

# 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 22. EXAMINING BOARDS

### PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

#### CHAPTER 518. UNAUTHORIZED PRACTICE OF PUBLIC ACCOUNTANCY

##### 22 TAC §518.5

The Texas State Board of Public Accountancy adopts an amendment to §518.5 concerning Unlicensed Entities without changes to the proposed text as published in the November 27, 2020, issue of the *Texas Register* (45 TexReg 8463). The rules will not be republished.

CPA firms not licensed in Texas may practice in Texas if the firm is licensed in another state and the firm does not establish and maintain an office in the state. This is referred to as the "practice privilege" provided for in 901.461 of the Texas Public Accountancy Act.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is 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.

Filed with the Office of the Secretary of State on January 14, 2021.

TRD-202100199

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Effective date: February 3, 2021

Proposal publication date: November 27, 2020

For further information, please call: (512) 305-7842



##### 22 TAC §518.6

The Texas State Board of Public Accountancy adopts an amendment to §518.6 concerning Administrative Penalty Guidelines for the Unauthorized Practice of Public Accountancy without changes to the proposed text as published in the November 27, 2020 issue of the *Texas Register* (45 TexReg 8464). The rules will not be republished.

The amendment addresses the fact that the Board is not required to assess an administrative penalty and but if so the Board determines the amount of the penalty for every Board rule violation.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is 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.

Filed with the Office of the Secretary of State on January 14, 2021.

TRD-202100200

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Effective date: February 3, 2021

Proposal publication date: November 27, 2020

For further information, please call: (512) 305-7842



#### CHAPTER 519. PRACTICE AND PROCEDURE SUBCHAPTER A. GENERAL PROVISIONS

##### 22 TAC §519.4

The Texas State Board of Public Accountancy adopts an amendment to §519.4 concerning Conduct and Decorum without changes to the proposed text as published in the November 27, 2020, issue of the *Texas Register* (45 TexReg 8465). The rules will not be republished.

The amendment is a grammatical change to revise the word from singular to plural verb.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is 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.

Filed with the Office of the Secretary of State on January 14, 2021.

TRD-202100201  
J. Randel (Jerry) Hill  
General Counsel  
Texas State Board of Public Accountancy  
Effective date: February 3, 2021  
Proposal publication date: November 27, 2020  
For further information, please call: (512) 305-7842



## 22 TAC §519.7

The Texas State Board of Public Accountancy adopts an amendment to §519.7 concerning Criminal Offenses that May Subject a Licensee or Certificate Holder to Discipline or Disqualify a Person from Receiving a License without changes to the proposed text as published in the November 27, 2020, issue of the *Texas Register* (45 TexReg 8466). The rules will not be republished.

The amendment adds the misdemeanor offense of evading arrest to the list of criminal offenses that could result in a disciplinary action by the Board against a licensee.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is 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.

Filed with the Office of the Secretary of State on January 14, 2021.

TRD-202100202  
J. Randel (Jerry) Hill  
General Counsel  
Texas State Board of Public Accountancy  
Effective date: February 3, 2021  
Proposal publication date: November 27, 2020  
For further information, please call: (512) 305-7842



## SUBCHAPTER C. PROCEEDINGS AT SOAH

### 22 TAC §519.40

The Texas State Board of Public Accountancy adopts an amendment to §519.40 concerning General Provisions without changes to the proposed text as published in the November 27, 2020, issue of the *Texas Register* (45 TexReg 8469). The rules will not be republished.

Occasionally licensees fail to respond to the public and/or fail to respond to the Board. When this occurs, the Board will seek a default judgment against the licensee. In those cases where this occurs regulatory expenses can be minimized by having the hearing conducted by the Executive Director. This amendment helps to put licensees and the public on notice that the Board may authorize the Executive Director to conduct hearings when the licensee fails to respond to Board communications.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the

agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is 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.

Filed with the Office of the Secretary of State on January 14, 2021.

TRD-202100203  
J. Randel (Jerry) Hill  
General Counsel  
Texas State Board of Public Accountancy  
Effective date: February 3, 2021  
Proposal publication date: November 27, 2020  
For further information, please call: (512) 305-7842



## PART 34. TEXAS STATE BOARD OF SOCIAL WORKER EXAMINERS

### CHAPTER 781. SOCIAL WORKER LICENSURE

#### SUBCHAPTER A. GENERAL PROVISIONS

##### 22 TAC §781.102

The Texas Behavioral Health Executive Council adopts amended §781.102, relating to Definitions. Section 781.102 is adopted without changes to the proposed text as published in the December 4, 2020, issue of the *Texas Register* (45 TexReg 8707) and will not be republished.

Reasoned Justification.

The amended rule, in conjunction with other rule amendments adopted in this edition of the *Texas Register*, will no longer require the preapproval of a supervision plan in order to accrue supervised experience required for the issuance of a license as a clinical social worker (LCSW) or for independent practice recognition for a baccalaureate social worker (LBSW) or a master social worker (LMSW). Supervised experience will still be required, at the same requisite level that is currently in place, but documentation of the required supervised experience will now only be submitted to the Executive Council when the applicant is applying for either the LCSW or independent practice recognition. The Executive Council anticipates the amended rule will address a backlog of applications and expedite future applications received.

If a rule will pertain to the qualifications necessary to obtain a license then the rule must first be proposed to the Executive Council by the applicable board for the profession before the Executive Council may propose or adopt such a rule, see §507.153 of the Tex. Occ. Code. The amended rule pertains to supervised experience requirements for licensure as an LCSW or for independent practice recognition for an LBSW or LMSW; therefore, this rule is covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Social Worker Examiners, in accordance with §505.2015 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose the adoption of this rule

to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Tex. Occ. Code and may adopt this rule.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

A commenter opined that this rule change will cause a backlog in two to four years when supervision plans are completed by supervisees, and believes the rule change puts too much pressure and liability onto clinical supervisors. The commenter requests this rule change not be made.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

Commenters voiced their support for this change to the licensing process for required supervised experience for independent practice or clinical practice.

Agency Response.

The Executive Council declines to amend the rule or make any changes as requested. The Executive Council is already reviewing applications after an applicant completes a supervision plan, and the pre-approval of a supervision plan has not made the application process any more efficient for the review of applications. Therefore any potential influx of future applications for licensure will not be negatively impacted by supervision plans no longer being pre-approved. The purpose of a supervisor is to aid a supervisee in obtaining the requisite knowledge, skill, and experience to competently practice independently or provide clinical services. A supervisor has always been responsible for the acts or omissions of a supervisee, therefore no additional pressure or liability is placed on supervisors by this rule amendment as the commenter suggests.

The Executive Council appreciates the commenters' supportive comments.

Statutory Authority.

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

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

In accordance with §505.2015 of the Tex. Occ. Code the Board previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. The rule is specifically authorized by §505.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed the rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Texas Occupations Code and may adopt this rule.

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

Filed with the Office of the Secretary of State on January 15, 2021.

TRD-202100235

Darrel D. Spinks

Executive Director

Texas State Board of Social Worker Examiners

Effective date: February 4, 2021

Proposal publication date: December 4, 2020

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



## SUBCHAPTER B. RULES OF PRACTICE

### 22 TAC §781.302

The Texas Behavioral Health Executive Council adopts amended §781.302, relating to the Practice of Social Work. Section 781.302 is adopted without changes to the proposed text as published in the December 4, 2020, issue of the *Texas Register* (45 TexReg 8711) and will not be republished.

Reasoned Justification.

The amended rule, in conjunction with other rule amendments adopted in this edition of the *Texas Register*, will no longer require the preapproval of a supervision plan in order to accrue supervised experience required for the issuance of a license as a clinical social worker (LCSW) or for independent practice recognition for a baccalaureate social worker (LBSW) or a master social worker (LMSW). Supervised experience will still be required, at the same requisite level that is currently in place, but documentation of the required supervised experience will now only be submitted to the Executive Council when the applicant is applying for either the LCSW or independent practice recognition. The Executive Council anticipates the amended rule will address a backlog of applications and expedite future applications received.

If a rule will pertain to the qualifications necessary to obtain a license then the rule must first be proposed to the Executive Council by the applicable board for the profession before the Executive Council may propose or adopt such a rule, see §507.153 of the Tex. Occ. Code. The amended rule pertains to supervised experience requirements for licensure as an LCSW or for independent practice recognition for an LBSW or LMSW; therefore, this rule is covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Social Worker Examiners, in accordance with §505.2015 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose the adoption of this rule

to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Tex. Occ. Code and may adopt this rule.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

A commenter opined that this rule change will cause a backlog in two to four years when supervision plans are completed by supervisees, and believes the rule change puts too much pressure and liability onto clinical supervisors. The commenter requests this rule change not be made.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

Commenters voiced their support for this change to the licensing process for required supervised experience for independent practice or clinical practice.

Agency Response.

The Executive Council declines to amend the rule or make any changes as requested. The Executive Council is already reviewing applications after an applicant completes a supervision plan, and the pre-approval of a supervision plan has not made the application process any more efficient for the review of applications. Therefore any potential influx of future applications for licensure will not be negatively impacted by supervision plans no longer being pre-approved. The purpose of a supervisor is to aid a supervisee in obtaining the requisite knowledge, skill, and experience to competently practice independently or provide clinical services. A supervisor has always been responsible for the acts or omissions of a supervisee, therefore no additional pressure or liability is placed on supervisors by this rule amendment as the commenter suggests.

The Executive Council appreciates the commenters' supportive comments.

Statutory Authority.

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

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

In accordance with §505.2015 of the Tex. Occ. Code the Board previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. The rule is specifically authorized by §505.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed the rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Texas Occupations Code and may adopt this rule.

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

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

Filed with the Office of the Secretary of State on January 15, 2021.

TRD-202100236

Darrel D. Spinks

Executive Director

Texas State Board of Social Worker Examiners

Effective date: February 4, 2021

Proposal publication date: December 4, 2020

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



## SUBCHAPTER C. APPLICATION AND LICENSING

### 22 TAC §781.401

The Texas Behavioral Health Executive Council adopts amended §781.401, relating to Qualifications for Licensure. Section 781.401 is adopted without changes to the proposed text as published in the December 4, 2020, issue of the *Texas Register* (45 TexReg 8713) and will not be republished.

Reasoned Justification.

The amended rule, in conjunction with other rule amendments adopted in this edition of the *Texas Register*, will no longer require the preapproval of a supervision plan in order to accrue supervised experience required for the issuance of a license as a clinical social worker (LCSW) or for independent practice recognition for a baccalaureate social worker (LBSW) or a master social worker (LMSW). Supervised experience will still be required, at the same requisite level that is currently in place, but documentation of the required supervised experience will now only be submitted to the Executive Council when the applicant is applying for either the LCSW or independent practice recognition. The Executive Council anticipates the amended rule will address a backlog of applications and expedite future applications received.

If a rule will pertain to the qualifications necessary to obtain a license then the rule must first be proposed to the Executive Council by the applicable board for the profession before the Executive Council may propose or adopt such a rule, see §507.153 of the Tex. Occ. Code. The amended rule pertains to supervised

experience requirements for licensure as an LCSW or for independent practice recognition for an LBSW or LMSW; therefore, this rule is covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Social Worker Examiners, in accordance with §505.2015 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Tex. Occ. Code and may adopt this rule.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

A commenter opined that this rule change will cause a backlog in two to four years when supervision plans are completed by supervisees, and believes the rule change puts too much pressure and liability onto clinical supervisors. The commenter requests this rule change not be made.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

Commenters voiced their support for this change to the licensing process for required supervised experience for independent practice or clinical practice.

Agency Response.

The Executive Council declines to amend the rule or make any changes as requested. The Executive Council is already reviewing applications after an applicant completes a supervision plan, and the pre-approval of a supervision plan has not made the application process any more efficient for the review of applications. Therefore any potential influx of future applications for licensure will not be negatively impacted by supervision plans no longer being pre-approved. The purpose of a supervisor is to aid a supervisee in obtaining the requisite knowledge, skill, and experience to competently practice independently or provide clinical services. A supervisor has always been responsible for the acts or omissions of a supervisee, therefore no additional pressure or liability is placed on supervisors by this rule amendment as the commenter suggests.

The Executive Council appreciates the commenters' supportive comments.

Statutory Authority.

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

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

In accordance with §505.2015 of the Tex. Occ. Code the Board previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. The rule is specifically authorized by §505.2015 of the Tex. Occ. Code which

states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed the rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Texas Occupations Code and may adopt this rule.

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

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

Filed with the Office of the Secretary of State on January 15, 2021.

TRD-202100237

Darrel D. Spinks

Executive Director

Texas State Board of Social Worker Examiners

Effective date: February 4, 2021

Proposal publication date: December 4, 2020

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



## 22 TAC §781.402

The Texas Behavioral Health Executive Council adopts amended §781.402, relating to Clinical Supervision for LCSW and Non-Clinical Supervision for Independent Practice recognition. Section 781.402 is adopted without changes to the proposed text as published in the December 4, 2020, issue of the *Texas Register* (45 TexReg 8715) and will not be republished.

Reasoned Justification.

The amended rule, in conjunction with other rule amendments adopted in this edition of the *Texas Register*, will no longer require the preapproval of a supervision plan in order to accrue supervised experience required for the issuance of a license as a clinical social worker (LCSW) or for independent practice recognition for a baccalaureate social worker (LBSW) or a master social worker (LMSW). Supervised experience will still be required, at the same requisite level that is currently in place, but documentation of the required supervised experience will now only be submitted to the Executive Council when the applicant is applying for either the LCSW or independent practice recognition. The Executive Council anticipates the amended rule will address a backlog of applications and expedite future applications received.

If a rule will pertain to the qualifications necessary to obtain a license then the rule must first be proposed to the Executive Council by the applicable board for the profession before the Executive Council may propose or adopt such a rule, see §507.153 of the Tex. Occ. Code. The amended rule pertains to supervised experience requirements for licensure as an LCSW or for independent practice recognition for an LBSW or LMSW; therefore, this rule is covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Social Worker Examiners, in accordance with §505.2015 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Tex. Occ. Code and may adopt this rule.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

A commenter opined that this rule change will cause a backlog in two to four years when supervision plans are completed by supervisees, and believes the rule change puts too much pressure and liability onto clinical supervisors. The commenter requests this rule change not be made.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

Commenters voiced their support for this change to the licensing process for required supervised experience for independent practice or clinical practice.

Agency Response.

The Executive Council declines to amend the rule or make any changes as requested. The Executive Council is already reviewing applications after an applicant completes a supervision plan, and the pre-approval of a supervision plan has not made the application process any more efficient for the review of applications. Therefore any potential influx of future applications for licensure will not be negatively impacted by supervision plans no longer being pre-approved. The purpose of a supervisor is to aid a supervisee in obtaining the requisite knowledge, skill, and experience to competently practice independently or provide clinical services. A supervisor has always been responsible for the acts or omissions of a supervisee, therefore no additional pressure or liability is placed on supervisors by this rule amendment as the commenter suggests.

The Executive Council appreciates the commenters' supportive comments.

Statutory Authority.

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

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

In accordance with §505.2015 of the Tex. Occ. Code the Board previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. The rule is specifically authorized by §505.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed the rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Texas Occupations Code and may adopt this rule.

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

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

Filed with the Office of the Secretary of State on January 15, 2021.

TRD-202100238

Darrel D. Spinks

Executive Director

Texas State Board of Social Worker Examiners

Effective date: February 4, 2021

Proposal publication date: December 4, 2020

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



## 22 TAC §781.403

The Texas Behavioral Health Executive Council adopts amended §781.403, relating to Independent Practice Recognition (Non-Clinical). Section 781.403 is adopted without changes to the proposed text as published in the December 4, 2020, issue of the *Texas Register* (45 TexReg 8718) and will not be republished.

Reasoned Justification.

The amended rule, in conjunction with other rule amendments adopted in this edition of the *Texas Register*, will no longer require the preapproval of a supervision plan in order to accrue supervised experience required for the issuance of a license as a clinical social worker (LCSW) or for independent practice recognition for a baccalaureate social worker (LBSW) or a master social worker (LMSW). Supervised experience will still be required, at the same requisite level that is currently in place, but documentation of the required supervised experience will now only be submitted to the Executive Council when the applicant is applying for either the LCSW or independent practice recog-

nition. The Executive Council anticipates the amended rule will address a backlog of applications and expedite future applications received.

If a rule will pertain to the qualifications necessary to obtain a license then the rule must first be proposed to the Executive Council by the applicable board for the profession before the Executive Council may propose or adopt such a rule, see §507.153 of the Tex. Occ. Code. The amended rule pertains to supervised experience requirements for licensure as an LCSW or for independent practice recognition for an LBSW or LMSW; therefore, this rule is covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Social Worker Examiners, in accordance with §505.2015 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Tex. Occ. Code and may adopt this rule.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

A commenter opined that this rule change will cause a backlog in two to four years when supervision plans are completed by supervisees, and believes the rule change puts too much pressure and liability onto clinical supervisors. The commenter requests this rule change not be made.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

Commenters voiced their support for this change to the licensing process for required supervised experience for independent practice or clinical practice.

Agency Response.

The Executive Council declines to amend the rule or make any changes as requested. The Executive Council is already reviewing applications after an applicant completes a supervision plan, and the pre-approval of a supervision plan has not made the application process any more efficient for the review of applications. Therefore any potential influx of future applications for licensure will not be negatively impacted by supervision plans no longer being pre-approved. The purpose of a supervisor is to aid a supervisee in obtaining the requisite knowledge, skill, and experience to competently practice independently or provide clinical services. A supervisor has always been responsible for the acts or omissions of a supervisee, therefore no additional pressure or liability is placed on supervisors by this rule amendment as the commenter suggests.

The Executive Council appreciates the commenters' supportive comments.

Statutory Authority.

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

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

In accordance with §505.2015 of the Tex. Occ. Code the Board previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. The rule is specifically authorized by §505.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed the rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Texas Occupations Code and may adopt this rule.

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

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

Filed with the Office of the Secretary of State on January 15, 2021.

TRD-202100239

Darrel D. Spinks

Executive Director

Texas State Board of Social Worker Examiners

Effective date: February 4, 2021

Proposal publication date: December 4, 2020

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



## 22 TAC §781.404

The Texas Behavioral Health Executive Council adopts amended §781.404, relating to Recognition as a Council-approved Supervisor and the Supervision Process. Section 781.404 is adopted without changes to the proposed text as published in the December 4, 2020, issue of the *Texas Register* (45 TexReg 8720) and will not be republished.

Reasoned Justification.

The amended rule, in conjunction with other rule amendments adopted in this edition of the *Texas Register*, will no longer require the preapproval of a supervision plan in order to accrue supervised experience required for the issuance of a license as a clinical social worker (LCSW) or for independent practice recognition for a baccalaureate social worker (LBSW) or a mas-

ter social worker (LMSW). Supervised experience will still be required, at the same requisite level that is currently in place, but documentation of the required supervised experience will now only be submitted to the Executive Council when the applicant is applying for either the LCSW or independent practice recognition. The Executive Council anticipates the amended rule will address a backlog of applications and expedite future applications received.

If a rule will pertain to the qualifications necessary to obtain a license then the rule must first be proposed to the Executive Council by the applicable board for the profession before the Executive Council may propose or adopt such a rule, see §507.153 of the Tex. Occ. Code. The amended rule pertains to supervised experience requirements for licensure as an LCSW or for independent practice recognition for an LBSW or LMSW; therefore, this rule is covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Social Worker Examiners, in accordance with §505.2015 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Tex. Occ. Code and may adopt this rule.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

A commenter opined that this rule change will cause a backlog in two to four years when supervision plans are completed by supervisees, and believes the rule change puts too much pressure and liability onto clinical supervisors. The commenter requests this rule change not be made.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

Commenters voiced their support for this change to the licensing process for required supervised experience for independent practice or clinical practice.

Agency Response.

The Executive Council declines to amend the rule or make any changes as requested. The Executive Council is already reviewing applications after an applicant completes a supervision plan, and the pre-approval of a supervision plan has not made the application process any more efficient for the review of applications. Therefore any potential influx of future applications for licensure will not be negatively impacted by supervision plans no longer being pre-approved. The purpose of a supervisor is to aid a supervisee in obtaining the requisite knowledge, skill, and experience to competently practice independently or provide clinical services. A supervisor has always been responsible for the acts or omissions of a supervisee, therefore no additional pressure or liability is placed on supervisors by this rule amendment as the commenter suggests.

The Executive Council appreciates the commenters' supportive comments.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent

with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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

In accordance with §505.2015 of the Tex. Occ. Code the Board previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. The rule is specifically authorized by §505.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed the rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Texas Occupations Code and may adopt this rule.

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

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

Filed with the Office of the Secretary of State on January 15, 2021.

TRD-202100240

Darrel D. Spinks

Executive Director

Texas State Board of Social Worker Examiners

Effective date: February 4, 2021

Proposal publication date: December 4, 2020

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



## 22 TAC §781.406

The Texas Behavioral Health Executive Council adopts amended §781.406, relating to Required Documentation of Qualifications for Licensure. Section 781.406 is adopted without changes to the proposed text as published in the December 4, 2020, issue of the *Texas Register* (45 TexReg 8724) and will not be republished.

Reasoned Justification.

The amended rule, in conjunction with other rule amendments adopted in this edition of the *Texas Register*, will no longer re-

quire the preapproval of a supervision plan in order to accrue supervised experience required for the issuance of a license as a clinical social worker (LCSW) or for independent practice recognition for a baccalaureate social worker (LBSW) or a master social worker (LMSW). Supervised experience will still be required, at the same requisite level that is currently in place, but documentation of the required supervised experience will now only be submitted to the Executive Council when the applicant is applying for either the LCSW or independent practice recognition. The Executive Council anticipates the amended rule will address a backlog of applications and expedite future applications received.

If a rule will pertain to the qualifications necessary to obtain a license then the rule must first be proposed to the Executive Council by the applicable board for the profession before the Executive Council may propose or adopt such a rule, see §507.153 of the Tex. Occ. Code. The amended rule pertains to supervised experience requirements for licensure as an LCSW or for independent practice recognition for an LBSW or LMSW; therefore, this rule is covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Social Worker Examiners, in accordance with §505.2015 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Tex. Occ. Code and may adopt this rule.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

A commenter opined that this rule change will cause a backlog in two to four years when supervision plans are completed by supervisees, and believes the rule change puts too much pressure and liability onto clinical supervisors. The commenter requests this rule change not be made.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

Commenters voiced their support for this change to the licensing process for required supervised experience for independent practice or clinical practice.

Agency Response.

The Executive Council declines to amend the rule or make any changes as requested. The Executive Council is already reviewing applications after an applicant completes a supervision plan, and the pre-approval of a supervision plan has not made the application process any more efficient for the review of applications. Therefore any potential influx of future applications for licensure will not be negatively impacted by supervision plans no longer being pre-approved. The purpose of a supervisor is to aid a supervisee in obtaining the requisite knowledge, skill, and experience to competently practice independently or provide clinical services. A supervisor has always been responsible for the acts or omissions of a supervisee, therefore no additional pressure or liability is placed on supervisors by this rule amendment as the commenter suggests.

The Executive Council appreciates the commenters' supportive comments.

Statutory Authority.

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

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

In accordance with §505.2015 of the Tex. Occ. Code the Board previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. The rule is specifically authorized by §505.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed the rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Texas Occupations Code and may adopt this rule.

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

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

Filed with the Office of the Secretary of State on January 15, 2021.

TRD-202100241

Darrel D. Spinks

Executive Director

Texas State Board of Social Worker Examiners

Effective date: February 4, 2021

Proposal publication date: December 4, 2020

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



## 22 TAC §781.420

The Texas Behavioral Health Executive Council adopts new §781.420, relating to Licensing of Persons with Criminal Convictions. Section 781.420 is adopted with changes to the proposed text as published in the November 13, 2020, issue of the *Texas Register* (45 TexReg 8097) and will be republished.

Reasoned Justification.

The new rule is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

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

The new rule pertains to licensing persons with criminal convictions as a social worker. Therefore, the rule is covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Social Worker Examiners, in accordance with §505.2015 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Tex. Occ. Code and may adopt this rule.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

A commenter

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

A commenter opined that this rule appeared to be in line with accepted previous practices for the profession.

Agency Response.

None.

Statutory Authority.

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

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

In accordance with §505.2015 of the Tex. Occ. Code the Board previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. The rule is specifically authorized by §505.2015 of the Tex. Occ. Code which

states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed the rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Texas Occupations Code and may adopt this rule.

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

*§781.420. Licensing of Persons with Criminal Convictions*

The following felonies and misdemeanors directly relate to the duties and responsibilities of a licensee:

- (1) offenses listed in Article 42A.054 of the Code of Criminal Procedure;
- (2) a sexually violent offense, as defined by Article 62.001 of the Code of Criminal Procedure;
- (3) any felony offense wherein the judgment reflects an affirmative finding regarding the use or exhibition of a deadly weapon;
- (4) any criminal violation of Chapter 505 (Social Work Practice Act) of the Occupations Code;
- (5) any criminal violation of Chapter 35 (Insurance Fraud) or Chapter 35A (Medicaid Fraud) of the Penal Code;
- (6) any criminal violation involving a federal health care program, including 42 USC Section 1320a-7b (Criminal penalties for acts involving Federal health care programs);
- (7) any offense involving the failure to report abuse or neglect;
- (8) any state or federal offense not otherwise listed herein, committed by a licensee while engaged in the practice of social work;
- (9) any criminal violation of Section 22.041 (abandoning or endangering a child) of the Penal Code;
- (10) any criminal violation of Section 21.15 (invasive visual recording) of the Penal Code;
- (11) any criminal violation of Section 43.26 (possession of child pornography) of the Penal Code;
- (12) any criminal violation of Section 22.04 (injury to a child, elderly individual, or disabled individual) of the Penal Code;
- (13) three or more drug or alcohol related convictions within the last 10 years, evidencing possible addiction that will have an effect on the licensee's ability to provide competent services; and
- (14) any attempt, solicitation, or conspiracy to commit an offense listed herein.

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 January 15, 2021.

TRD-202100242

Darrel D. Spinks

Executive Director

Texas State Board of Social Worker Examiners

Effective date: February 4, 2021

Proposal publication date: November 13, 2020

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



## TITLE 28. INSURANCE

### PART 1. TEXAS DEPARTMENT OF INSURANCE

#### CHAPTER 7. CORPORATE AND FINANCIAL REGULATION

The Commissioner of Insurance adopts new 28 TAC §7.508 and amendments to 28 TAC §7.1301, concerning a biographical affidavit form for foreign insurers and fees imposed on insurers regulated by TDI, respectively. New §7.508 is adopted without changes and will not be republished. The amendments to §7.1301 are adopted with a nonsubstantive change to the proposed text published in the November 6, 2020, issue of the *Texas Register* (45 TexReg 7980). This rule will be republished.

**REASONED JUSTIFICATION.** New §7.508 specifies that the biographical affidavit form for foreign insurers is only required on request from TDI. Currently, foreign insurers submit the biographical affidavit form adopted in 28 TAC §7.507, for each officer and director on admission to Texas and any time there is a change in officer or director. Foreign insurers' domiciliary regulators evaluate and monitor officers and directors and any changes to them, making TDI's review duplicative.

Section 7.1301 is amended to reduce most of the fees imposed on insurers regulated by TDI to \$0. The costs incurred to process many of these fees is greater than the fees collected, so eliminating these fees will effectively reduce the cost on TDI for enforcing this section.

New §7.508 and the amendments to §7.1301 are described in the following paragraphs.

**Section 7.508.** New §7.508 specifies that the biographical affidavit form for foreign insurers, adopted in 28 TAC §7.507, is only required on request from TDI.

**Section 7.1301.** Section 7.1301(a) is amended to delete the word "shall" and to replace "shall" with "will" in two places for consistency with agency rule-drafting style. Section 7.1301(a) is also amended to add the parenthetical "(department)" to show that term means "Texas Department of Insurance" when used in the section; to update the reference to pre-codified Insurance Code Chapters 1 - 3, 6 - 20, 20A, and 23 to current Insurance Code Titles 2 and 6 - 12; and to replace a reference to the previous rule adoption's effective date with the amended rule's ef-

fective date. The text of subsection (a) as proposed has been changed by deleting a superfluous comma.

Section 7.1301(b) is amended to update the reference to pre-codified Insurance Code Article 4.07 and "the article" with current Insurance Code §202.004 and "Insurance Code Chapter 202," respectively. Section 7.1301(b) is also amended to replace "shall be" with "is" for consistency with agency grammar and rule-drafting style; and to replace "Texas Department of Insurance" with "department" for conciseness.

Section 7.1301(c) is amended to update the references to pre-codified Insurance Code Article 3.42 with current Insurance Code Chapter 1701 and to clarify the second sentence by adding "and governed by" before "Chapter 3" and deleting "and shall be governed thereby" at the end of that sentence.

Section 7.1301(d) is amended to update the references to pre-codified Insurance Code Chapters 1 - 3, 6 - 20, 20A, and 23 to current Insurance Code Titles 2 and 6 - 12, and to replace "which" with "that," and "shall be" with "are," for consistency with agency grammar and rule-drafting style. Subsection (d)(1) - (20) and (22) - (24) is amended to replace "shall be" with "is" for consistency with agency rule-drafting style. The fees set in subsection (d)(2) - (24) are reduced to \$0. Subsection (d)(12) is amended to update the reference to pre-codified Insurance Code Article 22.19 with current Insurance Code Chapter 884, Subchapter K. Subsection (d)(13) is amended to update the reference to pre-codified Insurance Code Article 21.26 with current Insurance Code Chapter 828. Subsection (d)(14) is amended to update the reference to pre-codified Insurance Code Article 21.25 with current Insurance Code Chapter 824. Subsection (d)(15) and (16) are amended to update the references to pre-codified Insurance Code Article 3.16 with current Insurance Code §425.002. Subsection (d)(18) is amended to update the reference to pre-codified Insurance Code Article 1.28 with current Insurance Code Chapter 803. Subsection (d)(20) and (21) is amended to update the references to pre-codified Insurance Code Article 21.49-1, §5, with current Insurance Code Chapter 823, Subchapters D and E. Subsection (d)(22) is amended to update the reference to pre-codified Insurance Code Article 21.49, §3, with current Insurance Code Chapter 823, Subchapter B. Subsection (d)(23) is amended to update the reference to pre-codified Insurance Code Article 21.49, §4, and Article 22.15 with current Insurance Code Chapter 823, Subchapter C, and Chapter 884, Subchapter L, respectively. Subsection (d)(24) is amended to update the reference to pre-codified Insurance Code Article 21.49, §5(e), with current Insurance Code Chapter 823.164.

Section 7.1301(e) is amended to update the reference to pre-codified Insurance Code Article 4.07 with current Insurance Code Chapter 202, and to replace "shall be" with "is," for consistency with agency rule-drafting style. Subsection (e)(1) - (3) is amended to replace "shall be" with "is" for consistency with agency rule-drafting style and to reduce the fees set by the provision to \$0.

Section 7.1301(f)(1) is amended to replace "Texas Department of Insurance" with "department" for conciseness; to correct the reference to §7.1301(d)(11) - (15) with a reference to §7.1301(d)(10) - (14) to account for the renumbering of subsection (d) when amendments to §7.1301 were adopted effective April 23, 1996, (21 TexReg 3190); and to clarify the sentence by adding "the appropriate fee will be determined based on" before "the ceding or merged company" and deleting "will be the company upon which the determination of the appropriate fee to be

assessed will be based." Subsection (f)(2) is amended to update the reference to pre-codified Insurance Code Article 21.49-1, §4, with current Insurance Code Chapter 823, Subchapter C; to replace "shall" with "will" for consistency with agency rule-drafting style; to correct the reference to §7.1301(d)(24) with a reference to §7.1301(d)(23) to account for the renumbering of subsection (d) when amendments to §7.1301 were adopted effective April 23, 1996, (21 TexReg 3190); and to clarify the sentence by adding "based on" after "determined" and deleting "using" and "as a basis for such a fee." Subsection (f)(3) is amended to replace "Texas Department of Insurance" with "department" for conciseness; and to clarify the sentence by adding "the appropriate fee will be based on" before "the ceding company" and deleting "will be the insurer upon which the determination of the appropriate fee to be charged will be based." Subsection (f)(5) is amended to replace "shall" with "will" for consistency with agency rule-drafting style. Subsection (f)(6) is amended to update the reference to pre-codified Insurance Code Article 21.49-1, §5, with current Insurance Code Chapter 823, Subchapters D and E; to correct the reference to §7.1301(d)(21) and (d)(22) with a reference to §7.1301(d)(20) and (21) to account for the renumbering of subsection (d) when amendments to §7.1301 were adopted effective April 23, 1996 (21 TexReg 3190); and to replace "shall" with "will" for consistency with agency rule-drafting style.

Section 7.1301(g) is amended to update the reference to pre-codified Texas Health Maintenance Organization Act, §32, with current Insurance Code §843.154, and to replace "shall be" with "are," for consistency with agency rule-drafting style. Subsection (g)(1) is amended to replace "shall be" with "is" for consistency with agency rule-drafting style and to reduce the fee set by the provision to \$0. Subsection (g)(2) is amended to replace "shall be" with "is" for consistency with agency rule-drafting style. Subsection (g)(3) is amended to replace "Texas Department of Insurance" with "department" for conciseness, and to replace "shall be in such amounts as" with "will be an amount" and "shall certify" with "certifies" for clarity and consistency with agency rule-drafting style. Subsection (g)(4) is amended to replace "shall be" with "is" for consistency with agency rule-drafting style. Subsection (g)(5) is amended to replace "do" with "does" to correct the grammar of the sentence and to replace "shall be" with "is" for consistency with agency rule-drafting style.

The previous §7.1301(h) is deleted because Senate Bill 1623, 86th Legislature, 2019, repealed Insurance Code §961.212, which authorized the fees established by subsection (h). The previous subsections (i) and (j) have been redesignated as subsections (h) and (i), respectively, to account for the deletion of subsection (h).

Redesignated 7.1301(h) is amended to update the references to pre-codified Insurance Code Article 3.53 with current Insurance Code Chapter 1153 and to clarify the second sentence by adding "and governed by" before "Chapter 3" and deleting "and shall be governed thereby."

Redesignated §7.1301(i) is amended to update the reference to pre-codified Insurance Code Chapter 3 with current Insurance Code Chapter 841. Paragraphs (1) and (2) in redesignated subsection (i) are deleted because House Bill 1849, 80th Legislature, 2007, repealed the fee for valuing life insurance policies in Insurance Code §202.052(a)(1). The existing fee set for the filing of an annual statement in the previous subsection (j)(2) is added as the second sentence in redesignated (i) and the word

"fees" is replaced with "fee for filing an annual statement" in the first sentence.

In addition to the amendments previously noted, amendments are made throughout the section to remove the word "the" before "Insurance Code" where appropriate for consistency with agency rule-drafting style.

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

## SUBCHAPTER E. ADMISSION PROCEDURES FOR FOREIGN INSURANCE COMPANIES

### 28 TAC §7.508

STATUTORY AUTHORITY. TDI adopts new §7.508 under Insurance Code §§801.056, 801.101, and 36.001.

Insurance Code §801.056 allows TDI to request fingerprints from an applicant or a corporate officer of an applicant for an authorization issued by the department under Chapter 801.

Insurance Code §801.101 allows TDI to inquire into the competence, fitness, or reputation of an officer or director of an insurer or a person having control of an insurer.

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

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

Filed with the Office of the Secretary of State on January 13, 2021.

TRD-202100194

James Person

General Counsel

Texas Department of Insurance

Effective date: February 2, 2021

Proposal publication date: November 6, 2020

For further information, please call: (512) 676-6584



## SUBCHAPTER M. REGULATORY FEES

### 28 TAC §7.1301

STATUTORY AUTHORITY. TDI adopts §7.1301 under Insurance Code §§202.002, 202.051, 843.154, and 36.001.

Insurance Code §202.002 authorizes TDI to set the amount of the fees imposed under Insurance Code Chapter 202, subject to certain limits.

Insurance Code §202.051 authorizes TDI to impose 26 specified fees on each authorized insurer writing insurance in Texas, subject to certain limits.

Insurance Code §843.154 authorizes the Commissioner to impose certain fees on health maintenance organizations.

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

*§7.1301. Regulatory Fees.*

(a) Regulated entities subject to fees. The regulated entities subject to the fees imposed by this section include all authorized insurers writing any class of insurance in this state which are regulated by Insurance Code Titles 2 and 6 - 12. For filings and other actions received by the department on and after the effective date of this section, the Texas Department of Insurance (department) will charge these entities fees in amounts in accordance with the provisions of this section. Filings or other actions received by the department before the effective date of this section will be governed by this subchapter as it existed immediately prior to that date.

(b) Fees for insurers with annual gross premium receipts less than \$450,000. As provided in Insurance Code §202.004, any insurer to which Insurance Code Chapter 202 applies and whose gross premium receipts are less than \$450,000 according to its annual statement for the preceding year ending December 31, is required to pay only one-half the amount of the fees required to be paid under subsection (d) or subsection (e) of this section. The fees will be collected at the higher rate unless the applicant can provide the department with satisfactory documentation that gross premium receipts were less than \$450,000.

(c) Fees for specified filings pursuant to Insurance Code Chapter 1701. Fees for specified filings pursuant to Insurance Code Chapter 1701 are set forth in and governed by Chapter 3, Subchapter A of this title (relating to Submission Requirements for Filings and Departmental Actions Related to Such Filings).

(d) Fees for authorized insurers writing classes of insurance in this state that are regulated by Insurance Code Titles 2 and 6 - 12. For the following filings and actions, the fees are as follows.

(1) For classes of insurance for which statutory authority exists for collecting annual statement fees, the fee for filing annual statements is \$250 unless otherwise specified.

(2) For filing amendments to certificate of authority if charter is not amended, the fee is \$0.

(3) For reservation of name, the fee is \$0.

(4) For renewal of reservation of name, the fee is \$0.

(5) For filing application for admission of a foreign or alien insurance company, including issuance of certificate of authority, the fee is \$0.

(6) For filing original charter, including issuance of certificate of authority, the fee is \$0.

(7) For filing amendment to charter, including issuance of certificate of authority, if a hearing is held, the fee is \$0.

(8) For filing amendment to charter, including issuance of certificate of authority, if a hearing is not held, the fee is \$0.

(9) For filing designation of attorney for service of process or amendment thereto, the fee is \$0.

(10) For filing a total reinsurance agreement, the fee is \$0.

(11) For filing a partial reinsurance agreement, the fee is \$0.

(12) For filing a direct reinsurance agreement pursuant to Insurance Code Chapter 884, Subchapter K, the fee is \$0.

(13) For filing for approval of reinsurance agreement pursuant to Insurance Code Chapter 828, the fee is \$0.

(14) For filing for approval of merger pursuant to Insurance Code Chapter 824, the fee is \$0.

(15) For accepting a security deposit, excluding deposits made pursuant to Insurance Code §425.002, the fee is \$0.

(16) For substitution/amendment of a security deposit, excluding deposits made pursuant to Insurance Code §425.002, the fee is \$0.

(17) For certification of statutory deposit, the fee is \$0.

(18) For filing notice of intent to relocate the books/records pursuant to Insurance Code Chapter 803, the fee is \$0.

(19) For filing restated articles of incorporation for domestic/foreign companies, the fee is \$0.

(20) For filing a statement pursuant to Insurance Code Chapter 823, Subchapters D and E, for the first \$9,900,000 of the purchase price or consideration, the fee is \$0.

(21) For filing a statement pursuant to Insurance Code Chapter 823, Subchapters D and E, if the purchase price or consideration exceeds \$9,900,000, the fee is \$0.

(22) For filing registration statement pursuant to Insurance Code Chapter 823, Subchapter B, the fee is \$0.

(23) For filing for review pursuant to Insurance Code Chapter 823, Subchapter C, or Chapter 884, Subchapter L, the fee is \$0.

(24) For filing for an exemption pursuant to Insurance Code §823.164, the fee is \$0.

(e) Other fees established by Insurance Code Chapter 202. For the following filings, the fee is as follows.

(1) For filing joint control agreement, the fee is \$0.

(2) For filing substitution/amendment to the joint control agreement, the fee is \$0.

(3) For filing a change in attorney in fact, the fee is \$0.

(f) Administrative procedures.

(1) When a reinsurance agreement or merger agreement is filed with the department, as enumerated in subsection (d)(10) - (14) of this section, the appropriate fee will be determined based on the ceding or merged company.

(2) The fee relating to reinsurance transactions entered into pursuant to Insurance Code Chapter 823, Subchapter C, and subsection (d)(23) of this section will be determined based on the ceding company.

(3) When an amendment to a reinsurance agreement between affiliated insurers is filed with the department, as mentioned in paragraph (1) of this subsection, the appropriate fee will be based on the ceding company.

(4) An amendment to the charter would constitute any change in the original charter, including, but not limited to, name change, home office change, increase in capital, conversion, and increase in lines.

(5) The fee relating to affixing the official seal and certifying to the seal will be applied to all requests for certification, irrespective of requesting party.

(6) The fees for filing an acquisition statement pursuant to Insurance Code Chapter 823, Subchapters D and E, and subsection (d)(20) and (21) of this section will apply to and be collected from the applicant whenever:

(A) the applicant is a regulated entity subject to this section; or

(B) the company being acquired is a regulated entity subject to this section.

(g) Fees pursuant to the Texas Health Maintenance Organization Act, Insurance Code Chapter 843. For the following filings and actions, the fees are as follows.

(1) For filing original application for certificate of authority, the fee is \$0.

(2) For filing annual report, the fee is \$250.

(3) For all examinations made on behalf of the State of Texas by the department or under its authority, the fee will be an amount the commissioner certifies to be just and reasonable.

(4) For filing evidence of coverage which requires approval, the fee is \$100.

(5) For filing required by rule but which does not require approval, the fee is \$50.

(h) Fees for filings pursuant to Insurance Code Chapter 1153. Fees for filings pursuant to Insurance Code Chapter 1153 are set forth in and governed by Chapter 3, Subchapter A of this title.

(i) Fee for filing an annual statement under Insurance Code Chapter 841. The fee for filing an annual statement is \$250.

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 January 13, 2021.

TRD-202100195

James Person

General Counsel

Texas Department of Insurance

Effective date: February 2, 2021

Proposal publication date: November 6, 2020

For further information, please call: (512) 676-6584



## CHAPTER 9. TITLE INSURANCE

### SUBCHAPTER A. BASIC MANUAL OF RULES, RATES AND FORMS FOR THE WRITING OF TITLE INSURANCE IN THE STATE OF TEXAS

#### 28 TAC §9.1

The Commissioner of Insurance adopts amended 28 TAC §9.1, relating to adoption by reference of an amended version of the *Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas* (Basic Manual). The amendment to the Basic Manual updates Form T-51, Purchaser/Seller Insured Closing Service Letter (Form T-51) to implement House Bill 1614, 86th Legislature, 2019. The Texas Department of Insurance (TDI) adopts the amendment with nonsubstantive changes to the proposed text published in the October 23, 2020, issue of the *Texas Register* (45 TexReg 7524). The rule will be republished.

No changes were made to the amended version of the Basic Manual proposed to be adopted by reference.

REASONED JUSTIFICATION. Form T-51, which is part of the Basic Manual, is an insured closing letter that protects the buyer or seller if escrow funds are lost because of fraud or dishonesty by a title agent. Under Insurance Code §2702.002, Form T-51 can only be used if the sales price of real estate is more than the maximum amount of a covered claim under the Texas Title Insurance Guaranty Act (Guaranty Act).

The amendment to Form T-51 updates the minimum sales price that can be covered under the form. The update is necessary to implement a change made by HB 1614. HB 1614 increased the maximum amount under the Guaranty Act from \$250,000 to \$500,000. The rule amendment updates Form T-51 to show \$500,000 as the new threshold amount for coverage.

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

STATUTORY AUTHORITY. The Commissioner adopts the amendment to 28 TAC §9.1 under Insurance Code §§2702.002, 2703.208, 2551.003, and 36.001.

Insurance Code §2702.002 requires that insured closing and settlement letters be issued in the form and manner prescribed by the Commissioner.

Insurance Code §2703.208 allows additions or amendments to the Basic Manual to be proposed and adopted by reference by publishing notice of the proposal or adoption in the *Texas Register*.

Insurance Code §2551.003 authorizes the Commissioner to adopt rules that are necessary for the business of title insurance.

Insurance Code §36.001 authorizes the Commissioner to adopt any rules necessary to implement the powers and duties of TDI under the Insurance Code and laws of this state.

§9.1. *Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas*.

The Texas Department of Insurance adopts by reference the *Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas* (Basic Manual) as amended, effective February 1, 2021. The Basic Manual is available from the Texas Department of Insurance, Mail Code 104-PC, P.O. Box 149104, Austin, TX 78711-2040. The Basic Manual is also available on the TDI website at [www.tdi.texas.gov](http://www.tdi.texas.gov), and by email from [ChiefClerk@tdi.texas.gov](mailto:ChiefClerk@tdi.texas.gov).

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 January 11, 2021.

TRD-202100129

Allison Eberhart

Assistant General Counsel

Texas Department of Insurance

Effective date: February 1, 2021

Proposal publication date: October 23, 2020

For further information, please call: (512) 676-6584



## PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 133. GENERAL MEDICAL PROVISIONS  
SUBCHAPTER D. DISPUTE OF MEDICAL BILLS

28 TAC §133.307

**INTRODUCTION.** The Texas Department of Insurance, Division of Workers' Compensation (DWC or division) adopts amendments to 28 TAC §133.307 (concerning MDR of Fee Disputes) to allow health care providers and pharmacy processing agents to electronically submit requests for medical fee dispute resolution (MFDR). The amendments are adopted with one change to the proposed text published in the October 9, 2020, issue of the *Texas Register* (45 TexReg 7207). The rule will be republished. The effective date of these amendments, as described in §133.307(a)(4), will be February 22, 2021.

**REASONED JUSTIFICATION.** Section 133.307 applies to a request to DWC for MFDR as authorized by the Texas Workers' Compensation Act. It was last amended in 2012. Currently, requestors can submit MFDR requests by mail and hand-delivery. Injured employees may also submit requests by fax. The amendments are necessary to allow electronic transmission in the form and manner described in 28 TAC §102.5 (concerning General Rules for Written Communications to and from the Commission) to increase convenience and reduce costs associated with fee disputes. As provided by §102.5(h), "Electronic transmission is defined as transmission of information by facsimile, electronic mail, electronic data interchange or any other similar method and does not include telephonic communication."

Under these amendments, electronic filing will be accepted through fax, secure file transfer protocol (SFTP), or encrypted email. About 70% of the MFDR requests DWC receives are submitted by 15 entities. Moving those requests to electronic transmission should significantly reduce the time and costs spent managing paper mail.

Under the federal Health Insurance Portability and Accountability Act (HIPAA), health care providers are required to maintain the confidentiality of protected health information. 45 CFR §§160.103, 164.102-164.318, 164.500 - 164.534; see, e.g., 22 TAC §165.2 and §322.4. Health care providers are required to follow requirements or guidance from their licensing boards on protected health information. Health care providers can protect the security and privacy of injured employees' confidential information by using secure or encrypted email when submitting requests.

The amendments to subsection (a) update the description of the rule's applicability and will go into effect on February 22, 2021. Requests received on or after that date will need to comply with these amended rules. The amendments retain the general rule that a dispute resolution request must be resolved in accordance with the statutes and rules in effect at the time the request was filed. The adopted amendments also delete a specific reference to filings before the last amendment of this rule in 2012. This deletion does not change the effect that a dispute resolution request filed before June 1, 2012, will be resolved in accordance with the statutes and rules in effect at the time the request was filed. Similarly, requests filed between June 1, 2012, and February 22, 2021, will be resolved in accordance with the statutes and rules in effect at the time the request was filed. A new subsection (a)(4) provides that these amendments will go into effect on February 22, 2021. This is a change from the effective date of

February 1 provided in the proposed rule. As the Administrative Procedures Act, Texas Government Code §2001.036, requires that a rule must go into effect at least 20 days after it is filed with the Secretary of State and as February 1 would now be less than 20 days from filing, DWC has changed the effective date of these amendments to February 22.

Amendments to subsection (c)(1) provide that a request will be filed on the date DWC receives the request. Currently, a request is determined to have been received when the MFDR Section receives the request. This change will remove potential uncertainties and delays if a request received by mail is not promptly forwarded from DWC's mailroom to the MFDR Section. This change also will establish a uniform filing date, regardless of whether a request is submitted electronically or by mail or personal delivery.

Amendments to subsections (c), (c)(2)(J) - (K), (d)(2)(B) - (D), and (d)(2)(H) - (I) delete requirements for filing paper copies. Adopted amendments to subsections (c)(2), (c)(4), and (d)(1) provide for electronic transmission of medical bills in a form and manner as described in 28 TAC §133.10(b) (concerning Required Billing Forms/Formats) or 28 TAC §133.500 (concerning Electronic Formats for Electronic Medical Bill Processing).

Amendments to subsection (c)(2)(K) clarify that an MFDR request filed by a health care provider or pharmacy processing agent must include each explanation of benefits or e-remittance related to a dispute, these are collectively referred to as "EOBs" in this rule.

Amendments to subsection (c)(3) remove repetitive language and divide the existing language into subparagraphs.

In addition, the amendments to §133.307 include nonsubstantive editorial and formatting changes to conform to DWC's current style and improve the rule's clarity.

**SUMMARY OF COMMENTS AND AGENCY RESPONSE.**

**Commenters:** DWC received two written comments. Commenters in support of the proposal were submitted by the Office of Injured Employee Council and jointly from the Texas Medical Association and Texas Orthopaedic Association.

**Agency Response:** DWC appreciates the comments.

**STATUTORY AUTHORITY.** The commissioner of workers' compensation adopts the amendments to §133.307 under Labor Code §§402.00128, 402.021, 402.061, and 413.031.

Section 402.00128 describes the general powers and duties of the commissioner, including to hold hearings; take testimony directly or by deposition or interrogation; and prescribe the form, manner, and procedure for the transmission of information to the division.

Section 402.021 provides that it is a basic goal of the Texas workers' compensation system that each injured employee shall have access to a fair and accessible dispute resolution process, and it is the Legislature's intent that DWC take maximum advantage of technological advances to provide the highest levels of service possible to system participants.

Section 402.061 provides that the commissioner shall adopt rules as necessary to implement the Labor Code Title 5, Subtitle A.

Section 413.031 provides for medical dispute resolution and mandates that the commissioner adopt rules to notify claimants of their rights and to specify the appropriate dispute resolution

process for disputes in which a claimant has paid for medical services and seeks reimbursement. This section also authorizes the commissioner to prescribe by rule an alternative dispute resolution process to resolve disputes on medical services costing less than the cost of a review of the medical necessity of a health care service by an independent review organization.

§133.307. *Medical Fee Dispute Resolution.*

(a) *Applicability.* This section applies to a request to the division for medical fee dispute resolution (MFDR) as authorized by the Texas Workers' Compensation Act.

(1) Dispute resolution requests must be resolved in accordance with the statutes and rules in effect at the time the request was filed.

(2) In resolving disputes regarding the amount of payment due for health care determined to be medically necessary and appropriate for treatment of a compensable injury, the role of the division is to adjudicate the payment, given the relevant statutory provisions and division rules.

(3) In accordance with Labor Code §504.055 a request for medical fee dispute resolution that involves a first responder's request for reimbursement of medical expenses paid by the first responder will be accelerated by the division and given priority. The first responder shall provide notice to the division that the request involves a first responder.

(4) The 2020 amendments regarding electronic submission of dispute requests are effective February 22, 2021.

(b) *Requestors.* The following parties may be requestors in medical fee disputes:

(1) the health care provider, or a qualified pharmacy processing agent, as described in Labor Code §413.0111, in a dispute over the reimbursement of a medical bill(s);

(2) the health care provider in a dispute about the results of a division or insurance carrier audit or review which requires the health care provider to refund an amount for health care services previously paid by the insurance carrier;

(3) the injured employee in a dispute involving an injured employee's request for reimbursement from the insurance carrier of medical expenses paid by the injured employee;

(4) the injured employee when requesting a refund of the amount the injured employee paid to the health care provider in excess of a division fee guideline; or

(5) a subclaimant in accordance with §140.6 of this title (relating to Subclaimant Status: Establishment, Rights, and Procedures), §140.7 of this title (relating to Health Care Insurer Reimbursement under Labor Code §409.0091), or §140.8 of this title (relating to Procedures for Health Care Insurers to Pursue Reimbursement of Medical Benefits under Labor Code §409.0091), as applicable.

(c) *Requests.* Requests for MFDR must be legible and filed in the form and manner prescribed by the division.

(1) *Timeliness.* A requestor must timely file the request with the division or waive the right to MFDR. The division will deem a request to be filed on the date the division receives the request. A decision by the division that a request was not timely filed is not a dismissal and may be appealed pursuant to subsection (g) of this section.

(A) A request for MFDR that does not involve issues identified in subparagraph (B) of this paragraph shall be filed no later than one year after the date(s) of service in dispute.

(B) A request may be filed later than one year after the date(s) of service if:

(i) a related compensability, extent of injury, or liability dispute under Labor Code Chapter 410 has been filed, the medical fee dispute shall be filed not later than 60 days after the date the requestor receives the final decision, inclusive of all appeals, on compensability, extent of injury, or liability;

(ii) a medical dispute regarding medical necessity has been filed, the medical fee dispute must be filed not later than 60 days after the date the requestor received the final decision on medical necessity, inclusive of all appeals, related to the health care in dispute and for which the insurance carrier previously denied payment based on medical necessity; or

(iii) the dispute relates to a refund notice issued pursuant to a division audit or review, the medical fee dispute must be filed not later than 60 days after the date of the receipt of a refund notice.

(2) *Health Care Provider or Pharmacy Processing Agent Request.* The requestor must send the request to the division in the form and manner prescribed by the division by any mail service, personal delivery, or electronic transmission as described in §102.5 of this title. The request must include:

(A) the name, address, and contact information of the requestor;

(B) the name of the injured employee;

(C) the date of the injury;

(D) the date(s) of the service(s) in dispute;

(E) the place of service;

(F) the treatment or service code(s) in dispute;

(G) the amount billed by the health care provider for the treatment(s) or service(s) in dispute;

(H) the amount paid by the workers' compensation insurance carrier for the treatment(s) or service(s) in dispute;

(I) the disputed amount for each treatment or service in dispute;

(J) a copy of all medical bills related to the dispute, as described in §133.10 of this chapter (concerning Required Billing Forms/Formats) or §133.500 (concerning Electronic Formats for Electronic Medical Bill Processing) as originally submitted to the insurance carrier in accordance with this chapter, and a copy of all medical bills submitted to the insurance carrier for an appeal in accordance with §133.250 of this chapter (concerning Reconsideration for Payment of Medical Bills);

(K) each explanation of benefits or e-remittance (collectively "EOB") related to the dispute as originally submitted to the health care provider in accordance with this chapter or, if no EOB was received, convincing documentation providing evidence of insurance carrier receipt of the request for an EOB;

(L) when applicable, a copy of the final decision regarding compensability, extent of injury, liability and/or medical necessity for the health care related to the dispute;

(M) a copy of all applicable medical records related to the dates of service in dispute;

(N) a position statement of the disputed issue(s) that shall include:

(i) the requestor's reasoning for why the disputed fees should be paid or refunded,

(ii) how the Labor Code and division rules, including fee guidelines, impact the disputed fee issues, and

(iii) how the submitted documentation supports the requestor's position for each disputed fee issue;

(O) documentation that discusses, demonstrates, and justifies that the payment amount being sought is a fair and reasonable rate of reimbursement in accordance with §134.1 of this title (relating to Medical Reimbursement) or §134.503 of this title (relating to Pharmacy Fee Guideline) when the dispute involves health care for which the division has not established a maximum allowable reimbursement (MAR) or reimbursement rate, as applicable;

(P) if the requestor is a pharmacy processing agent, a signed and dated copy of an agreement between the processing agent and the pharmacy clearly demonstrating the dates of service covered by the contract and a clear assignment of the pharmacy's right to participate in the MFDR process. The pharmacy processing agent may redact any proprietary information contained within the agreement; and

(Q) any other documentation that the requestor deems applicable to the medical fee dispute.

### (3) Subclaimant Dispute Request.

(A) A request made by a subclaimant under Labor Code §409.009 (relating to Subclaims) must comply with §140.6 of this title (concerning Subclaimant Status: Establishment, Rights, and Procedures) and submit the required documents to the division.

(B) A request made by a subclaimant under Labor Code §409.0091 (relating to Reimbursement Procedures for Certain Entities) must comply with the document requirements of §140.8 of this title (concerning Procedures for Health Care Insurers to Pursue Reimbursement of Medical Benefits under Labor Code §409.0091) and submit the required documents to the division.

(4) Injured Employee Dispute Request. An injured employee who has paid for health care may request MFDR of a refund or reimbursement request that has been denied. The injured employee must send the request to the division in the form and manner prescribed by the division by mail service, personal delivery, or electronic transmission as described in §102.5 of this title and must include:

(A) the name, address, and contact information of the injured employee;

(B) the date of the injury;

(C) the date(s) of the service(s) in dispute;

(D) a description of the services paid;

(E) the amount paid by the injured employee;

(F) the amount of the medical fee in dispute;

(G) an explanation of why the disputed amount should be refunded or reimbursed, and how the submitted documentation supports the explanation for each disputed amount;

(H) proof of employee payment (including copies of receipts, health care provider billing statements, or similar documents); and

(I) a copy of the insurance carrier's or health care provider's denial of reimbursement or refund relevant to the dispute, or if no denial was received, convincing evidence of the injured em-

ployee's attempt to obtain reimbursement or refund from the insurance carrier or health care provider.

(5) Division Response to Request. The division will forward a copy of the request and the documentation submitted in accordance with paragraph (2), (3), or (4) of this subsection to the respondent. The respondent shall be deemed to have received the request on the acknowledgment date as defined in §102.5 of this title (relating to General Rules for Written Communications to and from the Commission).

(d) Responses. Responses to a request for MFDR must be legible and submitted to the division and to the requestor in the form and manner prescribed by the division.

(1) Timeliness. The response will be deemed timely if received by the division through mail service, personal delivery, or electronic transmission, as described in §102.5 of this title, within 14 calendar days after the date the respondent received the copy of the requestor's dispute. If the division does not receive the response information within 14 calendar days of the dispute notification, then the division may base its decision on the available information.

(2) Response. On receipt of the request, the respondent must provide any missing information not provided by the requestor and known to the respondent. The respondent must also provide the following information and records:

(A) the name, address, and contact information of the respondent;

(B) all initial and appeal EOBs related to the dispute as originally submitted to the health care provider in accordance with this chapter, related to the health care in dispute not submitted by the requester, or a statement certifying that the respondent did not receive the health care provider's disputed billing before the dispute request;

(C) all medical bill(s) related to the dispute, submitted in accordance with this chapter if different from that originally submitted to the insurance carrier for reimbursement;

(D) any pertinent medical records or other documents relevant to the fee dispute not already provided by the requestor;

(E) a statement of the disputed fee issue(s), which includes:

(i) a description of the health care in dispute;

(ii) a position statement of reasons why the disputed medical fees should not be paid;

(iii) a discussion of how the Labor Code and division rules, including fee guidelines, impact the disputed fee issues;

(iv) a discussion regarding how the submitted documentation supports the respondent's position for each disputed fee issues;

(v) documentation that discusses, demonstrates, and justifies that the amount the respondent paid is a fair and reasonable reimbursement in accordance with Labor Code §413.011 and §134.1 or §134.503 of this title if the dispute involves health care for which the division has not established a MAR or reimbursement rate, as applicable.

(F) The responses shall address only those denial reasons presented to the requestor prior to the date the request for MFDR was filed with the division and the other party. Any new denial reasons or defenses raised shall not be considered in the review. If the response includes unresolved issues of compensability, extent of injury, liability,

or medical necessity, the request for MFDR will be dismissed in accordance with subsection (f)(3)(B) or (C) of this section.

(G) If the respondent did not receive the health care provider's disputed billing or the employee's reimbursement request relevant to the dispute prior to the request, the respondent shall include that information in a written statement.

(H) If the medical fee dispute involves compensability, extent of injury, or liability, the insurance carrier must attach any related Plain Language Notice in accordance with §124.2 of this title (concerning Insurance Carrier Reporting and Notification Requirements).

(I) If the medical fee dispute involves medical necessity issues, the insurance carrier must attach documentation that supports an adverse determination in accordance with §19.2005 of this title (concerning General Standards of Utilization Review).

(e) Withdrawal. The requestor may withdraw its request for MFDR by notifying the division prior to a decision.

(f) MFDR Action. The division will review the completed request and response to determine appropriate MFDR action.

(1) Request for Additional Information. The division may request additional information from either party to review the medical fee issues in dispute. The additional information must be received by the division no later than 14 days after receipt of this request. If the division does not receive the requested additional information within 14 days after receipt of the request, then the division may base its decision on the information available. The party providing the additional information shall forward a copy of the additional information to all other parties at the time it is submitted to the division.

(2) Issues Raised by the Division. The division may raise issues in the MFDR process when it determines such an action to be appropriate to administer the dispute process consistent with the provisions of the Labor Code and division rules.

(3) Dismissal. A dismissal is not a final decision by the division. The medical fee dispute may be submitted for review as a new dispute that is subject to the requirements of this section. The division may dismiss a request for MFDR if:

(A) the division determines that the medical bills in the dispute have not been submitted to the insurance carrier for an appeal, when required;

(B) the request contains an unresolved adverse determination of medical necessity;

(C) the request contains an unresolved compensability, extent of injury, or liability dispute for the claim; or

(D) the division determines that good cause exists to dismiss the request, including a party's failure to comply with the provisions of this section.

(4) Decision. The division shall send a decision to the disputing parties or to representatives of record for the parties, if any, and post the decision on the department's website.

(5) Division Fee. The division may assess a fee in accordance with §133.305 of this subchapter (relating to MDR--General).

(g) Appeal of MFDR Decision. A party to a medical fee dispute may seek review of the decision. Parties are deemed to have received the MFDR decision as provided in §102.5 of this title. The MFDR decision is final if the request for the benefit review conference is not timely made. If a party provides the benefit review officer or administrative law judge with documentation listed in subsection (d)(2)(H) or (I) of this section that shows unresolved issues regarding

compensability, extent of injury, liability, or medical necessity for the same service subject to the fee dispute, then the benefit review officer or administrative law judge shall abate the proceedings until those issues have been resolved.

(1) A party seeking review of an MFDR decision must request a benefit review conference no later than 20 days from the date the MFDR decision is received by the party. The party that requests a review of the MFDR decision must mediate the dispute in the manner required by Labor Code, Chapter 410, Subchapter B and request a benefit review conference under Chapter 141 of this title (relating to Dispute Resolution--Benefit Review Conference). A party may appear at a benefit review conference via telephone. The benefit review conference will be conducted in accordance with Chapter 141 of this title.

(A) Notwithstanding §141.1(b) of this title (relating to Requesting and Setting a Benefit Review Conference), a seeking review of an MFDR decision may request a benefit review conference.

(B) At a benefit review conference, the parties to the dispute may not resolve the dispute by negotiating fees that are inconsistent with any applicable fee guidelines adopted by the commissioner.

(C) A party must file the request for a benefit review conference in accordance with Chapter 141 of this title and must include in the request a copy of the MFDR decision. Providing a copy of the MFDR decision satisfies the documentation requirements in §141.1(d) of this title. A first responder's request for a benefit review conference must be accelerated by the division and given priority in accordance with Labor Code §504.055. The first responder must provide notice to the division that the contested case involves a first responder.

(2) If the medical fee dispute remains unresolved after a benefit review conference, the parties may request arbitration as provided in Labor Code, Chapter 410, Subchapter C and Chapter 144 of this title (relating to Dispute Resolution). If arbitration is not elected, the party may appeal the MFDR decision by requesting a contested case hearing before the State Office of Administrative Hearings. A first responder's request for arbitration by the division or a contested case hearing before the State Office of Administrative Hearings must be accelerated by the division and given priority in accordance with Labor Code §504.055. The first responder must provide notice to the division that the contested case involves a first responder.

(A) To request a contested case hearing before State Office of Administrative Hearings, a party shall file a written request for a State Office of Administrative Hearings hearing with the Division's Chief Clerk of Proceedings not later than 20 days after conclusion of the benefit review conference in accordance with §148.3 of this title (relating to Requesting a Hearing).

(B) The party seeking review of the MFDR decision shall deliver a copy of its written request for a hearing to all other parties involved in the dispute at the same time the request for hearing is filed with the division.

(3) A party to a medical fee dispute who has exhausted all administrative remedies may seek judicial review of the decision of the Administrative Law Judge at the State Office of Administrative Hearings. The division and the department are not considered to be parties to the medical dispute pursuant to Labor Code §413.031(k-2) and §413.0312(f). Judicial review under this paragraph shall be conducted in the manner provided for judicial review of contested cases under Chapter 2001, Subchapter G Government Code, except that in the case of a medical fee dispute the party seeking judicial review must file suit not later than the 45th day after the date on which the State Office of Administrative Hearings mailed the party the notification of the deci-

sion. The mailing date is considered to be the fifth day after the date the decision was issued by the State Office of Administrative Hearings. A party seeking judicial review of the decision of the administrative law judge shall at the time the petition for judicial review is filed with the district court file a copy of the petition with the division's chief clerk of proceedings.

(h) Billing of the non-prevailing party. Except as otherwise provided by Labor Code §413.0312, the non-prevailing party shall reimburse the division for the costs for services provided by the State Office of Administrative Hearings and any interest required by law.

(1) The non-prevailing party shall remit payment to the division not later than the 30th day after the date of receiving a bill or statement from the division.

(2) In the event of a dismissal, the party requesting the hearing, other than the injured employee, shall reimburse the division for the costs for services provided by the State Office of Administrative Hearings unless otherwise agreed by the parties.

(3) If the injured employee is the non-prevailing party, the insurance carrier shall reimburse the division for the costs for services provided by the State Office of Administrative Hearings.

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 January 15, 2021.

TRD-202100232

Kara Mace

Deputy Commissioner of Legal Services

Texas Department of Insurance, Division of Workers' Compensation

Effective date: February 22, 2021

Proposal publication date: October 9, 2020

For further information, please call: (512) 804-4703



## TITLE 31. NATURAL RESOURCES AND CONSERVATION

### PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

#### CHAPTER 58. OYSTERS, SHRIMP, AND FINFISH

##### SUBCHAPTER A. STATEWIDE OYSTER FISHERY PROCLAMATION

###### 31 TAC §58.21

The Texas Parks and Wildlife Commission in a duly noticed meeting on November 10, 2020, adopted an amendment to 31 TAC §58.21, concerning Taking or Attempting to Take Oysters from Public Oyster Beds: General Rules, without changes to the proposed text as published in the September 25, 2020, issue of the *Texas Register* (45 TexReg 6752). The rules will not be republished.

The amendment prohibits the harvest of oysters for two years at six sites: three sites in Conditionally Approved Area TX-4 in upper Galveston Bay (Trinity Sanctuary Reef, Trinity Harvestable

Reef 1, and Trinity Harvestable Reef 2; approximately 23.0, 16.9 and 16.9 acres, respectively), one site in Conditionally Approved Area TX-6 in Galveston Bay (Resignation Reef, 27.2 acres), one site in Conditionally Approved Area TX-1 in Galveston Bay (Pepper Grove Reef, 11.9 acres), and one site in Approved Area TX-30 in Aransas Bay (Grass Island Reef, 80 acres). The Texas Department of State Health Services (DSHS) regulates shellfish sanitation and designates specific areas where oysters may be harvested for human consumption. The designation of "Conditionally Approved" or "Approved" is determined by DSHS. The amendment corrects the name of a reef complex in subsection (c)(2)(A)(ii). The current rules refer to that area as South Redfish Reef. It is more commonly known as Pasadena Reef.

The temporary closures will allow for the planting of oyster cultch to repopulate in those areas and enough time for those oysters to reach legal size for harvest. Oyster cultch is the material to which oyster spat (juvenile oysters) attach in order to create an oyster bed.

Under Parks and Wildlife Code, §76.115, the department may close an area to the taking of oysters when the commission finds that the area is being overworked or damaged or the area is to be reseeded or restocked. Oyster reefs in Texas have been impacted due to drought, flooding, and hurricanes (Hurricane Ike, September 2008 and Hurricane Harvey, August 2017), as well as high harvest pressure. The department's oyster habitat restoration efforts to date have resulted in a total of approximately 1,720 acres of oyster habitat returned to productive habitat within these bays.

House Bill 51 (85th Legislature, 2017) included a requirement that certified oyster dealers re-deposit department-approved cultch materials in an amount equal to thirty percent of the total volume of oysters purchased in the previous license year. For the 2021 fiscal year, the department anticipates this requirement will result in the restoration of more than thirty acres. Funds generated from House Bill 51 were used to restore 4.5 acres on Pepper Grove Reef in 2019 and are expected to be used to restore up to 27.2 acres on Resignation Reef in 2020-2021.

Following Hurricane Harvey in 2017, the National Marine Fisheries Service (NMFS) awarded the Texas Parks and Wildlife Department over \$13 million of fisheries disaster relief funding that was appropriated by Congress under the Bipartisan Budget Act of 2018 (P.L. 115-123). The notification to the governor of Texas from National Marine Fisheries Service (NMFS) stated that funds should be spent to "strengthen the long-term economic and environmental sustainability of the fishery", and over \$4 million was dedicated specifically to oyster restoration activities. A portion of these funds, combined with funding generated by House Bill 51 (2017) and the Shell Recovery Program (Chapter 76.020, Senate Bill 932, 82nd Leg., 2011), will be used to restore oyster habitats within an 80-acre area on Grass Island reef in Aransas Bay. Oyster abundance on this reef has severely declined over time, and average oyster abundance on Grass Island is 75% less than the average oyster abundance on other reefs in Aransas Bay. The portion of the reef selected for restoration is characterized by degraded substrates. The restoration activities will focus on establishing stable substrate and providing suitable conditions for spat settlement and oyster bed development.

The upper Galveston Bay sites are located in the proximity of Beasley Reef near Trinity Bay and have been degraded due to a variety of stressors. The Nature Conservancy (TNC) secured funding through the National Fish and Wildlife Foundation (NFWF) Gulf Environmental Benefit Fund (GEBF) program to

restore oyster habitat. The three sites in upper Galveston Bay include two 16.9-acre sites that will be restored on a degraded oyster reef that is commercially- and recreationally-fished, and 23.0 acres that will serve as a sanctuary reef. The sanctuary reef will be constructed of cultch materials of a size that will limit commercial harvest activities and provide a source of oyster larvae that will colonize other oyster habitat in this bay system.

The department received no comments opposing adoption of the proposed rule.

The department received six comments supporting adoption of the proposed rule.

The Coastal Conservation Association, The Nature Conservancy - Texas, the Galveston Bay Foundation, and the Pew Charitable Trusts commented in favor of adoption of the proposed rule.

The amendment is adopted under Parks and Wildlife Code, §76.301, which authorizes the commission to regulate the taking, possession, purchase and sale of oysters, including prescribing the times, places, conditions, and means and manner of taking oysters.

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 January 14, 2021.

TRD-202100204

James Murphy

General Counsel

Texas Parks and Wildlife Department

Effective date: February 3, 2021

Proposal publication date: September 25, 2020

For further information, please call: (512) 389-4775



## PART 10. TEXAS WATER DEVELOPMENT BOARD

### CHAPTER 363. FINANCIAL ASSISTANCE PROGRAMS

#### SUBCHAPTER A. GENERAL PROVISIONS

The Texas Water Development Board (TWDB) adopts amendments to 31 Texas Administrative Code (TAC) §§363.1, 363.4, 363.12, 363.13, 363.15, 363.16, 363.31, 363.41, 363.42, 363.43, 363.1303, 363.1304, 363.1307, and 363.1309. The proposal is adopted without changes as published in the December 4, 2020, issue of the *Texas Register* (45 TexReg 8739). The rules will not be republished.

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED AMENDMENT

This rulemaking is adopted under the authority of the Texas Water Code §6.101 which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State. The rulemaking is adopted under the additional authority of Texas Water Code Chapter 15, Subchapters G and H, §16.342, and Chapter 17

Subchapters D, E and F, which provides the TWDB with the authority to which provides the TWDB with the authority to adopt rules necessary to carry out its duties.

The purpose of the rule is to implement legislative changes from the 86th Legislative Session and to clarify certain aspects of TWDB rules related to state-funded financial assistance programs. This rulemaking will implement legislative changes from House Bill 3339, 86th Texas Legislative Session (HB 3339), which standardized and consolidated water conservation plan requirements for TWDB financial assistance programs. The rule also makes non-substantive changes to the general provisions of Chapter 363 in order to conform with changes made to Subchapter D (related to Flood Financial Assistance), which implements Senate Bill 7, 86th Texas Legislative Session (SB 7). The rules include various minor changes to conform rule text with agency practice, including the addition of definitions of agency terms.

#### SECTION BY SECTION DISCUSSION OF ADOPTED AMENDMENTS

##### *Subchapter A. General Provisions.*

##### *Division 1. Introductory Provisions.*

##### *Section 363.1. Scope of Subchapter.*

Section 363.1 is amended to show that Chapter 363, Subchapter A applies to the newly created Flood Infrastructure Fund, which was created by SB 7.

##### *Section 363.4. Activities Funded.*

Section 363.4 is amended to clarify that the board may provide financial assistance under this chapter for the newly created Flood Infrastructure Fund, which was created by SB 7.

##### *Division 2. General Application Procedures.*

##### *Section 363.12. General, Legal, and Fiscal Information.*

The requirement in §363.12 that the applicant submit the application in writing is deleted in order to clarify that the applicant may submit the application via the TWDB's Online Loan Application. Section 363.12(2)(A)(vii) is amended to clarify that the source of repayment is only required in the application for financial assistance requiring repayment. Section 363.12(2)(A)(xii)(V) is added to require an applicant to attest that the applicant is or will become in compliance with all of its material contracts and §363.12(2)(A)(xii)(VI) is amended to require the applicant to attest that at the time of the applicant and for the duration of any financial assistance provided by the TWDB, the applicant will remain in compliance with all applicable state and federal laws, rules and regulations. Conforming changes are made to §363.12(2)(B) (see changes to §363.13).

##### *Section 363.13. Preliminary Engineering Feasibility Report.*

The heading of §363.13 is amended to reflect the correct title of the document mentioned in that section. Conforming changes are made throughout the Chapter.

Section 363.13 is also amended to require a general description of the existing system in the Preliminary Engineering Feasibility Report, which is consistent with TWDB practice.

##### *Section 363.15. Required Water Conservation Plan.*

Section 363.15 is amended to reflect legislative changes from HB 3339, including updating the citation to the new Water Code provision. Section 363.15 is also amended to state that only one

copy of the water conservation plan is required. The exceptions are amended to conform to the language of HB 3339.

*Section 363.16. Pre-design Funding Option.*

Section 363.16(b) is amended to allow for the pre-design funding option for flood projects funded from the Flood Infrastructure Fund. This change is made in order to allow the Board to commit to planning, acquisition, design, and construction phases for flood projects through the FIF. The Flood Infrastructure Fund program provides extensive requirements for cooperation among entities affected by each flood project and provides extensive design requirements in order to ensure projects are successful.

Section 363.16 is amended to state that the contracts for engineering services at this point may be submitted in draft form.

Section 363.16 is also amended to clarify that any required water conservation plan must be adopted prior to closing. This change is consistent with TWDB practice.

Conforming changes are made pursuant to amendments to §363.13.

*Division 3. Formal Action by the Board.*

*Section 363.31. Board Consideration of Application.*

Section 363.31 is amended to state that the TWDB will not duplicate funding from federal sources. This change is made to satisfy federal requirements and to ensure the public interest is served by TWDB funding.

*Division 4. Prerequisites to Release of State Funds.*

*Section 363.41. Engineering Design Approvals.*

Section 363.41 is amended to clarify that the contract documents discussed in this section may be submitted in draft form during this phase. Section 363.41 is also amended to clarify when and how applicants should send a copy of certain documents to the Texas Commission on Environmental Quality. Section 363.41(a)(4) is added to require a high-resolution digital, searchable copy of the plans and specifications in order to update rule text in accordance with agency practice and advancing technology. Section 363.41(b) is amended to state that the iron and steel requirements of that subsection may apply to flood projects and to clarify the heading for exemptions.

*Section 363.42. Loan Closing.*

Section 363.42 is amended to conform to legislative changes from HB 3339 related to the required water conservation plans.

*Section 363.43. Release of Funds.*

Section 363.43 is amended to conform to agency practice related to release of funds for multiple construction contracts. Conforming changes are made pursuant to amendments to §363.13.

*Subchapter M. State Water Implementation Fund for Texas and State Water Implementation Revenue Fund for Texas.*

*Section 363.1303. Prioritization System.*

Section 363.1303 is amended to state that an applicant who will submit a complete application must do so by the deadline established by the executive administrator, rather than within 30 days. This amendment reflects current practice and allows more flexibility.

*Section 363.1304. Prioritization Criteria.*

Section 363.1304 is amended to fix typographical errors. Section 363.1304(7) is amended to clarify that points will not be given for principal forgiveness or grants from the TWDB for the prioritization criteria related to local contributions to be made to the project.

*Section 363.1307. Pre-design Funding Option.*

Section 363.1307 is amended to state that contracts for engineering services may be in draft form during this phase. Section 363.1307 is also amended to clarify that any required water conservation plan must be adopted prior to closing. This change is consistent with TWDB practice. Conforming changes are made pursuant to amendments to §363.13.

*Section 363.1309. Findings Required.*

Section 363.1309 is amended to conform to legislative changes from HB 3339 related to the required water conservation plan.

**REGULATORY IMPACT ANALYSIS DETERMINATION**

The board reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225, and determined that the rulemaking is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the rulemaking is to implement legislation and clarify TWDB rules.

Even if the adopted rule was a major environmental rule, Texas Government Code, §2001.0225 still would not apply to this rulemaking because Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: (1) does not exceed any federal law; (2) does not exceed an express requirement of state law; (3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and (4) is not adopted solely under the general powers of the agency, but rather Texas Water Code §§15.439 and 16.4021. Therefore, this adopted rule does not fall under any of the applicability criteria in Texas Government Code, §2001.0225.

**TAKINGS IMPACT ASSESSMENT**

The board evaluated this adopted rule and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rule is to implement legislation and clarify requirements in TWDB rules in order to facilitate financial assistance for water, wastewater, and flood projects. The adopted rule would substantially advance this stated purpose by updating citations to new law, including requirements of new legislation, and updating language to con-

form to agency and industry practice. The adopted rule will also require borrowers of TWDB funds to attest that they are or will be in compliance with all of their material contracts and will require borrowers to remain in compliance with all applicable state and federal laws, rules, and regulations during the term of the financial assistance from the TWDB.

The board's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this adopted rule because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code, §2007.003(b)(4). The board is the agency that administers financial assistance programs for water, wastewater, and flood projects.

Nevertheless, the board further evaluated this adopted rule and performed an assessment of whether it constitutes a taking under Texas Government Code, Chapter 2007. Promulgation and enforcement of this adopted rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject adopted regulation does not affect a landowner's rights in private real property because this rulemaking does not burden nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. In other words, this rule implements TWDB financial assistance programs that are voluntary for local governments to participate in. Therefore, the adopted rule does not constitute a taking under Texas Government Code, Chapter 2007.

#### PUBLIC COMMENTS

The comment period ended on January 4, 2021. No comments were received and no changes were made.

### DIVISION 1. INTRODUCTORY PROVISIONS

#### 31 TAC §§363.1, §363.4

##### STATUTORY AUTHORITY

This rulemaking is adopted under the authority of Texas Water Code §§6.101, 15.439, 16.342, and 16.4021. Additionally, this rulemaking is adopted under the authority of Texas Water Code Chapter 15, Subchapters G and H, and Chapter 17, Subchapters D, E, and F.

Texas Water Code Chapters 15, 16, and 17 are affected by this rulemaking.

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 January 14, 2021.

TRD-202100207

Ashley Harden

General Counsel

Texas Water Development Board

Effective date: February 3, 2021

Proposal publication date: December 4, 2020

For further information, please call: (512) 463-7686



### DIVISION 2. GENERAL APPLICATION PROCEDURES

### 31 TAC §§363.12, 363.13, 363.15, 363.16

##### STATUTORY AUTHORITY

This rulemaking is adopted under the authority of Texas Water Code §§6.101, 15.439, 16.342, and 16.4021. Additionally, this rulemaking is adopted under the authority of Texas Water Code Chapter 15, Subchapters G and H, and Chapter 17, Subchapters D, E, and F.

Texas Water Code Chapters 15, 16, and 17 are affected by this rulemaking.

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 January 14, 2021.

TRD-202100208

Ashley Harden

General Counsel

Texas Water Development Board

Effective date: February 3, 2021

Proposal publication date: December 4, 2020

For further information, please call: (512) 463-7686



### DIVISION 3. FORMAL ACTION BY THE BOARD

#### 31 TAC §363.31

##### STATUTORY AUTHORITY

This rulemaking is adopted under the authority of Texas Water Code §§6.101, 15.439, 16.342, and 16.4021. Additionally, this rulemaking is adopted under the authority of Texas Water Code Chapter 15, Subchapters G and H, and Chapter 17, Subchapters D, E, and F.

Texas Water Code Chapters 15, 16, and 17 are affected by this rulemaking.

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 January 14, 2021.

TRD-202100209

Ashley Harden

General Counsel

Texas Water Development Board

Effective date: February 3, 2021

Proposal publication date: December 4, 2020

For further information, please call: (512) 463-7686



### DIVISION 4. PREREQUISITES TO RELEASE OF STATE FUNDS

#### 31 TAC §§363.41 - 363.43

## STATUTORY AUTHORITY

This rulemaking is adopted under the authority of Texas Water Code §§6.101, 15.439, 16.342, and 16.4021. Additionally, this rulemaking is adopted under the authority of Texas Water Code Chapter 15, Subchapters G and H, and Chapter 17, Subchapters D, E, and F.

Texas Water Code Chapters 15, 16, and 17 are affected by this rulemaking.

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 January 14, 2021.

TRD-202100212

Ashley Harden

General Counsel

Texas Water Development Board

Effective date: February 3, 2021

Proposal publication date: December 4, 2020

For further information, please call: (512) 463-7686



## SUBCHAPTER M. STATE WATER IMPLEMENTATION FUND FOR TEXAS AND STATE WATER IMPLEMENTATION REVENUE FUND FOR TEXAS

### 31 TAC §§363.1303, 363.1304, 363.1307, 363.1309

#### STATUTORY AUTHORITY

This rulemaking is adopted under the authority of Texas Water Code §§6.101, 15.439, 16.342, and 16.4021. Additionally, this rulemaking is adopted under the authority of Texas Water Code Chapter 15, Subchapters G and H, and Chapter 17, Subchapters D, E, and F.

Texas Water Code Chapters 15, 16, and 17 are affected by this rulemaking.

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 January 14, 2021.

TRD-202100213

Ashley Harden

General Counsel

Texas Water Development Board

Effective date: February 3, 2021

Proposal publication date: December 4, 2020

For further information, please call: (512) 463-7686



## CHAPTER 371. DRINKING WATER STATE REVOLVING FUND

## SUBCHAPTER D. APPLICATION FOR ASSISTANCE

### 31 TAC §371.31

The Texas Water Development Board (TWDB) adopts an amendment to 31 TAC §371.31, concerning Timeliness of Application and Required Application Information. The proposal is adopted without changes as published in the December 4, 2020, issue of the *Texas Register* (45 TexReg 8752). The rule will not be republished.

#### DISCUSSION OF THE ADOPTED AMENDMENTS

This amendment is proposed under the authority of the Texas Water Code § 6.101 which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State. The amendment is proposed under the additional authority of Texas Water Code § 15.605 which provides the TWDB with the authority to adopt rules necessary to carry out Chapter 15, Subchapter J.

The purpose of the proposed rule is to conform rule text with agency practice for the Drinking Water State Revolving Fund program administered by the TWDB.

#### TWDB REGULATORY IMPACT ANALYSIS DETERMINATION

The board reviewed the amendment in light of the regulatory analysis requirements of Texas Government Code §2001.0225, and determined that the amendment is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the amendment is to strengthen application requirements in order to facilitate financial assistance for water projects.

Even if the amendment were a major environmental rule, Texas Government Code, §2001.0225 still would not apply to this amendment because Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This amendment does not meet any of these four applicability criteria because it: (1) does not exceed any federal law; (2) does not exceed an express requirement of state law; (3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and (4) is not proposed solely under the general powers of the agency, but rather is proposed under the authority of Texas Water Code § 15.605. Therefore, this amendment does not fall under any of the applicability criteria in Texas Government Code, §2001.0225.

The board invites public comment regarding this draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

#### TAKINGS IMPACT ASSESSMENT

The board evaluated this amendment and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rule is to strengthen application requirements in order to facilitate financial assistance for water projects. The amendment will advance this purpose by requiring borrowers of TWDB funds to attest that they are or will be in compliance with all of its material contracts. Further, the amendment requires borrowers of TWDB to remain in compliance with all applicable state and federal laws, rules, and regulations during the term of the financial assistance from the TWDB.

The board's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this amendment because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code, §2007.003(b)(4). The board is the agency that administers financial assistance programs for water, wastewater, and flood projects.

Nevertheless, the board further evaluated this amendment and performed an assessment of whether it constitutes a taking under Texas Government Code, Chapter 2007. Promulgation and enforcement of this amendment would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulation does not affect a landowner's rights in private real property because this rulemaking does not burden nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. Therefore, the proposed rule does not constitute a taking under Texas Government Code, Chapter 2007.

#### PUBLIC COMMENTS

The public comment period extended through January 4, 2021, and no comments were received.

#### STATUTORY AUTHORITY

The amendment is adopted under the authority of §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Texas Water Code § 15.605 which provides the TWDB with the authority to adopt rules necessary to carry out Chapter 15, Subchapter J.

Texas Water Code Chapter 15 is affected by this rulemaking.

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 January 14, 2021.

TRD-202100214

Ashley Harden

General Counsel

Texas Water Development Board

Effective date: February 3, 2021

Proposal publication date: December 4, 2020

For further information, please call: (512) 463-7686

◆ ◆ ◆

## CHAPTER 375. CLEAN WATER STATE REVOLVING FUND

### SUBCHAPTER D. APPLICATION FOR ASSISTANCE

#### 31 TAC §375.41

The Texas Water Development Board (TWDB) adopts 31 TAC §375.41. The proposal is adopted without changes as published in the December 4, 2020, issue of the *Texas Register* (45 TexReg 8755). The rule will not be republished.

#### DISCUSSION OF THE ADOPTED AMENDMENTS

This amendment is adopted under the authority of the Texas Water Code §6.101 which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State. The amendment is adopted under the additional authority of Texas Water Code §15.605 which provides the TWDB with the authority to adopt rules necessary to carry out Chapter 15, Subchapter J.

The purpose of the adopted rule is to conform rule text with agency practice for the Clean Water State Revolving Fund program administered by the TWDB.

#### TWDB REGULATORY IMPACT ANALYSIS DETERMINATION

The board reviewed the amendment in light of the regulatory analysis requirements of Texas Government Code §2001.0225, and determined that the amendment is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the amendment is to strengthen application requirements in order to facilitate financial assistance for water projects.

Even if the amendment were a major environmental rule, Texas Government Code, §2001.0225 still would not apply to this amendment because Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This amendment does not meet any of these four applicability criteria because it: (1) does not exceed any federal law; (2) does not exceed an express requirement of state law; (3) does not exceed a

requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and (4) is not adopted solely under the general powers of the agency, but rather is adopted under the authority of Texas Water Code §15.605. Therefore, this amendment does not fall under any of the applicability criteria in Texas Government Code, §2001.0225.

The board invites public comment regarding this draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

#### TAKINGS IMPACT ASSESSMENT

The board evaluated this amendment and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rule is to strengthen application requirements in order to facilitate financial assistance for water projects. The amendment will advance this purpose by requiring borrowers of TWDB funds to attest that they are or will be in compliance with all of its material contracts. Further, the amendment requires borrowers of TWDB to remain in compliance with all applicable state and federal laws, rules, and regulations during the term of the financial assistance from the TWDB.

The board's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this amendment because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code, §2007.003(b)(4). The board is the agency that administers financial assistance programs for water, wastewater, and flood projects.

Nevertheless, the board further evaluated this amendment and performed an assessment of whether it constitutes a taking under Texas Government Code, Chapter 2007. Promulgation and enforcement of this amendment would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject adopted regulation does not affect a landowner's rights in private real property because this rulemaking does not burden nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. Therefore, the adopted rule does not constitute a taking under Texas Government Code, Chapter 2007.

#### PUBLIC COMMENTS

The public comment period extended through January 4, 2021 and no comments were received.

#### STATUTORY AUTHORITY

The amendment is adopted under the authority of §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Texas Water Code § 15.605 which provides the TWDB with the authority to adopt rules necessary to carry out Chapter 15, Subchapter J.

Texas Water Code Chapter 15 is affected by this rulemaking.

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 January 14, 2021.

TRD-202100215

Ashley Harden

General Counsel

Texas Water Development Board

Effective date: February 3, 2021

Proposal publication date: December 4, 2020

For further information, please call: (512) 463-7686

## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### PART 15. TEXAS FORENSIC SCIENCE COMMISSION

#### CHAPTER 651. DNA, CODIS, FORENSIC ANALYSIS, AND CRIME LABORATORIES SUBCHAPTER C. FORENSIC ANALYST LICENSING PROGRAM

##### 37 TAC §651.209

The Texas Forensic Science Commission ("Commission") adopts an amendment to 37 Texas Administrative Code §651.209 without changes to the text as published in the November 20, 2020 issue of the *Texas Register* (45 Tex Reg 8287). The rules will not be republished. Section 651.209 describes the requirements for forensic analyst license reinstatement. The adopted amendments provide an exemption from elevated coursework requirements for license candidates who have an expired license and are reinstating the license after an indefinite period of absence from employment at an accredited laboratory. Candidates must be employed at an accredited laboratory to be eligible for licensure. Under the current rules, if a person departs employment from an accredited laboratory and his or her license expires, the candidate may be subject to elevated college coursework and other requirements that did not exist when the candidate was initially licensed. The amendments are necessary to reflect adoptions made by the Commission at its October 23, 2020 quarterly meeting. The adoption is made in accordance with the Commission's forensic analyst licensing authority under Code of Criminal Procedure, Article 38.01 §4-a, which directs the Commission to adopt rules to establish the qualifications for a forensic analyst license and the Commission's rulemaking authority under Code of Criminal Procedure, Article 38.01 §3-a, which directs the Commission to adopt rules necessary to implement Code of Criminal Procedure Article 38.01.

Summary of Comments. No comments were received regarding the amendments to this section.

Statutory Authority. The amendments are adopted under Code of Criminal Procedure, Article 38.01 §3-a, which directs the Commission to adopt rules necessary to implement Article 38.01, and Article 38.01 §4-a(d), which directs the Commission to adopt rules to establish the qualifications for a forensic analyst license.

Cross reference to statute. The adoption affects 37 Texas Administrative Code §651.209.

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 January 12, 2021.

TRD-202100175

Leigh Tomlin

Associate General Counsel

Texas Forensic Science Commission

Effective date: February 1, 2021

Proposal publication date: November 20, 2020

For further information, please call: (512) 784-0037



### 37 TAC §651.216

The Texas Forensic Science Commission ("Commission") adopts an amendment to 37 Texas Administrative Code §651.216 without changes to the text as published in the November 20, 2020, issue of the *Texas Register* (45 TexReg 8289) which describes disciplinary actions the Commission may take against a license holder or applicant for a license. The rules will not be republished. The adopted amendments specify factors the Commission may consider in determining whether to take adverse action against a license holder or applicant. The amendments are necessary to reflect adoptions made by the Commission at its October 23, 2020, quarterly meeting. The amendments are made in accordance with the Commission's forensic analyst licensing authority under Code of Criminal Procedure, Article 38.01 §4-a, which directs the Commission to adopt rules to establish the qualifications for a forensic analyst license and the Commission's rulemaking authority under Code of Criminal Procedure, Article 38.01 §3-a, which directs the Commission to adopt rules necessary to implement Code of Criminal Procedure Article 38.01.

Summary of Comments. No comments were received regarding the amendments to this section.

Statutory Authority. The amendments are adopted under Code of Criminal Procedure, Article 38.01 §3-a, which directs the Commission to adopt rules necessary to implement Article 38.01, and Article 38.01 §4-a(d), which directs the Commission to adopt rules to establish the qualifications for a forensic analyst license.

Cross reference to statute. The adoption affects 37 Texas Administrative Code §651.216.

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 January 12, 2021.

TRD-202100176

Leigh Tomlin

Associate General Counsel

Texas Forensic Science Commission

Effective date: February 1, 2021

Proposal publication date: November 20, 2020

For further information, please call: (512) 784-0037



### 37 TAC §651.221

The Texas Forensic Science Commission ("Commission") adopts an amendment to 37 Texas Administrative Code §651.221 without changes to the text as published in the November 20, 2020, issue of the *Texas Register* (45 TexReg 8291). The rules will not be republished. §651.221 describes the requirements for a laboratory license issued for purposes of ensuring the availability of uncommon forensic analysis, timeliness of forensic analysis, and/or service to counties with limited access to forensic analysis. Under the current rule, a laboratory (and its employed analysts) may qualify for licensure under this provision where either (1) a Texas customer requests a type of forensic analysis that is not widely available in accredited forensic laboratories; or (2) the request is necessary to ensure the availability of timely forensic analyses in counties for which access to forensic analyses is limited. The Commission amends the provision to remove qualifying provision (2), because the provision is no longer necessary due to prior rule revisions addressing the same issue. The Commission offers a *De Minimis* Texas Casework license program (37 Texas Administrative Code §651.220) that became effective August 24, 2020, for laboratories that may have otherwise qualified under this provision. The Commission also offers a Temporary License (37 Texas Administrative Code §651.211) for forensic analysts who may have otherwise qualified for licensure under this category. The amendments are necessary to reflect adoptions made by the Commission at its October 23, 2020, quarterly meeting. The amendments are made in accordance with the Commission's forensic analyst licensing authority under Code of Criminal Procedure, Article 38.01 §4-a, which directs the Commission to adopt rules to establish the qualifications for a forensic analyst license and the Commission's rulemaking authority under Code of Criminal Procedure, Article 38.01 §3-a, which directs the Commission to adopt rules necessary to implement Code of Criminal Procedure Article 38.01.

Summary of Comments. No comments were received regarding the amendments to this section.

Statutory Authority. The amendments are adopted under Code of Criminal Procedure, Article 38.01 §3-a, which directs the Commission to adopt rules necessary to implement Article 38.01, and Article 38.01 §4-a(d), which directs the Commission to adopt rules to establish the qualifications for a forensic analyst license.

Cross reference to statute. The adoption affects 37 Texas Administrative Code §651.221.

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 January 12, 2021.

TRD-202100177

Leigh Tomlin

Associate General Counsel

Texas Forensic Science Commission

Effective date: February 1, 2021

Proposal publication date: November 20, 2020

For further information, please call: (512) 784-0037



# TITLE 40. SOCIAL SERVICES AND ASSISTANCE

## PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

### CHAPTER 700. CHILD PROTECTIVE SERVICES

The Department of Family and Protective Services (DFPS) adopts amendments to §700.332 and §700.1013 in Title 40, Texas Administrative Code (TAC), Chapter 700, relating to Child Protective Services, in Subchapters C, relating to Eligibility for Child Protective Services and J, relating to Assistance Programs for Relatives and Other Caregivers. The rules are adopted with grammatical corrections and adding a reference to TAC to the proposed text published in the November 6, 2020 issue of the *Texas Register* (45 TexReg 7992). The rules will be republished.

#### BACKGROUND AND JUSTIFICATION

Currently, the Texas Administrative Code allows the Department to authorize funding for day care (also referred to as child care) for a child in a foster care placement or in a relative or other designated caregiver placement if certain criteria are met. The rules currently provide that the Assistant Commissioner for Child Protective Services (CPS) may grant a good cause waiver of some of the requirements if the Assistant Commissioner determines that the child's placement cannot be or is unlikely to be sustained if the caregiver cannot receive day care, there is no reasonable alternative to the provision of day care, and the day care is only authorized for the periods of time the caregiver must be outside the home for employment.

However, although a request for day care services may be initiated by Child Protective Investigations (CPI) staff, the current rules do not address the authority of the Associate Commissioner for CPI to grant a waiver as the CPI Associate Commissioner position was only recently created in 2017 to oversee the newly created Investigations division of DFPS which includes child abuse and neglect investigations formerly under the CPS program. The current rules also do not allow for delegation of waiver decisions. This can lead to delays in the granting of waivers when an Associate Commissioner is unavailable. For foster or relative caregivers with a critical need for day care services for a child placed with them, a delay in receiving day care could lead to a placement breakdown and a loss of stability for the child.

Accordingly, the proposed amendments to the rules have three main purposes: (1) updating terminology, including changing Assistant Commissioner to Associate Commissioner to accurately reflect position titles; (2) allowing the Associate Commissioner for CPI to grant a good cause waiver of certain requirements related to payment for day care services for a child in the Department's conservatorship; and (3) allowing the CPI and CPS Associate Commissioners to delegate the authority for granting the waiver.

#### COMMENTS

The 30-day comment period ended December 6, 2020. During this period, DFPS did not receive any comments regarding the proposed rules.

## SUBCHAPTER C. ELIGIBILITY FOR CHILD PROTECTIVE SERVICES

### 40 TAC §700.332

#### STATUTORY AUTHORITY

The amendments are adopted under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall adopt rules for the operation and provision of services by the Department.

Section 700.332 implements Texas Family Code Sec. 264.124, which authorizes the Department, in accordance with Department rules, to implement a process to verify that each foster parent who is seeking monetary assistance from the department for day care for a foster child has attempted to find appropriate day care services for the foster child through community services, including Head Start programs, prekindergarten classes, and early education programs offered in public schools.

The statute requires the Department to specify the documentation the foster parent must provide to the Department to demonstrate compliance with the requirements established under the law. The Department may not provide monetary assistance to a foster parent for day care for a foster child without the required verification unless the Department determines the verification would prevent an emergency placement that is in the child's best interest.

#### §700.332. *Eligibility for Foster Care Day Care Services.*

(a) In this subchapter, the following terms have the following meanings:

(1) "Day care" means the assessment, care, training, education, custody, treatment, or supervision of a foster child by a person other than the child's foster parent for less than 24 hours a day, but at least two hours a day, three or more days a week.

(2) "Emergency placement that is in the child's best interest" means that despite the exercise of reasonable diligence, compliance with the Department's verification process regarding the availability of community day care resources would interfere with a placement that is in the child's best interest.

(3) "School-aged child" means a child who has reached the age of 6 by September 1 of the current year or who enrolls in school and reaches the age of 6 during the school year.

(b) To the extent funds are available and in accordance with any priority system established under subsection (e) of this section, DFPS may provide day care for authorized purposes to a foster parent if:

(1) the child is 13 years or younger and either:

(A) placed in a foster family home or foster group home where each foster parent in the home works outside the home 40 hours per week or more; or

(B) the child of a parent who is a minor in foster care if the child:

(i) is not in the conservatorship of DFPS;

(ii) resides with the child's minor parent in a foster home where all caregivers are employed full-time;

(iii) receives primary care from the minor parent outside of school hours;

(iv) needs day care to allow the minor parent to remain in school and complete the minor parent's educational goals; and

(v) has a minor parent who is unable to access child care through a Texas Workforce Commission work or training program or through a school-based operation.

(2) the foster parent is a resident of Texas;

(3) the child's service level is basic;

(4) the child is in DFPS' managing conservatorship and not in an adoptive placement; and

(5) there is no other available type of day care provided by the community, and the foster parent verifies in writing that the foster parent has attempted to find appropriate day care services for the child through community services, including:

(A) Head Start programs;

(B) Prekindergarten classes;

(C) Early education programs offered in public schools;

and

(D) Any other available and appropriate resources in the foster parent's community.

(c) Day care for foster parents is authorized for the purpose of providing daily supervision:

(1) during the foster parents' work hours; or

(2) while the foster parents are attending judicial reviews, case conferences, or foster parent training.

(d) Day care for foster parents is not authorized for the following:

(1) full-time day care during school holidays;

(2) teacher in-service days;

(3) inclement-weather days;

(4) short breaks between semesters in a year-round school program;

(5) part-time care; or

(6) after-school care for school-aged children.

(e) To monitor the spending of funds, a priority system among foster parents will also be established in policy. The priority system will be based upon need, but at a minimum will require:

(1) a determination by DFPS that the provision of day care is critical to maintaining the placement of the child with the foster parent; and

(2) at least one child placed by DFPS:

(A) is under six years of age; or

(B) has a developmental delay (including physical, emotional, and cognitive or language) or physical disability.

(f) Notwithstanding any other provision of this section, if DFPS determines that requiring the written verification of a foster parent's attempts to find appropriate community day care services would prevent an emergency placement in the child's best interest, DFPS may waive the submission of the written verification of the foster parent's attempts. DFPS is authorized to require the submission of the written verification at any point following the initial authorization of day care services.

(g) The Associate Commissioner for Child Protective Services, the Associate Commissioner for Child Protective Investigations, or the Associate Commissioners' designees, may grant a good cause waiver of any of the requirements in subsection (b) or (d) of this section, if that person determines that:

(1) the placement cannot be sustained or is unlikely to be sustained if the foster parent cannot receive day care;

(2) there is no reasonable alternative to the provision of day care, such as a change in working hours; and

(3) day care services are only authorized in increments that are commensurate with the hours and days the foster parent and caregivers must be outside the home for employment.

(h) For a child who becomes ineligible during the term of a prior authorization, DFPS may in its discretion permit day care to continue through the end of the previously authorized period.

(i) DFPS pays for day care only in licensed child care centers and registered child care homes that are contracted through the local child care management service agency, unless care is self-arranged and DFPS gives prior approval to pay day care in the arrangement.

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 January 13, 2021.

TRD-202100190

Tiffany Roper

General Counsel

Department of Family and Protective Services

Effective date: February 2, 2021

Proposal publication date: November 6, 2020

For further information, please call: (512) 438-3397



## SUBCHAPTER J. ASSISTANCE PROGRAMS FOR RELATIVES AND OTHER CAREGIVERS DIVISION 1. RELATIVE AND OTHER DESIGNATED CAREGIVER PROGRAM

### 40 TAC §700.1013

Section 700.1013 implements Texas Family Code Sec. 264.775 which authorizes the Department, in accordance with Department rules, to implement a process to verify that each relative and designated caregiver who is seeking monetary assistance from the department for day care for a child in their care has attempted to find appropriate day care services for the child through community services, including Head Start programs, prekindergarten classes, and early education programs offered in public schools.

The statute requires the Department to specify the documentation the relative or other designated caregiver must provide to the Department to demonstrate compliance with the requirements established under the law. The Department may not provide monetary assistance to a relative or other designated caregiver for day care for a child without the required verification unless the Department determines the verification would prevent an emergency placement that is in the child's best interest.

§700.1013. *Who is eligible for child care services?*

(a) In this section, the following terms have the following meanings:

(1) "Child care services" has the same meaning as "day care."

(2) "Day care" means the assessment, care, training, education, custody, treatment, or supervision of a child in DFPS conservatorship by a person other than the child's caregiver for less than 24 hours a day, but at least two hours a day, three or more days a week.

(3) Emergency placement that is in the child's best interest means that despite the exercise of reasonable diligence, compliance with the Department's verification process regarding the availability of community day care resources would interfere with a placement that is in the child's best interest.

(b) To the extent funds are available, and in accordance with any priority system established under subsection (e) of this section, DFPS may provide child care services to a caregiver who meets the requirements in §700.1003 of this title (relating to What are the eligibility requirements for caregiver assistance?) if:

(1) all appropriate caregivers work outside the home 40 hours per week or more;

(2) the caregiver is a resident of Texas;

(3) the child is in DFPS' managing conservatorship;

(4) the child is 13 years old or younger, or is younger than 18 years old if the child has a developmental delay or a physical disability;

(5) the child is not receiving adoption assistance; and

(6) the caregiver verifies in writing that the caregiver has attempted to find appropriate day care services for the child through community services, including:

(A) Head Start programs;

(B) Prekindergarten classes;

(C) Early education programs offered in public schools;

and

(D) Any other available and appropriate resources in the caregiver's community.

(c) Day care for caregivers is authorized for the purpose of providing daily supervision:

(1) during the caregivers' work hours; or

(2) while the caregivers are attending judicial reviews, case conferences, or kinship caregiver training.

(d) To the extent funds are available, day care may also be authorized for the following:

(1) full-time day care during spring break and summer vacation for children who attend school full-time; and

(2) after-school day care.

(e) To monitor the spending of funds, a priority system among caregivers will also be established in policy. The priority system will be based upon need, but at a minimum will require:

(1) a determination by DFPS that the provision of day care is critical to maintaining the placement of the child with the caregiver; and

(2) at least one child placed by DFPS is:

(A) under six years of age or over six years of age but in day care during a scheduled break in the public school system; or

(B) at least one child placed by DFPS has a developmental delay (including physical, emotional, and cognitive or language) or physical disability.

(f) Notwithstanding any other provision of this section, if DFPS determines that requiring the written verification of a caregiver's attempts to find appropriate community day care services would prevent an emergency placement in the child's best interest, DFPS may waive the submission of the written verification of the caregiver's attempts. DFPS is authorized to require the submission of the written verification at any point following the initial authorization of day care services.

(g) The Associate Commissioner for Child Protective Services, the Associate Commissioner for Child Protective Investigations, or the Associate Commissioners' designees, may grant a good cause waiver of any of the requirements in subsection (b) of this section if that person determines that:

(1) the placement cannot be sustained or is unlikely to be sustained if the caregivers cannot receive day care;

(2) there is no reasonable alternative to the provision of day care, such as a change in working hours; and

(3) day care services are only authorized in increments that are commensurate with the hours and days the relative caregiver must be outside the home for employment.

(h) DFPS pays for day care only in licensed child care centers and registered child care homes that are contracted through the local child care management service agency, unless care is self-arranged and DFPS gives prior approval to pay day care in the arrangement.

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 January 13, 2021.

TRD-202100191

Tiffany Roper

General Counsel

Department of Family and Protective Services

Effective date: February 2, 2021

Proposal publication date: November 6, 2020

For further information, please call: (512) 438-3397



CHAPTER 702. GENERAL ADMINISTRATION  
SUBCHAPTER H. TRAUMA AND  
TRAUMA-INFORMED CARE

**40 TAC §702.701**

The Department of Family and Protective Services (DFPS) adopts §702.701 in new Subchapter H. Trauma and Trauma-Informed Care in Title 40, Texas Administrative Code (TAC), Chapter 702, relating to General Administration. The rule is adopted without changes to the proposed text published in the October 16, 2020 issue of the *Texas Register* (45 TexReg 7403). The rule will not be republished.

BACKGROUND AND JUSTIFICATION

Currently, the Texas Family Code, Government Code, and Human Resources Codes (in addition to other Texas Codes) include requirements that refer to a child in the state's child welfare system experiencing "trauma", and to certain training, programs, or services being "trauma-informed", but provide no definition or description of the terms. See for example: Texas Family Code Sec. 264.015 regarding Training and Sec. 266.012 Comprehensive Assessments; Texas Government Code Sec. 533.0052 Star Health Program: Trauma-Informed Care Training; Texas Human Resources Code Sec. 40.043 Child Safety and Runaway Prevention Procedures, Sec. 40.079 Strategic State Plan to Implement Community-Based Care and Foster Care Prevention Services, Sec. 42.0531 Secure Agency Foster Homes, and Sec. 42.252. Proposed Operational Plan; Licensing Procedures.

In 2017, the Supreme Court of Texas Permanent Judicial Commission for Children, Youth and Families ("Children's Commission") formed the Statewide Collaborative on Trauma-Informed Care (SCTIC) comprised of child welfare professionals and stakeholders, including DFPS. In February 2019, the Children's Commission published a document containing the recommendations of the SCTIC entitled "Building a Trauma-Informed Child Welfare System: A Blueprint." The stated purpose of the Trauma Blueprint is to provide a roadmap for the Texas child welfare system to become more trauma-informed and trauma-responsive.

In July 2019, the Children's Commission formed the SCTIC Implementation Task Force to implement the strategies set forth in the Trauma Blueprint. Strategy 1.1 calls for definitions of "trauma" and "trauma-informed care" to be adopted through a formal process to create a common understanding of the terminology used to create and ensure Texas has a trauma-informed and trauma-responsive child welfare system. To achieve Strategy 1.1, the SCTIC Implementation Task Force charged its Policy and Practice Workgroup with drafting and providing recommended definitions to be voted on by the SCTIC Implementation Task Force and submitted to DFPS to initiate its formal rulemaking process. The definitions were approved by a majority vote during the SCTIC Implementation Task Force meeting held on Friday, February 28, 2020 and were submitted to DFPS.

The Department of Family and Protective Services (DFPS) proposes to adopt into rule the definitions of "trauma" and "trauma-informed" recommended by the SCTIC. DFPS intends for these definitions to apply to the Prevention and Early Intervention (PEI), Child Protective Investigations (CPI), and Child Protective Services (CPS) divisions of DFPS.

#### COMMENTS

The 30-day comment period ended November 15, 2020. During this period, DFPS received one comment regarding the adoption of these rules, a letter in support of the rule adoption from the Texas Alliance of Child and Family Services. No response is required and no changes were made to the proposed rule.

#### STATUTORY AUTHORITY

The rule is adopted under Human Resources Code (HRC) §40.027, which provides that the DFPS commissioner shall adopt rules for the operation and provision of services by the department.

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

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

Filed with the Office of the Secretary of State on January 14, 2021.

TRD-202100211

Tiffany Roper

General Counsel

Department of Family and Protective Services

Effective date: February 3, 2021

Proposal publication date: October 16, 2020

For further information, please call: (512) 438-3397



## CHAPTER 732. CONTRACTED SERVICES SUBCHAPTER A. DISPUTE RESOLUTION

### 40 TAC §§732.101, 732.103, 732.105, 732.107, 732.109, 732.111, 732.113, 732.115, 732.117, 732.119, 732.121, 732.123, 732.125, 732.127, 732.129, 732.131, 732.133

The Department of Family and Protective Services (DFPS), adopts new §§732.101, 732.103, 732.105, 732.107, 732.109, 732.111, 732.113, 732.115, 732.117, 732.119, 732.121, 732.123, 732.125, 732.127, 732.129, 732.131 and 732.133 in Title 40, Texas Administrative Code (TAC), new Chapter 732, relating to Contracted Services. Sections 732.101, 732.105, 732.107, 732.113, 732.117, 732.119, 732.123, 732.127, and 732.131 are adopted without changes to the proposed text published in the August 28, 2020, issue of the *Texas Register* (45 TexReg 6062) and will not be republished. Sections 732.103, 732.109, 732.111, 732.115, 732.121, 732.125, 732.129 and 732.133 are adopted with changes and will be republished. The changes only reflect non-substantive variations from the proposed rules, and as such do not create any new duties or powers, nor affect new persons or entities, other than those given notice.

#### BACKGROUND AND JUSTIFICATION

The purpose of this rulemaking is to re-implement repealed TAC rules related to contracting at DFPS. Health and Human Services Commission (HHSC) repealed DFPS Title 40 TAC Chapter 732 (procurement) on or around June 2015 when DFPS' procurement function and associated legal staff were consolidated under HHSC. HHSC procurement and contracting ethics rules are located at Title 1 TAC, Part 15, Chapters 391, relating to Purchase of Goods and Services by the Texas Health and Human Services Commission & 392, relating to Purchase of Good and Services for Specific Health and Human Services Commission Programs.

With DFPS becoming a stand-alone agency in September 2017, DFPS needs to provide clarity for its procurement function by re-implementing statutorily required rules for contracting practices. In this case, the rules being adopted are required by Texas Government Code Chapter 2260, which explains how DFPS addresses contract disputes. It is determined that DFPS needs to implement these rules even though HHSC carries out some DFPS procurement process steps. If there is ever a dispute involving a contract, the final decision about performance under the contract will be DFPS' responsibility.

## COMMENTS

The 30-day comment period ended on September 27, 2020. During this period, DFPS did not receive any comments regarding the proposed rules.

## STATUTORY AUTHORITY

The new rules are adopted under Human Resources Code (HRC) §40.027, which provides that the DFPS commissioner shall adopt rules for the operation and provision of services by the department.

The newly adopted sections implement requirements found in Texas Government Code Chapter 2260, regarding an agency's procedures for handling and resolving contract disputes.

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

### §732.103. *Definitions.*

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

- (1) Claim--a demand for damages by the Contractor based upon the Department's alleged breach of contract;
- (2) Contractor--as defined by § 2260.001(2), Texas Government Code;
- (3) Commissioner--the chief administrative officer of the Department;
- (4) Counterclaim--a claim by the Department against the Contractor based upon the same contract as that of the Contractor's claim;
- (5) Day--a calendar day. If an act is required to occur on a date falling on a Saturday, Sunday, or holiday, the first working day following one of these days is the date to be counted as the required day for the act;
- (6) Department--the Texas Department of Family and Protective Services;
- (7) Event--an act or omission or a series of acts or omissions giving rise to a claim;
- (8) Negotiation--a consensual bargaining process in which the parties attempt to resolve a claim and counterclaim;
- (9) Parties--the Department and the Contractor that have entered into the contract that is the subject of the claim; and
- (10) SOAH--State Office of Administrative Hearings.

### §732.109. *Requirements for Notice of Claim of Breach of Contract.*

(a) A Contractor asserting a claim of breach of contract under Chapter 2260 of the Texas Government Code must file notice of the claim as provided in this section.

(b) The notice of the claim must be:

- (1) in writing and signed by the Contractor or the Contractor's authorized representative; and
- (2) delivered by hand, certified mail return receipt requested, or other verifiable delivery service, to the:
  - (A) contract signatory for the Department of the region or state office division which signed the contract;
  - (B) The person designated in the contract as the appropriate receiver of legal notice; or
  - (C) the Commissioner of the Department.

(c) The notice must state in detail:

(1) the nature of the alleged breach of contract, including the date of the event that the Contractor asserts as the basis of the claim and each contractual provision allegedly breached;

(2) a description of damages that are recoverable under §2260.003 of the Texas Government Code that the Contractor asserts resulted from the alleged breach, including the amount and method used to calculate those damages; and

(3) the legal theory of recovery, including the relationship between the alleged breach and the damages claimed.

(d) The notice of claim must be delivered no later than the 180th Day after the date of the event that the Contractor asserts as the basis of the claim.

### §732.111. *Department Counterclaims.*

(a) The Department may assert a counterclaim under Chapter 2260 of the Government Code, as provided in this section. The counterclaim must be:

- (1) in writing; and
- (2) delivered by hand, certified mail return receipt requested, or other verifiable delivery service to the Contractor or the representative of the Contractor who signed the notice of claim of breach of contract.

(b) The notice must state in detail:

- (1) the nature of the counterclaim;
- (2) a description of damages or offsets sought, including the amount and method used to calculate those damages or offsets; and
- (3) the legal theory supporting the counterclaim.

(c) The notice of counterclaim must be delivered to the Contractor no later than the 60th Day after the Department's receipt of the Contractor's notice of claim.

(d) Nothing in this subchapter precludes the Department from initiating a lawsuit for damages against the Contractor in a court of competent jurisdiction.

### §732.115. *Negotiation Timetable.*

(a) Following receipt of a Contractor's notice of claim, the Commissioner or another Department officer designated in the contract will review the Contractor's claim and the Department's counterclaim, if any, and initiate negotiations with the Contractor in an attempt to resolve the claim and counterclaim.

(b) The parties will begin negotiations within a reasonable period of time, not to exceed 120 Days following the date the Department receives the Contractor's notice of claim.

(c) The parties may conduct negotiations according to an agreed upon schedule as long as they complete the negotiations no later than the 270th Day after the Department receives the Contractor's notice of claim, subject to one or more extensions agreed upon by the parties.

(d) The parties may agree in writing on or before the 270th Day after the Department receives the Contractor's notice of claim to extend the time for negotiations. The agreement must be signed by representatives of the parties with authority to bind each respective party and must provide for the extension of the statutory negotiation period. The parties may enter into a series of written extension agreements that comply with the requirements of this section.

(e) The Contractor may request a contested case hearing before the State Office of Administrative Hearings on or before the 270th Day after the Department receives the Contractor's notice of claim, or the expiration of any extension agreed to by the parties.

(f) The parties may agree to mediate the dispute at any time before the 270th Day after the Department receives the Contractor's notice of claim or before the expiration of any extension agreed to by the parties.

§732.121. *Settlement Agreement.*

(a) A settlement agreement may resolve an entire claim or any designated portion of a claim.

(b) To be enforceable, a settlement agreement must be in writing and signed by representatives of the Contractor and the Department who have authority to bind each respective party.

(c) A partial settlement does not waive a party's rights under the Government Code, Chapter 2260, as to the parts of the claim or counterclaim that are not resolved.

§732.125. *Contractor Contested Case Hearings.*

(a) If a claim for breach of contract is not resolved in its entirety on or before the 270th Day after the Department receives the notice of claim, or after the expiration of any extension, the Contractor may file a request with the Department for a contested case hearing before SOAH in accordance with §2260.102 of the Texas Government Code.

(b) A request for a contested case hearing must state the legal and factual basis for the claim, request that the claim be referred to SOAH for a contested case hearing, and must be delivered within 30 Days after the 270th Day, or the expiration of any agreed extensions, to the Commissioner of the Department or the person designated in the contract to receive notice.

(c) If the parties reach an impasse in the negotiations and proceed to a contested case hearing because it would serve the interests of justice, the parties may agree to submit the case to SOAH before the 270th Day after the notice of claim is received by the Department to the extent that the claim or counterclaim, if any, remains unsolved.

§732.129. *Mediation.*

(a) A mediator may not impose his or her own judgment on the issues for that of the parties. The mediator must be acceptable to both parties.

(b) The mediation is subject to the provisions of the Governmental Dispute Resolution Act, Government Code, Chapter 2009.

(c) The term "mediation" is assigned the meaning set forth in the Civil Practice and Remedies Code §154.023.

(d) To facilitate a meaningful opportunity for settlement, the parties will, to the extent possible, select representatives who are knowledgeable about the subject matter of the dispute, who are in a position to reach agreement, and who can credibly recommend approval of an agreement.

§732.133. *Mediation Settlement Agreements.*

(a) A settlement agreement reached during, or as a result of, mediation that resolves an entire claim, or any designated and severable portion of a claim, or counterclaim, if any, must be in writing and signed by representatives of the Contractor and the Department who have authority to bind each respective party.

(b) If the settlement agreement does not resolve all issues raised by the claim or counterclaim, if any, the agreement must identify the issues that are not resolved.

(c) A partial settlement does not waive a Contractor's rights under the Texas Government Code, Chapter 2260, as to the parts of the claim that are not resolved, nor does it waive the Department's rights as to parts of the counterclaim that are not resolved.

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 January 13, 2021.

TRD-202100193

Tiffany Roper

General Counsel

Department of Family and Protective Services

Effective date: February 2, 2021

Proposal publication date: August 28, 2020

For further information, please call: (512) 438-3397

