

# ADOPTED RULES

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

## TITLE 1. ADMINISTRATION

### PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

#### CHAPTER 358. MEDICAID ELIGIBILITY FOR THE ELDERLY AND PEOPLE WITH DISABILITIES

##### SUBCHAPTER C. FINANCIAL REQUIREMENTS

The Texas Health and Human Services Commission (HHSC) adopts new §358.357, concerning Achieving a Better Life Experience Program; §358.358, concerning School-Based Savings Program; §358.389, concerning Achieving a Better Life Experience Program; and §358.390, concerning School-Based Savings Program, without changes to the proposed text as published in the August 5, 2016, issue of the *Texas Register* (41 TexReg 5643) and will not be republished. The new rules exclude Achieving a Better Life Experience (ABLE) accounts and School-Based Savings accounts from being counted as income and resources when determining eligibility for Medicaid for the Elderly and People with Disabilities (MEPD) programs.

##### BACKGROUND AND JUSTIFICATION

The 84th Legislature adopted two bills that affect eligibility determinations for MEPD programs: Senate Bill (SB) 1664 and House Bill (HB) 3987. These adopted rules implement the statutory changes adopted by those bills.

MEPD is available to eligible individuals who need continuous, long-term services and supports. Services can be provided either through community programs while an individual is living at home or in a place of care, such as a nursing facility or a facility for individuals with intellectual disabilities. Some individuals do not need long-term services and supports but are eligible for Medicaid benefits to cover acute care needs.

In determining eligibility for MEPD, HHSC currently considers as countable income and resources funds used to establish savings accounts, funds held in savings accounts, interest earned on savings accounts, and payments made for expenses of an individual.

Adopted new §358.357 and §358.389 implement provisions of SB 1664. SB 1664 amended Texas Education Code Chapter 54 by adding Subchapter J, Texas Achieving a Better Life Experience (ABLE) Program. Subchapter J creates the Texas ABLE Program and requires the Prepaid Higher Education Tuition Board in the Office of the Comptroller to administer it in accordance with federal law. In 2014, federal law was amended to allow the creation of tax-exempt, state-based private savings

accounts for individuals with disabilities to fund disability-related expenses, called ABLE accounts. Under §529A of the Internal Revenue Code, funds used to establish ABLE accounts, funds held in ABLE accounts, interest earned on the accounts, and payments for disability expenses for the designated beneficiaries are exempt when determining eligibility for certain federal means-tested programs, including MEPD. Texas Education Code §54.9065, adopted by SB 1664, likewise excludes the amount in an ABLE account, earnings on the account, and payments for qualified disability expenses from certain benefit eligibility determinations, including MEPD.

The adopted new sections align policy for MEPD eligibility determinations with federal and state law. Under the adopted rules, HHSC will exclude from countable income and resources funds used to establish an ABLE account, funds held in an ABLE account, interest earned on an ABLE account, and payments for disability expenses for the designated beneficiary.

Adopted new §358.358 and §358.390 implement provisions of HB 3987. HB 3987 adopted a new Texas Education Code §28.0024, which permits school districts to establish school-based savings programs to increase financial literacy and encourage students to save for higher education. HB 3987 also amended Texas Human Resources Code §32.02611 to exclude school-based savings accounts and interest earned on the accounts when determining eligibility for MEPD. Section 32.02611 limits the amount of the exclusion for school-based savings accounts to the cost of undergraduate resident tuition and required fees for one academic year consisting of 30 semester credit hours charged by the general academic teaching institution with the highest such tuition and fee costs for the most recent academic year as determined by the Texas Higher Education Coordinating Board.

The adopted new sections align policy for MEPD eligibility determinations with HB 3987. Under the adopted rules, HHSC will exclude from countable income and resources school-based savings accounts and interest earned on the accounts. HB 3987 rule changes were contingent on federal approval from the Centers for Medicare & Medicaid Services (CMS) of a Medicaid State Plan Amendment, which was approved on August 29, 2016.

Related rules governing the Medicare Savings Program, Medicaid Buy-In Program, and Medicaid Buy-In for Children Program appear elsewhere in this issue of the *Texas Register*.

##### COMMENTS

The 30-day comment period ended September 4, 2016. During this period, HHSC did not receive any comments regarding the new rules.

## DIVISION 2. RESOURCES

### 1 TAC §358.357, §358.358

The new rules are adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority, and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in 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.

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### DIVISION 3. INCOME

#### 1 TAC §358.389, §358.390

The new rules are adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority, and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

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### CHAPTER 359. MEDICARE SAVINGS PROGRAM

#### 1 TAC §359.103, §359.109

The Texas Health and Human Services Commission (HHSC) adopts amended §359.103, concerning the Qualified Medicare Beneficiary Program and §359.109, concerning the Qualified Disabled and Working Individual Program, without changes to the proposed text as published in the August 5, 2016, issue of the *Texas Register* (41 TexReg 5643) and will not be republished. The rules as amended exclude Achieving a Better Life Experience (ABLE) accounts and School-Based Savings

accounts from being counted as income and resources when determining eligibility for Medicare Savings Programs.

#### BACKGROUND AND JUSTIFICATION

The 84th Legislature adopted two bills that affect eligibility determinations for Medicare Savings Programs: Senate Bill (S.B.) 1664 and House Bill (HB) 3987. These adopted rules implement the statutory changes adopted by those bills.

Medicare Savings Programs are for individuals who receive Medicare and need help paying for premiums, co-insurance, and deductibles. If an individual meets the income and resource requirements of a Medicare Savings Program, Medicaid will help pay for some Medicare costs. HHSC administers four Medicare Savings Programs: the Qualified Medicare Beneficiary (QMB) program, the Specified Low-Income Medicare Beneficiary (SLMB) program, the Qualifying Individual (QI) program, and the Qualified Disabled and Working Individual (QDWI) program.

In determining eligibility for the Medicare Savings Programs, HHSC currently considers as countable income and resources funds used to establish savings accounts, funds held in savings accounts, interest earned on savings accounts, and payments for expenses of an individual.

Adopted amendments to §359.103 and §359.109 implement provisions of S.B. 1664. S.B. 1664 amended Texas Education Code Chapter 54 by adding Subchapter J, Texas Achieving a Better Life Experience (ABLE) Program. Subchapter J creates the Texas ABLE Program and requires the Prepaid Higher Education Tuition Board in the Office of the Comptroller to administer it in accordance with federal law. In 2014, federal law was amended to allow the creation of tax-exempt, state-based private savings accounts for individuals with disabilities to fund disability-related expenses, called ABLE accounts. Under §529A of the Internal Revenue Code, funds used to establish ABLE accounts, funds held in ABLE accounts, interest earned on the accounts, and payments for disability expenses for the designated beneficiaries are exempt when determining eligibility for certain federal means-tested programs, including Medicare Savings Programs. Texas Education Code §54.9065, as adopted by S.B. 1664, likewise excludes the amount in an ABLE account, earnings on the account, and payments for qualified disability expenses from certain benefit eligibility determinations, including Medicare Savings Programs.

The adopted rules align policy for Medicare Savings Program eligibility determinations with federal and state law. Under the adopted rules, HHSC will exclude from countable income and resources funds used to establish an ABLE account, funds held in an ABLE account, interest earned on an ABLE account, and payments for disability expenses for the designated beneficiary.

Adopted rules §359.103 and §359.109 implement provisions of HB 3987. HB 3987 adopted a new Texas Education Code §28.0024, School-Based Savings Program, which permits school districts to establish school-based savings programs to increase financial literacy and encourage students to save for higher education. HB 3987 also amended Texas Human Resource Code §32.02611 to exclude school-based savings accounts and interest earned on the accounts when determining eligibility for Medicare Savings Programs. Section 32.02611 limits the amount of the exclusion for school-based savings accounts to the cost of undergraduate resident tuition and required fees for one academic year consisting of 30 semester credit hours charged by the general academic teaching institution with the highest such tuition and fee costs for the most recent

academic year as determined by the Texas Higher Education Coordinating Board.

The adopted rules align policy for eligibility determinations for Medicare Savings Programs with state law. Under the adopted rules, HHSC will exclude from countable income and resources school-based savings accounts and interest earned on the accounts. HB 3987 rule changes were contingent on federal approval from the Centers for Medicare & Medicaid Services (CMS) of a Medicaid State Plan Amendment, which was approved on August 29, 2016.

Related rules governing Medicaid for the Elderly and People with Disabilities, Medicaid Buy-In Program, and Medicaid Buy-In for Children Program appear elsewhere in this issue of the *Texas Register*.

#### COMMENTS

The 30-day comment period ended September 4, 2016. During this period, HHSC did not receive any comments regarding the amended rules.

The amendments are adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority, and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

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## CHAPTER 360. MEDICAID BUY-IN PROGRAM

### 1 TAC §360.113

The Texas Health and Human Services Commission (HHSC) adopts amendments to §360.113, concerning Resources, without changes to the proposed text as published in the August 5, 2016, issue of the *Texas Register* (41 TexReg 5643). The rule as amended excludes Achieving a Better Life Experience (ABLE) accounts and School-Based Savings accounts from being counted as resources when determining eligibility for the Medicaid Buy-In (MBI) program.

#### BACKGROUND AND JUSTIFICATION

The 84th Legislature adopted two bills that affect eligibility determinations for the MBI program: Senate Bill (SB) 1664 and House Bill (HB) 3987. The adopted amendments implement the statutory changes adopted by those bills.

The MBI program provides Medicaid benefits to eligible individuals with disabilities who work, regardless of their age. Some individuals "buy-in" to the program by paying a monthly premium.

In determining eligibility for the MBI program, HHSC currently considers funds used to establish savings accounts and funds held in savings accounts as resources. Unearned income is not counted in the eligibility determination for MBI. Therefore, the adopted rules do not exempt interest earned on an ABLE or school-based account and payments for qualified disability expenses for the designated beneficiary.

Adopted amendments to §360.113 implement provisions of SB 1664. SB 1664 amended Texas Education Code Chapter 54 by adding Subchapter J, Texas Achieving a Better Life Experience (ABLE) Program. Subchapter J creates the Texas ABLE Program and requires the Prepaid Higher Education Tuition Board in the Office of the Comptroller to administer it in accordance with federal law. In 2014, federal law was amended to allow the creation of tax-exempt, state-based private savings accounts for individuals with disabilities to fund disability-related expenses, called ABLE accounts. Under Internal Revenue Code §529A, funds used to establish ABLE accounts, funds held in ABLE accounts, interest earned on the accounts, and payments for disability expenses for the designated beneficiaries are exempt when determining eligibility for certain federal means-tested programs, including MBI. Texas Education Code §54.9065, as adopted by SB 1664, likewise excludes the amount in an ABLE account, earnings on the account, and payments for qualified disability expenses from certain benefit eligibility determinations, including MBI.

The adopted amendments align policy for MBI eligibility determinations with federal and state law. Under the adopted rule, HHSC will exclude from countable resources funds used to establish an ABLE account and funds held in an ABLE account.

Adopted rule §360.113 implements provisions of HB 3987. HB 3987 adopted a new Texas Education Code §28.0024, which permits school districts to establish school-based savings programs to increase financial literacy and encourage students to save for higher education. HB 3987 also amended Texas Human Resources Code §32.02611 to exclude school-based savings accounts when determining eligibility for MBI. Section 32.02611 limits the amount of the exclusion for school-based savings accounts to the cost of undergraduate resident tuition and required fees for one academic year consisting of 30 semester credit hours charged by the general academic teaching institution with the highest such tuition and fee costs for the most recent academic year as determined by the Texas Higher Education Coordinating Board.

The adopted rule aligns policy for MBI eligibility determinations with HB 3987. Under the adopted amendments, HHSC would exclude from countable resources school-based savings accounts. HB 3987 rule changes were contingent on federal approval from the Centers for Medicare & Medicaid Services (CMS) of a Medicaid State Plan Amendment, which was approved on August 29, 2016.

Related rules governing Medicaid for the Elderly and People with Disabilities (MEPD), Medicare Savings Program, and Medicaid Buy-In for Children Program also appear elsewhere in this issue of the *Texas Register*.

#### COMMENTS

The 30-day comment period ended September 4, 2016. During this period, HHSC did not receive any comments regarding the amended rule.

The amendment is adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority, and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in 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.

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## CHAPTER 361. MEDICAID BUY-IN FOR CHILDREN PROGRAM

### 1 TAC §361.111

The Texas Health and Human Services Commission (HHSC) adopts amendments to §361.111, concerning Income, without changes to the proposed text as published in the August 5, 2016, issue of the *Texas Register* (41 TexReg 5643) and will not be republished. The rule as amended excludes Achieving a Better Life Experience (ABLE) accounts and School-Based Savings accounts from being counted as income when determining eligibility for Medicaid Buy-In for Children Program (MBIC).

#### BACKGROUND AND JUSTIFICATION

The 84th Legislature adopted two bills that affect eligibility determinations for MBIC: Senate Bill (SB) 1664 and House Bill (HB) 3987. The adopted amendments implement the statutory changes adopted by these bills.

MBIC provides Medicaid benefits to eligible children with disabilities whose families "buy-in" to the program by paying a monthly premium. In determining eligibility for the MBIC program, HHSC currently considers savings account interest and payments for expenses of a child with a disability as income.

Resources are not counted in the eligibility determination for MBIC. Therefore, the adopted rules do not include exempting funds used to establish an ABLE account, funds held in an ABLE account, or funds held in a school-based savings account.

Adopted amendments to §361.111 implement provisions of SB 1664. SB 1664 amended the Texas Education Code Chapter 54 by adding Subchapter J, Texas Achieving a Better Life Experience (ABLE) Program. Subchapter J creates the Texas ABLE Program and requires the Prepaid Higher Education Tuition Board in the Office of the Comptroller to administer it in accordance with federal law. In 2014, federal law was amended to allow creation of tax-exempt, state-based private savings

accounts for individuals with disabilities to fund disability-related expenses, called ABLE accounts. Under Internal Revenue Code §529A, funds used to establish ABLE accounts, funds held in ABLE accounts, interest earned on the accounts, and payments for disability expenses for the designated beneficiaries are exempt when determining eligibility for certain federal means-tested programs, including MBIC. Texas Education Code §54.9065, adopted by SB 1664, likewise excludes the amount in an ABLE account, earnings on the account, and payments for qualified disability expenses from certain benefit eligibility determinations, including MBIC.

The adopted amendments align policy for MBIC eligibility determinations with federal and state law. Under the adopted rule, HHSC excludes from countable income interest earned on an ABLE account and payments for disability expenses for the designated beneficiary.

Adopted rule §361.111 implements provisions of HB 3987. HB 3987 adopted a new Texas Education Code §28.0024, School-Based Savings Program, which permits school districts to establish school-based savings programs to increase financial literacy and encourage students to save for higher education. HB 3987 also amended Texas Human Resources Code §32.02611 to exclude school-based savings accounts and interest earned on the accounts when determining eligibility for MBIC. Section 32.02611 limits the amount of the exclusion for school-based savings accounts to the cost of undergraduate resident tuition and required fees for one academic year consisting of 30 semester credit hours charged by the general academic teaching institution with the highest such tuition and fee costs for the most recent academic year as determined by the Texas Higher Education Coordinating Board.

The adopted rule aligns policy for MBIC eligibility determinations with HB 3987. Under the adopted rule, HHSC will exclude from countable income the interest earned on school-based savings accounts. HB 3987 rule changes were contingent on federal approval from the Centers for Medicare & Medicaid Services (CMS) of a Medicaid State Plan Amendment, which was approved on August 29, 2016.

Related rules governing Medicaid for the Elderly and People with Disabilities, Medicare Savings Program, and Medicaid Buy-In Program also appear elsewhere in this issue of the *Texas Register*.

#### COMMENTS

The 30-day comment period ended September 4, 2016. During this period, HHSC did not receive any comments regarding the amended rule.

The amendment is adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority, and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in 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.

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## CHAPTER 366. MEDICAID ELIGIBILITY FOR WOMEN, CHILDREN, YOUTH, AND NEEDY FAMILIES

The Texas Health and Human Services Commission (HHSC) adopts amendments to §366.319, concerning Child Support and Medical Support; §366.703, concerning Definitions; §366.707, concerning Eligible Group; §366.821, concerning Child Support and Medical Support and §366.847, concerning Exempt Resources; and §366.1107, concerning Determination of Household Composition, without changes to the proposed text as published in the August 5, 2016, issue of the *Texas Register* (41 TexReg 5652) and will not be republished.

### BACKGROUND AND JUSTIFICATION

HHSC adopts several amendments to various sections of Chapter 366, concerning Medicaid Eligibility for Women, Children, Youth, and Needy Families. The amendments align the rules with federal policies and current HHSC policy and processes, and exclude school-based savings accounts as countable resources when determining eligibility for the Medically Needy program in accordance with state law.

HHSC adopts amended §366.319, concerning Child Support and Medical Support for Pregnant Women's Medicaid and §366.821, concerning Child Support and Medical Support for the Medically Needy Program, to align the rules with federal law and current HHSC policy and processes. Federal law prohibits HHSC from asking detailed questions about parents living outside of the home for certain Medicaid programs. Therefore, HHSC policy no longer requires pregnant women to provide information related to the biological father when applying for Medicaid. The adopted amendment aligns state rules with federally required changes and the Medicaid State Plan.

HHSC adopts amended §366.703, concerning Definitions for the Medicaid for Parents and Caretaker Relatives program, to align state rules with federally required changes and the Medicaid State Plan. A dependent child must live with a parent or caretaker relative in order for the adult to be eligible for Medicaid for Parents and Caretaker Relatives. The adopted amendment removes the deprivation requirement from the definition of dependent child for Medicaid for Parents and Caretaker Relatives. Children of parents and caretaker relatives who are income eligible for Medicaid for Parents and Caretaker Relatives are considered to meet the deprivation requirement. Therefore, it is no longer required that a child meet a separate deprivation requirement to be considered a dependent child for purposes of the adult's Medicaid for Parents and Caretaker Relatives eligibility.

HHSC adopts amended §366.707, concerning Eligible Group for the Medicaid for Parents and Caretaker Relatives program, to align state rules with federally required changes and the Medicaid State Plan. The adopted amendments implement the federal requirements from the Affordable Care Act (ACA), which amended §1902(a)(10)(A)(i)(VIII) and §1902(k)(3) of the Social

Security Act, to provide that the spouse of the caretaker relative may be eligible for the Medicaid for Parents and Caretaker Relatives Program if the spouse is living with the parent or other caretaker relative and meets all other eligibility criteria. 42 U.S.C.S. §1396a(a)(10)(A)(i)(VIII) and §1396a(k)(3).

HHSC adopts amended §366.847, concerning Exempt Resources for the Medically Need Program, to implement provisions of House Bill (H.B.) 3987, 84th Legislature, Regular Session, 2015. H.B. 3987 amended Texas Education Code by adding §28.0024, which allows school districts to establish school-based savings programs to increase financial literacy and encourage students to save for higher education. H.B. 3987 also amended Texas Human Resources Code §32.02611 to exclude school-based savings accounts and interest earned on the accounts when determining eligibility for the Medically Needy Program. Section 32.02611 limits the amount of the exclusion for school-based savings accounts to the cost of undergraduate resident tuition and required fees for one academic year consisting of 30 semester credit hours charged by the general academic teaching institution with the highest such tuition and fee costs for the most recent academic year as determined by the Texas Higher Education Coordinating Board.

The adopted amendments align the eligibility rules for the Medically Needy Program with H.B. 3987. Under the adopted rules, HHSC will exclude from countable resources school-based savings accounts. H.B. 3987 rule changes are contingent on federal approval from the Centers for Medicare & Medicaid Services (CMS) of a Medicaid State Plan Amendment, which is pending approval.

HHSC adopts amended §366.1107, concerning Determination of Household Composition for the Modified Adjusted Gross Income Methodology used for Medicaid programs, to align state rules with federally required changes and the Medicaid State Plan. The adopted amendment clarifies that the number of unborn children a pregnant individual is expected to deliver is included in the household composition of that pregnant individual and in the household composition of any individual whose household includes the pregnant individual.

### COMMENTS

The 30-day comment period ended September 4, 2016. During this period, HHSC did not receive any comments regarding the proposed amended rules.

## SUBCHAPTER C. PREGNANT WOMEN'S MEDICAID

### 1 TAC §366.319

The amendment is adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority, and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas. Amendments related to the school-based savings accounts are proposed under Texas Human Resources Code §32.02611.

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

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## SUBCHAPTER G. MEDICAID FOR PARENTS AND CARETAKER RELATIVES PROGRAM

### 1 TAC §366.703, §366.707

The amendments are adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority, and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas. Amendments related to the school-based savings accounts are proposed under Texas Human Resources Code §32.02611.

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## SUBCHAPTER H. MEDICALLY NEEDY PROGRAM

### 1 TAC §366.821, §366.847

The amendments are adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority, and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas. Amendments related to the school-based savings accounts are proposed under Texas Human Resources Code §32.02611.

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

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## SUBCHAPTER K. MODIFIED ADJUSTED GROSS INCOME METHODOLOGY

### 1 TAC §366.1107

The amendment is adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority, and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas. Amendments related to the school-based savings accounts are proposed under Texas Human Resources Code §32.02611.

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

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## CHAPTER 370. STATE CHILDREN'S HEALTH INSURANCE PROGRAM

The Texas Health and Human Services Commission (HHSC) adopts amendments to §370.307, concerning Continuous Enrollment Period; and §370.807, concerning Determination of Household Composition, without changes to the proposed text as published in the August 5, 2016, issue of the *Texas Register* (41 TexReg 5633). The rule text will not be republished in this issue of the *Texas Register*.

### BACKGROUND AND JUSTIFICATION

The amendment to §370.307 is adopted in accordance with the Social Security Act §2110(b)(2), and 42 CFR §457.310 and §457.315, and clarifies that an individual's continuous CHIP coverage is denied if the individual becomes a resident of an institution.

The amendment to §370.807 requires that the number of unborn children a pregnant individual is expected to deliver is included in the household composition of the pregnant individual for purposes of CHIP. The adopted amendment aligns state rules with federally-required changes and the CHIP State Plan.

### COMMENTS

The 30-day comment period ended September 4, 2016. During this period, HHSC did not receive any comments regarding the proposed amended rules.

**SUBCHAPTER C. ENROLLMENT, RENEWAL,  
DISENROLLMENT, AND COST SHARING  
DIVISION 1. ENROLLMENT AND  
DISENROLLMENT**

**1 TAC §370.307**

**STATUTORY AUTHORITY**

The amendment is adopted under the authority granted to HHSC by Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to implement HHSC's duties under Chapter 531 of the Texas Government Code, and Texas Health and Safety Code §62.051(d), which directs HHSC to adopt rules necessary to implement the Children's Health Insurance 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.

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**SUBCHAPTER I. MODIFIED ADJUSTED  
GROSS INCOME METHODOLOGY  
DIVISION 1. ENROLLMENT AND  
DISENROLLMENT**

**1 TAC §370.807**

**STATUTORY AUTHORITY**

The amendment is adopted under the authority granted to HHSC by Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to implement HHSC's duties under Chapter 531 of the Texas Government Code, and Texas Health and Safety Code §62.051(d), which directs HHSC to adopt rules necessary to implement the Children's Health Insurance 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.

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**CHAPTER 372. TEMPORARY ASSISTANCE  
FOR NEEDY FAMILIES AND SUPPLEMENTAL  
NUTRITION ASSISTANCE PROGRAMS**

The Texas Health and Human Services Commission (HHSC) adopts amendments to §372.354, concerning Treatment of Resources in TANF; §372.355, concerning Treatment of Resources in SNAP; §372.404, concerning Countable and Excluded Income in TANF; §372.406, concerning Countable and Excluded Income in SNAP; §372.802, concerning One-Time TANF Eligibility Requirements; §372.1153, concerning Personal Responsibility Agreement Requirements; and §372.1154, concerning Cooperating with Personal Responsibility Agreement Requirements. The amendments are adopted without changes to the proposed text as published in the August 5, 2016, issue of the *Texas Register* (41 TexReg 5633) and will not be republished.

**Background and Justification**

HHSC adopts amendments to Chapter 372 to align the rules with federal law and current HHSC policy and processes, and to align the rules with state law to exclude school-based savings accounts as countable resources and interest income when determining eligibility for two programs: Temporary Assistance for Needy Families (TANF) and Supplemental Nutrition Assistance Program (SNAP).

First, HHSC adopts amended §372.354 and §372.355 in Subchapter B to align the rules with House Bill (H.B.) 3987, 84th Legislature, Regular Session, 2015. H.B. 3987 amended the Texas Education Code by adopting §28.0024, School-Based Savings Program, which allows school districts to establish school-based savings programs to increase financial literacy and encourage students to save for higher education. H.B. 3987 also adopted statutes excluding school-based savings accounts and interest earned on the accounts when determining eligibility for certain HHSC-administered programs. Thus, new Texas Human Resources Code §31.0039 and §32.0291 exclude such accounts and interest when determining eligibility for TANF and SNAP, respectively. Section 31.0039 and §33.0291, as adopted by H.B. 3987, limit the amount of the exclusion for school-based savings accounts to the cost of undergraduate resident tuition and required fees for one academic year consisting of 30 semester credit hours charged by the general academic teaching institution with the highest such tuition and fee costs for the most recent academic year as determined by the Texas Higher Education Coordinating Board.

Under the adopted rules, HHSC will exclude school-based savings accounts from countable income and resources when determining eligibility, pursuant to Texas Education Code §28.0024 and Texas Human Resources Code §31.0039 and §33.0291. H.B. 3987 rule changes are contingent on federal approval from the Food and Nutrition Service (FNS) of a waiver request to apply the proposed policy changes for the school-based savings

accounts to SNAP households that are not categorically eligible, which is pending approval.

Second, HHSC adopts amended §372.802, concerning One-Time TANF Eligibility Requirements, to clarify the eligibility requirements for a caretaker adult to receive One-Time TANF and reorganizes the rules to better align them with current HHSC policy and processes.

And third, HHSC adopts amended §372.1153, concerning Personal Responsibility Agreement Requirements, and §372.1154, concerning Cooperating with Personal Responsibility Agreement Requirements, to align with federal requirements. Federal rules under Title 45 of the Code of Federal Regulations §264.30 require HHSC to refer families requesting TANF cash assistance to the Office of the Attorney General (OAG) when paternity has not been established for a child or when a child support order needs to be established, modified, or enforced. HHSC refers all appropriate individuals in the family of a child for whom paternity has not been established or for whom a child support order needs to be established, modified, or enforced to the OAG. The OAG determines if establishing paternity of the dependent child is necessary to establish or enforce child support orders.

The adopted changes strengthen the rules and align with current federal requirements and HHSC policy and processes of making referrals to OAG.

Comments

The 30-day comment period ended September 4, 2016. During this period, HHSC did not receive any comments regarding the new rules.

**SUBCHAPTER B. ELIGIBILITY**  
**DIVISION 6. RESOURCES**

**1 TAC §372.354, §372.355**

The amendments are adopted under Texas Government Code §531.0055, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §31.001, which provides HHSC with authority to operate the TANF; Texas Human Resources Code §31.0039, which sets forth TANF financial eligibility requirements for school-based savings accounts; Texas Human Resources Code §33.0006, which provides HHSC with authority to operate SNAP; and Texas Human Resources Code §33.0291, which set forth SNAP financial eligibility requirements for school-based savings accounts.

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

Filed with the Office of the Secretary of State on October 31, 2016.

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Karen Ray

Chief Counsel

Texas Health and Human Services Commission

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For further information, please call: (512) 424-6900



**DIVISION 7. INCOME**

**1 TAC §372.404, §372.406**

The amendments are adopted under Texas Government Code §531.0055, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §31.001, which provides HHSC with authority to operate the TANF; Texas Human Resources Code §31.0039, which sets forth TANF financial eligibility requirements for school-based savings accounts; Texas Human Resources Code §33.0006, which provides HHSC with authority to operate SNAP; and Texas Human Resources Code §33.0291, which set forth SNAP financial eligibility requirements for school-based savings accounts.

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

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**SUBCHAPTER C. ASSOCIATED PROGRAMS**  
**DIVISION 5. ONE-TIME TANF (OTTANF)**

**1 TAC §372.802**

The amendment is adopted under Texas Government Code §531.0055, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §31.001, which provides HHSC with authority to operate the TANF; Texas Human Resources Code §31.0039, which sets forth TANF financial eligibility requirements for school-based savings accounts; Texas Human Resources Code §33.0006, which provides HHSC with authority to operate SNAP; and Texas Human Resources Code §33.0291, which set forth SNAP financial eligibility requirements for school-based savings accounts.

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SUBCHAPTER E. PARTICIPATION  
REQUIREMENTS  
DIVISION 2. THE TANF PERSONAL  
RESPONSIBILITY AGREEMENT (PRA)

1 TAC §372.1153, §372.1154

The amendments are adopted under Texas Government Code §531.0055, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §31.001, which provides HHSC with authority to operate the TANF; Texas Human Resources Code §31.0039, which sets forth TANF financial eligibility requirements for school-based savings accounts; Texas Human Resources Code §33.0006, which provides HHSC with authority to operate SNAP; and Texas Human Resources Code §33.0291, which set forth SNAP financial eligibility requirements for school-based savings accounts.

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**TITLE 4. AGRICULTURE**

**PART 1. TEXAS DEPARTMENT OF  
AGRICULTURE**

**CHAPTER 3. BOLL WEEVIL ERADICATION  
PROGRAM**

The Texas Department of Agriculture (Department), upon the request and recommendation of the Texas Boll Weevil Eradication Foundation (Foundation), adopts the repeal of Title 4, Part 1, Chapter 3, Subchapter K, §3.705, relating to Penalty and Remedies, without changes, and adopts new §3.705 with non-substantive changes, and §§3.706 - 3.707, and 3.711, without changes, as published in the September 9, 2016, edition of the *Texas Register* (41 TexReg 6843). The adoptions concern the implementation and operation of a boll weevil eradication maintenance program to be conducted in an area known as the East Texas Maintenance Area.

The Department held three public hearings throughout the proposed Maintenance Area regarding the adopted rules during the public comment period. The Department provided comment forms at the hearings, and received 22 submissions from the public "for," and one submission "against" the rules as presented in the September 9 publication.

Oral and written comments received from various farmers, producers, and cotton ginners' associations on behalf of the adopted

rules were in favor of the proposition stating that the rules make billing more practical, reduce costs, and ensure alignment with the West Texas Maintenance Area which is currently in effect.

A written comment against the proposition was received from the Cotton Warehouse Association of America stating that the changes were not practicable for purposes of monitoring source locations of cotton, assessment of fees, and delivering those fees to the Foundation. Oral comments were received from members of the public representing warehouse associations concerned about cotton discounting by warehouse-brokers to the growers because of the inability to ascertain the amount of the assessment to be collected at the warehouse from year to year. While the Department appreciates the input received, the comments received were taken under consideration and it has been determined that to ensure consistency with the West Texas Maintenance Area (Subchapter K, §§3.702 - 3.704), the rules will be adopted as proposed in the September 9, 2016, edition of the *Texas Register*.

**SUBCHAPTER K. MAINTENANCE  
PROGRAM**

4 TAC §3.705

The adoption is made under Texas Agriculture Code, §74.204, which provides the Department with the authority to adopt rules to implement and operate a boll weevil maintenance program under the Code.

The code provisions affected by the adoption are the Texas Agriculture Code, Chapter 74, Subchapter F.

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

Filed with the Office of the Secretary of State on October 24, 2016.

TRD-201605530

Jessica Escobar

Assistant General Counsel

Texas Department of Agriculture

Effective date: November 13, 2016

Proposal publication date: September 9, 2016

For further information, please call: (512) 463-4075



4 TAC §§3.705 - 3.707, 3.711

The adoption is made under Texas Agriculture Code, §74.204, which provides the department with the authority to adopt rules to implement and operate a boll weevil maintenance program under the Code.

The code provisions affected by the adoption are the Texas Agriculture Code, Chapter 74, Subchapter F.

§3.705. *East Texas Maintenance Area.*

(a) The East Texas Maintenance Area shall consist of the following four (4) existing contiguous eradication zones: Northern Blacklands, Southern Blacklands, South Texas/Wintergarden, and Upper Coastal Bend.

(b) In each of the four (4) existing contiguous eradication zones listed in subsection (a) of this section, the Commissioner has determined that:

- (1) the boll weevil has been functionally eradicated;
- (2) the zone has satisfied any debt owed to the Foundation;
- (3) the cotton grower steering committee for each zone was consulted by the Foundation regarding the inclusion of the zone in the East Texas maintenance area; and
- (4) the Foundation board has requested that each zone be included in the East Texas Maintenance Area.

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

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## TITLE 19. EDUCATION

### PART 2. TEXAS EDUCATION AGENCY

#### CHAPTER 97. PLANNING AND ACCOUNTABILITY

The Texas Education Agency (TEA) adopts amendments to §§97.1051, 97.1055, 97.1059, 97.1065, and 97.1067; the repeal of §§97.1061, 97.1063, and 97.1064; and new §§97.1061, 97.1063, 97.1064, and 97.1066, concerning accreditation status, standards, and sanctions. The amendments to §§97.1055, 97.1059, and 97.1065; the repeal of §§97.1061, 97.1063, and 97.1064; and new §97.1066 are adopted without changes to the proposed text as published in the April 29, 2016, issue of the *Texas Register* (41 TexReg 3068) and will not be republished. The amendments to §97.1051 and §97.1067 and new §§97.1061, 97.1063, and 97.1064 are adopted with changes to the proposed text as published in the April 29, 2016, issue of the *Texas Register* (41 TexReg 3068). The adopted amendments, repeals, and new rules update processes and procedures related to campus sanctions and interventions to reflect changes made by House Bill (HB) 1842, 84th Texas Legislature, Regular Session, 2015.

**REASONED JUSTIFICATION.** HB 1842, 84th Texas Legislature, Regular Session, 2015, amended Texas Education Code (TEC), Chapter 39, relating to interventions and sanctions for campuses that do not meet state accountability standards.

The adopted revisions to 19 TAC Chapter 97, Subchapter EE, reflect changes made by HB 1842, as follows.

The adopted amendment to 19 TAC §97.1051, Definitions, revises definitions to provide a definition of board of managers, which must, if possible, include the statutory requirements of community leaders, business representatives, and education experts; provide a definition of campus turnaround that highlights achieving acceptable performance within two years, which is the timeframe required by the statutory changes to TEC, §39.107,

for a turnaround plan to achieve its purpose, and that clarifies that interventions initiated by statute due to "unacceptable performance" will be those ratings established under the academic accountability manual as unacceptable in any particular year; remove the definition of campus closure, which prohibited its use for educational purposes as the changes to TEC, §39.107, allow its use for educational purposes in certain instances. Adopted new §97.1066 details current options. The adopted amendment also revises the definitions to remove language regarding campus closure, which, along with language regarding alternative management, were moved to separate sections of rule to provide better clarity and organization of requirements; provide a definition of district coordinator of school improvement to ensure districts clearly identify an individual responsible for being a member of the campus intervention team (CIT); provide a definition of professional service provider as an educator approved by the commissioner as statute provides the commissioner the flexibility to require districts to select or be assigned a provider; and remove the definition of campus reconstitution to align with the statutory changes.

Based on public comment, 19 TAC §97.1051 was modified at adoption to add a definition for *root cause* to align with statute.

The adopted amendment to 19 TAC §97.1055, Accreditation Status, provides clarifying language since legislative changes in HB 1842 authorized monitoring reviews in addition to investigations under TEC, §39.056. The adopted amendment also provides clarification that grades, course credits, and diplomas issued by a school district prior to annexation remain valid.

The adopted amendment to 19 TAC §97.1059, Standards for All Accreditation Sanction Determinations, updates a cross reference to the rule for financial accountability ratings.

The adopted repeal of 19 TAC §97.1061, Interventions and Sanctions for Campuses, removes outdated provisions. Adopted new 19 TAC §97.1061, Interventions and Sanctions for Campuses, provides clarifying language on the required sanctions and interventions for campuses that do not meet academic accountability standards. The adopted new rule outlines the Texas Accountability Intervention System (TAIS) continuous improvement process and specific intervention requirements for each consecutive year that a campus does not meet academic accountability standards.

The TAIS process is a research-based best practice for improving performance on low-performing campuses. The TAIS provides a framework for the CIT to work with stakeholders to implement strategies that will address areas of low performance.

Based on public comment, new 19 TAC §97.1061 was modified at adoption to clarify the roles of the commissioner, campus, and CIT in alignment with statutory requirements.

The adopted repeal of 19 TAC §97.1063, Campus Intervention Team, removes repetitive requirements that are outlined in statute. Adopted new 19 TAC §97.1063, Campus Intervention Team, provides clarification from statute about the role and members of the CIT. Based on public comment, new §97.1063 was modified at adoption to clarify additional statutory responsibilities for the CIT.

The adopted repeal of 19 TAC §97.1064, Reconstitution, removes outdated provisions. Adopted new 19 TAC §97.1064, Campus Turnaround Plan, updates provisions from previous reconstitution requirements, which were repealed under the statutory changes of HB 1842. The adopted new rule reflects new

campus turnaround requirements by outlining the procedures, content, and timeline for developing and submitting a campus turnaround plan for commissioner approval, as follows.

Subsection (a) imposes the statutory requirement for creation of a turnaround plan after two consecutive years of poor performance.

As campus interventions apply to open-enrollment charters, subsection (b) implements the statutory duty imposed on an open-enrollment charter to modify its charter to enact the turnaround plan. The adoption also specifies that the governing board must perform the duties imposed on boards of trustees.

Subsection (c) implements statutory authorization to use regional education service centers.

Subsection (d) implements new statutory provisions requiring input from parents and the community in developing the turnaround plan. The adoption imposes timelines necessary to ensure proper notice and inclusion of the input received. Based on public comment, subsection (d) was modified at adoption to add stakeholders to the list of groups that should be notified and provided an opportunity to give input.

Subsection (e) implements the statutory requirement that parents, the community, and stakeholders provide input in developing the plan. The adoption clarifies that a campus-level committee and teachers must be included since the statutory requirement of a turnaround plan requires including comments from those entities.

Subsection (f) implements statutory provisions requiring certain components of the turnaround plan.

Subsection (g) requires districts, after board of trustee approval, to submit the adopted campus turnaround plan electronically to the commissioner by March 1. As statute requires extensive planning, approval, and then implementation, this date and delivery method afford the greatest possibility of effectively achieving all three phases.

Subsection (h) allows a district to implement the turnaround plan or implement a modified version even if the subsequent rating removes the requirement to implement the plan, as authorized by statute.

The adopted amendment to 19 TAC §97.1065, Repurposing, Alternative Management, or Campus Closure, incorporates changes to commissioner determinations for campuses that do not meet academic accountability requirements. Specifically, the adopted amendment removes various references and provisions regarding repurposing, alternative management, and optional waiving of imposing sanctions as HB 1842 repealed these actions. Similarly, the adopted amendment removes old law processes regarding when functions such as repurposing, alternative management, and closure would be used; imposes the HB 1842 requirement that the commissioner must either, at the commissioner's discretion, close the campus or appoint a board of managers over the district upon five years of consecutive poor performance; clarifies the commissioner's authority to not approve a campus turnaround plan resulting in campus closure, alternative management, or appointment of a board of managers to oversee district operations; and changes the section title to "Commissioner Determinations for Decisions Preceding Alternative Management, Campus Closure, or Board of Managers."

Adopted new 19 TAC §97.1066, Campus Closure, clarifies the process and procedures in the event that the commissioner orders campus closure. As statute does not explicitly state a time-frame for closure, adopted new subsection (a) clarifies that the closure date will be defined by the commissioner for each decision. Adopted new subsections (b) - (d) address the statutory requirements for when a building containing a closed campus may be used for alternative purposes and for a student's option to attend any other campus in the district.

The adopted amendment to 19 TAC §97.1067, Alternative Management of Campuses, clarifies the process and procedures in the event the commissioner orders alternative management. The adopted amendment includes the addition of language, which was removed from 19 TAC §97.1065, regarding the closure of a campus due to poor performance upon the return of the campus to district operation. Based on public comment, 19 TAC §97.1067 was modified at adoption to clarify the terms of alternative management in alignment with statute.

**SUMMARY OF COMMENTS AND AGENCY RESPONSES.** The public comment period on the proposal began April 29, 2016, and ended May 31, 2016. Following is a summary of public comments received and corresponding agency responses regarding the proposed revisions to 19 TAC Chapter 97, Planning and Accountability, Subchapter EE, Accreditation Status, Standards, and Sanctions.

**Comment.** The Texas Classroom Teachers Association (TCTA) commented that the definition of *root cause* should be included in 19 TAC §97.1051.

**Agency Response.** The agency agrees and has added a definition for root cause to 19 TAC §97.1051.

**Comment.** TCTA commented that new 19 TAC §97.1061 should be revised to better align with enabling statute. TCTA provided specific rule text recommendations that included clarifying the roles of the commissioner and campus in proposed subsection (a)(1) and (2); specifying that the CIT is responsible for the provisions in proposed subsection (a)(3)-(6); including language in proposed subsection (a)(4) referencing the guidelines and procedures in TEC, §39.106(b)(1)-(12); adding a new CIT responsibility to recommend actions relating to any area of insufficient performance in accordance with TEC, §39.106(c); modifying the CIT responsibilities in proposed subsection (a)(5), (a)(5)(B) and (C), and (a)(6); adding a new subsection to specify the responsibilities of the board of trustees of a school district after a targeted improvement plan or updated plan is submitted to the board; and adding clarifying language in proposed subsection (b) that specifies which provisions in subsection (a) are required of a campus that is assigned an unacceptable rating for a second consecutive year.

**Agency Response.** The agency partially agrees and has modified new 19 TAC §97.1061 accordingly to better align with statute and minimize redundant information in the rule. Specifically, the following changes were made.

Paragraphs (1)-(6) under proposed 19 TAC §97.1061(a), were reorganized to clearly specify the roles of the commissioner, campus, and CIT to align with requirements in statute.

Proposed 19 TAC §97.1061(a)(5), relettered as (d)(3), was partially amended to specify that the CIT shall assist in the creation of a targeted improvement plan.

Proposed 19 TAC §97.1061(a)(6), relettered as (d)(4), was partially amended to specify that the CIT shall assist the commis-

sioner in monitoring the implementation of the targeted improvement plan.

The agency disagrees with some of TCTA's recommendations, as follows.

Proposed 19 TAC §97.1061(a)(4), relettered as (d)(2), was not amended to reference the guidelines and procedures in TEC, §39.106(b)(1)-(12), as those requirements are already clearly outlined in statute and do not require further clarification in rule.

Additional language was not added to specify which provisions in subsection (a) are required of a campus that is assigned an unacceptable rating for a second consecutive year because the creation of an updated targeted improvement plan is implicit in completing the requirements in subsections (a), (b), (c) and (d).

Additional language was not added to state that the CIT must recommend actions related to areas of insufficient performance as the agency has determined that this action is implicit in the creation of a targeted improvement plan outlined under new 19 TAC §97.1061(d)(3) and (4) and TEC, §39.106.

Recommended changes and additions to clarify the CIT responsibilities in proposed 19 TAC §97.1061(a)(5)(B) and (C), relettered as (d)(3)(B) and (C), were not made as the agency has determined that the language does not require clarification.

The recommended addition of a new subsection to specify the responsibilities of the board of trustees of a school district after a targeted improvement plan or updated plan is submitted to the board was not made as the requirements are clearly stated in the enabling statute and, therefore, require no further clarification in rule.

Comment. TCTA commented that new 19 TAC §97.1063(a) should be amended to include TEC, §39.107, in the statutory responsibilities for the CIT.

Agency Response. The agency agrees and has revised new 19 TAC §97.1063(a) accordingly.

Comment. San Antonio Independent School District and the Texas Urban Council commented about the requirement of a professional service provider (PSP) to serve as a member of the CIT. The commenters stated that TEC, §39.109, clearly states the use of PSPs as permissive, therefore, requiring them under new 19 TAC §97.1063 exceeds the commissioner's authority. Additionally, the commenters cited the cost burden of hiring PSPs as well as the lack of research or data that signals the effectiveness of PSPs. The commenters recommended amending new 19 TAC §97.1063 to specify that the CIT may include PSPs.

Agency Response. The agency disagrees that the requirement of PSPs exceeds the commissioner's authority. TEC, §39.109, permits the commissioner to order the district to acquire professional services, and TEC, §39.106, provides the commissioner the authority to assign the CIT. Therefore, it is within the commissioner's authority to clarify those members through the rulemaking process. The commissioner provides wide latitude to districts in determining the number of hours to contract with PSPs as well as the hourly rate for their services. Finally, to ensure the effectiveness of PSPs, the agency's technical assistance contractor completes a comprehensive evaluation of all PSPs every school year, which includes surveys of district personnel, campus principals, campus leadership teams, and TEA staff, and a component of academic growth on the campuses served by the PSP. The results of this evaluation are used to remove individuals who are no longer identified as effective.

Comment. TCTA commented that, given the focus by the enabling statute and the agency on the importance of the CIT's role in ensuring stakeholder input into and review of the campus turnaround plan, it recommends that this duty be specifically referenced in new 19 TAC §97.1063 by adding a new subsection stating that the CIT shall ensure that stakeholders are given the opportunity to provide input into the development of and written feedback on the turnaround plan.

Agency Response. The agency disagrees as requirements for stakeholder input are sufficiently covered in applicable areas of rule, including new 19 TAC §97.1061 and §97.1064.

Comment. TCTA commented that stakeholders should be included in new 19 TAC §97.1064(d) and (d)(2) in the list of groups that are notified of a campus's unacceptable rating for two consecutive years and provided an opportunity to give input in the development of the final campus turnaround plan. TCTA commented that this addition would conform the list of groups to those outlined in the enabling statute.

Agency Response. The agency agrees and has added stakeholders to new 19 TAC §97.1064(d) and (d)(2).

Comment. TCTA commented that it strongly supports proposed new 19 TAC §97.1064(e) and (f), as the subsections list all the categories of stakeholders that shall be provided an opportunity to review and comment on the completed campus turnaround plan before it is submitted for approval to the board of trustees.

Agency Response. Although the comment does not request a change to the proposed rules, the agency acknowledges the input on the process.

Comment. TCTA commented that 19 TAC §97.1067(a)(1) should be amended to state that the contract for alternative management of a campus must not exceed five years.

Agency Response. The agency agrees and has modified 19 TAC §97.1067(a)(1) accordingly.

Comment. TCTA commented that a new subsection should be added to 19 TAC §97.1067 to align with the enabling statute (TEC, §39.107(g-1)) that specifies if a campus receives an academically unacceptable performance rating for two consecutive school years after the managing entity assumes management of the campus, the commissioner shall cancel the contract with the managing entity.

Agency Response. The agency agrees that additional clarification should be included in the rule and has amended 19 TAC §97.1067(b)(5)(A) to clarify when a contract should be terminated.

## SUBCHAPTER EE. ACCREDITATION STATUS, STANDARDS, AND SANCTIONS

### 19 TAC §§97.1051, 97.1055, 97.1059, 97.1061, 97.1063 - 97.1067

STATUTORY AUTHORITY. The amendments and new sections are adopted under the Texas Education Code (TEC), §39.052, which requires an annual evaluation of the accreditation status of each school district. This section specifically safeguards diplomas, course credit, and grade promotions granted prior to the revocation by the commissioner; TEC, §39.056, which authorizes the agency to conduct monitoring reviews or investigations in accordance with requirements of the statutory provisions; TEC, §39.104, which applies interventions and sanctions imposed by

TEC, Chapter 39, on school districts and campuses to open-enrollment charters. The section authorizes the commissioner to adopt rules to apply the interventions; TEC, §39.106, which requires the placement of a campus intervention team by the commissioner when a campus's performance fails to meet standards established under TEC, §39.054(e). This section also describes the duties, public notice, guidelines for a needs assessment to be done by a campus intervention team, and required areas of recommendations. This statute allows the commissioner to authorize some substitutions of certain committees and plans. The statute requires a board of trustees to take certain actions such as conducting a public hearing and submitting the plans to the commissioner; TEC, §39.107, which prescribes certain actions that must occur when a campus has consecutive years of unacceptable performance. The statute requires the development of a turnaround plan for two consecutive years of poor performance, requires public notice and input in developing the turnaround plan, details certain requirements of the turnaround plan, and authorizes the commissioner to adopt rules governing procedures for application to charters. The statute also prohibits the approval of a campus turnaround plan unless the commissioner determines the plan will achieve acceptable performance within two years of implementation and authorizes a district to implement a turnaround plan (or modified version) even if subsequent performance removes the requirement to implement the plan. TEC, §39.107, authorizes the commissioner to adopt rules necessary to implement the section; TEC, §39.109, which authorizes the commissioner to require a district or campus to select or be assigned professional services at their expense. This requirement is in addition to other interventions and sanctions authorized by statute. The statute authorizes additional requirements by the commissioner with regard to professional services; and TEC, §39.112, which describes the duties and responsibilities of a board of managers. This statute includes a requirement for the commissioner to, if possible, appoint certain types of individuals to a board of managers.

CROSS REFERENCE TO STATUTE. The amendments and new sections implement the TEC, §§39.052, 39.056, 39.104, 39.106, 39.107, 39.109, and 39.112.

§97.1051. *Definitions.*

For purposes under Texas Education Code (TEC), Chapter 39, and this subchapter, the following words and terms shall have the following meaning, unless the context clearly indicates otherwise:

- (1) Board of managers--A board appointed by the commissioner of education to serve as a governing body that must, if possible, include:
  - (A) community leaders;
  - (B) business representatives who have expertise in leadership; and
  - (C) individuals who have knowledge or expertise in the field of education.
- (2) Board of trustees--The definition of this term includes a governing body of a charter holder as defined by TEC, §12.1012.
- (3) Campus--An organizational unit operated by the school district that is eligible to receive a campus performance rating in the state accountability rating system under §97.1001 of this title (relating to Accountability Rating System), including a rating of Not Rated or Not Rated: Data Integrity Issues. The definition of this term includes a charter school campus as defined by §100.1001(3)(C) of this title (relating to Definitions).

(4) Campus turnaround--A comprehensive change in an academically unacceptable campus that produces significant and sustainable gains in achievement within two years. For the purposes of this chapter, the term "academically unacceptable" performance means a rating of Academically Unacceptable, AEA: Academically Unacceptable, Improvement Required, or Unacceptable Performance or as otherwise indicated in the applicable year's academic accountability manual.

(5) Charter school--This term has the meaning assigned by §100.1001(3) of this title. References to a charter school in TEC, Chapter 39, and rules adopted under it, shall mean either the board of trustees or the school district, as appropriate.

(6) Charter school site--This term has the meaning assigned by §100.1001(3)(D) of this title.

(7) District coordinator of school improvement (DCSI)--An employee of a school district in a leadership position in school improvement, in curriculum and instruction, or in another position with responsibility for student performance.

(8) Newspaper of general circulation--A newspaper, as defined in Texas Government Code, §2051.044, that has more than a minimum number of subscribers among a particular geographic region, that has a diverse subscribership, and that publishes some news items of general interest to the community.

(9) Person--This term has the meaning assigned by the Code Construction Act, Government Code, §311.005(2), and includes a school district.

(10) Professional service provider (PSP)--An educator who has been vetted to provide on-site technical assistance for underperforming schools and districts either by the Texas Education Agency (TEA) or the TEA's technical assistance provider.

(11) Root cause--The education-related factors resulting in a campus's low performance and lack of progress.

(12) School district and district--The definition of these terms includes a charter operator, which is the same as a charter holder as defined by TEC, §12.1012.

§97.1061. *Interventions and Sanctions for Campuses.*

(a) If a campus's performance is below any standard under Texas Education Code (TEC), §39.054(e), the campus shall engage in the Texas Accountability Intervention System (TAIS) continuous improvement process.

(b) The commissioner shall assign members to a campus intervention team (CIT) as outlined in §97.1063 of this title (relating to Campus Intervention Team) and TEC, §39.106.

(c) The campus shall establish a campus leadership team (CLT) that includes the campus principal and other campus leaders responsible for the development, implementation, and monitoring of the targeted improvement plan.

(d) The campus intervention team shall:

- (1) conduct a data analysis related to areas of low performance;
- (2) conduct a needs assessment based on the results of the data analysis, as follows:
  - (A) The needs assessment shall include a root cause analysis.

(B) Root causes identified through the needs assessment will be addressed in the targeted improvement plan and, if applicable, campus turnaround plan;

(3) assist in the creation of a targeted improvement plan, as follows.

(A) Input must be gathered from the principal; campus-level committee established under TEC, §11.251; parents; and community members, prior to the development of the targeted improvement plan, using the following steps.

(i) The campus must hold a public meeting at the campus. The campus shall take reasonable steps to conduct the meeting at a time and in a manner that would allow a majority of stakeholders to attend and participate. The campus may hold more than one meeting if necessary.

(ii) The public must be notified of the meeting 15 days prior to the meeting by way of the district and campus website, local newspapers or other media that reach the general public, and the parent liaison, if present on the campus.

(iii) All input provided by family and community members should be considered in the development of the final targeted improvement plan submitted to the Texas Education Agency (TEA).

(B) The completed targeted improvement plan must be presented at a public hearing and approved by the board of trustees.

(C) The targeted improvement plan must be submitted to the commissioner of education for approval according to TEA procedures and guidance; and

(4) assist the commissioner in monitoring the implementation of the targeted improvement plan. The campus will submit updates to the TEA as requested that include:

(A) a description of how elements of the targeted improvement plan are being monitored; and

(B) data demonstrating the results of interventions from the targeted improvement plan.

(e) If a campus is assigned an unacceptable rating under TEC, §39.054(e), for a second consecutive year, the campus must engage in the processes outlined in subsections (a), (b), (c), and (d) of this section, and the campus must develop a campus turnaround plan to be approved by the commissioner as described in §97.1064 of this title (relating to Campus Turnaround Plan).

(f) If a campus is assigned an unacceptable rating under TEC, §39.054(e), for a third or fourth consecutive year, the campus must engage in the processes outlined in subsections (a), (b), (c), and (d) of this section, and the campus must implement the commissioner-approved campus turnaround plan as described in §97.1064 of this title (relating to Campus Turnaround Plan).

(g) If a campus is assigned an unacceptable rating under TEC, §39.054(e), for a fifth consecutive year, the commissioner shall order the appointment of a board of managers to govern the district or closure of the campus.

(h) If a campus was assigned an unacceptable rating in the prior year but met standard in the current year, the campus will continue to engage in TAIS activities outlined in subsection (a) of this section with the following exceptions:

(1) the campus may release its CIT based on criteria set annually by the TEA; and

(2) the campus that developed a turnaround plan may modify that plan as described in §97.1064 of this title.

(i) Based on a campus's progress toward improvement, the commissioner may order a hearing if a campus's performance is below any standard under TEC, §39.054(e).

(j) Interventions and sanctions listed under this section begin upon release of preliminary ratings and may be adjusted based on final accountability ratings.

#### §97.1063. *Campus Intervention Team.*

(a) The campus intervention team (CIT) shall perform the duties outlined in Texas Education Code (TEC), §39.106 and §39.107, and oversee the activities outlined in §97.1061(a) of this title (relating to Interventions and Sanctions for Campuses) and §97.1064 of this title (relating to Campus Turnaround Plan).

(b) The CIT must include:

(1) a professional service provider (PSP); and

(2) a district coordinator of school improvement (DCSI). The DCSI must submit qualifications to the Texas Education Agency (TEA) for approval.

(c) The CIT shall perform the duties referenced in subsection (a) of this section in collaboration with the campus leadership team (CLT) as outlined in §97.1061(a) of this title and §97.1064 of this title.

(d) CIT members as defined in subsection (b) of this section and the campus principal shall attend TEA-sponsored trainings on interventions and sanctions.

#### §97.1064. *Campus Turnaround Plan.*

(a) If a campus is assigned an unacceptable rating under Texas Education Code (TEC), §39.054(e), for two consecutive years, the campus must develop a campus turnaround plan to be approved by the commissioner of education in accordance with TEC, §39.107.

(b) A charter campus subject to this section must revise its charter in accordance with §100.1033 of this title (relating to Charter Amendment). The governing board of the charter performs the function of the board of trustees for this section.

(c) The district may request assistance from a regional education service center or partner with an institution of higher education in developing and implementing a campus turnaround plan.

(d) Within 60 days of receiving a campus's preliminary accountability rating the district must notify parents, community members, and stakeholders that the campus received an unacceptable rating for two consecutive years and request assistance in developing the campus turnaround plan.

(1) The district shall notify stakeholders of their ability to review the completed plan on the district website at least 30 days before the final plan is submitted to the board of trustees as described in TEC, §39.107(b-3).

(2) All input provided by family, community members, and stakeholders must be considered in the development of the final campus turnaround plan submitted to the Texas Education Agency (TEA).

(e) The district shall provide the following groups an opportunity to review and comment on the completed plan before it is submitted for approval to the board of trustees:

(1) the campus-level committee established under TEC, §11.251. If the campus is not required to have a campus-level committee under TEC, §11.251, the district shall provide an opportunity

for professional staff at the campus to review and comment on the campus turnaround plan;

- (2) teachers at the campus;
- (3) parents; and
- (4) community members.

(f) A campus turnaround plan must include:

(1) a detailed description of the academic programs to be offered at the campus, including instructional methods, length of school day and school year, academic credit and promotion criteria, and programs to serve special student populations;

(2) a detailed description of the budget, staffing, and financial resources required to implement the plan, including any supplemental resources to be provided by the district or other identified sources;

(3) written comments received from stakeholders described in subsection (e) of this section; and

(4) the term of the charter, if a district charter is to be granted for the campus under TEC, §12.0522.

(g) Upon approval of the board of trustees, the district must submit the campus turnaround plan electronically to the TEA by March 1 unless otherwise specified.

(h) A campus may implement, modify, or withdraw its campus turnaround plan with board approval if the campus receives an academically acceptable rating for the school year following the development of the campus turnaround plan.

§97.1067. *Alternative Management of Campuses.*

(a) By January 1 of the school year for which alternative management of a campus is ordered under §97.1065 of this title (relating to Commissioner Determinations for Decisions Preceding Alternative Management, Campus Closure, or Board of Managers), the school district shall:

(1) execute a contract, not to exceed five years, in compliance with this section; and

(2) relinquish control over the campus to a service provider approved under §97.1069 of this title (relating to Providers of Alternative Campus Management).

(b) A contract under this section must be executed by the district and the service provider and must:

(1) relinquish all authority to perform the duties and responsibilities of a principal under Texas Education Code (TEC), §11.202(b)(1)-(6), with respect to the campus;

(2) comply with TEC, §39.107(m)-(o); this section; and the requirements and performance measures established by the Texas Education Agency (TEA) under §97.1069 of this title;

(3) provide for the creation, maintenance, retention, and transfer of all public records concerning the campus;

(4) include provisions governing liability for damages, costs, and other penalties for acts or omissions by the service provider, including failure to comply with federal or state laws;

(5) provide for termination of the contract if:

(A) the campus is assigned an unacceptable rating under the state academic accountability system for two consecutive school years; or

(B) the commissioner of education orders campus closure under §97.1065 of this title;

(6) specify additional roles or responsibilities assumed by the service provider, if any;

(7) be approved by written resolution of the district's board of trustees; and

(8) be approved in writing by the commissioner.

(c) The service provider may perform the duties and responsibilities of a principal, and in addition may make requests and recommendations to the district concerning all aspects of campus administration, including personnel and budget decisions.

(1) If a request is denied or a recommendation is not implemented by the district, the service provider shall report to the TEA both its request or recommendation and the district's action in response.

(2) The commissioner may implement additional sanctions under this subchapter and consider such reports under TEC, §39.108 and §39.107(n), as well as §97.1065(b) of this title.

(d) The funding for the campus must be not less than the funding of the other campuses operated by the district on a per-student basis so that the service provider receives at least as much funding as the campus would otherwise have received. The district must continue to support:

(1) campus maintenance and operations;

(2) transportation;

(3) food services;

(4) extracurricular activities;

(5) central office support services;

(6) state assessment administration; and

(7) similar operational expenses of the campus.

(e) A campus operated by a service provider under this section remains a campus of the district. Educators and staff assigned to work at the campus are district employees for all purposes. The campus is not subject to TEC, §11.253.

(f) The commissioner shall order closure of a campus when alternative management of the campus was ordered under this section and:

(1) the district resumed operation of the campus under TEC, §39.107(n); and

(2) for the school year immediately following resumption of operations, the campus is assigned an unacceptable performance rating under the state academic accountability system.

(g) A district subject to this section shall comply fully with TEA requests for information for the purpose of evaluating implementation of the contract, student performance, and management of the campus.

(h) A district that violates the terms of its contract under this section is subject to further sanctions under this subchapter.

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

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Cristina De La Fuente-Valadez  
Director, Rulemaking  
Texas Education Agency  
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Proposal publication date: April 29, 2016  
For further information, please call: (512) 475-1497



## 19 TAC §§97.1061, 97.1063, 97.1064

STATUTORY AUTHORITY. The repeals are adopted under the Texas Education Code (TEC), §39.052, which requires an annual evaluation of the accreditation status of each school district. This section specifically safeguards diplomas, course credit, and grade promotions granted prior to the revocation by the commissioner; TEC, §39.056, which authorizes the agency to conduct monitoring reviews or investigations in accordance with requirements of the statutory provisions; TEC, §39.104, which applies interventions and sanctions imposed by TEC, Chapter 39, on school districts and campuses to open-enrollment charters. The section authorizes the commissioner to adopt rules to apply the interventions; TEC, §39.106, which requires the placement of a campus intervention team by the commissioner when a campus's performance fails to meet standards established under TEC, §39.054(e). This section also describes the duties, public notice, guidelines for a needs assessment to be done by a campus intervention team, and required areas of recommendations. This statute allows the commissioner to authorize some substitutions of certain committees and plans. The statute requires a board of trustees to take certain actions such as conducting a public hearing and submitting the plans to the commissioner; TEC, §39.107, which prescribes certain actions that must occur when a campus has consecutive years of unacceptable performance. The statute requires the development of a turnaround plan for two consecutive years of poor performance, requires public notice and input in developing the turnaround plan, details certain requirements of the turnaround plan, and authorizes the commissioner to adopt rules governing procedures for application to charters. The statute also prohibits the approval of a campus turnaround plan unless the commissioner determines the plan will achieve acceptable performance within two years of implementation and authorizes a district to implement a turnaround plan (or modified version) even if subsequent performance removes the requirement to implement the plan. TEC, §39.107, authorizes the commissioner to adopt rules necessary to implement the section; TEC, §39.109, which authorizes the commissioner to require a district or campus to select or be assigned professional services at their expense. This requirement is in addition to other interventions and sanctions authorized by statute. The statute authorizes additional requirements by the commissioner with regard to professional services; and TEC, §39.112, which describes the duties and responsibilities of a board of managers. This statute includes a requirement for the commissioner to, if possible, appoint certain types of individuals to a board of managers.

CROSS REFERENCE TO STATUTE. The repeals implement the TEC, §§39.052, 39.056, 39.104, 39.106, 39.107, 39.109, and 39.112.

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

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## TITLE 22. EXAMINING BOARDS

### PART 24. TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

#### CHAPTER 577. GENERAL ADMINISTRATIVE DUTIES

##### SUBCHAPTER B. STAFF

#### 22 TAC §577.15

The Texas Board of Veterinary Medical Examiners (Board) adopts amendments to §577.15, concerning the Fee Schedule. The amendments are adopted without changes to the proposed text published in the September 9, 2016, issue of the *Texas Register* (41 TexReg 6918).

The change to the fees is to ensure sufficient revenue for the appropriations received by the agency.

No comments were received regarding the adoption of the amendments to the rule.

The amendments are adopted under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; and §801.154(a), which states that the board by rule shall set fees in amounts that are reasonable and necessary so that the fees, in the aggregate, cover the costs of administering this chapter.

No other statutes, articles or codes are affected by the adoption.

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

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Loris Jones  
Executive Assistant  
Texas Board of Veterinary Medical Examiners  
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For further information, please call: (512) 305-7563



## TITLE 34. PUBLIC FINANCE

# PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

## CHAPTER 3. TAX ADMINISTRATION

### SUBCHAPTER O. STATE AND LOCAL SALES AND USE TAXES

#### 34 TAC §3.369

The Comptroller of Public Accounts adopts amendments to §3.369, concerning sales tax holiday--certain energy star products, without changes to the proposed text as published in the May 27, 2016, issue of the *Texas Register* (41 TexReg 3870).

This section is being amended to implement Senate Bill 1356, 84th Legislature, 2015, which added Tax Code, §151.3335 to provide a sales tax exemption for certain water-efficient products sold during a limited period. Sales of certain water-conserving products and products that have been designated as a WaterSense certified product under the WaterSense program operated by the United States Environmental Protection Agency are exempt from sales and use tax if sold during the 3-day period each May described by Tax Code, §151.333. Additional non-substantive revisions are made throughout the section for clarity and consistency with other sales tax holiday provisions.

The title of §3.369 is amended to reference the exemption for certain water-conserving and WaterSense products.

The definition of "energy-efficient product" provided in subsection (a)(1) is amended to add subparagraphs (A) - (H) and to specify the definition is limited to the list of items provided in those paragraphs. This list of specific items is currently included under the definition of "qualifying products" provided in subsection (a)(5).

The definition of "layaway" in paragraph (4) is amended by deleting the last sentence to make the definition consistent with the definition of the term in other sections of this title addressing sales tax holiday provisions.

The definition of "qualifying products" provided in paragraph (5) is amended to include water-conserving and WaterSense products. The definition is also amended to delete the list of specific energy-efficient items, as it is now provided in subsection (a)(1).

New paragraph (7) defines the term "water-conserving product" and includes examples of water-conserving products. Subparagraphs (7)(C) and (D) explain when items are used in a business or trade and are not water-conserving products for purposes of this section. New paragraph (8) defines the term "WaterSense product." Both definitions are based on Tax Code, §151.3335.

The comptroller received comments from Ken Kramer on behalf of the Lone Star Chapter of the Sierra Club. The comments recommended removing grasses, plants, shrubs, and trees from the list of examples of "water-conserving products" in subsection (a)(7). Mr. Kramer expressed concern that not all grasses, plants, shrubs, and trees promote water conservation. These items, however, meet the definition of "water-conserving products" provided by Tax Code, §151.3335(a)(1). Based on the statutory provision, the comptroller declines to make any changes to the section at this time.

Subsection (b)(4) is amended for readability and consistency with other sales tax holiday provisions. No substantive change is intended.

Subsection (c)(1) is amended to specify that sales of energy-efficient items other than those specifically included in subsection (a)(1) are taxable and do not qualify for an exemption under this section.

Paragraph (2) is added to specify that sales of products that conserve water but do not fall within the definition of water-conserving products in subsection (a)(7) are taxable and do not qualify for the exemption under this section. Subsequent paragraphs are renumbered accordingly.

Renumbered paragraph (3) is amended to replace the term "Energy Star qualified products" with the defined term "qualifying products" to make clear that repair and replacement parts for WaterSense and water-conserving products, as well as Energy Star qualified products, do not qualify for the sales tax exemption.

Renumbered paragraphs (4), (5), and (6) are amended to make the paragraphs easier to read. No substantive change is intended.

Subsection (f)(2)(B) is amended to provide that nontaxable charges for energy-efficient or WaterSense products must be separately stated from charges for taxable nonresidential repair and remodeling. Products that may conserve water but are installed on nonresidential property do not meet the definition of a water-conserving product and do not qualify for exemption.

Subsection (g)(1) is amended to specify that an exemption or resale certificate is not required for purchases of energy-efficient or WaterSense products by real estate developers, dealers, service providers, and contractors.

Paragraph (2) is added to require a purchaser to issue a resale certificate in lieu of tax, even during the exemption period, for purchases of water-conserving products that are resold to customers or incorporated into real property under a separated contract.

Paragraph (3) is added to specify an exemption or resale certificate may not be provided for products that will be incorporated into real property under a lump sum contract because such products do not meet the definition of water-conserving products. Subsequent paragraphs are renumbered accordingly.

New paragraph (4) includes language previously under paragraph (1) and corrects a grammatical error.

Renumbered paragraph (5) addresses items held in inventory. Subparagraphs (A) and (B) are amended to add WaterSense products and provides in subparagraph (B) that use tax is due on products purchased tax-free as water-conserving products that no longer meet the definition of water-conserving products because they are incorporated into real property under a lump sum contract.

Subsection (i) is amended to correct a grammatical error and to make the subsection easier to read.

Subsection (j) is amended to include provisions in existing subsection (n) addressing purchases by means other than in person and to address WaterSense and water-conserving products. The subsection is amended for consistency with other sales tax holiday provisions.

Subsection (l) is amended for consistency with other sales tax holiday provisions. Paragraphs (1) and (2) are amended to delete language that for an exchange required the qualifying products be of the same type. Paragraph (3), addressing

exchanges for different types of qualifying products, is deleted. Subsequent paragraphs are renumbered accordingly.

Provisions in subsection (m) that provide for a 30-day period during which tax cannot be refunded without documentation are deleted as the requirement is not limited to 30 days.

Provisions of subsection (n) relating to purchases by means other than in person are incorporated into subsection (j). Subsection (n) is deleted. Subsequent subsection (o) is relettered accordingly. The existing provision of relettered subsection (n) is moved to new paragraph (1) and applies to energy-efficient and WaterSense products. Paragraph (2) is added to specify that a seller is not required to obtain an exemption certificate for items listed as examples of water-conserving products in subsection (a)(7). A seller should obtain an exemption certificate for items that are not listed as examples but may be used in a manner that qualifies as a water-conserving product.

The amended section is adopted under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture), which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code, §151.3335 (Water-Efficient Products).

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

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Lita Gonzalez

General Counsel

Comptroller of Public Accounts

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For further information, please call: (512) 475-0387



## **TITLE 40. SOCIAL SERVICES AND ASSISTANCE**

### **PART 20. TEXAS WORKFORCE COMMISSION**

#### **CHAPTER 807. CAREER SCHOOLS AND COLLEGES**

##### **CHAPTER 807. CAREER SCHOOLS AND COLLEGES**

The Commission adopts amendments to the following sections of Chapter 807, relating to Career Schools and Colleges, *without* changes, as published in the August 9, 2016, issue of the *Texas Register* (41 TexReg 6462):

Subchapter A. General Provisions, §807.2 and §807.7

Subchapter B. Certificates of Approval, §807.11 and §807.15

Subchapter E. School Director and Administrative Staff, §807.62

Subchapter H. Courses of Instruction, §807.122

Subchapter J. Advertising, §807.175

Subchapter N. Cancellation and Refund Policy, §807.262 and §807.264

Subchapter O. Records, §807.281 and §807.282

Subchapter R. Closed Schools, §807.342

Subchapter S. Sanctions, §807.353

Subchapter T. Cease and Desist Orders, §807.362 and §807.365

The Commission adopts the repeal of the following section of Chapter 807, relating to Career Schools and Colleges, *without* changes, as published in the August 9, 2016, issue of the *Texas Register* (41 TexReg 6462):

Subchapter A. General Provisions, §807.5 Exemptions

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

Texas law charges the Agency with exercising jurisdiction and control of the oversight of career schools and colleges operating in Texas. The Agency's Career Schools and Colleges department (CSC) licenses and regulates most private postsecondary career schools and colleges that offer vocational training or continuing education to Texas residents. The Agency currently regulates more than 560 career schools and colleges, which provide training to more than 160,000 students annually.

Senate Bill (SB) 563, passed by the 82nd Texas Legislature, Regular Session (2011), required the Agency to establish a pilot program to improve the efficiency and quality of Agency operations while reducing costs, and to adopt a structured approach for identifying the wasteful use of state resources and improving Agency processes. These rules reflect improvements to regulations and efficiency resulting from implementation of the bill.

Texas law requires the Agency to administer the provisions of Texas Education Code, Chapter 132, enforce minimum standards for approval and regulation of career schools and colleges, and adopt policies and rules necessary for carrying out the responsibilities of Chapter 132. To fulfill this role, the Agency investigates complaints about schools, monitors schools to ensure regulatory compliance, arranges for the disposition of students affected by a school closure, and administers the tuition trust account to pay tuition refunds to students when a school closes. In carrying out its regulatory duties, CSC seeks to:

--hold all businesses meeting the definition of a career school or college to consistent standards of quality, performance, and regulatory oversight;

--provide consumer protection for Texas students; and

--ensure students receive quality training that meets the needs of Texas employers.

To support the Agency's ability to effectively and efficiently protect students, regulate career schools and colleges, and meet employer needs, and to improve consumer disclosures that allow informed choices, the Commission adopts amendments in several key areas. The amendments enumerate the Commission's expectations and use of its regulatory authority in areas in which recent violations and possible abuses have been identified. Additionally, the amendments are intended to increase

transparency of regulatory requirements and the overall performance of career schools and colleges.

Further, to support effective and efficient Agency response to the needs of schools, students, and consumers, and to provide direction to career schools and colleges regulated by the Agency, the Chapter 807 amendments:

--add definitions for "response deadline" and "address of record" and amend the definition of "date of notice";

--removing a requirement for a school to receive an exemption;

--modify the exemption requirements for accredited, degree-granting career schools and colleges;

--consolidate the exemption requirements into one section;

--shorten the time for a career school or college to receive an original license;

--require career schools and colleges to notify the Agency of changes in accreditation and Title IV status;

--remove a duplicative requirement for school directors;

--require schools whose program approval was revoked for failing to meet the minimum employment rate for three consecutive years to wait a minimum of one year and submit a reimplementation plan before reapplying for approval of the program;

--require schools that charge tuition and fees based on more than one period to fully disclose information to students that will allow them to understand the charges;

--emphasize that schools must disclose all catalog changes and that there are sanctions for failure to comply;

--clarify the order of refunds paid by schools;

--add Local Workforce Development Boards (Boards) as possible recipients of refunds and any associated penalties paid by schools for late refunds;

--change the requirement for an audit based on incorrect calculation of refunds or for late payment to an agreed-upon procedures engagement;

--require schools to protect student records, whether physical or electronic, from damage, loss, or misuse;

--require schools to properly maintain and dispose of student information and records;

--clarify the method and order of refunds paid from the tuition trust account;

--amend the penalty matrix to define what constitutes an instance;

--remove the provision for oral argument while preserving the right of written appeal; and

--remove the requirement to send a copy of CSC rules with the statement of charges in a cease and desist notice.

## PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

Texas Government Code §2001.039 requires that every four years each state agency review and consider for reoption, revision, or repeal each rule adopted by that agency. The Com-

mission has conducted a rule review of Chapter 807, Career Schools and Colleges, and adopts the following amendments:

## SUBCHAPTER A. GENERAL PROVISIONS

The Commission adopts the following amendments to Subchapter A:

### §807.2. Definitions

New §807.2(7) is added to create a definition for "address of record" that requires each career school or college to establish a distribution list e-mail address of record that consistently maintains a minimum of two current subscribers, with the format of the address to be "School#Director@xdomain," e.g., S1111Director@gmail.com.

Creating a definition for "address of record" to require an Internet presence reflects the current best practice among career schools and colleges. Moreover, modernizing the address of record for career schools and colleges ensures a consistent point of contact for notice, both for students and for the Agency, regardless of a school's choice to physically relocate.

Section 807.2(16) is amended to change the definition of "Date of Notice" from the date the Agency receives the notice to the date it is mailed, which accords with the definition in statute and simplifies establishing the date. Existing §807.2(16) is also renumbered to §807.2(17) to accommodate the addition of new definitions within this section.

New §807.2(33) is added to create a definition for "response deadline," clarifying that deadlines that fall on a weekend, an official state holiday, a state holiday for which minimal staffing is required, or a federal holiday are extended one working day.

This addition reflects typical Agency practice and will ensure consistent interpretation regarding timely filing, both for career schools and colleges and for Agency staff.

Comment: One commenter opined that the proposed format, "School#Director@xdomain," would be inapplicable to schools with multiple locations and a corporate office separate from a campus. The commenter requested maintaining the current practice.

Response: The current practice, in which each school identifies an e-mail address, has proven to be an unreliable method for contacting the schools. Many schools use an e-mail address specific to the school director. If the Agency has not been notified of that director's departure, which is often the case, the e-mail is not received. The Agency routinely corresponds with approximately 600 career schools, and with increasing use of e-mail, it is important for protection of the school's rights that the Agency has a dependable method of ensuring that e-mail is received and promptly read. The amendment would not only establish a standard address protocol, but also requires a minimum of two subscribers. One of these could be a corporate contact, or additional subscribers could be added.

Comment: One commenter asked when the response period would start-- whether it would be when mailed, when received, or another time. The commenter further stated that responding to the Agency is an important matter.

Response: The Agency will continue the current practice of stating the deadline for responding in the body of the notice, for example, "within 20 days of the date mailed."

### §807.5. Exemptions

The Commission adopts the repeal of §807.5 in its entirety. The contents of this section will be included in an amendment to §807.7(e).

#### §807.7. Exemptions

Section 807.7(a)(c) and (d) are amended to delete "or educational institution" from the phrase "school or educational institution," to conform with existing definitions.

New §807.7(e) is moved from previous §807.5(2) - (5) and relettered.

#### SUBCHAPTER B. CERTIFICATES OF APPROVAL

The Commission adopts the following amendments to Subchapter B:

##### §807.11. Original Approvals

Section 807.11(b) is amended to reduce processing time frames from 180 days to 90 days.

Section 807.11(c) is amended to reduce response time frames from 30 days to 21 days.

In undergoing a Rapid Process Improvement (RPI) review, CSC streamlined critical application review processes, thereby reducing the time required for Agency staff to fully process an original application. The RPI review also identified process efficiencies that allowed for a reduction in response time frames from career schools and colleges.

Comment: One commenter wished to extend appreciation for reduced time for approvals to allow career schools and colleges to continue to meet the demands of employers.

Response: The Agency concurs and appreciates the expression of support.

##### §807.15. Notification of Legal Actions

Section 807.15 is amended to read "Notification of Actions" from "Notification of Legal Action."

Updating the title of §807.15 reflects the need to broaden the terminology to include other critical notification requirements. Restricting notification solely to legal actions overlooked critical changes to schools' eligibility-related requirements and operational status. Such changes are discussed in more detail in new §807.15(d).

Section 807.15 is amended to add subsection (d), to require schools to report, in writing and within five days, any change in accreditation status or Title IV status, e.g., Heightened Cash Monitoring 1 or 2, loss of eligibility, composite score, 90/10 ratio or default rate problems, or other similar changes.

Any change to a school's accreditation status or Title IV status is critical knowledge for consumers; as such changes can affect transferability of credits and the ability to secure federal student loans.

#### SUBCHAPTER E. SCHOOL DIRECTOR AND ADMINISTRATIVE STAFF

The Commission adopts the following amendments to Subchapter E:

##### §807.62. School Director Qualifications and Duties

Section 807.62(e) is removed; subsequent subsections are relettered to reflect the removal of this subsection.

The requirement for the school director to sign and agree to the terms of the Director's Statement found in §807.62(e) is no longer needed. RPI review identified the form as a redundant requirement.

#### SUBCHAPTER H. COURSES OF INSTRUCTION

The Commission adopts the following amendments to Subchapter H:

##### §807.122. General Information for Courses of Instruction.

Section 807.122 is amended to add the following language:

(a) A school shall not apply for approval of a program that is substantially similar to a discontinued or revoked program, unless the application for approval is submitted at least one year after the date of discontinuation or revocation, and:

(1) the school's approved programs are all meeting the employment rate as referenced in §807.131(b), at the time of application; and

(2) the school submits a reimplementation plan to the Agency.

A school whose remaining programs all meet the minimum rate at the time of application and which provides an implementation plan for a revoked program, may reapply for approval after the one-year period. Programs found to be substantially similar to a revoked program would also be subject to the same requirements.

Subsequent subsections are relettered to reflect additions.

Comment: The commenter questioned the need for the additional requirements if the new program is not related to the discontinued or revoked program.

Response: The Agency points out that the requirements only apply to a program that is substantially similar to a discontinued or revoked program, not to an unrelated program.

#### SUBCHAPTER J. ADVERTISING

The Commission adopts the following amendments to Subchapter J:

##### §807.175. Catalog

New §807.175(c) is added to require a school catalog to include specific information about tuition and fees calculations based on one or more period of time, e.g., semester, quarter.

Requiring schools that charge tuition and fees based on one or more period to completely disclose information to students allowing them to understand the charges and ensuring full disclosure to students, parents, and other funding sources. Further, the basis of a school's charges is established clearly, both for students and the Agency, should issues arise, including, but not limited to, calculation of refunds.

New §807.175(d) is added to require schools to disclose all changes and to advise schools that there are sanctions for failing to comply.

This language is designed to ensure that schools keep their policies current, both for students and for the Agency, and to emphasize the importance of prompt notification of changes to such policies.

#### SUBCHAPTER N. CANCELLATION AND REFUND POLICY

The Commission adopts the following amendments to Subchapter N:

#### §807.262. Completion of Refund

New §807.262(d) is added to delineate the proper recipients of refunds and to establish that refunds will be paid in the following order: 1) any federal loans; 2) any private loans; 3) credit card or cash payments made by the student; and 4) other funding sources, including Boards. Clarifying who can receive refunds and the order in which refunds are made are critical to ensuring proper and timely distribution of any refunds.

Current Agency rules do not delineate the recipients or the order of refunds to students by schools. In addition to direct payment from a student, payment may be made on behalf of a student by a bank or other lending institution, or by federal entities. A student's tuition may also be paid directly to a school by an employer or by another funding source, including Boards. The language is added to clarify the order in which refunds will be made to various funding sources and that, when payment is not made by a student but is made on the student's behalf, that funding source is entitled to recover any refund, as appropriate.

Comment: One commenter was unsure of the meaning of the term "Board" and noted that it was not contained in the definitions.

Response: This was not included because the term "Board" is defined in Texas Workforce Commission rule §800.2(4) as a Local Workforce Development Board, created pursuant to Texas Government Code §2308.253 and certified by the governor pursuant to Texas Government Code §2308.261. This includes such a Board when functioning as the Local Workforce Investment Board, including those functions required of a Youth Council. The definition of Board shall apply to all uses of the term in the rules contained in this part, or unless otherwise defined, relating to the Texas Workforce Commission, that are adopted after February 1, 2001.

#### §807.264. Penalties Relating to Refunds

Current §807.264(b) is amended to remove the provision that any late refunds for grants \$15 or less are to be paid to the tuition trust account (TTA).

This language is intended to clarify Agency practice.

New §807.264(b)(3) adds new language, including adding Boards as potential recipients in the payment of penalties for late refunds.

This new language is added to align with new §807.262(d) to ensure that Boards are treated equivalently to students paying for themselves.

As a Board pays for the education or training services on behalf of an individual, the Board is entitled to receive any penalties relating to a recovered refund, as appropriate.

Section 807.264(c) is amended to require schools to submit an agreed-upon procedures engagement when the Agency determines the method used to calculate refunds is in error or the school does not pay refunds within the specified time limit. This language is added to increase the reliability of schools' refund calculations.

Section 807.264 is further amended by adding subsection (d) listing the requirements of the opinion letter, deleting the requirement for an audited report, and instead requiring an agreed-upon procedures engagement that requires an independent CPA to examine all files for students who did not complete a course of study to determine compliance with the most restrictive of: 1) the

Act; 2) this chapter; or 3) the school catalog current at the time of the student's enrollment.

Comment: One commenter stated that the new language in subsection (d) seems excessive and redundant to the current process and that they are not certain if these items would only be requested under penalty or as part of the initial information gathering of a refund dispute.

Response: The information requested in subsection (d) is essentially the same information as currently requested in subsection (c), with clarification that if necessary, the same information will be required for recalculated refunds, with the addition of "other information requested by the Agency to demonstrate compliance" to ensure provision for unforeseen circumstances. The requirement was moved to provide clarity as part of the restructuring of the section. Subsection (c) clearly states that the information will only be required if the Agency determines that the method used by the school to calculate refunds is in error or that the school does not routinely pay refunds timely.

#### SUBCHAPTER O. RECORDS

The Commission adopts the following amendments to Subchapter O:

##### §807.281. General Information for Records

Section 807.281(b) is amended to clarify that records may be electronic; to add that records must be protected against damage, loss, or misuse; and to direct that records be available to the Commission for inspection.

Updating this rule will ensure that the Agency can protect student records, whether retained in hard copy or electronic copy.

Comment: One commenter stated that §807.281(b)(2) was vague and requested further explanation, and that without clarification the commenter would consider this to be an additional expense without guidance as to type of product or service. The commenter further stated that the accrediting bodies recognized by the USDOE [sic] have a standard that they would encourage duplicating.

Response: The Agency reviewed the requirements of five of the accreditors recognized by the U.S. Department of Education that are most used by regulated schools before deciding on language. All five address protecting against the risk of loss; three address damage and give examples of fire, water, and theft; and three address forms of misuse. The accreditor whose standard most closely resembles the amendment is Accrediting Commission of Career Schools and Colleges, whose standard requires that "These records (physical or electronic) must be securely maintained and protected against damage or loss (e.g., fire, water, theft, tampering, etc.)."

##### §807.282. Student Records

Section 807.282's title is amended to read "Student Information and Records."

Updating the title of §807.282 reflects a broader terminology that includes other information in addition to what is statutorily defined as student records.

New §807.282(d) and (e) are added to provide detail regarding appropriate methods of record maintenance and destruction to improve accountability and protection of students' sensitive personal information and provide clarity regarding minimum record destruction standards to enhance objective evaluation of compliance.

## SUBCHAPTER R. CLOSED SCHOOLS

The Commission adopts the following amendments to Subchapter R:

### §807.342. Tuition Trust Account

Section 807.342(c) is amended to clarify that discharges will be determined before making refunds and that other funding sources are only refunded if an amount remains after the Commission has attempted to provide full refunds to students.

This wording change is designed to ensure that all outstanding liabilities are accounted for, thereby maximizing the effectiveness of the tuition trust account.

## SUBCHAPTER S. SANCTIONS

The Commission adopts the following amendments to Subchapter S:

### §807.353. Administrative Penalties

Section 807.353(e) is amended to define violation and repeat offense penalties. The violation for failure to respond to an Agency request is repealed, as no scenario exists in which a school would not have already received a penalty for the violation that occurred when the school failed to respond.

Amended §807.353(e) includes a definition of "Instance" when referring to each violation and adds new violations for protection and disposal of sensitive student personal information.

## SUBCHAPTER T. CEASE AND DESIST ORDERS

The Commission adopts the following amendments to Subchapter T:

### §807.362. Contents of Statement of Charges and Notice of Hearing

Section 807.362 is amended to remove the requirement to send a copy of the CSC rules with the statement of charges for a cease and desist notice.

Sending a hard copy of rules is not a statutory requirement, adds costs, and is unnecessary, given that all rules are accessible and up to date on the Agency website.

### §807.365. Hearing Decision and Final Review by the Commission.

Section 807.365 is amended to eliminate the provision for oral argument, while preserving the right of written appeal to the Commission.

Oral argument before the Commission is not a statutory requirement and creates conflict with the requirement that the Commission's decision be made on the basis of the record of the hearing officer.

Comment: One commenter was concerned to see the removal and elimination of the provision for "verbal response during the hearing decision and final review process."

Response: This section only deals with cease and desist hearings involving unlicensed schools, and it does not affect the conduct of hearings held under Subchapter U, which governs the conduct of all other career school and college hearings, or the appeal rights of the parties. This section aligns the process with other similar Agency processes.

Comments were received from:

Jerry Valdez, Executive Director, Career Colleges & Schools of Texas

## SUBCHAPTER A. GENERAL PROVISIONS

### 40 TAC §807.2, §807.7

The rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted rules affect Texas Government Code, Chapter 552.

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

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Patricia Gonzalez

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Texas Workforce Commission

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For further information, please call: (512) 475-0829



### 40 TAC §807.5

The repeal is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted repeal affects Texas Government Code, Chapter 552.

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## SUBCHAPTER B. CERTIFICATES OF APPROVAL

### 40 TAC §807.11, §807.15

The rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it

deems necessary for the effective administration of Agency services and activities.

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## SUBCHAPTER E. SCHOOL DIRECTOR AND ADMINISTRATIVE STAFF

### 40 TAC §807.62

The rule is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

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## SUBCHAPTER H. COURSES OF INSTRUCTION

### 40 TAC §807.122

The rule is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

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## SUBCHAPTER J. ADVERTISING

### 40 TAC §807.175

The rule is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

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## SUBCHAPTER N. CANCELLATION AND REFUND POLICY

### 40 TAC §807.262, §807.264

The rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted rules affect Texas Government Code, Chapter 552.

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## SUBCHAPTER O. RECORDS

### 40 TAC §807.281, §807.282

The rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted rules affect Texas Government Code, Chapter 552.

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

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## SUBCHAPTER R. CLOSED SCHOOLS

### 40 TAC §807.342

The rule is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted rule affects Texas Government Code, Chapter 552.

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## SUBCHAPTER S. SANCTIONS

### 40 TAC §807.353

The rule is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted rule affects Texas Government Code, Chapter 552.

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## SUBCHAPTER T. CEASE AND DESIST ORDERS

### 40 TAC §807.362, §807.365

The rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted rules affect Texas Government Code, Chapter 552.

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## TITLE 43. TRANSPORTATION

### PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

#### CHAPTER 28. OVERSIZE AND OVERWEIGHT VEHICLES AND LOADS

## SUBCHAPTER I. PORT OF HARLINGEN AUTHORITY PERMITS

### 43 TAC §§28.110 - 28.117

The Texas Department of Transportation (department) adopts new §§28.110 - 28.117, concerning Port of Harlingen Authority Permits. New §§28.110 - 28.117 are adopted without changes to the proposed text as published in the August 12, 2016, issue of the *Texas Register* (41 TexReg 5986) and will not be republished.

#### EXPLANATION OF ADOPTED NEW SECTIONS

Under Transportation Code, Chapter 623, Subchapter K, the Texas Transportation Commission (commission) has the authority to authorize Port of Harlingen Authority (Authority) to issue permits for oversize and overweight vehicles on certain roads within the Authority. The Authority contacted the department and expressed the desire to obtain the authority needed to issue permits as allowed under current state law. The adopted new sections are necessary to authorize the Authority to issue permits and to implement and carry out the provisions of Transportation Code, Chapter 623, Subchapter K. These rules add new Subchapter I which was developed to be consistent with similar optional permitting programs previously established by the commission.

New §28.110 sets out the purpose of Subchapter I, which is to allow the Authority to issue permits for the movement of oversize or overweight vehicles weighing up to 125,000 pounds on roads designated by Transportation Code, §623.219(a)(2)(B), (C), (D), and (E).

New §28.111 sets out the applicable definitions used in the subchapter by defining the Port of Harlingen as the "Authority."

New §28.112 provides the powers and duties of the Authority and the department for the implementation and oversight of the Authority's permit program. Subsection (a) authorizes the issuance of permits and collection of fees and provides the maximum dimensions and gross weight that may be allowed under a permit. Subsection (b) authorizes the department to require a surety bond to pay for the costs of the maintenance of the roadways that are used by the permitted vehicles if the amount of the fees deposited in the state highway fund is not sufficient to cover those costs. The Authority can prevent recovery on the bond by paying the amount not covered by the fees. This section also covers the verification of permits, the provision of training necessary for the Authority to issue permits, accounting and auditing requirements, and audits. Subsection (g) provides the department's authority to ensure that the Authority complies with applicable law, including the rules in new Subchapter I. Subsection (h) sets out the fee requirements. Subsection (i) requires the Authority to enter into a contract with the department for the maintenance of roads on which the permitted vehicles will travel. Finally, subsection (j) sets out the Authority's reporting requirements. The provisions of the section were developed to be in compliance with Transportation Code, Chapter 623, Subchapter K, and to be consistent with similar optional permitting programs previously established.

New §28.113 establishes the eligibility requirements that must be satisfied for the issuance of a permit by the Authority. The section prohibits the Authority from issuing a permit to a person or for a vehicle if administrative penalties imposed under Transportation Code, §623.271 have not been paid. This prohibition is required under Transportation Code, §623.271.

New §28.114 sets out the requirements related to the form and content of the application for a permit. The requirements are necessary to comply with Transportation Code §623.215 and are as consistent as possible with similar optional permitting programs previously established by the department.

New §28.115 provides the permit weight limits for axles that the Authority must follow as part of the permit program. Requirements and specifications include minimum axle group spacing and maximum permit weight for single and multiple axles.

New §28.116 sets forth movement requirements and restrictions that the Authority and a permittee must follow as part of the permit program. A permittee is required to carry the issued permit when moving the permitted vehicle and is prohibited under this section from moving an oversize or overweight load if a permit becomes void. A permit is void on issuance if the applicant for the permit gives false or incorrect information and becomes void when the permittee fails to comply with the restrictions or conditions stated in the permit or when the permittee changes or alters the information in the permit. The section provides limitations on the movement of a permitted vehicle because of weather conditions, road work, or time of day. Finally, the section sets out the requirements for types of scales that may be used to weigh permitted vehicles and provides speed restrictions.

New §28.117 provides the records maintenance requirements that the Authority must follow as part of the permit process to ensure the department has adequate access to oversee the program.

#### COMMENTS

No comments on the proposed new sections were received.

#### STATUTORY AUTHORITY

The new sections are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §623.212, which allows the commission to authorize the authority to issue permits for the movement of oversize or overweight vehicles, and Transportation Code, §623.002, which provides the commission with the authority to establish rules necessary to implement Transportation Code, Chapter 623.

#### CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 623, Subchapter K.

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

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