomen;
- (xxi) MRI one breast;
- (xxii) MRI both breasts;
- (xxiii) MRI pelvis;
- (xxiv) mammogram, analog;
- (xxv) mammogram with CAD; and
- (xxvi) mammogram, digital.

(5) Pathology services. Data on pathology services must be reported only for professional claims for which the place of service is an independent lab.

(A) Data must be reported at the claim-line level and averaged to reflect the cost per unit of service.

(B) Data must be reported for the following pathology services, using the medical billing codes consistent with §21.4505(b) of this title:

- (i) organ or disease panels;
- (ii) evocative suppression testing;
- (iii) urinalysis;
- (iv) chemistry;
- (v) hematology-coagulation;
- (vi) immunology;
- (vii) microbiology;
- (viii) anatomic pathology;
- (ix) screening cytopathology; and
- (x) complete blood count.

(6) Office visits. Data on office visits must be reported only for professional claims for which the place of service is an office or rural health clinic.

(A) For data elements listed in subparagraph (B) of this paragraph, data must be reported at the claim-line level and averaged to reflect the cost per unit of service.

(B) Data must be reported for the following types of office visits, using the medical billing codes consistent with §21.4505(b) of this title:

- (i) office or other outpatient visit with a new patient, by time or complexity;

- (ii) office or other outpatient visit with an established patient, by time or complexity;

- (iii) office consultation, by time or complexity;

- (iv) preventive medicine evaluation and management, new patient, by age group;

- (v) preventive medicine evaluation and management, established patient, by age group;

- (vi) annual gynecological exam, new patient;

- (vii) annual gynecological exam, established patient;

- (viii) screening pelvic and breast exam;

- (ix) screening pap smear; and

- (x) cytopathology for pap smear.

(C) Data must be reported for well-woman exams so that all costs associated with a claim are reported with respect to the medical billing consistent with §21.4505(b) of this title.

(d) In reporting data required under this section, issuers must:

- (1) report data elements according to medical billing codes specified by §21.4505(b) of this title;

- (2) separately report data for insurance and HMO and exclude any HMO claims paid through a capitation agreement;

- (3) separately report data for in-network and out-of-network claims; and

- (4) filter claims data to include only:

- (A) claims incurred during the 12-month reporting period. For the 2015 reporting period, limit data for inpatient procedure claims and outpatient procedure claims to claims incurred before October 1, 2015, or the date on which the issuer transitioned billing systems to use ICD-10 procedure codes;

- (B) claims for which adjudication is final; exclude pending or denied claims;

- (C) claims for which the issuer is the primary plan responsible for payment; exclude claims for which issuer is the secondary plan; and

- (D) claims with an allowed amount greater than zero.

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

Filed with the Office of the Secretary of State on May 17, 2016.

TRD-201602386

Norma Garcia

General Counsel

Texas Department of Insurance

Effective date: June 6, 2016

Proposal publication date: November 20, 2015

For further information, please call: (512) 676-6584



CHAPTER 34. STATE FIRE MARSHAL SUBCHAPTER B. FIRE SUPPRESSION RATINGS OVERSIGHT

28 TAC §§34.201 - 34.204

The Texas Department of Insurance adopts new 28 TAC Chapter 34, Subchapter B, §§34.201 - 34.204, relating to oversight of fire suppression ratings. The new sections are adopted without changes to the proposed text published in the March 18, 2016, issue of the *Texas Register* (41 TexReg 2087).

REASONED JUSTIFICATION. These new sections are necessary to implement Government Code §417.0083 and to specify by rule the state fire marshal's procedures to perform oversight of fire suppression ratings as directed by the commissioner.

Section 34.201 specifies that the applicability of the subchapter is for an advisory organization or other filer that determines a fire rating based on a fire suppression and mitigation grading schedule. The filing of a fire suppression and mitigation grading schedule is a filing that a filer must make in accordance with Insurance Code Chapter 2251, and is not the subject of this subchapter. ISO has filed a fire suppression and mitigation rating schedule. Other advisory organizations or insurers could enter the marketplace to provide fire ratings. The adopted subchapter applies to all fire suppression and mitigation grading schedules where a filer recommends a fire rating.

Section 34.202 defines certain terms used in the subchapter.

Section 34.203 specifies the process for submission of fire ratings, how the fire rating will be verified, the approval or disapproval of the fire rating, and appeals procedures. The section includes a 30-day deemer provision so that inaction does not delay the approval of otherwise compliant fire ratings. The review period can be extended if the filer agrees. The procedures are adopted in accordance with the authority to establish summary procedures for routine matters under Insurance Code §36.102.

Section 32.204 specifies the process for the appeal of a community fire-rating determination. The procedures are adopted in accordance with Insurance Code §36.103, concerning Review of Action on a Routine Matter.

SUMMARY OF COMMENTS.

TDI did not receive any comments on the proposed sections.

STATUTORY AUTHORITY. The new sections are adopted under Government Code §417.0083 and §417.005, and Insurance Code §§2003.003, 2003.004, 36.102, 36.103, and 36.001.

Government Code §417.0083 provides that the state fire marshal must perform duties as directed by the commissioner relating to TDI's fire suppression ratings schedule.

Government Code §417.005 provides that the commissioner may adopt necessary rules to guide the state fire marshal in the performance of duties for the commissioner.

Insurance Code §2003.003 provides that the commissioner may give a locality, municipality, or other political subdivision credit for the reduction of fire hazards, for improvements that tend to reduce fire hazards, and for a good fire record.

Insurance Code §2003.004 provides that the commissioner may require an insurer to give credit to a policyholder for the reduction of fire hazards through a policyholder credit.

Insurance Code §36.102 provides that TDI may create a summary procedure for routine matters if the activity is voluminous, repetitive, believed to be noncontroversial, and of limited interest to anyone other than persons involved in or affected by the adopted TDI action.

Insurance Code §36.103 provides that the commissioner may adopt rules relating to an application for review of a routine matter taken under a summary procedure adopted under Insurance Code §36.102.

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

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

Filed with the Office of the Secretary of State on May 17, 2016.

TRD-201602387

Norma Garcia

General Counsel

Texas Department of Insurance

Effective date: June 6, 2016

Proposal publication date: March 18, 2016

For further information, please call: (512) 676-6584

TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 65. WILDLIFE

SUBCHAPTER F. PERMITS FOR AERIAL MANAGEMENT OF WILDLIFE AND EXOTIC SPECIES

The Texas Parks and Wildlife Commission in a duly noticed meeting on January 21, 2016 adopted the repeal of §§65.156 - 65.159 and amendments to §§65.151 - 65.154, 65.160, and 65.161, concerning Permits for Aerial Management of Wildlife and Exotic Species. Sections 65.151, 65.152, 65.154, and 65.160 are adopted with changes to the proposed text as published in the December 18, 2015, issue of the *Texas Register* (40 TexReg 9091). The repeals and the amendments to §65.153 and §65.161 are adopted without changes and will not be republished.

The change to §65.151, concerning Definitions, adds the definition of "aircraft" established by Parks and Wildlife Code, §43.103. The change is necessary for purposes of clarity and is nonsubstantive. The change to §65.151 also alters the definition of "observer" in paragraph (9) by removing the clause "Landowner, Agent, or Subagent" and replacing it with "person other than a pilot or gunner" in order to clarify that an observer need not be a landowner, agent, or subagent, and removes a reference to "observer" from the definition of "Subagent" in paragraph (12) for reasons addressed in the discussion of the change to §65.154, concerning Issuance of Permit. The change to §65.151 also capitalizes the terms "agent," "subagent," and "landowner." The change is necessary to clearly distinguish the meanings of those words in order to identify those as defined terms and prevent confusion, as their specialized meanings in the context of the subchapter may differ from a generic or

denotational understanding. The change is made throughout the rules as adopted.

The change to §65.152, concerning General Rules, makes non-substantive changes to subsections (a), (c), (d), and (g). In subsection (a), the final sentence as proposed read, "The AMP shall be carried in aircraft when performing management by the use of aircraft." The change would replace that sentence with the following, "The AMP must be carried in an aircraft when the aircraft is engaged in activities authorized by the AMP." The change is intended to improve clarity. The change to subsection (c) would insert language to stipulate that the written contract required between a permit holder and a landowner or agent must be signed by the landowner or agent, and removes the term "observer." The change is intended to emphasize that the written contract must be signed, and for the reasons discussed in the change to §65.154(g) relating to the removal of observers from the applicability of that subsection. The change to subsection (d) alters paragraph (11) to clarify that the AMP authorizes permit activities only on the lands specified in the LOA. The change also adds language to clarify that a pilot may overfly land that the pilot does not possess written permission to overfly "following the conclusion" of AMP activities, rather than "following AMP activities." The changes are intended to facilitate compliance and enforcement. The change to subsection (g) would insert the phrase "by or with the approval of the landowner or agent" to qualify the conditions under which the department would not approve an LOA for the take of feral hogs. The change is necessary in order to provide for the scenario in which someone who has purchased a tract of land where feral hogs were released by a previous owner subsequently desires to control feral hogs by the use of aircraft.

The change to §65.154 alters subsections (a) - (d) and (h) as proposed. The change eliminates subsection (a) as proposed. Subsection (a) as proposed allowed the department to issue a permit to an individual. By adding a reference to "an individual" in the provisions of proposed subsection (b) (which is adopted as new subsection (a)), subsection (a) as proposed can be removed entirely. The change also necessitates the redesignation of the other subsections in the section. The change to proposed subsection (c) (adopted as subsection (b)) removes a reference to "partnership or corporation." The current rule authorizes the issuance of permits to partnerships and corporations in addition to individuals. The proposed amendment restricted the issuance of permits to named individuals only; however, the reference to partnerships and corporations in proposed subsection (c)(1) (adopted as subsection (b)(1)) was inadvertently missed. The change to proposed subsection (d) (adopted as subsection (c)) inserts language to clarify that an amendment to a permit must be made by the department. The change to proposed subsection (h) (adopted as subsection (g)) removes "observer" from the provisions of the subsection. The Commission determined that because the intent of the rule is to prevent persons with a history of violating wildlife law from directly engaging in permitted activities it is unnecessary to prohibit such persons from acting as observers.

The change to §65.160, concerning Landowner Authorization (LOA), inserts the word "proposed" in subsection (a) to prevent the expectation that any and all activities will be approved by the department.

The repeals and amendments are generally intended to provide greater administrative efficiencies by removing obsolete or unnecessary provisions, streamlining administrative processes,

and clarifying regulatory language to enhance compliance and enforcement.

Under federal law (16 U.S.C. §742j-1, commonly referred as the Airborne Hunting Act, or AHA) it is unlawful to shoot or attempt to shoot or intentionally harass any bird, fish, or other animal from aircraft except for certain specified reasons, including protection of wildlife, livestock, and human health. Under Parks and Wildlife Code, §43.109, the Parks and Wildlife Commission (Commission) is authorized to promulgate regulations governing the management of wildlife by the use of aircraft.

The repeal of §65.156, concerning Amendment of Permit, is necessary because the provisions governing the amendment of an aerial management permit (AMP) are addressed in the amendment to §65.154(c). Similarly, the repeal of §65.157, concerning Renewal of Permit, is necessary because the provisions for renewal of an AMP are addressed in the amendment to §65.154(a), (b), and (d) - (g).

The repeal of §65.158, concerning Permit Not Transferable, is necessary to incorporate the contents of that section into new §65.154(h), which provides that an AMP is not transferable or assignable.

The repeal of §65.159, concerning Permit Fee, is necessary because the fee requirement is incorporated in the amendment to §65.154(a).

The amendments make several changes repeatedly throughout the rules, as follows.

The word "hunt" is replaced with the word "take" throughout the rules, except in instances in which "hunt" is required by statute or refers to an activity that is prohibited. Under both state and federal law it is unlawful to hunt for recreational purposes from an aircraft; therefore, the use of the word "take" is technically more accurate when referring to the activities authorized by a permit issued under the subchapter. As noted elsewhere in this preamble, in describing the amendment to §65.152(d)(1), the term "take" is defined in Parks and Wildlife Code, §1.101(5), and includes the attempt to take.

The amendments also create a shorthand term ("aerial management permit" or "AMP") to be used in place of the lengthier "permit to manage wildlife or exotic animals by use of wildlife" or generic "permit."

The amendment to §65.151, concerning Definitions, consists of several components.

The amendment as adopted eliminates current §65.151(3), which is the definition for "convicted." Because the amendment to §65.154 adds new subsection (d) to establish the bases upon which the department may refuse to issue or renew a permit, the current definition of "convicted" is unnecessary.

The amendment to §65.151 adds new paragraph (5) to provide the acronym for the Federal Aviation Administration, which is the federal agency with aviation oversight. The amendment is intended to provide a convenient shorthand reference in order to avoid repeating a lengthier term.

The amendment to §65.151 alters current paragraph (5) to clarify that a gunner can be a landowner, agent, or subagent. The current definition does not precisely identify who is included in the definition of "a gunner" under an AMP. The amendment is intended to provide specificity in order to avoid confusion.

The amendment to §65.151 also alters current paragraph (6) to accommodate a change in terminology created by new paragraph (8) to refer to the landowner's authorized agent. The amendment also adds an acronym for the landowner's authorization (LOA) for ease of reference.

The amendment to §65.151 adds new paragraph (8) to define "landowner's authorized agent (agent)" as "a person authorized by a landowner to act on behalf of the landowner." The amendment is intended to provide an absolute standard that is not subject to equivocation, which is necessary to avoid confusion.

The amendment to §65.151 would have defined "observer" as "a Landowner, Agent, or Subagent who is on board an aircraft while wildlife or exotic animals are being counted, photographed, relocated, captured, or taken." The department has determined that the amendment as proposed could be misconstrued as a requirement for an observer to be a landowner, agent, or subagent, which is not the case. Therefore, as adopted, the definition of "observer" would be "any person other than a pilot or gunner who is on board an aircraft during AMP activities."

The amendment to §65.151 eliminates current paragraph (8), which defines the term "on file." The amendments individually address situations in which the department requires certain information to have been submitted to the department, which makes the current definition unnecessary.

The amendment to §65.151 eliminates current paragraph (9), which defines the term "permit." The amendments replace the generic term "permit" with the specific acronym AMP (aerial management permit) throughout the rules.

The amendment alters paragraph (10) to eliminate a tautology (using "pilot" to define the term "pilot") and to clarify that the word "pilot" includes co-pilots.

The amendment to §65.151 alters paragraph (11) to define "qualified landowner, agent, or subagent." Parks and Wildlife Code, §43.1075, provides that "a qualified landowner or landowner's agent, as determined by commission rule, may contract to participate as a hunter or observer in using a helicopter to take depredating feral hogs or coyotes under the authority of a permit issued under this subchapter." The current definition establishes a standard, based on a person's criminal history with respect to violations of wildlife law, to determine whether that person is qualified to act as a gunner. As noted previously, the amendment to §65.154 added new subsection (e) to enumerate the bases upon which a person not be authorized to act as a gunner; therefore, "qualified landowner, agent, or subagent" is defined as "a person who is not prohibited from obtaining a permit or acting as a gunner under the provisions of §65.154(d) of this title (relating to Issuance of Permit; Amendment and Renewal)."

The amendment to §65.151 also adds new paragraph (12) to define "subagent" as "a person designated by an agent to act as a gunner or observer for the purpose of taking feral hogs or coyotes." The amendment to §65.152(c) allows subagents to be designated for the purpose of taking feral hogs and coyotes from helicopters. As a result, the term is used throughout the rules; therefore, the term must be defined.

The amendment to §65.152, concerning General Rules, also consist of several components.

The amendment to §65.152(a) clarifies that a person with an AMP is authorized to conduct AMP activities on the specific tract or tracts of land authorized by the LOA. Under the current rule, a permit holder "is authorized to engage in the management of

wildlife and exotic animals by the use of aircraft only on land named in the landowner's authorization." The rules are intended to ensure specificity in the description of the land on which AMP activities are to be undertaken. The department has determined that the current language could be misunderstood as allowing less specificity; therefore, the rule as adopted states that a permit holder is authorized to engage in the management of wildlife and exotic animals by the use of aircraft "only on the specific tract(s) of land specified in the LOA."

The amendment to §65.152(b) alters language regarding the flight log required under the subchapter. Under the current rule, the pilot of an aircraft used for aerial management must "maintain a daily flight log and report." The department has determined that the current language could be misunderstood to mean that daily flight logs could be created at the end of the reporting period. However, the department's intent is that the daily flight log be maintained on a daily basis; therefore, the rule as adopted states that the pilot of an aircraft used for aerial management must "maintain, on a daily basis, a flight log and report."

The amendment to §65.152(c) adds "subagent" to the list of persons that may be contracted with by an AMP holder for the taking of feral hogs and coyotes from a helicopter, specifies that such contracts be in writing, and requires that the department-approved subagent authorization form be properly executed and in the possession of the subagent during all AMP activities in which the subagent participates. Parks and Wildlife Code, §43.1075, provides that "a qualified landowner or landowner's agent, as determined by commission rule, may contract to participate as a hunter or observer in using a helicopter to take depredating feral hogs or coyotes under the authority of a permit issued under this subchapter." As noted previously in the discussion of the amendments to §65.151, the amendment to §65.152(c) allows subagents to be designated for the purpose of taking feral hogs and coyotes from helicopters. The department believes that it is in the best interests of all concerned that any contracts between landowners, agents, and subagents for the take of feral hogs and coyotes from helicopters be in writing and in the possession of the subagent when participating in AMP activities.

The amendment to §65.152(d) provides several clarifications. Current §65.152(d) consists of a list of specific actions that are offenses under the subchapter if committed by "a person." In the interests of clarity, the amendment as adopted stipulates that the word "person" includes a pilot, applicant, gunner, observer, or subagent.

Current §65.152(d)(1) provides that it is an offense to "hunt, shoot, shoot at, kill or attempt to kill" wildlife or exotic wildlife other than as authorized under a permit or LOA." Under Parks and Wildlife Code, §43.103(5), "management by the use of aircraft" is defined as "counting, photographing, relocating, capturing, or hunting by the use of aircraft." The amendment re-words the current regulatory provision to make it consistent with the statutory provision, adding "take" and including "attempt to count, photograph, relocate, capture, hunt, or take." Under Parks and Wildlife Code, §1.101, "hunt" is defined as "capture, trap, take, or kill, or an attempt to capture, trap, take, or kill" and "take" is defined as "collect, hook, hunt, net, shoot, or snare, by any means or device, and includes an attempt to take or to pursue in order to take." The department has determined that given the many different actions and attempted actions that can be construed as hunting or taking, it is prudent to make sure that all of them are explicitly cited in regulation. The same alteration

is made in the amendment to subsection (d)(9) for the same rationale.

The amendment to §65.152(d)(2) eliminates the phrase "disturbs, hazes, or buzzes" because the word "harasses" includes those actions. Specifically, "harass" is defined in Parks and Wildlife Code, §43.103(4) to include "disturb, worry, molest, harry, torment, rally, concentrate, drive, or herd."

The amendment eliminates current §65.152(d)(3). As noted previously in this preamble, the amendment to §65.154 adds new subsection (d) to establish the bases upon which the department could refuse to issue or renew a permit, which makes current §65.152(d)(3) unnecessary.

The amendment adds new §65.152(d)(3) to clarify that it is an offense for a person to take any wildlife or exotic animal without having on his or her person a valid hunting license. Under Parks and Wildlife Code, §42.002(c) and §42.005(f), a hunting license is not required for the take of depredating feral hogs. Under Health and Safety Code, §822.013, a person who kills a coyote that is attacking, is about to attack, or has recently attacked livestock, domestic animals, or fowls is not required to acquire a hunting license.

The amendment to §65.152(d)(5) adds "subagent" to the list of persons to whom the provision is applicable. As noted previously, the amendments allow the designation of subagents to act as gunners for the take of feral hogs and coyotes from helicopters; thus, the term must be added to all provisions affecting gunners.

The amendment also alters §65.152(d)(6). The current wording of §65.152(d)(6) makes it an offense to "take or attempt to take any wildlife or exotic animals for any purpose other than is necessary for the protection of lands, water, wildlife, livestock, domesticated animals, human life, or crops...." The amendment adds "aid in the administration" and re-words the provision to read "takes or attempts to take any wildlife or exotic animals for any purpose other than is necessary to protect or to aid in the administration of lands, water, wildlife, livestock, domesticated animals, human life, or crops...." Under Parks and Wildlife Code, §43.194, the department may "issue a permit to any person if the department finds that management of wildlife or exotic animals by the use of aircraft is necessary to protect or to aid in the administration or protection of land, water, wildlife, livestock, domesticated animals, human life, or crops and will not have a deleterious effect on indigenous species." The amendment is necessary to be consistent with statutory language.

The amendment to §65.152(d) also includes new paragraph (11), which makes it an offense for a person engaging in AMP activities to pilot an aircraft over property for which the person has not received written permission to overfly, except as is necessary to gain initial access to conduct AMP activities and to leave following AMP activities. The amendment is intended to clarify that the LOA is valid only for the specific tract(s) of land identified in the LOA.

The amendment to §65.152(d) also includes new paragraph (12) to clarify that the list of offenses in subsection (d) is not exhaustive or all-inclusive.

The amendment to §65.152 also adds new subsection (f) to allow fee waivers for employees of governmental entities acting in the course and scope of the employees' official duties. The department believes that the common good is better served when the efficiency of government is enhanced. By authorizing the waiver

of fees for other governmental entities, the department believes it enhances the efficiency of those entities.

The amendment to §65.152 also adds new subsection (g) to prohibit the take of feral hogs by aircraft if the feral hogs were intentionally released for purposes of hunting. Feral hogs are an unequivocal menace to agriculture and wildlife, causing untold destruction and requiring extensive control efforts. The department is aware of instances in which hogs have been released for purposes of recreational hunting and does not believe that control of hogs from aircraft under the guise of feral hog control should be permitted by a landowner or agent who has released hogs for purposes of recreational hunting.

The amendment to §65.153, concerning Application for Permit, eliminates archaic language and duplication and requires AMP applicants to furnish a Social Security number as part of the application process. Under both state (Family Code, §231.302) and federal (42 U.S.C.A. 666) law, the department is required for purposes of child support enforcement to collect a person's Social Security number as a condition of license or permit issuance.

The amendment to §65.154, concerning Issuance of Permit, changes the title of the section to "Issuance of Permit; Amendment and Renewal," to more accurately reflect the contents of the section.

The amendment to §65.154 alters eliminates current subsection (a). As noted previously in this preamble, by adding a reference to "an individual" in the provisions of subsection (b) (which is adopted as new subsection (a)), subsection (a) can be removed entirely.

The amendment to §65.154 alters subsection (a) (formerly subsection (b)) to address the standards for issuing or renewing an AMP. Current §65.154(b) provides for the issuance of an AMP upon filing of a properly executed application; however, there is also a fee for an AMP. The amendment explicitly states that the fee must be paid before the AMP can be issued.

Current §65.154(b)(1) prohibits the issuance of an AMP to an applicant or pilot if the individual within the previous year has been convicted of a Class A Parks and Wildlife Code misdemeanor or Parks and Wildlife Code felony relating to the management of wildlife or exotic animals by the use of aircraft. The amendment removes this provision because new subsections (e) and (f) establish new criteria to be used by the department for refusing AMP issuance or renewal, making current subsection (b)(1) unnecessary.

Current subsection §65.154(b)(2) (subsection (a)(1) as adopted) authorizes the issuance of an AMP if, among other things, an applicant "has not knowingly failed to disclose any material information required, or has not knowingly made any false statement regarding any material fact in connection with the application." The amendment removes the word "knowingly." The department believes that if an applicant for an AMP for whatever reason provides erroneous or inaccurate information or fails to provide required information, such deficiencies are sufficient to refuse issuance of an AMP.

The amendment to current §65.154(b)(4) (adopted as subsection (a)(3)) replaces the term "issuing official" with the word "department." The department has determined that it is more accurate to characterize the review of AMP applications as a department function generally, rather than as the action of a specific employee.

The amendment to §65.154 creates new subsection (c) to establish the requirements for the amendment of an AMP. The new subsection essentially preserves the current process set forth in §65.156, concerning Amendment of Permit, which has been repealed.

The amendment to §65.154 creates new subsection (d) to set forth the circumstances under which the department could choose to refuse AMP issuance or renewal on the basis of criminal history. The amendment allows the department to refuse to issue or renew an AMP for any applicant who has a final conviction or has been assessed an administrative penalty for a violation of Parks and Wildlife Code, Chapter 43, Subchapter C, E, L, R, or R-1; a provision of the Parks and Wildlife Code other than Chapter 43, Subchapter C, E, L, R, or R-1 that is a Parks and Wildlife Code Class A or B misdemeanor, state jail felony, or felony; Parks and Wildlife Code, §63.002; or the Lacey Act (16 U.S.C. §§3371-3378). In addition, the amendment adds new subsection (e) to allow the department to prevent a person from engaging in AMP activities or acting on behalf of or as a surrogate for a person who is prohibited from obtaining an AMP.

Under §65.154(d) and (e), in deciding to issue or renew an AMP, the department takes into account an applicant's history of violations involving the capture and possession of live animals, major violations of the Parks and Wildlife Code (Class B misdemeanors, Class A misdemeanors, and felonies), and Lacey Act violations. The department reasons that it is appropriate to deny the privilege of taking or allowing the take of wildlife resources, and especially for personal benefit, to persons who exhibit a demonstrable disregard for laws and regulations governing wildlife. Similarly, it is appropriate to deny such privileges to a person who has exhibited demonstrable disregard for wildlife law in general by committing more egregious (Class B misdemeanors, Class A misdemeanors, and felonies) violations of wildlife law.

The Lacey Act (16 U.S.C. §§3371-3378) is a federal law that, among other things, prohibits interstate trade in or movement of wildlife, fish, or plants taken, possessed, transported or sold in violation of state law. Lacey Act prosecutions are normally conducted by the United States Department of Justice in federal courts. Although a Lacey Act conviction or civil penalty is often predicated on a violation of state law, the federal government need only prove that a state law was violated; there is no requirement for there to be a record of conviction in a state jurisdiction. Rather than expending resources and time conducting concurrent state and federal prosecutions, the department believes that it is reasonable to use a Lacey Act conviction or civil penalty as the basis for denying issuance or renewal of an AMP.

The denial of AMP issuance or renewal as a result of an adjudicative status listed in the rule is not automatic, but within the discretion of the department. Factors that may be considered by the department in determining whether to issue or renew an AMP based on adjudicative status include, but are not limited to: the number of final convictions or administrative violations; the seriousness of the conduct on which the final conviction or administrative violation is based; the existence, number and seriousness of offenses or administrative violations other than offenses or violations that resulted in a final conviction; the length of time between the most recent final conviction or administrative violation and the application for enrollment or renewal; whether the final conviction, administrative violation, or other offenses or violations was the result of negligence or intentional conduct; whether the final conviction or administrative violations resulted

from the conduct committed or omitted by the applicant, an agent of the applicant, or both; the accuracy of information provided by the applicant; for renewal, whether the applicant agreed to any special provisions recommended by the department as conditions; and other aggravating or mitigating factors.

The amendment to §65.154 also adds new subsection (f) to create a mechanism for persons who have been denied AMP issuance or renewal to have the opportunity to have such decisions reviewed by department managers. The new subsection is intended to help ensure that decisions affecting AMP privileges are correct and is identical to the review process used in other department regulations.

The amendment to §65.154 also adds new subsection (g) to prohibit a person who has been finally convicted of, pleaded nolo contendere to, received deferred adjudication for, or assessed an administrative penalty for an offense listed in the section from acting or contracting to act as a gunner for an AMP holder. The department reasons that it is appropriate to deny the privilege of AMP participation to persons who exhibit a demonstrable disregard for laws and regulations governing wildlife. Similarly, it is appropriate to deny such privileges to a person who has exhibited demonstrable disregard for wildlife law in general by committing more egregious (Class B misdemeanors, Class A misdemeanors, and felonies) violations of wildlife law.

The amendment to §65.154 also creates new subsection (h) to provide that an AMP is not transferable or assignable. The provision is identical to current §65.158, concerning Permit Not Transferable, which is being repealed.

The amendment to §65.154 also sets forth the requirements for the renewal of an AMP, which is addressed under current rule at §65.157, regarding Renewal of Permit. This rulemaking adopts the repeal of §65.157; however, one aspect of the current rule (the requirement to submit a request for renewal within 10 days of permit expiration) is not retained in the amendment to §65.154. The department has determined that there is no reason to place a time limit on AMP renewals because the process is independent of time-related constraints and there is no adverse impact.

The amendment to §65.160, concerning Landowner Authorization, makes a number of alterations.

The amendment to §65.160(a) requires an AMP holder to submit to the department on a department approved form an LOA for each tract of land where AMP activities are proposed to be taken and provides that such activities may not be undertaken until the department has approved the LOA. The amendment also requires that an LOA to be signed by the AMP holder and the landowner or agent, and requires the LOA to be kept in physical possession by the AMP holder during all AMP activities. In addition, the amendment adds (a)(5) which requires the LOA to contain a georeferenced map (a map image incorporating a system of geographic ground coordinates, such as latitude/longitude or Universal Transverse Mercator (UTM) coordinates) showing the exact boundaries of the property where AMP activities are to take place and a written statement signed by the landowner that the map is true and correct. In order to ensure that AMP activities are conducted on the property on which the landowner intends such activities to be conducted (i.e., are not conducted on the wrong property), the department believes it is appropriate to require the LOA to include a georeferenced map, and to require that the accuracy of the map be verified by the landowner in writing prior to the initiation of AMP activities. The amendment also alters cur-

rent paragraphs (5) and (6) (adopted as paragraphs (6) and (7)) to simplify language. Current paragraph (5) (adopted paragraph (6)) requires an LOA to state the "specific kind and number" of wildlife to be taken under an AMP. The amendment refers to the number of individual animals of each species and adds the qualifying term "yearly," because LOAs are approved on an annual basis. Current paragraph (6) (adopted paragraph (7)) requires an applicant to supply a "trap and transplant permit number" if animals are to be trapped under that permit. The amendment supplies a more legally precise description of that permit and adds a reference to another type of permit that allows capture of wildlife for scientific, educational, or zoological purposes.

The amendment to §65.160(b) allows an LOA to be in effect for a specific time period and allows invalidation at the request of the landowner. As currently worded, the provision states that an LOA is valid for the life of the AMP unless it is suspended, revoked, or not renewed. The department does not intend for landowners to be unable to specify a period of validity for an LOA or to be unable to withdraw authorization at any time the landowner wishes.

Current §65.160(c) and (d) have been removed. Current subsection (c) stipulates that an LOA for hunting will be approved only for depredated animals and exotic animals. As mentioned previously in this preamble, the use of the word "hunt" in the context of aerial management is problematic because the legal meaning of "hunt" and the common understanding of hunting as a recreational activity can be easily confused. An AMP cannot authorize hunting in the sense of recreational activity; therefore, the subsection is actually unnecessary.

Current subsection (d) provides that an LOA will not be approved for non-indigenous wild animals except as authorized by the department when a specific wild animal(s) has escaped from captivity. The department has determined that this provision prevents the removal of exotic wildlife that may be competing with indigenous wildlife or presenting some other deleterious impact to indigenous wildlife. Therefore, the amendment removes this provision.

The amendment to current §65.160(e), new subsection (c) as adopted, alters the current provision by requiring a georeferenced map to be provided with an LOA application for a group or association of landowners, and new subsection (d) requires the landowner or agent to ensure that the information is true and correct prior executing the authorization. The map and certification requirements are necessary for the same reasons articulated in the discussion of the amendment to §65.160(a).

The amendment to §65.161, concerning Reports, provides for electronic signatures of quarterly reports, removes the requirement for the signature of the pilot, and allows the inclusion of a government-issued identification number for gunners. The amendment also requires the quarterly reports to be filed electronically. With the transition to electronic reporting for AMP administration, it is necessary to accommodate electronic signatures to affirm that an AMP holder has complied with reporting requirements. The amendment also removes the signature requirement for pilots because it is duplicative, and allows gunners to provide a government-issued identification number in lieu of a hunting license number, because a hunting license is not required to take depredated feral hogs or coyotes and therefore an alternative method of identification must be established.

The department received six comments opposing adoption of the proposed rules. Of those comments, five articulated a reason or

rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that there should be no commercialization of take by AMP. The department neither agrees nor disagrees with the comment and responds that under the provisions of Parks and Wildlife Code, §43.1075, a qualified landowner or landowner's agent may contract to participate as a hunter or observer in using a helicopter to take depredated feral hogs or coyotes under the authority of an AMP. The Commission cannot modify or eliminate that provision. No changes were made as a result of the comment.

One commenter opposed adoption and stated that it is ridiculous to require a permit for photography on one's own property, which is unnecessary and excessively bureaucratic. The department disagrees with the comment and responds that under the provisions of Parks and Wildlife Code, §43.1095, it is an offense for any person to use an aircraft to manage wildlife or exotic animals without first having obtained a permit to do so. Under Parks and Wildlife Code, §43.103(5), "management by use of aircraft" includes photography. These provisions are not within the authority of the Commission to eliminate or modify. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there should be no restrictions on a landowner's use of aircraft to eliminate feral hogs on their own property. The department disagrees with the comment and responds that under federal law (16 U.S.C. §742j-1, commonly referred as the Airborne Hunting Act, or AHA) as well as state law (Parks and Wildlife Code, §43.1095), it is unlawful to shoot or attempt to shoot or intentionally harass any bird, fish, or other animal from aircraft without having obtained a permit to do so. These provisions are not within the authority of the Commission to eliminate or modify. No changes were made as a result of the comment.

One commenter opposed adoption and stated that proposed §65.155(d)(3) seems to imply that animals outside of the AMP can be hunted, provided a hunting license is possessed. The department disagrees with the comment and responds that §65.155 is not affected by this rulemaking; however, although an AMP authorizes specific activities to be conducted at specific locations and a hunting license is required, possession of a hunting license does not authorize any activity or location other than those specified on the AMP. No changes were made as a result of the comment.

One commenter opposed adoption and stated all aerial take should be prohibited. The department disagrees with the comment and responds that Parks and Wildlife Code, §43.102 authorizes the department to issue permits for the management of wildlife and exotic animals by use of aircraft. No changes were made as a result of the comment.

31 TAC §§65.151 - 65.154, 65.160, 65.161

The amendments are adopted under Parks and Wildlife Code, §43.109, which provides the commission with authority to make regulations governing the management of wildlife or exotic animals by the use of aircraft under this subchapter, including forms and procedures for permit applications; procedures for the management of wildlife or exotic animals by the use of aircraft; limitations on the time and the place for which a permit is valid; establishment of prohibited acts; rules to require, limit, or prohibit any activity as necessary to implement Parks and Wildlife Code, Chapter 43, Subchapter G.

§65.151. *Definitions.*

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

- (1) Aerial Management Permit (AMP)--A permit issued by the department to count, photograph, relocate, capture, hunt or take wildlife or exotic animals by the use of aircraft.
- (2) Aircraft--A mechanical or other device used for flight in the air.
- (3) Applicant--An individual who files an application for an AMP.
- (4) Department--The Texas Parks and Wildlife Department or a specifically authorized employee of the department.
- (5) FAA--The Federal Aviation Administration of the United States Department of Transportation.
- (6) Gunner--A Landowner, Agent or Subagent who captures, takes, shoots, or attempts to capture, take, or shoot wildlife or exotic animals from an aircraft.
- (7) Landowner's authorization (LOA)--Signed consent from the Landowner or Agent to manage a specified number of wildlife or exotic animals from an aircraft on certain property.
- (8) Landowner's authorized agent (Agent)--A person authorized by a Landowner to act on behalf of the Landowner.
- (9) Observer--A person other than a pilot or gunner who is on board an aircraft during AMP activities.
- (10) Pilot--An individual who controls an aircraft to count, photograph, relocate, capture, or take wildlife or exotic animals, and includes a co-pilot.
- (11) Qualified Landowner, Agent, or Subagent--A person who is not prohibited from acting as a gunner under the provisions of §65.154(d) of this title (relating to Issuance of Permit; Amendment and Renewal).
- (12) Subagent--A person designated by an Agent to act as a gunner for the purpose of taking of feral hogs or coyotes.

§65.152. *General Rules.*

- (a) A person who holds an AMP is authorized to engage in the management of wildlife and exotic animals by the use of aircraft only on the tract(s) of land specified in the LOA. The AMP must be carried in an aircraft when the aircraft is engaged in activities authorized by the AMP.
- (b) A pilot of an aircraft used for the management of wildlife or exotic animals must maintain, on a daily basis, a flight log and report. The daily flight log must be current and available for inspection by game wardens at reasonable times. Each AMP holder and pilot shall comply with all FAA regulations for the specific type of aircraft listed on their AMP.
- (c) It is lawful for a person who holds an AMP to contract with a qualified Landowner, Agent, or Subagent to act as a gunner the taking of depredating feral hogs or coyotes from a helicopter, provided:
 - (1) the contract is in writing and signed by the Landowner or Agent;
 - (2) a department-approved Subagent authorization form has been properly executed and is in the physical possession of the Subagent during all AMP activities in which the Subagent participates; and

(3) the AMP holder possesses a valid, properly executed LOA.

(d) A person (which includes a pilot, applicant, gunner, observer, or Subagent) commits an offense if:

- (1) the person counts, photographs, relocates, captures, hunts, or takes or attempts to count, photograph, relocate, capture, hunt, or take from an aircraft any wildlife or exotic animals other than wildlife or exotic animals authorized by the AMP and LOA;
 - (2) the person intentionally harasses any wildlife or exotic animals by the use of an aircraft other than wildlife or exotic animals authorized in an AMP and LOA;
 - (3) the person participates in the take or attempted take of any wildlife or exotic animal other than depredating feral hogs or coyotes without having on his or her person a valid hunting license issued by the department;
 - (4) the person pilots an aircraft to manage wildlife or exotic animals without a valid pilot's license as required by the FAA;
 - (5) the person pays, barter, or exchanges anything of value to participate as a gunner, observer, or Subagent except as may be otherwise provided in this subchapter;
 - (6) the person acting as a gunner or pilot under an AMP takes or attempts to take any wildlife or exotic animals for any purpose other than is necessary to protect or to aid in the administration of lands, water, wildlife, livestock, domesticated animals, human life, or crops, except that any wildlife or exotic animals, once lawfully taken pursuant to this subchapter may be sold if their sale is not otherwise prohibited;
 - (7) the person acting as a gunner or pilot takes or attempts to take wildlife or exotic animals during the hours between 1/2-hour after sunset and 1/2-hour before sunrise;
 - (8) the person operates an aircraft for the management of wildlife or exotic animals and is not named as an authorized pilot by an AMP;
 - (9) the person takes, kills, captures, or attempts to take, kill, or capture more wildlife or exotic animals on properties than are specified in the LOA;
 - (10) the person uses an AMP for the purpose of sport hunting;
 - (11) the person is engaging in AMP activities and pilots an aircraft over land for which the person has not received written permission to overfly, except as is necessary to gain initial access to the land described in the LOA prior to commencing AMP activities and to leave following the conclusion of AMP activities; or
 - (12) the person otherwise violates a provision of this subchapter.
- (e) These rules do not exempt any person from the requirement for other licenses or permits required by statute or rule of the commission.
- (f) The department may waive the fee requirements of this subchapter for an employee of a governmental entity acting in the scope and course of official duties.
- (g) The department will not approve an LOA for the take of feral hogs on a tract of land where feral hogs have been released or liberated by or with the approval of the Landowner or Agent for the purpose of being hunted.

§65.154. *Issuance of Permit; Amendment and Renewal.*

(a) Upon the filing of a properly executed application and payment of the fee specified by §53.15 of this title (relating to Miscellaneous Fisheries and Wildlife Licenses and Permits), the department may issue or renew an AMP to an individual if:

(1) the applicant has not failed to disclose any material information required, or has not made any false statement regarding any material fact in connection with the application;

(2) the applicant will use the AMP only for the purpose of protecting or aiding in the administration or protection of land, water, wildlife, livestock, domesticated animals, human life, or crops; and

(3) the AMP requested, in the judgment of the department, will aid in the management of wildlife and exotic animals and will not have a deleterious effect on indigenous species.

(b) The permit shall include the following information:

(1) the name and address of the individual applicant;

(2) the authorized pilot's name, address, date of birth, and FAA Certificate number;

(3) the authorized aircraft; and

(4) the issue and expiration date of the permit.

(c) The department may amend an AMP following the completion and submission of a form provided by the department. An application for amendment is subject to the same issuance criteria as the original application for an AMP.

(d) The department may refuse to issue to or renew an AMP for any person who has been finally convicted of, pleaded nolo contendere to, received deferred adjudication, or assessed an administrative penalty for a violation of:

(1) Parks and Wildlife Code, Chapter 43, Subchapter C, E, L, R, or R-1;

(2) a provision of the Parks and Wildlife Code that is not described by paragraph (1) of this subsection that is punishable as a Parks and Wildlife Code:

(A) Class A or B misdemeanor;

(B) state jail felony; or

(C) felony;

(3) Parks and Wildlife Code, §63.002; or

(4) the Lacey Act (16 U.S.C. §§3371-3378).

(e) The department may refuse to issue an AMP to or renew an AMP for any person the department has evidence is acting on behalf of or as a surrogate for another person who is prohibited by the provisions of this subchapter from obtaining an AMP or engaging in AMP activities.

(f) An applicant for an AMP or AMP renewal may request a review of a decision of the department to refuse issuance of an AMP or AMP renewal (as applicable).

(1) An applicant seeking review of a decision of the department with respect to the issuance or renewal of an AMP must request the review within 10 working days of being notified by the department that the application has been denied.

(2) Within 10 working days of receiving a request for review under this section, the department shall establish a date and time for the review.

(3) The department shall conduct the review within 30 days of receipt of the request required by paragraph (2) of this subsection, unless another date is established in writing by mutual agreement between the department and the requester.

(4) The request for review shall be presented to a review panel. The review panel shall consist of three department managers with expertise in the management of wildlife from aircraft, appointed or approved by the executive director, or designee.

(5) The decision of the review panel is final.

(g) No person who has been finally convicted of, pleaded nolo contendere to, received deferred adjudication for, or assessed an administrative penalty for an offense listed in this section may act or contract to act as a gunner for an AMP holder.

(h) An AMP is not transferable or assignable.

§65.160. Landowner Authorization (LOA).

(a) Prior to managing wildlife or exotic animals, an AMP holder must submit to the department, on a department-approved form, an LOA for each tract of land where AMP activities are proposed to take place and may not conduct AMP activities until the department has approved the LOA. The LOA must be signed by the AMP holder and the Landowner or Agent and must be in the physical possession of the person using an aircraft to manage wildlife or exotic animals during all AMP activities. The LOA shall include:

(1) the name, address, and phone number of the Landowner;

(2) the name, address, and phone number of the authorized Landowner's Agent, if applicable;

(3) the name and AMP number of the AMP holder;

(4) the farm or ranch name and specific location of the property;

(5) a georeferenced map (a map image incorporating a system of geographic ground coordinates, such as latitude/longitude or Universal Transverse Mercator (UTM) coordinates) showing the exact boundaries of the property on which AMP activities are to be conducted, accompanied by a written statement signed by the Landowner or Agent confirming that the map is true and correct;

(6) the yearly number of individual animals of each species of wildlife or exotic animals to be managed by use of aircraft and the reason why these animals should be managed; and

(7) if game animals or game birds are to be captured by the use of aircraft, the permit number of a valid permit issued under the provisions of Subchapters E or J of this chapter.

(b) An LOA is valid for the time period specified in the authorization or the life of the AMP unless the AMP expires without renewal, is suspended or revoked, or is invalidated by the Landowner by notifying the department in writing.

(c) A single LOA form may be submitted by a group of Landowners or by an association on behalf of such landowners. The LOA form shall have attached a list of participating landowner names, ranch names, addresses, acreage, and a georeferenced map (a map image incorporating a system of geographic ground coordinates, such as latitude/longitude or UTM coordinates) showing the exact boundaries of each property for each participating Landowner. The LOA may be signed by one authorized Agent who represents the group of landowners or an association.

(d) The Landowner or the Landowner's Agent shall ensure that information included in the LOA is true and correct prior to executing an authorization.

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

Filed with the Office of the Secretary of State on May 19, 2016.

TRD-201602475

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Effective date: January 4, 2017

Proposal publication date: December 18, 2015

For further information, please call: (512) 389-4775



31 TAC §§65.156 - 65.159

The repeals are adopted under Parks and Wildlife Code, §43.109, which provides the commission with authority to make regulations governing the management of wildlife or exotic animals by the use of aircraft under this subchapter, including forms and procedures for permit applications; procedures for the management of wildlife or exotic animals by the use of aircraft; limitations on the time and the place for which a permit is valid; establishment of prohibited acts; rules to require, limit, or prohibit any activity as necessary to implement Parks and Wildlife Code, Chapter 43, Subchapter G.

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

Filed with the Office of the Secretary of State on May 19, 2016.

TRD-201602476

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Effective date: January 4, 2017

Proposal publication date: December 18, 2015

For further information, please call: (512) 389-4775



TITLE 34. PUBLIC FINANCE

PART 4. EMPLOYEES RETIREMENT SYSTEM OF TEXAS

CHAPTER 71. CREDITABLE SERVICE

34 TAC §71.31

The Employees Retirement System of Texas (ERS) adopts an amendment to 34 Texas Administrative Code (TAC) §71.31, concerning Credit Purchase Option for Certain Waiting Period Service, without changes to the proposed text as published in the April 1, 2016, issue of the *Texas Register* (41 TexReg 2464). The amendment was approved by the ERS Board of Trustees at its May 17, 2016 meeting. This section will not be republished.

Section 71.31 is amended to remove the requirement that a person must be a contributing member to purchase waiting period

service. This change allows employee class members who have left state service, but kept their account at ERS, to purchase waiting period service.

No comments were received on the proposed rule amendment.

The amendment is adopted under the Texas Government Code, §815.102, which provides authorization for the ERS Board of Trustees to adopt rules for eligibility of membership in the retirement system.

No other statutes are affected by the amendment.

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

Filed with the Office of the Secretary of State on May 17, 2016.

TRD-201602397

Paula A. Jones

Deputy Executive Director and General Counsel

Employees Retirement System of Texas

Effective date: June 6, 2016

Proposal publication date: April 1, 2016

For further information, please call: (877) 275-4377



CHAPTER 85. FLEXIBLE BENEFITS

34 TAC §§85.1, 85.3, 85.5

The Employees Retirement System of Texas (ERS) adopts amendments to 34 Texas Administrative Code (TAC) Chapter 85 concerning Flexible Benefits, §85.1 (Introduction and Definitions), §85.3 (Eligibility and Participation) and §85.5 (Benefits) without changes to the proposed text as published in the April 1, 2016, issue of the *Texas Register* (41 TexReg 2465). The amendments were approved by the ERS Board of Trustees at its May 17, 2016, meeting. These sections will not be republished.

ERS adopts amendments to §§85.1, 85.3 and 85.5 in order to comply with Subchapter J which was added to Chapter 1551, Texas Insurance Code, by the Texas Legislature in 2015. The amendments will benefit TexFlex program participants in a manner permitted by the Internal Revenue Code. The amendments will also conform the TexFlex program to facilitate participation in the new "consumer directed health plan" (CDHP) within the HealthSelectSM of Texas managed care plan while also allowing participants to enroll in a limited purpose flexible spending account (FSA) program. Participation in a general purpose FSA is incompatible with contributing to a health savings account (HSA) under federal law. The amendments provide a limited purpose FSA that is compatible for use for those enrolled in the CDHP.

Section 85.1 (Introduction and Definitions) is amended to add a definition for a general purpose health care reimbursement account and for a limited purpose health care reimbursement account.

Section 85.3 (Eligibility and Participation) is amended to allow participants in the CDHP to participate only in the limited purpose FSA program, in conformance with the Internal Revenue Code. The amendment provides that any monetary balance remaining in an FSA account on August 31 of a plan year or any carryover that might otherwise be permitted for an employee who chooses to enroll in the CDHP for the following plan year would go into a limited purpose FSA, subject to IRS maximums or be forfeited.

Section 85.5 (Benefits) is amended to clarify that only qualifying dental and vision expenses may be reimbursed through a limited purpose FSA.

No comments were received on the proposed rule amendments.

The amendments are adopted under the Texas Insurance Code, §1551.052 and §1551.206, which provide authorization for the ERS Board of Trustees to develop, implement, and administer a cafeteria plan, and to adopt necessary rules.

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

Filed with the Office of the Secretary of State on May 17, 2016.

TRD-201602400

Paula A. Jones

Deputy Executive Director and General Counsel

Employees Retirement System of Texas

Effective date: June 6, 2016

Proposal publication date: April 1, 2016

For further information, please call: (877) 275-4377



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 12. TEXAS BOARD OF OCCUPATIONAL THERAPY EXAMINERS

CHAPTER 362. DEFINITIONS

40 TAC §362.1

The Texas Board of Occupational Therapy Examiners adopts an amendment to §362.1, concerning definitions, with changes to the proposed text as published in the March 18, 2016, issue of the *Texas Register* (41 TexReg 2133). The rule will be republished.

The change is to replace in the previously proposed definition for telehealth, §362.1(39), the word "or" with a slash in the phrase "electronic information or communications technologies" so the phrase is instead "electronic information/communications technologies."

The amendment to §362.1 will clarify existing definitions with regard to and add a definition for telehealth. The definitions have also been renumbered when necessary so that they appear in alphabetical order; general clarifications, cleanups, and grammatical revisions have been made to the section, as well.

The amendment will add a definition for telehealth and contains related revisions to other definitions in the section. Amendments to §372.1, concerning provision of services, and §373.1, concerning supervision of non-licensed personnel, have also been adopted, and notice of such has been submitted for publication in the *Texas Register*, regarding the inclusion in the Board Rules of telehealth as a mode of occupational therapy service delivery. The definitions in §362.1 for "direct contact" and "first available examination" have also been removed.

Comments were received by the Board by Tammy Richmond, CEO, GO 2 Care Inc.; Marsha Waind, Manager, Telehealth, In-

formation Systems, Altru Health System; Chrissy Vogeley, Manager, State Affairs, American Occupational Therapy Association; and Christene Maas.

One commenter noted the value in the Board's proposing of rules that would permit telehealth to be used during the provision of occupational therapy services in Texas.

The Board appreciates the comment and made no changes to the amendment based on the comment.

Commenters, in response to the proposed definition of telehealth, §362.1(39), which would require that all technologies used for telehealth be synchronous, commented on the value of allowing occupational therapy practitioners to use asynchronous technologies during the provision of occupational therapy services via telehealth and asked the Board to allow the licensee to use his or her judgment to determine whether asynchronous technologies may be used. They noted this would have the effect of not restricting the use of technologies by occupational therapy practitioners and access to occupational therapy services by consumers. Several commenters noted that the use of asynchronous technologies aligns with other standards related to and definitions of telehealth and is supported by current research.

The Board does not agree with the comments and declines to revise the rule in response to the comments. The Board noted that asynchronous technologies are those that are not used in real time and thereby provide a lower level of public protection during the provision of occupational therapy services via telehealth than those technologies that are synchronous. The Board made no changes to the amendment based on the comments.

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

§362.1. Definitions.

The following words, terms, and phrases, when used in this part shall have the following meaning, unless the context clearly indicates otherwise.

(1) Accredited Educational Program--An educational institution offering a course of study in occupational therapy that has been accredited or approved by the Accreditation Council for Occupational Therapy Education (ACOTE) of the American Occupational Therapy Association.

(2) Act--The Occupational Therapy Practice Act, Title 3, Subtitle H, Chapter 454 of the Occupations Code.

(3) AOTA--American Occupational Therapy Association.

(4) Applicant--A person who applies for a license to the Texas Board of Occupational Therapy Examiners.

(5) Board--The Texas Board of Occupational Therapy Examiners (TBOTE).

(6) Certified Occupational Therapy Assistant (COTA®)-An individual who uses this term must hold a valid regular or provisional license to practice or represent self as an occupational therapy assistant in Texas and must practice under the general supervision of an OTR® or OT. An individual who uses this term is responsible for ensuring that he or she is otherwise qualified to use it by maintaining certification with NBCOT.

(7) Class A Misdemeanor--An individual adjudged guilty of a Class A misdemeanor shall be punished by:

(A) A fine not to exceed \$4,000;

(B) Confinement in jail for a term not to exceed one year; or

(C) Both such fine and imprisonment (Vernon's Texas Codes Annotated Penal Code §12.21).

(8) Client--The entity that receives occupational therapy; also may be known as patient. Clients may be individuals (including others involved in the individual's life who may also help or be served indirectly such as a caregiver, teacher, parent, employer, spouse), groups, or populations (i.e., organizations, communities).

(9) Complete Application--Application form with photograph, license fee, jurisprudence examination with at least 70% of questions answered correctly, and all other required documents.

(10) Complete Renewal--Contains renewal fee, renewal form with continuing education submission form, home/work address(es) and phone number(s), jurisprudence examination with at least 70% of questions answered correctly, and all other required documents.

(11) Continuing Education Committee--Reviews and makes recommendations to the Board concerning continuing education requirements and special consideration requests.

(12) Coordinator of Occupational Therapy Program--The employee of the Executive Council who carries out the functions of the Texas Board of Occupational Therapy Examiners.

(13) Endorsement--The process by which the Board issues a license to a person currently licensed in another state or territory of the United States that maintains professional standards considered by the Board to be substantially equivalent to those set forth in the Act, and is applying for a Texas license for the first time.

(14) Evaluation--The process of planning, obtaining, documenting and interpreting data necessary for intervention. This process is focused on finding out what the client wants and needs to do and on identifying those factors that act as supports or barriers to performance.

(15) Examination--The Examination as provided for in Section 17 of the Act. The current Examination is the initial certification examination given by the National Board for Certification in Occupational Therapy (NBCOT).

(16) Executive Council--The Executive Council of Physical Therapy and Occupational Therapy Examiners.

(17) Executive Director--The employee of the Executive Council who functions as its agent. The Executive Council delegates implementation of certain functions to the Executive Director.

(18) Intervention--The process of planning and implementing specific strategies based on the client's desired outcome, evaluation data and evidence, to effect change in the client's occupational performance leading to engagement in occupation to support participation.

(19) Investigation Committee--Reviews and makes recommendations to the Board concerning complaints and disciplinary actions regarding licensees and facilities.

(20) Investigator--The employee of the Executive Council who conducts all phases of an investigation into a complaint filed against a licensee, an applicant, or an entity regulated by the Board.

(21) Jurisprudence Examination--An examination covering information contained in the Texas Occupational Therapy Practice

Act and Texas Board of Occupational Therapy Examiners Rules. This test is an open book examination with multiple choice and/or true-false questions. The passing score is 70%.

(22) License--Document issued by the Texas Board of Occupational Therapy Examiners which authorizes the practice of occupational therapy in Texas.

(23) Medical Condition--A condition of acute trauma, infection, disease process, psychiatric disorders, addictive disorders, or post surgical status. Synonymous with the term health care condition.

(24) NBCOT--National Board for Certification in Occupational Therapy.

(25) Non-Licensed Personnel--OT Aide or OT Orderly or other person not licensed by this Board who provides support services to occupational therapy practitioners and whose activities require on-the-job training and supervision.

(26) Non-Medical Condition--A condition where the ability to perform occupational roles is impaired by developmental disabilities, learning disabilities, the aging process, sensory impairment, psychosocial dysfunction, or other such conditions which do not require the routine intervention of a physician.

(27) Occupation--Activities of everyday life, named, organized, and given value and meaning by individuals and a culture. Occupation is everything people do to occupy themselves, including looking after themselves, enjoying life and contributing to the social and economic fabric of their communities.

(28) Occupational Therapist (OT)--An individual who holds a valid regular or provisional license to practice or represent self as an Occupational Therapist in Texas. This definition includes an Occupational Therapist or one who is designated as an Occupational Therapist, Registered (OTR®).

(29) Occupational Therapist, Registered (OTR®)--An individual who uses this term must hold a valid regular or provisional license to practice or represent self as an Occupational Therapist in Texas by maintaining registration through NBCOT.

(30) Occupational Therapy Assistant (OTA)--An individual who holds a valid regular or provisional license to practice or represent self as an Occupational Therapy Assistant in Texas, and who is required to be under the continuing supervision of an OT. This definition includes an individual who is designated as a Certified Occupational Therapy Assistant (COTA®) or an Occupational Therapy Assistant (OTA).

(31) Occupational Therapy Plan of Care--A written statement of the planned course of Occupational Therapy intervention for a client. It must include goals, objectives and/or strategies, recommended frequency and duration, and may also include methodologies and/or recommended activities.

(32) Occupational Therapy Practice--Includes:

(A) Methods or strategies selected to direct the process of interventions such as:

(i) Establishment, remediation, or restoration of a skill or ability that has not yet developed or is impaired.

(ii) Compensation, modification, or adaptation of activity or environment to enhance performance.

(iii) Maintenance and enhancement of capabilities without which performance in everyday life activities would decline.

(iv) Health promotion and wellness to enable or enhance performance in everyday life activities.

(v) Prevention of barriers to performance, including disability prevention.

(B) Evaluation of factors affecting activities of daily living (ADL), instrumental activities of daily living (IADL), education, work, play, leisure, and social participation, including:

(i) Client factors, including body functions (such as neuromuscular, sensory, visual, perceptual, cognitive) and body structures (such as cardiovascular, digestive, integumentary, genitourinary systems).

(ii) Habits, routines, roles and behavior patterns.

(iii) Cultural, physical, environmental, social, and spiritual contexts and activity demands that affect performance.

(iv) Performance skills, including motor, process, and communication/interaction skills.

(C) Interventions and procedures to promote or enhance safety and performance in activities of daily living (ADL), instrumental activities of daily living (IADL), education, work, play, leisure, and social participation, including:

(i) Therapeutic use of occupations, exercises, and activities.

(ii) Training in self-care, self-management, home management and community/work reintegration.

(iii) Development, remediation, or compensation of physical, cognitive, neuromuscular, sensory functions and behavioral skills.

(iv) Therapeutic use of self, including one's personality, insights, perceptions, and judgments, as part of the therapeutic process.

(v) Education and training of individuals, including family members, caregivers, and others.

(vi) Care coordination, case management and transition services.

(vii) Consultative services to groups, programs, organizations, or communities.

(viii) Modification of environments (home, work, school, or community) and adaptation of processes, including the application of ergonomic principles.

(ix) Assessment, design, fabrication, application, fitting and training in assistive technology, adaptive devices, and orthotic devices, and training in the use of prosthetic devices.

(x) Assessment, recommendation, and training in techniques to enhance functional mobility including wheelchair management.

(xi) Driver rehabilitation and community mobility.

(xii) Management of feeding, eating, and swallowing to enable eating and feeding performance.

(xiii) Application of physical agent modalities, and use of a range of specific therapeutic procedures (such as wound care management; techniques to enhance sensory, perceptual, and cognitive processing; manual therapy techniques) to enhance performance skills.

(33) Occupational Therapy Practitioners--Occupational Therapists and Occupational Therapy Assistants licensed by this Board.

(34) Outcome--The focus and targeted end objective of occupational therapy intervention. The overarching outcome of occupational therapy is engagement in occupation to support participation in context(s).

(35) Place(s) of Business--Any facility in which a licensee practices.

(36) Practice--Providing occupational therapy as a clinician, practitioner, educator, or consultant to clients located in Texas at the time of the provision of occupational therapy services. Only a person holding a license from this Board may practice occupational therapy in Texas, and the site of practice is the location in Texas where the client is located at the time of the provision of services.

(37) Rules--Refers to the TBOTE Rules.

(38) Screening--A process used to determine a potential need for occupational therapy interventions, educational and/or other client needs. Screening information may be compiled using observation, client records, the interview process, self-reporting, and/or other documentation.

(39) Telehealth--A mode of service delivery for the provision of occupational therapy services through the use of visual and auditory, synchronous, real time, interactive electronic information/communications technologies. As a mode of service delivery, telehealth is contact with the client and the occupational therapy practitioner(s). Telehealth refers only to the practice of occupational therapy by occupational therapy practitioners who are licensed by this Board with clients who are located in Texas at the time of the provision of occupational therapy services. Also may be known as other terms including but not limited to telepractice, telecare, telerehabilitation, and e-health services.

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

Filed with the Office of the Secretary of State on May 19, 2016.

TRD-201602456

John P. Maline

Executive Director

Texas Board of Occupational Therapy Examiners

Effective date: July 1, 2016

Proposal publication date: March 18, 2016

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



CHAPTER 367. CONTINUING EDUCATION

40 TAC §§367.1 - 367.3

The Texas Board of Occupational Therapy Examiners adopts amendments to §§367.1 - 367.3, concerning continuing education, categories of education, and continuing education audit, without changes to the proposed text as published in the March 18, 2016, issue of the *Texas Register* (41 TexReg 2135). The rules will not be republished.

The amendments will remove requirements related to Type 1 and Type 2 CE and address acceptable activities that are eligible and unacceptable activities that are not eligible for continuing

education credit. The amendments include further clarifications and cleanups, as well.

The amendments will remove the Type 1 and Type 2 continuing education designations and the requirement that licensees earn a minimum of fifteen contact hours of continuing education in Type 2 activities. The amendments instead will require that all of the required 30 hours of continuing education taken for license renewal fit the new definition for continuing education, defined in the amendment to §367.1 as professional development activities that are directly relevant to the profession of occupational therapy. Amendments to §370.3, concerning restoration of a Texas license, and §371.2, concerning retired status, have also been adopted by the Board, and notice of such has been submitted for publication in the *Texas Register*, and include changes to reflect the amendments to §§367.1 - 367.3.

The amendments to §367.2 will also add the NBCOT Navigator™ activities of Case Simulations, Balloon Match Games, Mini Practice Quizzes, and the PICO Game as acceptable continuing education activities. In addition, the amendments will allow for grant writing, general cooking classes, and geriatric anthology to be taken for continuing education if meeting the requirements for continuing education in Chapter 367. The amendments will add first aid as an unacceptable activity that may not be completed for continuing education.

No comments were received regarding adoption of the amendments.

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

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

Filed with the Office of the Secretary of State on May 19, 2016.

TRD-201602457

John P. Maline

Executive Director

Texas Board of Occupational Therapy Examiners

Effective date: July 1, 2016

Proposal publication date: March 18, 2016

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



CHAPTER 370. LICENSE RENEWAL

40 TAC §370.3

The Texas Board of Occupational Therapy Examiners adopts an amendment to §370.3, concerning restoration of a Texas license, without changes to the proposed text as published in the March 18, 2016, issue of the *Texas Register* (41 TexReg 2138). The rule will not be republished.

The amendment will clarify requirements for restoration of an occupational therapist or occupational therapy assistant license expired one year or more.

The amendment will, in addition to clarifying restoration requirements in general, remove the requirement that an individual whose license has been expired two or more years must also

complete forty-five hours of continuing education if choosing the method of restoration requiring that the individual take and pass the National Board for Certification in Occupational Therapy (NBCOT) exam for licensure purposes only. The amendment also removes from a provision related to expedited services for military service members, military veterans, and military spouses, necessitated by Senate Bill 1307 from the 84th Legislative session, the requirement that to be eligible for such services, the military service member, military veteran, or military spouse, as defined in Chapter 55, Occupations Code, §55.001, must have within the five years preceding the restoration application date held a license in Texas. The amendment, in addition, clarifies that restoration requirements are based on the length of time the license has been expired and whether the individual has a current license or occupational therapy employment as specified in this section at the time of the license's restoration. Any reference to Type 2 Continuing Education has also been removed as part of the amendment in accordance with adopted amendments to §§367.1 - 367.3, concerning continuing education, and notice of such has been submitted for publication in the *Texas Register*. The amendment includes further cleanups, as well.

No comments were received regarding adoption of the amendment.

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

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

Filed with the Office of the Secretary of State on May 19, 2016.

TRD-201602458

John P. Maline

Executive Director

Texas Board of Occupational Therapy Examiners

Effective date: July 1, 2016

Proposal publication date: March 18, 2016

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



CHAPTER 371. INACTIVE AND RETIRED STATUS

40 TAC §371.1, §371.2

The Texas Board of Occupational Therapy Examiners adopts amendments to §371.1 and §371.2, concerning inactive status and retired status, without changes to the proposed text as published in the March 18, 2016, issue of the *Texas Register* (41 TexReg 2140). The rules will not be republished.

The amendments to §371.1 and §371.2 will clarify requirements regarding inactive and retired status; the amendments include further clarifications and cleanups, as well.

The amendments to §371.1 will clarify requirements regarding inactive status and specify that inactive status fees for an occupational therapist or occupational therapy assistant license are nonrefundable. The amendments will specify that if the inactive status license has been expired one year or more, in order to

return to active status, the individual must follow the procedures to restore the license according to §370.3, concerning restoration of a Texas license, an amendment to which has also been adopted, and notice of such submitted to the *Texas Register*. The amendments to §371.1 will also add the provision that licensees on inactive status are subject to the audit of continuing education as described in §367.3, concerning continuing education audit.

The amendments to §371.2 will clarify requirements regarding retired status and specify that retired status fees for an occupational therapist or occupational therapy assistant license are nonrefundable. The amendments will also add the provision that licensees on retired status may provide occupational therapy services according to the terms of the license upon online verification of current licensure and license expiration date from the Board's license verification web page. Any reference to Type 2 continuing education has also been removed as part of the proposal in accordance with adopted amendments to §§367.1 - 367.3, notice of which has been submitted for publication in the *Texas Register*, concerning continuing education, categories of education, and continuing education audit.

No comments were received regarding adoption of the amendments.

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

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

Filed with the Office of the Secretary of State on May 19, 2016.

TRD-201602459

John P. Maline

Executive Director

Texas Board of Occupational Therapy Examiners

Effective date: July 1, 2016

Proposal publication date: March 18, 2016

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



CHAPTER 372. PROVISION OF SERVICES

40 TAC §372.1

The Texas Board of Occupational Therapy Examiners adopts an amendment to §372.1, concerning provision of services, without changes to the proposed text as published in the March 18, 2016, issue of the *Texas Register* (41 TexReg 2142). The rule will not be republished.

The amendment includes clarifications regarding the provision of services and will add telehealth as a mode of occupational therapy service delivery.

The amendment will add language specifying that the occupational therapist is responsible for determining whether any aspect of the provision of services may be conducted via telehealth or must be conducted in person. The amendment will also add the provision that the initial evaluation for a medical condition must be conducted in person and may not be conducted via telehealth. The amendment will add language allowing for the eval-

uation for a non-medical condition and for the intervention for a medical or non-medical condition to be provided via telehealth. The amendment will, furthermore, add the provision that devices that are in sustained skin contact with the client (including but not limited to wheelchair positioning devices, splints, hot/cold packs, and therapeutic tape) require the on-site and attending presence of the occupational therapy practitioner for any initial applications and that the occupational therapy practitioner is responsible for determining the need to be on-site and attending for subsequent applications or modifications. Amendments to §362.1, concerning definitions, and §373.1, concerning supervision of non-licensed personnel, have also been adopted, and notice of such has been submitted for publication in the *Texas Register*, regarding the inclusion of telehealth in the Board Rules as a mode of occupational therapy service delivery.

The amendment to §372.1, in addition, clarifies that occupational therapists may provide consultation or monitored services, or screen or evaluate the client to determine the need for occupational therapy services without a referral and that a screening, consultation, or monitored services may be performed by an occupational therapy practitioner. The amendment, in addition, clarifies that an occupational therapist must exercise professional judgment to determine cessation or continuation of intervention without a receipt of the written referral. The amendment contains further cleanups and grammatical revisions, as well.

Comments were received by the Board by Tammy Richmond, CEO, GO 2 Care Inc.; Marsha Waind, Manager, Telehealth, Information Systems, Altru Health System; Chrissy Vogeley, Manager, State Affairs, American Occupational Therapy Association; Christene Maas; and Judy Skarbek, President, Texas Occupational Therapy Association.

Some commenters noted the value in the Board's proposing of rules that would permit telehealth to be used during the provision of occupational therapy services in Texas.

The Board appreciates the comments and made no changes to the amendment based on the comments.

Several commenters, in response to the proposed definition of telehealth, §362.1(39), which would require that all technologies used for telehealth be synchronous, commented on the value of allowing occupational therapy practitioners to use asynchronous technologies during the provision of occupational therapy services via telehealth and asked the Board to allow the licensee to use his or her judgment to determine whether asynchronous technologies may be used. They noted this would have the effect of not restricting the use of technologies by occupational therapy practitioners and access to occupational therapy services by consumers. Several commenters noted that the use of asynchronous technologies aligns with other standards related to and definitions of telehealth and is supported by current research.

The Board does not agree with the comments and declines to revise the rules in response to the comments. The Board noted that asynchronous technologies are those that are not used in real time and thereby provide a lower level of public protection during the provision of occupational therapy services via telehealth than those technologies that are synchronous. The Board made no changes to the amendment to §372.1 or to the definition of telehealth in the amendment to §362.1 based on the comments.

Comments were, in addition, received opposing provision §372.1(b)(2) in the proposal, which requires that the initial evaluation for a medical condition must be conducted in person

and may not be conducted via telehealth. The commenters noted that whether the initial evaluation may be conducted via telehealth should be left to the occupational therapist's judgment. They noted that the ability to conduct an initial evaluation via telehealth aligns with other standards related to and definitions of telehealth and is supported by current research, and some commented that the practice of telehealth should not be regulated differently from in person care. Several commenters also noted that the requirement would be too restrictive and may impede access to care.

The Board does not agree with the comments and declines to revise the rule as the commenters suggest. The Board noted that the requirement that the initial evaluation for a medical condition must be conducted in person provides for a higher level of public protection than would a provision allowing that such may be conducted via telehealth. The Board made no changes to the amendment based on the comments.

Two commenters also addressed the proposed addition to the section of §372.1(f)(8), concerning devices that are in sustained skin contact with the client. The commenters were in opposition to this requirement noting that it was unclear which devices would be considered under this provision and noted that it should be left to the judgment of the occupational therapy practitioner to determine when the practitioner needs to be on-site and attending for the initial application or, as they note, whether telehealth may be used, as supported by research. One commenter also noted that this provision would limit current practice and lead to delays in treatment.

The Board does not agree with the comments and declines to revise the rule in response to the comments. The Board noted that the provision defines the parameters of such devices and that the provision is needed to ensure the protection of the public when devices that are in sustained skin contact with the client are used by ensuring that a licensee is on-site and attending for the initial application of such. The Board noted, furthermore, that this will facilitate the licensee's ability to determine whether the licensee needs to be on-site and attending for any subsequent applications.

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

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

Filed with the Office of the Secretary of State on May 19, 2016.

TRD-201602460

John P. Maline

Executive Director

Texas Board of Occupational Therapy Examiners

Effective date: July 1, 2016

Proposal publication date: March 18, 2016

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



40 TAC §372.2

The Texas Board of Occupational Therapy Examiners adopts new rule §372.2, concerning general purpose occupation-based

instruction, with changes to the proposed text as published in the March 18, 2016, issue of the *Texas Register* (41 TexReg 2143). The rule will be republished.

The first change is to remove from §372.2(b) the sentence "However, if a participant requires individualized occupational therapy services, a referral must be made to an occupational therapist for the provision of occupational therapy services in accordance with §372.1 of this title (relating to Provision of Services)" and to replace it with "If a participant requires individualized occupational therapy services, these may only be provided in accordance with §372.1 of this title (relating to Provision of Services)" to clarify that individualized occupational therapy services may only be provided according to the provisions of §372.1, concerning provision of services.

The second change is to add as §372.2(d) the provision "When general purpose occupation-based instruction is being provided pursuant to §372.2, the OT must approve the curricular goals/program prior to the OTA's initiating instruction." This provision was originally published as §373.3(b)(4) in the previously proposed amendment to §373.3, concerning supervision of an occupational therapy assistant, in the March 18, 2016, issue of the *Texas Register* (41 TexReg 2144). During the adoption of §373.3, this provision was removed from the amendment as it was added to §372.2 upon the latter section's adoption.

The adopted new rule §372.2 will concern general purpose occupation-based instruction by occupational therapy practitioners.

The rule will specify that occupational therapy practitioners may develop or facilitate general purpose, occupation-based groups or classes and that these services do not require individualized evaluation and plan of care services but practitioners may develop goals or curriculums for the group as a whole. The rule will add that if a participant requires individualized occupational therapy services, these may only be provided in accordance with §372.1 of this title (relating to Provision of Services). The new rule will require that supervision requirements for services provided pursuant to this section shall be completed in accordance with §373.3, concerning supervision of an occupational therapy assistant and that when general purpose occupation-based instruction is being provided pursuant to §372.2, the occupational therapist must approve the curricular goals/program prior to the occupational therapy assistant's initiating instruction. Amendments to §373.3 and to §376.5, concerning exemptions to registration, with regard to facilities registered with the Board, have also been adopted by the Board, and notice of such has been submitted for publication in the *Texas Register*, with regard to new §372.2.

No comments were received regarding adoption of the new rule.

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

§372.2. *General Purpose Occupation-Based Instruction.*

(a) Occupational therapy practitioners may develop or facilitate general purpose, occupation-based groups or classes including but not limited to handwriting groups, parent-child education classes, wellness-focused activities for facility residents, aquatics exercise groups, and cooking for diabetics classes.

(b) These services do not require individualized evaluation and plan of care services but practitioners may develop goals or

curriculums for the group as a whole. If a participant requires individualized occupational therapy services, these may only be provided in accordance with §372.1 of this title (relating to Provision of Services).

(c) Supervision requirements for services provided pursuant to this section shall be completed in accordance with §373.3 of this title (relating to Supervision of an Occupational Therapy Assistant).

(d) When general purpose occupation-based instruction is being provided pursuant to §372.2, the OT must approve the curricular goals/program prior to the OTA's initiating instruction.

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

Filed with the Office of the Secretary of State on May 19, 2016.

TRD-201602461

John P. Maline

Executive Director

Texas Board of Occupational Therapy Examiners

Effective date: July 1, 2016

Proposal publication date: March 18, 2016

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



CHAPTER 373. SUPERVISION

40 TAC §373.1, §373.3

The Texas Board of Occupational Therapy Examiners adopts amendments to §373.1 and §373.3, concerning supervision of non-licensed personnel and supervision of an occupational therapy assistant, without changes to the proposed text of §373.1 and with changes to the proposed text to §373.3 as published in the March 18, 2016, issue of the *Texas Register* (41 TexReg 2144). Section 373.3 will be republished.

The first change is to replace in §373.3(b)(2)(F)(ii) the word "or" in the phrase "electronic information or communications technologies" with a slash so the phrase reads "electronic information/communications technologies." The second change is to remove provision §373.3(b)(4). This provision was added to §372.2, concerning general purpose occupation-based instruction, upon its adoption.

The amendment to §373.1 will clarify the supervision requirements for non-licensed personnel in general and with regard to the use of non-licensed personnel during the provision of occupational therapy services via telehealth. The amendment to §373.3 will clarify the supervision requirements for occupational therapy assistants in general and with regard to their supervision when providing general purpose occupation-based instruction. The amendments include cleanups and grammatical revisions, as well.

The amendment to §373.1 will remove language that close personal supervision implies direct, on-site contact whereby the supervising occupational therapy licensee is able to respond immediately to the needs of the patient. The amendment will add language that supervision for occupational therapy aides as defined by the Practice Act, §454.002, concerning definitions, is on-site contact whereby the supervising occupational therapy practitioner is able to respond immediately to the needs of the client. The amendment will also add the provision that supervision of other non-licensed personnel either on-site or via telehealth requires that the occupational therapy practitioner main-

tain line of sight. Amendments to §362.1, concerning definitions, and §372.1, concerning provision of services, have also been adopted regarding the inclusion of telehealth in the Board Rules as a mode of occupational therapy service delivery, and notice of such has been submitted for publication in the *Texas Register*.

The amendment to §373.3 includes language adding that up to half of the required interactive supervision hours for an occupational therapy assistant may be completed via visual and auditory, synchronous, real time, interactive electronic information/communications technologies. The amendment also includes revisions to the required supervision hours for occupational therapy assistants, adding a category pertaining to those working twenty or fewer hours during a given month. With regard to the requirement that the occupational therapy assistant must include the name of a supervising occupational therapist in each intervention note, language has been added in the amendment that this requirement is not applicable to instruction provided pursuant to §372.2, concerning general purpose occupation-based instruction. An amendment to §376.5, concerning exemptions to registration, with regard to facilities registered with the Board, has also been adopted with regard to §372.2.

Two comments were received by the Board, the first from Kristine Weir and the second from Chrissy Vogeley, Manager, State Affairs, American Occupational Therapy Association.

One commenter was in support of the proposed provision to §373.3 that would reduce the number of required supervision hours for occupational therapy assistants working twenty or fewer hours during a given month.

The Board appreciates the comment and made no changes based on the comment.

The commenters were in support of the proposed change to §373.3(b)(2)(F)(ii) that would add that up to half of the required interactive supervision hours for an occupational therapy assistant may be completed via visual and auditory, synchronous, real time, interactive electronic information/communications technologies.

The Board appreciates the comments and made no changes based on the comments.

One commenter questioned why all of the interactive supervision hours may not be completed by such electronic information/communications technologies and also requested that asynchronous be added to the provision to allow for asynchronous technologies to be used during interactive supervision.

The Board does not agree with the comment and declines to revise the rule in response to the comment. The Board noted that the requirements that at least half of the required interactive supervision hours be completed in person and that any hours eligible to be completed via electronic information/communications technologies be completed using synchronous technologies are required to maintain the close supervisory relationship between the occupational therapy assistant and the delegating occupational therapists in order to protect the public.

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

§373.3. Supervision of an Occupational Therapy Assistant.

(a) An occupational therapy assistant shall provide occupational therapy services only under the supervision of an occupational therapist(s).

(b) Supervision of an occupational therapy assistant in all settings includes:

(1) Supervision Form: For each employer, the occupational therapy assistant must submit the Occupational Therapy Assistant Supervision form with the employer information and name and license number of one of the occupational therapists working for the employer who will be providing supervision.

(2) Supervision Log and Supervision Hours:

(A) The occupational therapy assistant must complete supervision hours each month, which must be recorded on the Supervision Log. The Supervision Log is kept by the occupational therapy assistant and signed by the occupational therapist(s) when supervision is given. The occupational therapist(s) or employer may request a copy of the Supervision Log.

(B) All of the occupational therapists, whether working full time, part time, or PRN (i.e., working on an as-needed basis), who delegate to the occupational therapy assistant must participate in the supervision hours, whether on a shared or rotational basis.

(C) For each employer, the occupational therapy assistant must complete a separate Supervision Log and must complete the specified supervision hours, in addition to all other requirements. Supervision hours for different employers may not be combined.

(D) For those months when the licensee does not work as an occupational therapy assistant, he or she shall write N/A in the Supervision Log.

(E) Supervision Logs are subject to audit by the Board.

(F) Occupational therapy assistants must complete these types of supervision per month according to the following table:

(i) Frequent Communication Supervision: frequent communication between the supervising occupational therapist(s) and occupational therapy assistant including, but not limited to, communication by electronic/communications technology methods, written report, and conference, including review of progress of clients assigned, plus

(ii) Interactive Supervision: interactive supervision during which the occupational therapist directly observes the occupational therapy assistant providing services to one or more clients. Up to half of the required interactive supervision hours may be completed via visual and auditory, synchronous, real time, interactive electronic information/communications technologies.

Figure: 40 TAC §373.3(b)(2)(F)(ii)

(3) The occupational therapy assistant must include the name of a supervising OT in each intervention note. This may not necessarily be the occupational therapist who wrote the plan of care, but an occupational therapist who is readily available to answer questions about the client's intervention at the time of the provision of services. If this requirement is not met, the occupational therapy assistant may not provide services. This provision is not applicable to instruction provided pursuant to §372.2 of this title (relating to General Purpose Occupation-Based Instruction).

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

Filed with the Office of the Secretary of State on May 19, 2016.

TRD-201602462

John P. Maline

Executive Director

Texas Board of Occupational Therapy Examiners

Effective date: July 1, 2016

Proposal publication date: March 18, 2016

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

CHAPTER 376. REGISTRATION OF FACILITIES

40 TAC §376.5

The Texas Board of Occupational Therapy Examiners adopts an amendment to §376.5, concerning exemptions to registration, without changes to the proposed text as published in the March 18, 2016, issue of the *Texas Register* (41 TexReg 2146). The rule will not be republished.

The amendment to §376.5 will add a provision related to exemptions to the requirement to register as an occupational therapy facility.

The amendment will add language specifying that if a facility only offers services pursuant to adopted new rule §372.2, concerning general purpose occupation-based instruction, then the facility is exempted from the requirement to register the facility with the Board. An amendment to §373.3, concerning supervision of an occupational therapy assistant, has also been adopted with regard to new §372.2, and notice of such has been submitted for publication in the *Texas Register*.

No comments were received regarding adoption of the amendment.

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

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

Filed with the Office of the Secretary of State on May 19, 2016.

TRD-201602463

John P. Maline

Executive Director

Texas Board of Occupational Therapy Examiners

Effective date: July 1, 2016

Proposal publication date: March 18, 2016

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

PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 702. GENERAL ADMINISTRATION

The Health and Human Services Commission (HHSC) adopts, on behalf of the Department of Family and Protective Services (DFPS or "Department"), amendment to §702.5 and new

§§702.501, 702.503, 702.505, 702.507, 702.509, 702.511, 702.513 and 702.515. Section 702.509 and §702.511 are adopted with changes to the proposed text published in the March 18, 2016, issue of the *Texas Register* (41 TexReg 2149) and will be republished.

The justification of the amendment and new rules is to establish five advisory committees to advise the Department and to establish general provisions applicable to all advisory committees.

Current DFPS rules regarding advisory committees were originally adopted in 1988, revised in 1994, and do not contain complete or correct information regarding the Department's active advisory committees. The rules in Chapter 730, Legal Services, Subchapter E, relating to Advisory Committees and Other Committees are being repealed and will be published in this same issue of the *Texas Register*.

In August of 2014, the Texas Sunset Advisory Commission issued its Staff Report for DFPS, which included recommendations that DFPS' advisory committees be removed from statute and that DFPS subsequently establish any advisory committee(s) the agency wanted to create or maintain in rule. The Sunset Report also made some specific recommendations regarding certain provisions that rules establishing advisory committees should contain.

Texas Senate Bill 206, 84th Legislature (2015), the DFPS Sunset bill, included a provision requiring the Executive Commissioner of HHSC to adopt rules, in compliance with Chapter 2110, Government Code, regarding the purpose, structure, and use of advisory committees by DFPS. The rules may include provisions governing: (1) an advisory committee's size and quorum requirements; (2) qualifications for membership of an advisory committee, including: (A) requirements relating to experience and geographic representation; and (B) requirements for the department to include as members of advisory committees youth who have aged out of foster care and parents who have successfully completed family service plans and whose children were returned to the parents, as applicable; (3) appointment procedures for an advisory committee; (4) terms for advisory committee members; and (5) compliance with Chapter 551, Government Code (Open Meetings).

In addition, Senate Bill 200, Sunset legislation for HHSC in the 84th Legislature (and other related bills) removed most Health and Human Services (HHS) advisory committees from statute, and provided the Executive Commissioner of HHSC the latitude to re-establish or modify needed advisory committees through rule. Senate Bill 200 stated that advisory committees shall consider issues and solicit public input across major areas of the HHS system, including relating to the following issue areas: (1) Medicaid and other social services programs; (2) managed care under Medicaid and the child health plan program; (3) health care quality initiatives; (4) aging; (5) persons with disabilities, including persons with autism; (6) rehabilitation, including for persons with brain injuries; (7) children; (8) public health; (9) behavioral health; (10) regulatory matters; (11) protective services; and (12) prevention efforts.

As noted, the legislation requires any advisory committees adopted in rule to comply with Chapter 2110, Texas Government Code. This statute, in effect since 1997, requires a state agency that creates an advisory committee to establish that committee in agency rule. The rule must state the purpose and tasks of the committee, and describe the manner in which the committee will report to the agency.

The Government Code further provides that:

- (1) An agency advisory committee must be composed of a reasonable number of members, not to exceed 24.
- (2) An advisory committee that advises a state agency regarding an industry or occupation regulated or directly affected by the agency must provide a balanced representation between the industry or occupation and consumers of services provided by the agency, industry or occupation.
- (3) An advisory committee shall select from among its members a presiding officer, and the presiding officer shall preside over the advisory committee and report to the state agency it is advising.
- (4) A state agency that wants to reimburse the expenses of advisory committee members may only do so by requesting authority through the appropriations or budget execution process.
- (5) The agency must annually evaluate the committee's work, the committee's usefulness, and the costs related to the committee's existence, including the cost of agency staff time spent in support of the committee's activities.
- (6) The state agency shall report to the Legislative Budget Board the information developed in the evaluation described above. The agency shall file the report biennially in connection with the agency's request for appropriations.
- (7) The agency may designate in rule the date on which the committee will automatically be abolished. If the agency does not establish an abolition date in rule, the committee will automatically be abolished on the fourth anniversary of the date of its creation (unless a specific duration for the advisory committee is prescribed in statute).
- (8) These provisions apply to an advisory committee unless another law specifically states that this law does not apply, or a federal law or regulation imposes a condition or requirement that irreconcilably conflicts with this law.

In 2015, HHSC established a cross-agency work group to evaluate all existing HHS advisory committees and determine their continued ability to effectively inform agency leadership regarding key issue areas in the HHS system. Staff representing each of the HHS agencies conducted an assessment of existing committees, gathered stakeholder input, and made preliminary recommendations to the Executive Commissioner. On October 30, 2015, as required by law, HHSC published in the *Texas Register* (40 TexReg 7726) the list of advisory committees that should be established in rule, which advisory committees should be combined, and which had become inactive or should otherwise be eliminated. Of the published list, 11 committees are (or formerly were) operated primarily by DFPS and are the subject of this proposed rulemaking.

Committees to be established in rule: (1) The Committee on Advancing Residential Practices; (2) The Public Private Partnership; (3) The Advisory Committee on Promoting Adoption of Minority Children; (4) The Parent Collaboration Group; and (5) The Youth Leadership Council.

Inactive committees to be abolished in rule: (1) State Advisory Committee on Child Care Administrators and Facilities; (2) Strategic Directions Advisory Committee; (3) Advisory Committee for the Office of Protective Services for Families and Children; (4) Advisory Committee for the Office of Adult Protective Services; (5) Research Review Committee; and (6) Regional Advisory Councils.

A summary of the changes are:

Amendment to §702.5 will add new terms and definitions for the following: (1) Advisory committee--Any group, such as a committee, commission, task force, workgroup, or other entity with multiple members that has as its primary function advising the Department of Family and Protective Services; (2) Commissioner--The Commissioner of DFPS; (3) DFPS or the Department--The Texas Department of Family and Protective Services; (4) Executive Commissioner--The Executive Commissioner of the Texas Health and Human Services Commission or his or her designee; (5) Quorum--A majority of an advisory committee's active membership; (6) Single Source Continuum Contractor--Entity with which DFPS contracts for the full continuum of care in a Foster Care Redesign catchment area. Technical amendments were made to the following definitions: (1) APS--Adult Protective Services; (2) CCL--Child-Care Licensing; (3) CPS--Child Protective Services; and (4) PEI--Prevention and Early Intervention. The following definitions are being repealed: (1) Board of the Texas Department of Protective and Regulatory Services; and (2) Executive director.

New §702.501(a) cites the statutory authority for the Executive Commissioner to establish advisory committees in rule; subsection (b) applies Texas Government Code Chapter 2110 to advisory committees established in these rules; subsection (c) applies the Texas Government Code "Open Meetings Act" to a committee unless otherwise noted.

New §702.503 provides that unless otherwise noted, an advisory committee selects a presiding officer from among its members which is a requirement of Texas Government Code Chapter 2110.

New §702.505 outlines conflict of interest provisions for members of advisory committees.

New §702.507 establishes the Committee for the Advancement of Residential Practices, its purpose, tasks, reporting requirements, membership, meeting schedule, decision-making process, and date of abolishment.

New §702.509 establishes the Public Private Partnership, its purpose, tasks, reporting requirements, membership, meeting schedule, decision-making process, and date of abolishment.

New §702.511 establishes the Advisory Committee on Promoting Adoption of Minority Children, its purpose, tasks, reporting requirements, membership, meeting schedule, decision-making process, and date of abolishment.

New §702.513 establishes the Parent Collaboration Group, its purpose, tasks, reporting requirements, membership, meeting schedule, decision-making process, and date of abolishment. Exempts the Group from the "Open Meetings Act."

New §702.515 establishes the Youth Leadership Council, its purpose, tasks, reporting requirements, membership, meeting schedule, decision-making process, and date of abolishment. Exempts the Council from the "Open Meetings Act."

The amendment and new sections will function so that stakeholders and interested parties will know what advisory committees the Department has established, what their purpose is, and how they will advise the Department.

During the public comment period following posting of the proposed rules in the *Texas Register*, DFPS did not receive any comments regarding the rule changes. However, DFPS inadvertently posted the proposed rules in the *Texas Register* without

a modification suggested in informal stakeholder comments received prior to publication. Therefore a Correction of Error was published in the April 1, 2016, issue of the *Texas Register* (41 TexReg 2519) to include the modified language in the proposed rules. The Correction of Error clarified that the language in the rule text of §702.511(e)(1)(B)(ii) stating "At least six members must be ordained members of the clergy" was incorrect and the correct rule language should be "Membership may include ordained members of the clergy."

Because no additional comments were received during the official comment period, the agency is adopting the rule as it appeared after the April 1, 2016, correction.

SUBCHAPTER A. INTRODUCTION

40 TAC §702.5

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the Health and Human Services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §40.030, which allows the Commissioner and Executive Commissioner to appoint advisory committees for DFPS and requires the Executive Commissioner to adopt rules regarding the advisory committees, and Government Code §531.012, which directs the Executive Commissioner to adopt rules to establish and govern advisory committees across all major areas of the HHS system.

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

Filed with the Office of the Secretary of State on May 20, 2016.

TRD-201602485

Trevor Woodruff

General Counsel

Department of Family and Protective Services

Effective date: July 1, 2016

Proposal publication date: March 18, 2016

For further information, please call: (512) 438-3466



SUBCHAPTER F. ADVISORY COMMITTEES

40 TAC §§702.501, 702.503, 702.505, 702.507, 702.509, 702.511, 702.513, 702.515

The new sections are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules

governing the delivery of services to persons who are served or regulated by the Department.

The new sections implement HRC §40.030, which allows the Commissioner and Executive Commissioner to appoint advisory committees for DFPS and requires the Executive Commissioner to adopt rules regarding the advisory committees and Texas Government Code §531.012, which directs the Executive Commissioner to adopt rules to establish and govern advisory committees across all major areas of the HHS system.

§702.509. *Public Private Partnership.*

(a) Establishment. The Public Private Partnership (PPP) is established.

(b) Purpose. The purpose of the PPP is to explore, study, and recommend innovative and creative practices that affect the Texas Foster Care system. The PPP provides recommendations to the Department regarding Foster Care Redesign and its implementation.

(c) Tasks. The PPP performs the following tasks:

(1) makes recommendations to the Department through regularly scheduled meetings and Department staff assigned to the committee; and

(2) performs other tasks consistent with the committee's purpose that are requested by the Commissioner.

(d) Reporting requirements and Department action.

(1) The PPP reports recommendations to the Department at least annually.

(2) PPP recommendations may inform Department policy or practice.

(3) PPP recommendations are advisory and do not obligate the Department to take action.

(e) Membership.

(1) The PPP consists of no more than 24 members.

(2) Members are appointed by the Commissioner.

(3) Membership requirements.

(A) Members must have demonstrated a commitment to the children, youth, and families of Texas and have knowledge and experience with the Texas foster care system.

(B) Members must be willing to devote the time necessary to attend and participate in meetings.

(C) In choosing PPP members, the Commissioner considers how the diverse ethnic, gender, and geographic communities in Texas are represented on the committee, including diverse sizes and types of providers.

(4) Membership includes:

(A) providers and provider associations in good standing with the Department;

(B) youth who were formerly in foster care;

(C) members of the judiciary;

(D) child welfare advocacy groups;

(E) parents; and

(F) other child welfare stakeholders, as determined by the Commissioner.

(5) Except as may be necessary to stagger terms, a committee member serves for a two-year term and may be appointed for additional terms at the discretion of the Commissioner.

(6) Members who represent a particular group are automatically removed from the committee when they are no longer members of the group in subsection (e)(1)(C) of this section whom they were appointed to represent, and may be replaced by another member of that same group by Commissioner appointment.

(7) Members who fail to attend three consecutive meetings without an excused absence by the presiding officer as reflected in the minutes are removed from the committee without further action, and the Commissioner appoints a replacement.

(f) Presiding officers. The presiding officer may not currently be an employee of or be actively seeking a contract as a Single Source Continuum Contractor (SSCC).

(g) Meetings. The PPP meets at least quarterly or as called by the presiding officer.

(h) Decision-making. The committee makes recommendations by consensus, with dissenting opinions noted.

(i) Bylaws. The committee will adopt bylaws to further govern committee practices, such as attendance requirements, meeting notices, workgroups and subcommittees, and conflicts of interest.

(j) Abolition. The PPP is abolished, and this section expires, August 31, 2026.

§702.511. *Advisory Committee on Promoting Adoption of Minority Children.*

(a) Establishment. The Advisory Committee on Promoting Adoption of Minority Children (ACPAMC) is established.

(b) Purpose. The ACPAMC works locally and at the state level to raise awareness of the needs of minority children in all stages of service.

(c) Tasks. The ACPAMC performs the following tasks:

(1) makes recommendation to the Department through regularly scheduled meetings and Department staff assigned to the committee; and

(2) performs other tasks consistent with the committee's purpose that are requested by the Commissioner.

(d) Reporting requirements and department action.

(1) The ACPAMC reports to the Department at least annually the committee's recommendations for Department programs and projects that will promote the adoption of and provision of services to minority children.

(2) The committee's recommendations may inform Department policy or practice.

(e) Membership.

(1) The ACPAMC consists of no more than 24 members.

(A) Members are appointed by the Commissioner.

(B) Membership requirements:

(i) Members must have knowledge of and experience in community education, cultural relations, family support, counseling, and parenting skills and education.

(ii) Membership may include ordained members of the clergy.

(2) Except as may be necessary to stagger terms, a committee member serves for a two-year term and may be appointed for additional terms at the discretion of the Commissioner.

(f) Meetings. The Committee will meet at least quarterly.

(g) Decision-making. The committee will make decisions by consensus.

(h) Bylaws. The ACPAMC will adopt bylaws to govern committee practices including selection of the presiding officer, voting procedures, attendance requirements, reimbursement procedures, workgroups and subcommittees, and conflicts of interest.

(i) Presiding officer. The presiding officer serves for a two-year term.

(j) Abolition. The ACPAMC is abolished, and this section expires, August 31, 2026.

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

Filed with the Office of the Secretary of State on May 20, 2016.

TRD-201602486

Trevor Woodruff

General Counsel

Department of Family and Protective Services

Effective date: July 1, 2016

Proposal publication date: March 18, 2016

For further information, please call: (512) 438-3466



CHAPTER 730. LEGAL SERVICES

SUBCHAPTER E. ADVISORY COMMITTEES AND OTHER COMMITTEES

40 TAC §§730.401 - 730.403, 730.405, 730.406

The Health and Human Services Commission (HHSC) adopts, on behalf of the Department of Family and Protective Services (DFPS or "Department"), the repeal of §§730.401 - 730.403, 730.405, and 730.406 without changes to the proposed text published in the March 18, 2016, issue of the *Texas Register* (41 TexReg 2154).

The justification of the repeals is to update current DFPS rules regarding advisory committees. The rules were originally adopted in 1988, revised in 1994, and do not contain complete or correct information regarding the Department's active advisory committees.

In August of 2014, the Texas Sunset Advisory Commission issued its Staff Report for DFPS, which included recommendations that DFPS' advisory committees be removed from statute and that DFPS subsequently establish any advisory committee(s) the agency wanted to create or maintain in rule. The Sunset Report also made some specific recommendations regarding certain provisions that rules establishing advisory committees should contain.

Texas Senate Bill (SB) 206, 84th Legislature (2015), the DFPS Sunset bill, included a provision requiring the Executive Commissioner of HHSC to adopt rules, in compliance with Chapter 2110, Government Code, regarding the purpose, structure, and use of advisory committees by DFPS. The provision in SB 206

stated that the rules may include provisions governing: (1) an advisory committee's size and quorum requirements; (2) qualifications for membership of an advisory committee, including: (A) requirements relating to experience and geographic representation; and (B) requirements for the department to include as members of advisory committees youth who have aged out of foster care and parents who have successfully completed family service plans and whose children were returned to the parents, as applicable; (3) appointment procedures for an advisory committee; (4) terms for advisory committee members; and (5) compliance with Chapter 551, Government Code (Open Meetings).

In addition, Senate Bill 200, Sunset legislation for HHSC in the 84th Legislature (and other related bills) removed most Health and Human Services (HHS) advisory committees from statute, and provided the Executive Commissioner of HHSC the latitude to re-establish or modify needed advisory committees through rule. Senate Bill 200 stated that advisory committees shall consider issues and solicit public input across major areas of the HHS system including relating to the following issue areas: (1) Medicaid and other social services programs; (2) managed care under Medicaid and the child health plan program; (3) health care quality initiatives; (4) aging; (5) persons with disabilities, including persons with autism; (6) rehabilitation, including for persons with brain injuries; (7) children; (8) public health; (9) behavioral health; (10) regulatory matters; (11) protective services; and (12) prevention efforts.

As noted, the legislation requires any advisory committees adopted in rule to comply with Chapter 2110, Texas Government Code. This statute, in effect since 1997, requires a state agency that creates an advisory committee to establish that committee in agency rule. The rule must state the purpose and tasks of the committee, and describe the manner in which the committee will report to the agency.

The Government Code further provides that:

(1) An agency advisory committee must be composed of a reasonable number of members, not to exceed 24.

(2) An advisory committee that advises a state agency regarding an industry or occupation regulated or directly affected by the agency must provide a balanced representation between the industry or occupation and consumers of services provided by the agency, industry or occupation.

(3) An advisory committee shall select from among its members a presiding officer, and the presiding officer shall preside over the advisory committee and report to the state agency it is advising.

(4) A state agency that wants to reimburse the expenses of advisory committee members may only do so by requesting authority through the appropriations or budget execution process.

(5) The agency must annually evaluate the committee's work, the committee's usefulness, and the costs related to the committee's existence, including the cost of agency staff time spent in support of the committee's activities.

(6) The state agency shall report to the Legislative Budget Board the information developed in the evaluation described above. The agency shall file the report biennially in connection with the agency's request for appropriations.

(7) The agency may designate in rule the date on which the committee will automatically be abolished. If the agency does not establish an abolition date in rule, the committee will automatically be abolished on the fourth anniversary of the date of its

creation (unless a specific duration for the advisory committee is prescribed in statute).

(8) These provisions apply to an advisory committee unless another law specifically states that this law does not apply, or a federal law or regulation imposes a condition or requirement that irreconcilably conflicts with this law.

In 2015, HHSC established a cross-agency work group to evaluate all existing HHS advisory committees and determine their continued ability to effectively inform agency leadership regarding key issue areas in the HHS system. Staff representing each of the HHS agencies conducted an assessment of existing committees, gathered stakeholder input, and made preliminary recommendations to the Executive Commissioner. On October 30, 2015, as required by law, HHSC published in the *Texas Register* (40 TexReg 7726) the list of advisory committees that should be established in rule, which advisory committees should be combined, and which had become inactive or should otherwise be eliminated. Of the published list, 11 committees are (or formerly were) operated primarily by DFPS and are the subject of this rulemaking:

Committees to be established in rule: (1) The Committee on Advancing Residential Practices; (2) The Public Private Partnership; (3) The Advisory Committee on Promoting Adoption of Minority Children; (4) The Parent Collaboration Group; and (5) The Youth Leadership Council.

Inactive committees to be abolished in rule: (1) State Advisory Committee on Child Care Administrators and Facilities; (2) Strategic Directions Advisory Committee; (3) Advisory Committee for the Office of Protective Services for Families and Children; (4) Advisory Committee for the Office of Adult Protective Services; (5) Research Review Committee; and (6) Regional Advisory Councils.

A summary of the changes to Chapter 730 are that §§730.401, 730.402, 730.403, 730.405, and 730.406 are being repealed because they are outdated. New rules are adopted in Chapter 702, General Administration, Subchapter F of this title (relating to Advisory Committees). The new subchapter will establish the Department's current and active advisory committees in rule in accordance with recently enacted Sunset legislation, will be published in this same issue of the *Texas Register*.

The function of the repeals will be that inactive advisory committees will not appear to still be in place, which will prevent confusion to DFPS stakeholders and the public. New advisory committee rules are being adopted in Chapter 702, General Administration, Subchapter F of this title (relating to Advisory Committees).

No comments were received regarding the adoption of the sections.

The repeals are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement HRC §40.030, which allows the Commissioner and Executive Commissioner to appoint advisory committees for DFPS and requires the Executive Commissioner to adopt rules regarding the advisory committees, and Government Code §531.012, which directs the Executive Commissioner to adopt rules to establish and govern advisory committees across all major areas of the HHS system.

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

Filed with the Office of the Secretary of State on May 20, 2016.

TRD-201602487

Trevor Woodruff

General Counsel

Department of Family and Protective Services

Effective date: July 1, 2016

Proposal publication date: March 18, 2016

For further information, please call: (512) 438-3466

