

EMERGENCY RULES

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034).

TITLE 1. ADMINISTRATION

PART 10. DEPARTMENT OF INFORMATION RESOURCES

CHAPTER 215. STATEWIDE TECHNOLOGY CENTERS FOR DATA AND DISASTER RECOVERY SERVICES

SUBCHAPTER B. DATA CENTER SERVICES FOR STATE AGENCIES AND LOCAL GOVERNMENT

1 TAC §215.13

The Texas Department of Information Resources (department) adopts on an emergency basis an amendment to 1 Texas Administrative Code Chapter 215, §215.13, in response to the COVID-19 emergency to address urgent statewide technology needs of state agencies and local governments during the pandemic.

As authorized by Texas Government Code § 2001.034, the department may adopt an emergency rule without prior notice or hearing upon finding that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. Emergency rules adopted under Texas Government Code § 2001.034 may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

The emergency amendment to §215.13 adds the deployment, development, and maintenance of software applications, including software as a service products, to the definition of Data Center Services.

The emergency rule amendment is in furtherance of the Governor's March 13, 2020, disaster proclamation and all subsequent disaster declarations extensions regarding the COVID-19 pandemic. Texas is experiencing a significant increase in COVID-19 cases. In response to this pandemic emergency, agencies and local governments have an enhanced reliance on technology to enable employees to work remotely and serve the public remotely. That reliance further increases the need for cybersecurity protections provided through the department. Specifically, state agencies and local governments require software applications, including software as a service products, to be available through the Data Center Services program to address the needs of the public during the COVID-19 pandemic. The department accordingly finds that an imminent peril to the public health, safety, and welfare of the state requires immediate adoption of this amendment providing access to certain services available to state agencies and local governments through the Data Center Services program.

The emergency rule amendment is adopted under the department's specific authority to adopt rules and guidelines regarding the Statewide Technology Centers, Texas Government Code § 2054.378, and the department's general rulemaking authority granted under Texas Government Code § 2054.052(a) to adopts rules necessary to address the department's enumerated responsibilities under Texas Government Code Chapter 2054.

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

§215.13. *Data Center Services.*

(a) DCS services include:

- (1) Mainframe services
- (2) Server services, including cloud computing services
- (3) Hosting and management of telecommunication hardware for emergency services
- (4) Storage services, including cloud hosted services
- (5) Bulk Print and mail services
- (6) Network services for DCS connectivity
- (7) Disaster Recovery services
- (8) Infrastructure Service Integration Management
- (9) Application Lifecycle Management
- (10) the deployment, development, and maintenance of software applications, including but not limited to the procurement, configuration, and integration of software as a service products.

(b) With the exception of subsection (a)(8) and (a)(10) of section, unless an exemption has been requested and approved by the department pursuant to §215.10(a)(1)(B) of this chapter, designated DCS Customers shall not procure the services specified in this section outside the DCS program.

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

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TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 261. INTERMEDIATE CARE FACILITIES FOR INDIVIDUALS WITH AN INTELLECTUAL DISABILITY OR RELATED CONDITIONS (ICF/IID) PROGRAM--CONTRACTING

SUBCHAPTER K. EMERGENCY RULES FOR THE ICF/IID PROGRAM

26 TAC §261.351

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 26 Texas Administrative Code, Chapter 261 Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions (ICF/IID) Program--Contracting, new §261.351, concerning an emergency rule related to leave during the COVID-19 pandemic. As authorized by Texas Government Code §2001.034, HHSC may adopt an emergency rule without prior notice or hearing upon finding that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. Emergency rules adopted under Texas Government Code §2001.034 may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

BACKGROUND AND PURPOSE

The purpose of the emergency rulemaking is to support the Governor's March 13, 2020 proclamation certifying that the COVID-19 virus poses an imminent threat of disaster in the state and declaring a state of disaster for all counties in Texas. In this proclamation, the Governor authorized the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster and directed that government entities and businesses would continue providing essential services. HHSC accordingly finds that an imminent peril to the public health, safety, and welfare of the state requires immediate adoption of §261.351 Emergency Rule Related to Leave During the COVID-19 Pandemic.

To protect individuals enrolled in the ICF/IID Program and the public health, safety, and welfare of the state during the COVID-19 pandemic, the emergency rule allows HHSC to pay a program provider for reserving a bed in a facility for an individual who takes COVID-19 therapeutic leave to reduce the risk of COVID-19 transmission. The emergency rule sets forth the requirements that a program provider must meet to receive payment (sometimes referred to as a bed hold payment) for an individual's COVID-19 therapeutic leave.

The emergency rule provides that HHSC recoups payments from the program provider if HHSC determines the program provider did not comply with the rule or makes an attestation that is inaccurate.

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Texas Government Code §2001.034, §531.0055, and §531.021, and Texas Human Resources Code, §32.021. Texas Government Code §2001.034 authorizes the adoption of emergency rules without

prior notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice. Texas Government Code §531.0055 authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by the health and human services system. Texas Government Code, §531.021, authorizes the Executive Commissioner of HHSC to adopt rules to administer federal funds and plan and direct the Medicaid program. Texas Human Resources Code, §32.021, authorizes the Executive Commissioner of HHSC to adopt rules governing the proper and efficient operation of the Medicaid program.

The new section implements Texas Government Code §531.0055 and §531.021, and Texas Human Resources Code, §32.021.

§261.351. Emergency Rule Related to Leave During the COVID-19 Pandemic.

(a) The following words and terms, when used in this section, have the following meanings.

(1) COVID-19 therapeutic leave--Leave described in a state plan amendment approved by the Centers for Medicare and Medicaid Services for payment to providers for reserving a bed in a facility for an individual who takes a temporary leave of absence to reduce the risk of COVID-19 transmission.

(2) Extended therapeutic leave--Leave described in §261.226(c) of this chapter (relating to Leaves).

(3) Facility--An intermediate care facility for individuals with an intellectual disability or related conditions.

(4) Full day--A 24-hour period extending from midnight to midnight.

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

(6) Individual--A person enrolled in the ICF/IID Program.

(7) Program provider--An entity with whom HHSC has a provider agreement.

(8) Provider agreement--A written agreement between HHSC and a program provider that obligates the program provider to deliver ICF/IID Program services.

(9) Revenue--This term does not include a loan or grant that a program provider is required to repay.

(10) Special leave--Leave described in §261.226(d) of this chapter.

(11) Staff member--An employee or contractor of a program provider.

(12) Therapeutic leave--Leave described in §261.266(b) of this chapter.

(b) If an individual is absent from a facility for one full day and such absence is not during a therapeutic, extended therapeutic, COVID-19 therapeutic, or special leave, the program provider must discharge the individual from the facility.

(c) COVID-19 therapeutic leave is in addition to the days allowed for therapeutic leave or extended therapeutic leave.

(d) If an individual takes COVID-19 therapeutic leave, the program provider must ensure that the individual's individual program plan specifies that the individual was absent from the facility to reduce the risk of COVID-19 transmission.

(e) A program provider must submit an HHSC bed hold payment attestation form, as described in subsection (f) of this section, and a request for payment for COVID-19 therapeutic leave to HHSC on or before April 30, 2021.

(f) For a program provider to receive payment for COVID-19 therapeutic leave, the program provider must submit a completed HHSC bed hold payment attestation form on or before the date the program provider requests payment for COVID-19 therapeutic leave. By signing an HHSC bed hold payment attestation form, a program provider:

(1) acknowledges that HHSC may recoup an overpayment made to the program provider if:

(A) HHSC determines, based on a federal or state audit or any other authorized third-party review, that the program provider:

(i) received an inappropriate payment, such as payment for more days than allowed for COVID-19 therapeutic leave;

(ii) received duplicate payments for services, such as payment for COVID-19 therapeutic leave for a day on which HHSC paid the program provider for therapeutic, extended therapeutic, or special leave; or

(iii) received funding from any other source to pay for the days of COVID-19 therapeutic leave for which payment is requested; and

(B) the program provider's revenue for the quarters described in the state plan amendment exceeded its revenue:

(i) during the quarter of December 2019 through February 2020; or

(ii) an alternative pre-pandemic period authorized in writing by HHSC based on a request from the program provider; and

(2) attests that, during the time period for which payment is requested, the program provider:

(A) did not lay off any staff members who were working on March 19, 2020, due to lack of work, not work performance; and

(B) maintained staff member wages and benefits at least at the levels that existed on March 19, 2020.

(g) When submitting a request for payment, a program provider must use the designated leave code that identifies the request as payment for COVID-19 therapeutic leave.

(h) If HHSC determines, based on a federal, state, or third-party review or audit, that a program provider is not in compliance with this section or the program provider makes an attestation described in subsection (f)(2) of this section that is inaccurate, HHSC recoups payment made for COVID-19 therapeutic leave from the program provider.

(i) An HHSC bed hold payment attestation form covers payments for COVID-19 therapeutic leave requested only for the dates identified on the form. A program provider must submit a separate form for each provider agreement that the program provider has with HHSC.

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

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 815. UNEMPLOYMENT INSURANCE

The Texas Workforce Commission (TWC) adopts on an emergency basis the following new sections to Chapter 815, relating to Unemployment Insurance:

Subchapter A. General Provisions, §815.4

Subchapter F. Extended Benefits, §815.175

TWC adopts on an emergency basis amendments to the following sections of Chapter 815, relating to Unemployment Insurance:

Subchapter G. CARES Act Provisions, §§815.180 - 815.185

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

TWC adopts this rulemaking on an emergency basis in accordance with the Families First Coronavirus Response Act, Public Law (P.L.) 116 - 127, specifically:

--Division D, the Emergency Unemployment Insurance Stabilization and Access Act of 2020, enacted March 18, 2020;

--the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), P.L. 116 - 136, enacted March 27, 2020;

--the Consolidated Appropriations Act, 2021, P.L. 116 - 260, enacted December 27, 2020, which contained the Continued Assistance for Unemployed Workers Act of 2020 (Continued Assistance Act or CAA); and

--Texas Labor Code, §209.205.

The CARES Act provided for new entitlement programs including Federal Pandemic Unemployment Compensation (FPUC), Pandemic Emergency Unemployment Compensation (PEUC), Federally Reimbursed Waiting Week (FRWW), and Pandemic Unemployment Assistance (PUA).

CAA amended the CARES Act in multiple ways, including allowing states the option to waive PUA overpayments, providing for the creation of a new Mixed Earner Unemployment Compensation (MEUC) program, and new requirements concerning the coordination of programs.

Previously, each CARES Act program contained a provision for the waiver of overpayments with the exception of PUA. TWC operationalized these requirements through administrative rulemaking in 40 Texas Administrative Code §815.12 and §815.183. MEUC operates similarly to another CARES Act program, FPUC.

As addressed in this rulemaking, in order for TWC to adjudicate the waiver of PUA overpayments and operationalize MEUC, Chapter 815, Subchapter G must be amended. The amended coordination of program rules must also be included in §815.181.

Under new guidance from the US Department of Labor, PUA has been removed from the 15 percent fraud penalty exception in §815.185(a). For the same reason, MEUC has been added.

Texas Labor Code, §209.025 provides that "Notwithstanding any other provision of this subchapter, the commission by rule may adjust the extended benefit eligibility period as necessary to maximize the receipt of any fully funded federal extended unemployment benefits, if full federal funding for those benefits is available."

Section 266 of the CAA also provides a state option to disregard the requirement of §203(b)(1)(B) of the Federal-State Extended Unemployment Compensation Act of 1970 (26 USC §3304 note) that "no extended benefit period may begin before the fourteenth week after the close of a prior extended benefit period with respect to such State." Currently, this flexibility applies between November 1, 2020, and December 31, 2021.

To ensure that TWC maximizes the federal funding, TWC is adopting the flexibility provided by §266 of the CAA with a retroactivity provision and generally applicable language should this flexibility be extended into the future. This rule also accounts for possible future situations where the fourteen-week period is reduced, but not eliminated. This provision is applicable to the Insured Unemployment Rate and the Total Unemployment Rate trigger.

Finally, as discussions continue to evolve concerning the CARES Act and potential extensions of or future benefits programs, TWC is adding a federal conformity provision to the Chapter 815 rules. This provision ensures that if federal statutes or regulations change before TWC has a reasonable opportunity to amend its rules, that TWC will continue to operate in conformity with federal law.

TWC's three-member Commission (Commission) must take immediate action in order to operationalize these new federal programs, state options, and requirements. During this surge of unemployment, it is vital that Texans have access to the federal benefit programs and options authorized by the CARES Act as well as the potential to have their PUA overpayment waived as adjudicated on a case-by-case basis. Out-of-work Texans who are struggling to pay their bills need access to these unemployment benefits. These benefits also serve as a much-needed stabilizing factor in local economies.

Therefore, the Commission finds that imminent peril to the public welfare requires adoption of rules without 30 days' notice in the Texas Register. On the same basis, the Commission also finds that imminent peril to the public welfare requires adoption of rules with an expedited effective date that is effective immediately upon filing with the Secretary of State, so that these rules can be implemented immediately under the emergency rulemaking provisions of Texas Government Code, §2001.034 and §2001.036.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

SUBCHAPTER A. GENERAL PROVISIONS

TWC adopts on an emergency basis the following new section to Subchapter A:

§815.4. Conformity with Federal Law

New §815.4 provides that, notwithstanding any other provision of Chapter 815, if the US Secretary of Labor holds that a provision of Chapter 815 does not conform with federal statute or regulation, TWC may administer Chapter 815 to conform with the federal statute or regulation until it has a reasonable opportunity to amend the nonconforming provision.

SUBCHAPTER F. EXTENDED BENEFITS

TWC adopts on an emergency basis the following new section to Subchapter F:

§815.175. Federal Waiver to Preserve Access to Extended Benefits

New §815.175 states that pursuant to Texas Unemployment Compensation Act, §209.025, if full federal funding for Extended Benefits (EB) is available and TWC is permitted to reduce or eliminate the number of weeks between the end of an extended benefit period and the beginning of a new extended benefit period required by the Extended Unemployment Compensation Act of 1970, §203(b)(1)(B), TWC shall reduce or eliminate the number of weeks accordingly to maximize the receipt of any fully funded federal EB. Section 815.175 operates retroactively, if applicable.

SUBCHAPTER G. CARES ACT PROVISIONS

TWC adopts on an emergency basis amendments to Subchapter G:

§815.180. Definitions

Section 815.180 is amended to add new paragraph (4), which defines MEUC as the Mixed Earner Unemployment Compensation provisions of §2104 of the CARES Act. Current paragraphs (4) and (5) are renumbered as paragraphs (5) and (6).

§815.181. Coordination of CARES Act

Section 815.181 is amended to add new subsections (c) - (g), which further dictate the coordination of programs, especially how they relate to PEUC, EB, and MEUC.

New §815.181(c) provides that if a claimant is receiving PEUC, EB, or PUA, and becomes eligible for regular compensation, the claimant must stop collecting PEUC, EB, or PUA and file a new claim for regular compensation, with the following exception: For a claimant whose regular compensation benefit year expires after December 27, 2020, if the claimant is entitled to and has a remaining entitlement to PEUC with respect to that benefit year, TWC shall establish a new benefit year, but defer the payment of regular compensation with respect to that new benefit year until exhaustion of all PEUC payable with respect to the prior benefit year if the individual's weekly benefit amount of regular compensation in the new benefit year is at least \$25 less than the individual's weekly benefit amount on the PEUC claim.

New §815.181(d) provides that a claimant who is receiving EB for the week of unemployment that includes December 27, 2020, shall not be eligible for PEUC until the individual has exhausted all rights to EB.

New §815.181(e) states that for weeks of unemployment beginning January 3, 2021, a claimant's eligibility for EB shall be considered to include any week that begins after the individual exhausts all rights to PEUC and that falls during an EB period that began after the date the individual exhausted all rights to PEUC. This applies even if the claimant's benefit year has expired, provided the state is in an EB period as of the date the individual exhausts PEUC.

New §815.181(f) replaces current §815.181(c). It still provides that FPUC provides for additional compensation to a claimant collecting regular compensation, PEUC, PUA, EB, a Shared Work program under Chapter 215 of the Texas Unemployment Compensation Act, Trade Readjustment Allowances (TRA), and Disaster Unemployment Assistance (DUA), and that claimants will receive FPUC payments concurrently with payments under these programs. The last sentence referencing dates for FPUC has been removed.

New subsection (g) provides that MEUC provides for additional compensation to a claimant collecting regular compensation, PEUC, EB, a Shared Work program under Chapter 215 of the Texas Unemployment Compensation Act, TRA, and DUA. It does not provide additional compensation to a claimant collecting PUA. Claimants will receive MEUC payments concurrently with payments under these programs.

§815.182. Appeals

Section 815.182 is amended to add MEUC to §815.182(a) - (c).

§815.183. Waiver

Section 815.183 is amended to remove subsection (b). References to PUA and MEUC as being federal extended unemployment compensation programs and therefore subject to §815.12 of this chapter have been added.

§815.184. Overpayments

Section 815.184 is amended to add MEUC to subsections (a) and (c) as well as to remove the PUA waiver prohibition from subsection (b).

§815.185. Fraud

Section 815.185 is amended to add MEUC to subsections (a) and (b) and remove PUA from subsection (a).

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §815.4

STATUTORY AUTHORITY

The new rule is adopted on an emergency basis pursuant to:

--Texas Government Code, §2001.034, which provides TWC with the authority to adopt rules on an emergency basis;

--Texas Labor Code, §209.025, which provides TWC with authority to adopt rules necessary to maximize the receipt of any fully federally funded extended unemployment benefits, if full federal funding of those benefits is available;

--Texas Labor Code, §301.0015(a)(6), which provides TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities; and

--Texas Labor Code, §301.062, which provides TWC with the power to make findings and determine issues under Title 4 of the Texas Labor Code.

The effective date of the rule shall be immediate upon the date of filing the adoption with the Secretary of State pursuant to Texas Government Code, §2001.036(a)(2).

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

§815.4. Conformity with Federal Law.

Notwithstanding any other provision of this chapter, if the US Secretary of Labor holds that a provision of this chapter does not conform with federal statute or regulation, the Agency may administer this chapter to conform with the federal statute or regulation until the Commission has a reasonable opportunity to amend the nonconforming provision.

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

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For further information, please call: (512) 689-9855



SUBCHAPTER F. EXTENDED BENEFITS

40 TAC §815.175

STATUTORY AUTHORITY

The new rule is adopted on an emergency basis pursuant to:

--Texas Government Code, §2001.034, which provides TWC with the authority to adopt rules on an emergency basis;

--Texas Labor Code, §209.025, which provides TWC with authority to adopt rules necessary to maximize the receipt of any fully federally funded extended unemployment benefits, if full federal funding of those benefits is available;

--Texas Labor Code, §301.0015(a)(6), which provides TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities; and

--Texas Labor Code, §301.062, which provides TWC with the power to make findings and determine issues under Title 4 of the Texas Labor Code.

The effective date of the rule shall be immediate upon the date of filing the adoption with the Secretary of State pursuant to Texas Government Code, §2001.036(a)(2).

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

§815.175. Federal Waiver to Preserve Access to Extended Benefits.

Pursuant to §209.025 of the Act, if full federal funding for Extended Benefits is available and the Agency is permitted to reduce or eliminate the number of weeks between the end of an extended benefit period and the beginning of a new extended benefit period required by §203(b)(1)(B) of the Extended Unemployment Compensation Act of 1970, the Agency shall reduce or eliminate the number of weeks accordingly to maximize the receipt of any fully funded federal Extended Benefits. This section operates retroactively, if applicable.

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

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SUBCHAPTER G. CARES ACT PROVISIONS

40 TAC §§815.180 - 815.185

STATUTORY AUTHORITY

The amendments are adopted on an emergency basis pursuant to:

--Texas Government Code, §2001.034, which provides TWC with the authority to adopt rules on an emergency basis;

--Texas Labor Code, §209.025, which provides TWC with authority to adopt rules necessary to maximize the receipt of any fully federally funded extended unemployment benefits, if full federal funding of those benefits is available;

--Texas Labor Code, §301.0015(a)(6), which provides TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities; and

--Texas Labor Code, §301.062, which provides TWC with the power to make findings and determine issues under Title 4 of the Texas Labor Code.

The effective date of these rules shall be immediate upon the date of filing the adoption with the Secretary of State pursuant to Texas Government Code, §2001.036(a)(2).

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

§815.180. Definitions.

The following definitions shall apply to this subchapter:

(1) CARES Act--refers to the Coronavirus Aid, Relief, and Economic Security Act, Public Law 116 - 136; TITLE II--Assistance for American Workers, Families, and Businesses; Subtitle A--Unemployment Insurance Provisions.

(2) FPUC--refers to the Federal Pandemic Unemployment Compensation provisions of §2104 of the CARES Act.

(3) FRWW--refers to the Federally Reimbursed Waiting Week provisions of §2105 of the CARES Act.

(4) MEUC--refers to the Mixed Earner Unemployment Compensation provisions of §2104 of the CARES Act.

(5) [(4)] PEUC--refers to the Pandemic Emergency Unemployment Compensation provisions of §2107 of the CARES Act.

(6) [(5)] PUA--refers to the Pandemic Unemployment Assistance provisions of §2102 of the CARES Act.

§815.181. Coordination of CARES Act Programs.

(a) For a claimant who is eligible for regular compensation, including Unemployment Compensation for Federal Employees (UCFE)

and Unemployment Compensation for Ex-servicemembers (UCX), the following order of payment applies:

(1) The claimant must first apply for and receive regular compensation. The amount and duration of these benefits are as defined by the Act;

(2) if the claimant exhausts regular compensation, the claimant may then be eligible to receive PEUC;

(3) if the claimant exhausts PEUC and the state has "triggered on" to Extended Benefits (EB) under Chapter 209 of the Act, the claimant may then be eligible to receive EB;

(4) if the State is not "triggered on" to EB or the claimant exhausts EB, the claimant may then be eligible to receive PUA. If the State "triggers on" to EB during the period in which the claimant is collecting PUA and the claimant has not previously exhausted entitlement to EB for the respective benefit year, then the claimant must stop collecting PUA and file for EB; and

(5) the claimant meets the qualifications to receive Trade Readjustment Allowances (TRA), such benefits will be payable after regular compensation, PEUC, and EB if "triggered on," but prior to PUA.

(b) For a claimant who is not eligible for regular compensation, PEUC, EB, or TRA, and who meets the federal requirements, the claimant may be eligible to collect PUA.

(c) If a claimant is receiving PEUC, EB, or PUA, and becomes eligible for regular compensation, the claimant must stop collecting PEUC, EB, or PUA and file a new claim for regular compensation, with the following exception: For a claimant whose regular compensation benefit year expires after December 27, 2020, if the claimant is entitled to and has a remaining entitlement to PEUC with respect to that benefit year, the Agency shall establish a new benefit year, but defer the payment of regular compensation with respect to that new benefit year until exhaustion of all PEUC payable with respect to the prior benefit year if the individual's weekly benefit amount of regular compensation in the new benefit year is at least \$25 less than the individual's weekly benefit amount on the PEUC claim.

(d) A claimant who is receiving EB for the week of unemployment that includes December 27, 2020, shall not be eligible for PEUC until the individual has exhausted all rights to EB.

(e) For weeks of unemployment beginning January 3, 2021, a claimant's eligibility for EB shall be considered to include any week that begins after the individual exhausts all rights to PEUC and that falls during an EB period that began after the date the individual exhausted all rights to PEUC. This applies even if the claimant's benefit year has expired, provided the state is in an EB period as of the date the individual exhausts PEUC.

(f) [(e)] FPUC provides for additional compensation to a claimant collecting regular compensation, PEUC, PUA, EB, a Shared Work program under Chapter 215 of the Act, TRA, and Disaster Unemployment Assistance (DUA). Claimants will receive FPUC payments concurrently with payments under these programs. [This applies for the benefit week ending April 4, 2020 through the benefit week ending July 25, 2020 unless subsequently amended by federal law.]

(g) MEUC provides for additional compensation to a claimant collecting regular compensation, PEUC, EB, a Shared Work program under Chapter 215 of the Act, TRA, and DUA. It does not provide additional compensation to a claimant collecting PUA. Claimants will receive MEUC payments concurrently with payments under these programs.

§§815.182. *Appeals.*

(a) A claimant may appeal an adverse FPUC, FRWW, MEUC, PEUC, or PUA determination pursuant to the provisions and timeframes of Chapter 212 of the Act and the provisions set out in §815.16 of this chapter (relating to Appeals to Appeal Tribunals from Determinations), §815.17 of this chapter (relating to Appeals to the Commission from Decisions), and §815.18 of this chapter (relating to General Rules for Both Appeal Stages).

(b) An employer is not a "party of interest," [;] pursuant to §815.15(c) of this chapter (relating to Parties with Appeal Rights), to a FPUC, FRWW, MEUC, PEUC, or PUA determination and therefore does not have appeal rights. An employer may appear at a FPUC, FRWW, MEUC, PEUC, or PUA hearing to offer evidence when appropriate.

(c) When considering an appeal involving FPUC and/or MEUC, the Appeal Tribunal and the Commission shall look to the merits of the denial of the underlying benefit when determining eligibility for FPUC and/or MEUC payments.

§§815.183. *Waiver.*

[(a)] FPUC, [the] FRWW, MEUC, PUA, and PEUC are federal extended unemployment compensation programs and therefore subject to §815.12 of this chapter (relating to Waiver of Repayment and Recovery of Federal Extended Unemployment Compensation Overpayments).

[(b)] PUA, as provided by P.L. 116 - 136 §2102, is related to Disaster Unemployment Assistance programs regulated under Title 20, Part 625, Code of Federal Regulations. Therefore, PUA does not constitute a federal extended unemployment compensation program and the waiver provisions of §815.12 of this chapter do not apply.]

§§815.184. *Overpayments.*

(a) Unless a FPUC, FRWW, MEUC, or PEUC overpayment is otherwise recovered or waived, the Agency shall, during the three-year period after the date the claimant received the payment of FPUC, FRWW, MEUC, or PEUC to which the claimant was not entitled, recover the overpayment by deductions from any sums payable to the claimant. No single deduction may exceed 50 percent of the amount otherwise payable to the claimant.

(b) Unless a PUA overpayment is otherwise recovered, the Agency shall recover the overpayment by deductions from any sums payable to the claimant. A PUA overpayment [~~may not be waived per §815.183(b) of this chapter and~~] is not subject to the three-year period limitation stated in subsection (a) of this section. No single deduction may exceed 50 percent of the amount otherwise payable to the claimant.

(c) If a claimant has an unemployment benefits overpayment with an appropriate agency in another state, and the Agency has a reciprocal arrangement with that other state agency under §211.004 of the Act, the Agency shall deduct 50 percent per each single deduction of the amount of FPUC, FRWW, MEUC, PEUC, or PUA otherwise payable to the claimant.

§§815.185. *Fraud.*

(a) A penalty for fraudulently obtaining benefits under §214.003 of the Act shall not apply to fraudulently obtained FPUC, FRWW, MEUC, and PEUC [; and PUA] benefits forfeited.

(b) The Agency and the Commission shall examine the underlying payment or statement which precipitated the fraud determination when examining FPUC and/or MEUC fraud.

(c) In determining disqualification for fraud under PUA, the provisions of 20 C.F.R. §625.14(i) shall apply.

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

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Texas Workforce Commission

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