**PROPOSED RULES**

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

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

**TITLE 4. AGRICULTURE**

**PART 1. TEXAS DEPARTMENT OF AGRICULTURE**

**CHAPTER 30. COMMUNITY DEVELOPMENT SUBCHAPTER A. TEXAS COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM DIVISION 5. REALLOCATION OF PROGRAM FUNDS**

**4 TAC §30.101**

The Texas Department of Agriculture (Department) proposes the repeal of Title 4, Part 1, Chapter 30, Subchapter A, Division 5, §30.101, relating to Deobligated Funds, in order to remove detailed descriptions on the use of deobligated funds under the Texas Community Development Block Grant (CDBG) Program. The use and allocation of CDBG funds is more appropriately described in the CDBG annual action plan available on the Department's website and is submitted to the U.S. Department of Housing and Urban Development.

Suzanne Barnard, Director for CDBG Programs, has determined that for the first five years the proposal is in effect, there will be no adverse fiscal implications for state or local governments as a result of the proposal.

Ms. Barnard has also determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of repealing this rule is the flexibility with which the Department may transfer deobligated funds to other CDBG program funding categories in order to make grants to local communities in need. There will be no adverse economic effect on micro-businesses, small businesses or individuals as a result of the proposal. There will be no adverse impact to rural communities.

Ms. Barnard has provided the following information related to the government growth impact statement, as required pursuant to Texas Government Code, §2001.021. As a result of implementing the proposal, for the first five years the proposal is in effect:

1. no new or current government or Department programs will be created or eliminated;
2. no employee positions will be created, nor will any existing Department staff positions be eliminated; and
3. there will not be an increase or decrease in future legislative appropriations to the Department.

Additionally, Ms. Barnard has determined that for the first five years the proposal is in effect:

1. there will be no increase or decrease in fees paid to the Department;
2. there will be new regulations created by the proposal;
3. there will be increase or decrease to the number of individuals subject to the proposal, as communities in Texas remain subject to CDBG program rules and eligibility requirements; and
4. the proposal is not anticipated to have an adverse effect on the Texas economy.

Written comments on the proposal may be submitted to Suzanne Barnard, Director for CDBG Programs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, or by email to RuleComments@TexasAgriculture.gov. Comments must be received no later than June 3, 2019.

The proposal is made under Texas Government Code §487.051, which designates the Department as the agency to administer the federal community development block grant non-entitlement program, and §487.052, which provides authority for the Department to adopt rules as necessary to implement Chapter 487.

The code affected by the proposal is Texas Government Code, Chapter 487.

**§30.101. Deobligated Funds.**

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

Filed with the Office of the Secretary of State on April 30, 2019.

TRD-201901268

Jessica Escobar

Assistant General Counsel

Texas Department of Agriculture

Earliest possible date of adoption: June 16, 2019

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

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**TITLE 16. ECONOMIC REGULATION**

**PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION**

**CHAPTER 130. PODIATRIC MEDICINE PROGRAM**

The Texas Department of Licensing and Regulation (Department) proposes amendments to existing rules at 16 Texas
Administrative Code (TAC), Chapter 130, Subchapter C, §§130.30 - 130.32; Subchapter D, §§130.40, and §§130.42 - 130.44; Subchapter E, §§130.51; Subchapter F, §§130.60; and Subchapter G, §§130.72, regarding the Podiatric Medicine Program. The Department also propose new rules at 16 TAC, Chapter 130, Subchapter D, §§130.49; Subchapter E, §§130.58; Subchapter F, §§130.61, and Subchapter G, §§130.74, regarding the Podiatric Medicine Program. These proposed changes are referred to herein as "proposed rules."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The proposed rules under 16 TAC, Chapter 130 implement Texas Occupations Code, Chapter 202, Podiatric Medicine.

The proposed rules implement a change from a one-year license to a two-year license term, provide for a reduction in license fees, and for the orderly transition between the license terms. The Sunset Advisory Commission recommended, along with the transfer of the Podiatric Medicine program from the Texas State Board of Podiatric Medical Examiners, that the Department be authorized to provide biennial license renewals. This brings the Department of Podiatric Medicine license term more in line with other similar health-related professions.

The proposed rules streamline and clarify certain provisions and bring the rules in line with current statutory requirements. These statutory requirements include implementing a voluntary charity care status as required by Texas Occupations Code, Chapter 112. Chapter 112 requires agencies to provide for reduced fees and continuing education requirements for certain retired health care practitioners whose only practice is voluntary charity care.

The proposed rules implement prescription monitoring guidelines for the responsible prescribing of opioids, benzodiazepines, barbiturates, or carisoprodol as required by House Bill 2561, 85th Legislature, Regular Session (2017), and Texas Health and Safety Code, Chapters 481 (Texas Controlled Substances Act) and 483 (Dangerous Drugs). House Bill 2561, the Texas State Board of Pharmacy Sunset bill, requires license holders who choose to prescribe opioids, benzodiazepines, barbiturates, or carisoprodol to access the Texas State Board of Pharmacy's Prescription Monitoring Program System, AWARXE, to review each patient’s prescription history before prescribing.

The proposed rules also provide for the adoption of a penalty matrix by rule as required by House Bill 3078, 85th Legislature, Regular Session (2017), and Texas Occupations Code, Section 202.6011. This change implements another Sunset Advisory Commission recommendation from the Texas State Board of Podiatric Medical Examiners review.

The proposed rules were reviewed by the Licensing, Enforcement, and Standard of Care Workgroups of the Podiatric Medical Examiners Advisory Board (Advisory Board).

The proposed rules were presented to and discussed by the Advisory Board at its meeting on April 15, 2019. The Advisory Board voted and recommended that the proposed rules be published in the Texas Register for public comment.

SECTION-BY-SECTION SUMMARY

The proposed amendments regarding Subchapter C. Temporary Residency, §130.30 streamline provisions for Temporary Residency renewal requirements and applications by rewording certain provisions for clarity, adding statutory language into the rule, and creating consistency with other sections in the rule.

The proposed amendments to §130.31 allow Temporary Residency license holders to register with the U.S. Drug Enforcement Administration (DEA) to prescribe controlled substances.

The proposed amendments to §130.32 update the term currently used on the final year of residency memorandum of understanding from "Podiatry" to "Doctor of Podiatric Medicine."

The proposed amendments regarding Subchapter D. Doctor of Podiatric Medicine, §130.40 streamline provisions for Doctor of Podiatric Medicine license requirements and applications by rewording certain provisions for clarity, adding statutory language into the rule, and creating consistency with other sections in the rule.

The proposed amendments to §130.42 change the license term for the Doctor of Podiatric Medicine license from a one-year license to a two-year license.

The proposed amendments to §130.43 streamline provisions for the Doctor of Podiatric Medicine Provisional license by rewording certain provisions for clarity, adding statutory language into the rule, and creating consistency with other sections in the rule.

The proposed amendments to §130.44 add opioid topics to the list of courses, classes, seminars, or workshops acceptable for fulfilling continuing medical education requirements, and reword certain provisions for clarity.

The proposed new §130.49 implements voluntary charity care status provisions as required by Texas Occupations Code, Chapter 112.

The proposed amendments regarding Subchapter E. Practitioner Responsibilities and Code of Ethics, §130.51 remove the prohibition on testimonials and provides clarity on terms that are not acceptable in advertisements.

The proposed new §130.58 implements specific guidelines for the responsible prescribing of controlled substances and dangerous drugs as required by Health and Safety Code, Chapters 481 and 483.

The proposed amendments regarding Subchapter F. Fees, §130.60 reduce the fee for the Doctor of Podiatric Medicine Initial and Renewal license to address the two-year license term and establishes that there is no fee for voluntary charity care status.

The proposed new §130.61 provides for the orderly transition of licenses from a one-year to a two-year license term.

The proposed amendments regarding Subchapter G. Enforcement, §130.72 clarify that administrative penalties and sanctions may be instituted in accordance with the Department’s enforcement plan.

The proposed new §130.74 outlines the penalty matrix as required by Texas Occupations Code, Section 202.6011.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rules are in effect, there will be an additional estimated cost to the state of $200 as a result of enforcing or administering these proposed rules. The proposed rules reflect current procedure and clarify that the Department, not the applicant, queries the National Practitioner Data Bank (NPDB) and pays the fee. The Department uses the NPDB query report to determine if an applicant has been disciplined in another jurisdiction. The cost to the De-
Mr. Couvillon has determined that for each of the first five years the proposed rules are in effect, there are no estimated reductions in costs to the state as a result of enforcing or administering the proposed rules.

Mr. Couvillon has determined that for the first five years the proposed rules are in effect, there will be an estimated increase in revenue to the state in the first year and loss in revenue in the subsequent years as a result of enforcing or administering the proposed rules. Proposed amendments to §130.42 change the Doctor of Podiatric Medicine (DPM) license term from one year to two years. This change will reduce the number of renewals received and processed by the Department by approximately 500 each fiscal year. Additionally, proposed amendments to §130.60 reduce the initial and renewal DPM application fees. Applicants for initial and renewal licenses will initially pay an increased fee as compared to the previous fee but will receive a two-year license instead of a one-year license. This will result in an increase in state revenue of $63,500 for the first year the proposed rules are in effect and then a decrease of $136,000 for each of the four subsequent years. The fee for the one-year initial license was $534 and the proposed new two-year initial license fee will be $750. The one-year renewal fee was $530, and the proposed new two-year renewal fee will be $700.

To balance the revenue between years, about half of renewing licensees will receive a one-year license in the first year and about half will receive a two-year license. Licensees who receive their initial license in an even-numbered year will pay a one-time renewal fee of $350 and receive a one-year license. Those licensees who received their initial license in an odd-numbered year will pay the regular renewal fee of $700 and receive a two-year license.

Mr. Couvillon has determined that for each of the first five years the proposed rules are in effect, there are no additional estimated costs or reductions in costs to local governments as a result of enforcing or administering the proposed rules.

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

LOCAL EMPLOYMENT IMPACT STATEMENT

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

PUBLIC BENEFITS

Mr. Couvillon also has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be for more effective and efficient regulation of podiatrists, which enhances the public health, safety, and welfare. Persons applying for an initial Temporary Residency license, Provisional DPM license, or full DPM license are no longer required to pay the fee to perform the self-query of the National Practitioner Data Bank and full DPM licensees will receive a two-year license at an overall lower cost. This saves each applicant and licensee approximately $160-$180.

Additionally, the prescribing guidelines for the responsible prescribing of opioids, benzodiazepines, barbiturates, or carisoprodol help address the growing concern with the opioid crisis and over prescribing of certain controlled substances.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules. The proposed rules implement prescription monitoring guidelines for the responsible prescribing of opioids, benzodiazepines, barbiturates, or carisoprodol. Licensees who choose to prescribe these medications are now required by law to access the Texas State Board of Pharmacy’s Prescription Monitoring Program System, AWAREx, to review each patient’s prescription history. The Texas State Board of Pharmacy determines any associated costs of administering the Prescription Monitoring Program through the legislative appropriations process. The proposed rules create no new economic costs to persons required to comply with the proposed rules.

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

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

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

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

1) The proposed rules do not create or eliminate a government program.

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

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

4) The proposed rules do require an increase or decrease in fees paid to the agency. Proposed rule §130.60 reduces the initial and renewal DPM application fee. Applicants for initial and renewal licenses will initially pay an increased fee but will receive a two-year license. This will result in an increase in state revenue for the first year the proposed rules are in effect but then a decrease for each of the four subsequent years. The fee for the one-year initial license was $534 and the proposed new two-year initial license fee will be $750. The one-year renewal

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fee was $530 and the proposed new two-year renewal fee will be $700. The result of this proposed rule is an overall reduction in fee to licensees by approximately $160-$180.

(5) The proposed rules do create a new regulation. The proposed rules provide guidelines for licensed podiatrists who prescribe opioids, benzodiazepines, barbiturates, or carisoprodol to review a patient's Schedule II, III, IV, and V prescription drug history report prior to prescribing such medications. License holders who choose to prescribe these medications must access the Texas State Board of Pharmacy's Prescription Monitoring Program System, AWARE, to review each patient's prescription history. This proposed rule is required by Health and Safety Code, Chapter 481.

(6) The proposed rules do expand, limit, or repeal an existing regulation. The proposed rules implement a voluntary charity care status for DPMs as required by Texas Occupations Code, Chapter 112.

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

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

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

PUBLIC COMMENTS
Comments on the proposal may be submitted to Vanessa Vasquez, Legal Assistant, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile (512) 475-3032, or electronically: erule.comments@tdlr.texas.gov. The deadline for comments is 30 days after publication in the Texas Register.

SUBCHAPTER C. TEMPORARY RESIDENCY
16 TAC §§130.30 - 130.32

STATUTORY AUTHORITY
The amendments and new rules are proposed under Texas Occupations Code, Chapters 51 and 202, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other laws establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51, 102, 112, and 202 and Texas Health and Safety Code, Chapters 181, 311, 481 and 483.

No other statutes, articles, or codes are affected by the proposal. §130.30. Temporary Residency License—General Requirements and Application.

(a) A person who is enrolled in an accredited graduate podiatric medical education (GPME) program in Texas must hold a temporary residency license. [A temporary residency license will be issued to an applicant who is enrolled in an accredited graduate podiatric medical education (GPME) program].

(b) The GPME program must be accredited by the Council on Podiatric Medical Education of the American Podiatric Medical Association [It shall be the sole responsibility of the applicant to ascertain the accreditation status of the applicant's GPME program].

(c) An applicant granted a temporary residency license for the purpose of pursuing a GPME program in the State of Texas shall not engage in the practice of podiatric medicine, whether for compensation or free of charge, outside the scope and limits of the GPME program in which the applicant is enrolled.

(d) A temporary residency license granted by the department for the purpose of pursuing a GPME program in the State of Texas is valid until the licensee leaves or is terminated from said GPME program.

(e) All temporary residency licensees shall be subject to the same fees and penalties as all other licensees as set forth in the Act and this chapter except that temporary residency licensees are not subject to continuing medical education requirements.

(f) To be eligible for a temporary residency license an applicant must:

1. be at least 21 years of age;

2. successfully complete at least 90 semester hours of undergraduate college courses acceptable at the time of completion for credit toward a bachelor's degree at an institution of higher education determined by the department to have acceptable standards;

3. successfully graduate from a reputable college of podiatry approved by the Council on Podiatric Medical Education of the American Podiatric Medical Association, and the college must have been so approved during the entire period of the applicant's course of instruction;

4. successfully pass all required sections of the American Podiatric Medical Licensing Examination;

5. pay all applicable fees;

6. submit a completed application on a department-approved form;

7. pay the required fee;

8. submit all transcripts of all relevant coursework, acceptable to the department;

9. provide proof of successfully passing required sections of the American Podiatric Medical Licensing Examination;

10. successfully pass a criminal history background check performed by the department;

11. provide proof of successful completion of [having successfully completed] a course in cardiopulmonary resuscitation (CPR) [and provide a current certification to that effect];

12. complete the "Memorandum of Understanding for Approved Residency Program";

13. complete the "Certificate of Acceptance for Postgraduate Training Program"; and

14. successfully pass a [submit a Self-Query report from the] National Practitioner Data Bank query check performed by the department.

(g) The department approves and adopts by reference the Standards and Requirements for Approval of Residencies in Podiatric Medicine and Surgery and Procedures for Approval of Residencies in


(i) The applicant shall submit evidence sufficient for the department to determine that the applicant has met all the requirements and any other information reasonably required by the department. Any application, diploma or certification, or other document required to be submitted to the department that is not in the English language must be accompanied by a certified translation into English.

§130.31. Temporary Residency License--Residency Requirements; Program Responsibilities; License Term.

(a) All residency programs requesting temporary residency licenses for their enrollees must meet all American Podiatric Medical Association/Council on Podiatric Medical Education (APMA/CPME) requirements for accreditation.

(b) The residency director will be held responsible for the entire program including but not limited to:

(1) Ensuring that the temporary residency licensee is practicing within the scope of the residency program requirements;

(2) Ensuring that the temporary residency licensee has read and understood the Act and Rules governing the practice of podiatric medicine; and

(3) Ensuring that all residency program attendees are properly licensed with the department prior to participation in the program. A temporary residency license to practice podiatric medicine expires on June 30 of each year.

(c) Within thirty (30) days after the start date of the program each year, the residency director must report to the department a list of all residents enrolled in the program.

(d) A temporary residency license is valid for one year and the licensee must renew on a department-approved application and pay the required fee. The annual renewal application notification will be deemed to be written notice of the impending license expiration forwarded to the person at the person's last known address.

(e) A temporary license holder shall not be considered to be a fully licensed podiatrist who independently practices podiatric medicine without supervision. A temporary residency license holder is a person in training and is limited by the GPME program for residency based supervised patient encounters, supervision of which is designed to protect patients and the citizens of Texas.

(f) A person enrolled in a GPME program must hold a temporary residency license at all times and shall not be considered to be qualified for a Doctor of Podiatric Medicine license until all residency program requirements have been completed and fulfilled as certified by the GPME program residency director, and all other requirements for licensure have been attained.

(g) Residents enrolled in an accredited GPME residency program who hold a temporary residency license (i.e. denoted with the letter "T" followed by numerals) may register with the U.S. Drug Enforcement Administration (DEA) to prescribe controlled substances subject to the supervision of the program and residency director. Under no circumstances are residents allowed to prescribe controlled substances for purposes outside of the approved residency program.

§130.32. Temporary Residency License--Final Year of Residency.

(a) A holder of a temporary residency license who has entered the final year of an accredited GPME program, who is in good standing with the GPME program, and who is on course to complete the course in a timely manner, may be permitted to apply for the Doctor of Podiatric Medicine license in the spring, provided that the resident has entered and signed the "Memorandum of Understanding for Conditional Issuance of Texas Doctor of Podiatric Medicine (Podiatric) License" (MOU).

(b) A holder of a temporary residency license who passes the jurisprudence examination, and who is in compliance with the resident's MOU(s), and who meets all other requirements of the law regarding licensure may be issued a Doctor of Podiatric Medicine license prior to completion of the last year of the residency. The Doctor of Podiatric Medicine license issued under this subsection will be subject to the resident's MOU and to the following conditions and restrictions, in addition to any other provisions in statute and rule applicable to a license to practice podiatry, in general that:

(1) the resident must successfully complete and graduate from the resident's accredited GPME program by the date noted in the resident's MOU with the department, and must submit to the department proof of successful completion and graduation within 30 days after the end date of the residency as noted on the MOU. Failure to timely provide the proof the department requires subjects the Doctor of Podiatric Medicine license to automatic revocation; and

(2) the resident who has received a Doctor of Podiatric Medicine license prior to successful completion and graduation from an accredited GPME program, and for such period of time while still a resident, shall practice podiatry only under the temporary residency license, and subject to the scope and limits of the GPME program, and shall not practice podiatry under the Doctor of Podiatric Medicine license until after successful completion and graduation from the GPME program and after providing to the department proof of such completion and graduation.

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

Filed with the Office of the Secretary of State on May 6, 2019.

TRD-201901316
Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
Earliest possible date of adoption: June 16, 2019
For further information, please call: (512) 463-3671

SUBCHAPTER D. DOCTOR OF PODIATRIC MEDICINE

16 TAC §§130.40, 130.42 - 130.44, 130.49

STATUTORY AUTHORITY

The amendments and new rules are proposed under Texas Occupations Code, Chapters 51 and 202, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.
The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51, 102, 112, and 202 and Texas Health and Safety Code, Chapters 181, 311, 481 and 483. No other statutes, articles, or codes are affected by the proposal.

§130.40. Doctor of Podiatric Medicine License--General Requirements and Application.

(a) Any person who wishes to practice podiatric medicine in this state must:

(1) be at least 21 years of age;

(2) successfully complete at least 90 semester hours of undergraduate college courses acceptable at the time of completion for credit toward a bachelor’s degree at an institution of higher education determined by the department to have acceptable standards;

(3) successfully graduate from a reputable college of podiatry approved by the Council on Podiatric Medical Education of the American Podiatric Medical Association, and the college must have been so approved during the entire period of the applicant’s course of instruction;

(4) [44] successfully pass all required sections of the American Podiatric Medical Licensing Examination and the jurisprudence examination;

(5) [45] complete at least one year of GPME in a program approved by the Council on Podiatric Medical Education of the American Podiatric Medical Association with a hospital, clinic, or institution acceptable to the department;

(6) [46] pay all applicable fees;

(7) [47] submit a completed application on a department-approved form;

(8) [48] submit all transcripts of relevant college coursework, acceptable to the department; [and]

(9) [49] successfully pass a criminal history background check performed by the department;

(10) [49] provide proof of successful completion of a course in cardiopulmonary resuscitation (CPR); and

(11) [44] successfully pass a [submit a Self-Query report from the] National Practitioner Data Bank query check performed by the department.

(b) The department approves and adopts by reference the Standards and Requirements for Approval of Residencies in Podiatric Medicine and Surgery and Procedures for Approval of Residencies in Podiatric Medicine and Surgery adopted by the Council on Podiatric Medical Education of the American Podiatric Medical Association.


d) The department may require additional information from an applicant who has been out of practice for more than two years and require the applicant to complete additional education, examinations, or training before issuing a license to ensure the podiatrist possesses reasonable knowledge, skill and competence for the safe care and treatment of patients.

e) [44] The applicant shall submit evidence sufficient for the department to determine that the applicant has met all the requirements and any other information reasonably required by the department. Any application, diploma or certification, or other document required to be submitted to the department that is not in the English language must be accompanied by a certified translation into English.

§130.42. Doctor of Podiatric Medicine License--Term; Renewal.

(a) A Doctor of Podiatric Medicine license is valid for two years [one year].

(b) To renew a Doctor of Podiatric Medicine license the licensee must:

(1) submit a department-approved renewal application;

(2) complete all required continuing medical education hours as required by §130.44; and

(3) pay the required fee.

§130.43. Doctor of Podiatric Medicine License--Provisional License.

(a) An applicant for a provisional license must:

(1) be at least 21 years of age;

(2) successfully complete at least 90 semester hours of undergraduate college courses acceptable at the time of completion for credit toward a bachelor’s degree at an institution of higher education determined by the department to have acceptable standards;

(3) successfully graduate from a reputable college of podiatry approved by the Council on Podiatric Medical Education of the American Podiatric Medical Association, and the college must have been so approved during the entire period of the applicant’s course of instruction;

(4) successfully pass all required sections of the American Podiatric Medical Licensing Examination;

(5) [45] complete at least one year of GPME in a program approved by the Council on Podiatric Medical Education of the American Podiatric Medical Association with a hospital, clinic, or institution acceptable to the department;[and]

(6) [45] pay all applicable fees;

(7) [47] submit a completed application on a department-approved form;

(8) [48] submit all transcripts of relevant college coursework, acceptable to the department;[and]

(9) [49] successfully pass a criminal history background check performed by the department;

(10) [49] provide proof of successful completion of a course in cardiopulmonary resuscitation (CPR); and

(11) [44] submit a Self-Query report from the National Practitioner Data Bank query check performed by the department;

(12) [44] be licensed in good standing as a podiatric physician in another state, the District of Columbia, or a territory of the United States that has licensing requirements that are substantially equivalent to the requirements of the Act, subsequent amendments, and rules;

(13) [44] have passed and submitted a score report for a national or other examination recognized by the department relating to the practice of podiatric medicine;

(14) have not been subject to denial for a license by virtue of having violated any provision under Texas Occupations Code Chapter 53 or the Act.]
(8) [45] not have been revoked or suspended in any jurisdiction;

(9) [46] successfully pass the jurisprudence exam;

(10) [48] pay all applicable fees; [•]

(11) submit a completed application on a department-approved form;

(12) submit all transcripts of relevant college coursework, acceptable to the department;

(13) successfully pass a criminal history background check performed by the department;

(14) provide proof of successful completion of a course in cardiopulmonary resuscitation (CPR); and

(15) successfully pass a National Practitioner Data Bank query check performed by the department.

(b) An applicant for provisional licensure must be sponsored by a person currently licensed by the department for at least five years and in good standing under the Act with the following conditions applicable.

(c) Prior to beginning practice in Texas, the sponsor licensee must ensure the following:

(1) that the applicant for provisional licensure will be working within the same office as the licensee, under the direct supervision of the sponsor licensee; and

(2) that such sponsor licensee is aware of the Act and rules governing provisional licensure and that the sponsorship will cease upon the invalidity of the provisional license.

(d) Sponsor licensee will be held responsible for the unauthorized practice of podiatric medicine should such provisional license expire.

(e) An applicant for a provisional license may be excused from the requirement of sponsorship of this rule if the department determines that compliance with this subsection constitutes a hardship to the applicant.

(f) A provisional license is valid for 180 days or until successful passage or failure of the jurisprudence exam [required exams] and may be renewed three times. It shall be the responsibility of the applicant and sponsor to return the provisional license to the department upon expiration.

(g) If at any time during the provisional licensure period it is determined that the holder of such provisional license has violated the Act or department rules, such provisional license will be subject to disciplinary action including revocation.

(h) At the discretion of the executive director, the GPME requirement may be waived if the applicant has been in active podiatric practice for at least five continuous years in another state under license of that state, and upon application to the department demonstrates an acceptable record from that state and from all other states under which the applicant has ever been licensed. (The GPME requirement became effective in Texas on July 1, 1995).

(i) At the discretion of the executive director, the executive director may excuse an applicant for a license from the National Board Part III (formerly known as PM Lexis) requirement if the executive director determines that an applicant with substantially equivalent experience was not required to pass a part of an examination related to the testing of clinical skills when the applicant was licensed in this or another state with an acceptable record, provided that the applicant has been in active licensed practice for at least five continuous years and has successfully completed any other course of training reasonably required by the executive director relating to the safe care and treatment of patients. (The National Board Part III/PM Lexis came to be in existence in June 1987. Texas began the National Board Part III/PM Lexis requirement for licensure on January 29, 1992.)

(j) A showing of an acceptable record under this section is defined to include, but is not limited to:

(1) a showing that the applicant has not had entered against him a judgment, civil or criminal, in state or federal court or other judicial forum, on a podiatric medical-related cause of action; no conviction of or deferred adjudication for a felony; no disciplinary action recorded from any medical institution or agency or organization, including, but not limited to, any licensing board, hospital, surgery center, clinic, professional organization, governmental health organization, or extended-care facility; and no dishonorable discharge from military service.

(2) If any judgment or disciplinary determination under this subsection, has been on appeal, reversed, reversed and rendered, or remanded and later dismissed, or in any other way concluded in favor of the applicant, it shall be the applicant's responsibility to bring such result to the notice of the department by way of certified letter along with any such explanation of the circumstances as the applicant deems pertinent to the determination of admittance to licensure in the State of Texas.

(3) The applicant shall obtain and submit to the department a letter directly from all state boards under which he or she has ever been previously licensed stating that the applicant is a licensee in good standing with each said board or that said prior license or licenses were terminated or expired with the licensee in good standing.


(m) The department may require additional information from an applicant who has been out of practice for more than two years and require the applicant to complete additional education, examinations, or training before issuing a license to ensure the podiatrist possesses reasonable knowledge, skill and competence for the safe care and treatment of patients.

(n) The applicant shall submit evidence sufficient for the department to determine that the applicant has met all the requirements and any other information reasonably required by the department. Any application, diploma or certification, or other document required to be submitted to the department that is not in the English language must be accompanied by a certified translation into English.

§130.44. Continuing Medical Education--General Requirements.

(a) Each person licensed to practice podiatric medicine in the State of Texas is required to have 50 hours of continuing medical education (CME) every two years for the renewal of the license to practice podiatric medicine. One hour of training is equal to one hour of CME.
(b) Two hours of the required 50 hours of department approved CME shall be a course, class, seminar, or workshop in: Ethics in the Delivery of Health Care Services and/or Rules and Regulations pertaining to Podiatric Medicine in Texas. Topics on Healthcare Fraud, Professional Boundaries, Practice Risk Management or Podiatric Medicine related Ethics or Jurisprudence courses, Abuse and Misuse of Controlled Substances, Opioid Prescription Practices, and/or Pharmacology, including those sponsored by an entity approved by CPME, APMA, APMA affiliated organizations, AMA, AMA affiliated organizations, or governmental entities, or the entities described in subsections (c) and (d) are acceptable.

(c) A licensee shall receive credit for each hour of [for] podiatric medical meetings and training sponsored by APMA, APMA affiliated organizations, TPMA, state, county or regional podiatric medical association podiatric medical meetings, university sponsored podiatric medical meetings, hospital podiatric medical meetings or hospital podiatric medical grand rounds, medical meetings sponsored by the Foot & Ankle Society or the orthopedic community relating to foot care, and others at the discretion of the Board. A practitioner may receive credit for giving a lecture, equal to the credit that a podiatrist attending the lecture obtains.

(d) A licensee shall receive credit for each hour of training for non-podiatric medical sponsored meetings that are relative to podiatric medicine and department approved. The department may assign credit for hospital grand rounds, hospital CME programs, corporate sponsored meetings, and meetings sponsored by the American Association, the orthopedic community, the American Diabetes Association, the Nursing Association, the Physical Therapy Association, and others if approved.

(e) It shall be the responsibility of the licensee to ensure that all CME hours being claimed meet the standards for CME as set by the commission. Practice management, home study and self-study programs will be accepted for CME credit hours only if the provider is approved by the Council on Podiatric Medical Education. The licensee may obtain up to, but not exceed twenty (20) hours of the aforementioned hours per biennium.

(f) Cardiopulmonary Resuscitation (CPR) certification is eligible for up to three (3) hours of CME credit and Advanced Cardiac Life Support (ACLS) certification for up to six (6) hours of CME credit. Practitioners may only receive credit for one, not both. No on-line CPR certification will be accepted for CME credit.

(g) If a practitioner has an article published in a peer review journal, the practitioner may receive one (1) hour of CME credit for the article, with credit for the article being provided only once, regardless of the number of times or the number of journals in which the article is published.

(h) These hours of continuing education must be obtained in the 24-month period immediately preceding the year for which the license was issued. The two-year period will begin on November 1 and end on October 31 two years later. The year in which the 50-hour credit requirement must be completed after the original license is issued is every odd-numbered year if the original license was issued in an odd-numbered year and is every even-numbered year if the original license was issued in an even-numbered year. A licensee who completes more than the required 50 hours during the preceding CME period may carry forward a maximum of ten (10) hours for the next CME period.

(i) The department shall employ an audit system for continuing education reporting. The license holder shall be responsible for maintaining a record of his or her continuing education experiences. The certificates, diplomas[,] or other documentation verifying earning of continuing education hours are not to be forwarded to the department at the time of renewal unless the license holder has been selected for audit.

(j) The audit process shall be as follows:

(1) The department shall select for audit a random sample of license holders to ensure compliance with CME hours.

(2) If selected for an audit, the license holder shall submit copies of certificates, transcripts or other documentation satisfactory to the department, verifying the license holder’s attendance, participation and completion of the continuing education.

(3) Failure to timely furnish this information within thirty (30) calendar days or providing false information during the audit process or the renewal process are grounds for disciplinary action against the license holder.

(4) If selected for continuing education audit during the renewal period, the license holder may renew and pay renewal fees.

(k) Licensees that are deficient in CME hours must complete all deficient CME hours and current biennium CME requirement in order to maintain licensure.

(1) Continuing education obtained as a part of a disciplinary action is not acceptable credit towards the total of fifty (50) hours required every two years.

§130.49. Voluntary Charity Care Status.

(a) As used in this section:

(1) "Voluntary charity care" means medical care provided for no compensation to:

(A) indigent populations;

(B) in medically underserved areas; or

(C) for a disaster relief organization.

(2) "Compensation" means direct or indirect payment of anything of monetary value, except payment or reimbursement of reasonable, necessary, and actual travel and related expenses.

(b) To be eligible for voluntary charity care status, a practitioner must:

(1) apply on a department approved form; and

(2) pay any required fee.

(c) The practice by a podiatrist on voluntary charity care status:

(1) does not include the provision of podiatric services for compensation which has monetary value of any kind;

(2) is limited to voluntary charity care for which the practitioner receives no compensation of any kind for podiatric services rendered;

(3) does not include the provision of podiatric services to members of the practitioner’s family; and

(4) does not include the self-prescribing of controlled substances or dangerous drugs.

(d) A podiatrist on voluntary charity care status must:

(1) renew the voluntary charity status every two years in a manner prescribed by the department; and

(2) complete twenty-five (25) hours of CME during each renewal cycle.
(e) A podiatrist on voluntary charity care status is subject to disciplinary action for:
   (1) a violation of the Act or rule adopted under this chapter;
   (2) obtaining, or attempting to obtain, voluntary charity care status by submitting false or misleading information to the department; or
   (3) unprofessional or dishonorable conduct likely to deceive, defraud, or injure the public if the practitioner engages in the compensated practice of podiatric medicine, the provision of podiatric services to members of the practitioner's family, or the self-prescribing of controlled substances or dangerous drugs.

(f) A podiatrist on voluntary charity care status must apply with the department before returning to active status by:
   (1) submitting a department approved application;
   (2) providing a description of the work performed while on voluntary charity care status;
   (3) paying the required doctor of podiatric medicine renewal fee; and
   (4) completing an additional 25 hours of CME to meet the doctor of podiatric medicine renewal requirements;

(g) The department may require additional information, education, examinations, or training from a podiatrist who has been on voluntary charity care status for more than two years before returning to active status.

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

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SUBCHAPTER E. PRACTITIONER RESPONSIBILITIES AND CODE OF ETHICS

16 TAC §130.51, §130.58

STATUTORY AUTHORITY

The amendments and new rules are proposed under Texas Occupations Code, Chapters 51 and 202, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51, 102, 112, and 202 and Texas Health and Safety Code, Chapters 181, 311, 481 and 483. No other statutes, articles, or codes are affected by the proposal.

§130.51. Advertising.

(a) A practitioner may advertise. A practitioner shall not use or participate in the use of any publication, including advertisements, news stories, press releases, and periodical articles, that contains a false, misleading, or deceptive statement.

(b) A practitioner may not include any of the following types of statements in any advertisements or press releases:

   (1) a misrepresentation of fact, or claims as fact something that has not been generally accepted among the podiatric community or by the department as having been proven or established as fact;
   (2) a statement that is likely to mislead or deceive or entice or persuade a reasonable person because it fails to make full disclosure of relevant facts whether regarding fees, modes of treatment, conditions or techniques of surgery, post-operative conditions such as degree of pain, length of time of recovery, mobility and strength during recovery, and the like;
   (3) a statement that is intended or likely to create in an ordinary reasonable person false or unjustified expectations of favorable results;
   (4) a laudatory statement, or other statement or implication that the practitioner's services are of exceptional quality;
   (5) a statistical data or information that reflects or is intended to reflect quality or degree of success of past performance, or prediction of future success;
   (6) a representation that podiatric services can or will be completely performed for a stated fee amount when this is not the case, or makes representations with respect to fees that do not disclose all variables affecting the fees, or makes representations that might reasonable cause an ordinary prudent person to misunderstand or be deceived about the fee amount;

   (7) a testimonial;

   (8) a representation that health care insurance deductibles or co-payments may be waived or are not applicable to health care services to be provided if the deductibles or co-payments are required; or

   (9) fees charged for the initial consultation, provided that if the time for the consultation is to be limited, any such limitation on the time shall be stated;

   (10) a statement using the following terms or phrases: "limited, limited time, limited time offer, special offer, limited funds, last chance, special chance, special offer."
(10) fixed fees for specific podiatric treatments and services, subject, however, to the provisions of subsection (b)(2) and (b)(6); and

(11) a statement that a schedule of fees or an estimate of fees to be charged for specific treatments or services will be available on request.

(d) All practitioners shall retain recordings, transcripts, or copies of all public communications by date of publication for a period of at least two years after such communication was made.

(e) A practitioner may advertise or publish the name of any board of certification under which the practitioner has fully and validly become certified provided that the full name of the certifying board is included in the publication; except as provided by this subsection, practitioners may not list in any type of advertisement or public communication any certifying board that is not approved or recognized by the Council on Podiatric Medical Education of the American Podiatric Medical Association.

(f) Each certifying board that is not recognized by the Council on Podiatric Medical Education of the American Podiatric Medical Association must meet each of the following requirements:

(1) the certifying board requires all practitioners who are seeking certification to successfully pass a written or an oral examination or both, which tests the applicant's knowledge and skills in the specialty or subspecialty area of podiatric medicine. All or part of the examination may be delegated to a testing organization. All examinations require a psychometric evaluation for validation;

(2) the certifying board has written proof of a determination by the Internal Revenue Service that the certifying board is tax exempt under the Internal Revenue Code pursuant to §501(c);

(3) the certifying board has a permanent headquarters and staff;

(4) the certifying board has at least 100 duly licensed certificants from at least one-third of the states; and

(5) the certifying board requires all practitioners who are seeking certification to have satisfactorily completed identifiable and substantial training in the specialty or subspecialty area of podiatric medicine in which the practitioner is seeking certification, and the certifying organization utilizes appropriate peer review. This identifiable training shall be deemed acceptable unless determined by the department, with the advice of the advisory board, to be inadequate in scope, content, and duration in that speciality or subspecialty area of podiatric medicine in order to protect the public health and safety.

(g) The terms "board eligible", "board qualified", or any similar words or phrase calculated to convey the same meaning may not be used in advertising.

(h) [Reserved]

§130.58. Standards for Prescribing Controlled Substances and Dangerous Drugs.

(a) Podiatrists shall comply with all federal and state laws and regulations relating to the ordering and prescribing of controlled substances in Texas, including but not limited to requirements set forth by the United States Food & Drug Administration, Texas Health & Human Services Commission, Texas Department of Public Safety, Texas State Board of Pharmacy, and the department.

(b) A podiatrist may not prescribe a controlled substance except for a valid podiatric medical purpose and in the course of podiatric practice.

(c) A podiatrist may not confer upon and may not delegate prescriptive authority (the act of prescribing or ordering a drug or device) to any other person.

(d) Responsible prescribing of controlled substances requires that a podiatrist consider certain elements prior to issuing a prescription, including, but not limited to:

(1) reviewing the patient's Schedule II, III, IV, and V prescription drug history report by accessing the Texas State Board of Pharmacy's - Texas Prescription Monitoring Program (PMP) database;

(2) the patient's date of birth matches with proper identification;

(3) an initial comprehensive history and physical examination is performed;

(4) the Schedule II prescription copy is in the chart or record found for each prescription written; and

(5) alternative therapy (e.g. ultrasound, TENS) discussed and prescribed for the patient.

(e) Prior to prescribing opioids, benzodiazepines, barbiturates, or carisoprodol, a podiatrist shall review the patient's Schedule II, III, IV, and V prescription drug history report by accessing the Texas State Board of Pharmacy's - Texas Prescription Monitoring Program (PMP) database. Failure to do so is grounds for disciplinary action by the department.

(f) Prior to prescribing any controlled substance, a podiatrist may review the patient's Schedule II, III, IV, and V prescription drug history report by accessing the Texas State Board of Pharmacy's - Texas Prescription Monitoring Program (PMP) database.

(g) An employee of the podiatrist acting at the direction of the podiatrist may perform the function described in subsection (e) and (f) of this section so long as that employee acts in compliance with HIPAA and only accesses information related to a particular patient of the podiatrist.

(h) A podiatrist or an employee of a podiatrist acting at the direction of the podiatrist may access the Texas State Board of Pharmacy's - Texas Prescription Monitoring Program (PMP) database to inquire about the podiatrist's own Schedule II, III, IV, and V prescription drug activity.

(i) If a podiatrist uses an electronic medical records management system (health information exchange) that integrates a patient's Schedule II, III, IV, and V prescription drug history data from the Texas State Board of Pharmacy's - Texas Prescription Monitoring Program (PMP) database, a review of the electronic medical records management system (health information exchange) with the integrated data shall be deemed compliant with the review of the Texas State Board of Pharmacy's - Texas Prescription Monitoring Program (PMP) database as required under §481.0764(a) of the Texas Health and Safety Code and these rules.

(j) The duty to access a patient's Schedule II, III, IV, and V prescription drug history report through the Texas State Board of Pharmacy's - Texas Prescription Monitoring Program (PMP) database as described in subsection (e) of this section does not apply in the follow-
Because access to certain controlled substances is limited, the commissioner of the Department of Public Safety makes a good faith attempt to access the Texas State Board of Pharmacy’s - Texas Prescription Monitoring Program (PMP) database but is unable to access the information because of circumstances outside the control of the pharmacist or an employee of the pharmacist and the good faith attempt and circumstances are clearly documented in the patient’s medical record for prescribing a controlled substance.

(k) Information obtained from the Texas State Board of Pharmacy’s - Texas Prescription Monitoring Program (PMP) database may be included in any form in the searched patient’s medical record and is subject to any applicable state or federal confidentiality, privacy or security laws.

(l) In accordance with Texas Health and Safety Code Chapter 483, Subchapter E., a pharmacist may prescribe an opioid antagonist to a person at risk of experiencing an opioid-related drug overdose or to a family member, friend, or other person in a position to assist the person who is at risk of experiencing an opioid-related drug overdose. A pharmacist who prescribes an opioid antagonist shall document the basis for the prescription in the medical record of the person who is at risk of experiencing an opioid-related drug overdose.

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

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SUBCHAPTER F. FEES

16 TAC §130.60, §130.61
STATUTORY AUTHORITY

The amendments and new rules are proposed under Texas Occupations Code, Chapters 51 and 202, which authorize the Texas Commission of Licensing and Regulation, the Department’s governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51, 102, 112, and 202 and Texas Health and Safety Code, Chapters 181, 311, 481 and 483. No other statutes, articles, or codes are affected by the proposal.

§130.60. Fees.
(a) Fees paid to the department are non-refundable.
(b) Fees are as follows:
1. Temporary Residency License (Initial and Renewal)--$125
2. Extended Temporary License extension--$50
3. Provisional License--$125
4. Doctor of Podiatric Medicine Initial License--$750 [Licensing Fee--$245]
6. Voluntary Charity Care Status License (Initial and Renewal)--$0
8. Nitrous Oxide Registration--$25
9. Podiatric Medical Radiological Technicians--$0
10. Duplicate License/replacement license--$25
11. The fee for a criminal history evaluation letter is the fee prescribed under §60.42 of this title (relating to Criminal History Evaluation Letters).
12. A dishonored/returned check or payment fee is the fee prescribed under §60.82 of this title (relating to Dishonored Payment Device).
13. Late renewal fees for licenses issued under this chapter are provided under §60.83 of this title (relating to Late Renewal Fees).

§130.61. Transition Rule For Two-year License Terms.
(a) The 85th Texas Legislature enacted changes to Chapter 202, Occupations Code, providing the commission with authority to establish a one or two-year license term for Doctors of Podiatric Medicine licensees. See H.B.3078, 85th Legislature, Regular Session (2017).
(b) The purpose of this transition rule is to provide guidance on how the fees will be assessed when transitioning from a one to two-year license term. This rule applies only to licenses expiring on or after September 1, 2019.
(c) Beginning September 1, 2019, the department shall stagger the renewal of licenses and issue a one-year license for renewal fee of $350 to a practitioner whose initial license was issued in an even-numbered year.
(d) This rule expires on August 31, 2020.

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

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implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51, 102, 112, and 202 and Texas Health and Safety Code, Chapters 181, 311, 481 and 483. No other statutes, articles, or codes are affected by the proposal.

§130.72. Administrative Penalties and Sanctions.
If a person or entity violates any provision of Texas Occupations Code, Chapters 51 or 202, this chapter, or any rule or order of the executive director or commission, proceedings may be instituted to impose administrative penalties, administrative sanctions, or both in accordance with the provisions of Texas Occupations Code, Chapters 51 and 202, [and] any associated rules, and consistent with the department's enforcement plan.

§130.74. Penalty Matrix.
(a) In this section the following statutes and rules are referenced:

1. Texas Health and Safety Code, Chapter 181;  
2. Texas Health and Safety Code, Chapter 311; 
3. Texas Health and Safety Code, Chapter 481;  
4. Texas Health and Safety Code, Chapter 483;  
5. Texas Occupations Code, Chapter 51;  
6. Texas Occupations Code, Chapter 102;  
7. Texas Occupations Code, Chapter 202;  
8. 16 Texas Administrative Code, Chapter 60;  
9. 25 Texas Administrative Code, Chapter 130; and  
10. 16 Texas Administrative Code, Chapter 601.

(b) In this section:

1. "TAC" means Texas Administrative Code. and  

(c) Class A Violations: Figure: 16 TAC §130.74(c)

(d) Class B Violations: Figure: 16 TAC §130.74(d)

(e) Class C Violations: Figure: 16 TAC §130.74(e)

(f) Class D Violations: Figure: 16 TAC §130.74(f)

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

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TITLE 19. EDUCATION
PART 2. TEXAS EDUCATION AGENCY
CHAPTER 109. BUDGETING, ACCOUNTING, AND AUDITING
SUBCHAPTER DD. COMMISSIONER’S RULES CONCERNING FISCAL PEER GROUPS
19 TAC §109.4001

The Texas Education Agency (TEA) proposes new §109.4001, concerning fiscal peer groups. The proposed new section would establish the criteria to be used to place school districts and open-enrollment charter schools into fiscal peer groups for purposes of an online financial information tool.

BACKGROUND INFORMATION AND JUSTIFICATION: Texas Education Code, §39.001, authorizes the commissioner of education to adopt rules as necessary to administer TEC, Chapter 39, Public School System Accountability, and TEC, §39.085, authorizes the commissioner to adopt rules to administer TEC, Chapter 39, Subchapter D, Financial Accountability. TEC, §39.082(a)(2)(A), directs the commissioner to provide additional transparency to public education finance, and TEC, §39.082(h), authorizes the commissioner to adopt rules to administer the section.

Proposed new 19 TAC §109.4001 would promote transparency by allowing users of the txschools.gov website, which is designed to provide an in-depth look into how campuses and districts are performing overall and in different areas, to compare the financial data of similar school districts and open-enrollment charter schools based upon specific criteria. The criteria include whether the school district is eligible to receive the sparsity adjustment and student enrollment levels as established in proposed new subsection (a)(2). Open-enrollment charter schools will be placed in fiscal peer groups that do not receive the sparsity adjustment. A list of fiscal peer groups categorized using the criteria in the proposed new rule is posted on the TEA website at https://tea.texas.gov/Finance_and_Grants/State_Funding/Financial_Information_Tool_(FIT)/.

The establishment of fiscal peer groups is for informational purposes only and has no effect upon a school district’s or an open-enrollment charter school’s financial accountability rating. Groupings will be reevaluated on an ongoing basis.

FISCAL IMPACT: Leo Lopez, associate commissioner for school finance, has determined that for the first five-year period the proposal is in effect there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state
agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not expand, limit, or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state’s economy.

PUBLIC BENEFIT AND COST TO PERSONS: Mr. Lopez has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be promoting transparency by ensuring that rule language provides for comparison of fiscal peer groups as determined by the commissioner. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no data and reporting impact.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: The TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins May 17, 2019, and ends June 17, 2019. A public hearing to solicit testimony and input on the proposal will be held at 9:00 a.m. on May 29, 2019, in Room 1-104, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas, 78701. Anyone wishing to testify at the hearing must sign in between 8:00 a.m. and 9:00 a.m. on the day of the hearing. The hearing will conclude once all who have signed in have been given the opportunity to comment. A form for submitting public comments is available on the TEA website at https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/. Comments on the proposal may also be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701.

STATUTORY AUTHORITY. The new section is proposed under Texas Education Code (TEC), §39.001, which authorizes the commissioner to adopt rules as necessary to administer TEC, Chapter 39; TEC, §39.082(a)(2)(A), which directs the commissioner of education to provide additional transparency to public education finance; TEC, §39.082(h), which authorizes the commissioner to adopt rules to administer TEC, §39.082; and TEC, §39.085, which authorizes the commissioner to adopt rules to administer TEC, Chapter 39, Subchapter D.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §§39.001; 39.082(a)(2)(A) and (h); and 39.085.

(a) The criteria selected by the Texas Education Agency for use in an online financial information tool to place school districts and open-enrollment charter schools in fiscal peer groups include:

(1) whether the school district is eligible to receive the sparsity adjustment; and

(2) student enrollment levels, which are determined by districtwide enrollment of:

(A) 1 through 499 students;

(B) 500 through 999 students;

(C) 1,000 through 1,599 students;

(D) 1,600 through 4,999 students;

(E) 5,000 through 24,999 students; or

(F) 25,000 or more students.

(b) Open-enrollment charter schools will be placed in fiscal peer groups that do not receive the sparsity adjustment.

(c) The establishment of fiscal peer groups is for informational purposes only and has no effect upon a school district’s or an open-enrollment charter school’s financial accountability rating.

(d) Fiscal peer groups will be reevaluated on an ongoing basis.

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

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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
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CHAPTER 151. COMMISSIONER’S RULES CONCERNING PASSING STANDARDS FOR EDUCATOR CERTIFICATION EXAMINATIONS

19 TAC §151.1001

The Texas Education Agency (TEA) proposes an amendment to §151.1001, concerning passing standards for educator certification examinations. The proposed amendment would specify the satisfactory scores for the new Principal as Instructional Leader examination and the new Performance Assessment for School Leaders as well as update the passing standards for several other examinations.

BACKGROUND INFORMATION AND JUSTIFICATION: Texas Education Code (TEC), §21.048(a), requires the commissioner of education to establish the satisfactory levels of performance required on educator certification examinations and require a satisfactory level of performance on each core subject covered by an examination.

The proposed amendment would adopt passing standards for the new Principal as Instructional Leader certification examination and the new Performance Assessment for School Leaders. Most of the passing standards previously set by the commissioner would be maintained, but others would change as follows.

Beginning July 29, 2019, passing standards would be updated for the following Texas Examinations of Educator Standards (TExES) to reflect the average raw cut score based on all active forms of a test as changed by new test forms being introduced and/or some test forms being discontinued or revised:

-801 Core Subjects EC-6 English Language Arts and Reading and the Science of Teaching Reading
-802 Core Subjects EC-6 Mathematics
-803 Core Subjects EC-6 Social Studies
-804 Core Subjects EC-6 Science
-113 English Language Arts and Reading/Social Studies 4-8
-114 Mathematics/Science 4-8
-115 Mathematics 4-8
-806 Core Subjects 4-8: English Language Arts and Reading
-808 Core Subjects 4-8: Social Studies
-235 Mathematics 7-12
-238 Life Science 7-12
-231 English Language Arts and Reading 7-12
-256 Journalism 7-12
-177 Music EC-12
-158 Physical Education EC-12
-242 Technology Applications EC-12
-272 Agriculture, Food, and Natural Resources 6-12
-273 Health Science 6-12
-276 Business and Finance 6-12
-184 American Sign Language EC-12
-610 LOTE: French EC-12
-611 LOTE: German EC-12
-613 LOTE: Spanish EC-12
-161 Special Education EC-12
-182 Visually Impaired
-283 Braille
-154 English as a Second Language Supplemental
-163 Special Education Supplemental
-160 Pedagogy and Professional Responsibilities EC-12
-270 Pedagogy and Professional Responsibilities for Trade and Industrial Education 6-12
-153 Educational Diagnostician
-068 Principal

The average passing standard is expressed as an average raw cut score of all active forms of a test or the minimum proficiency level. It is critical to note that the actual raw cut scores may vary slightly from form to form to account for differences in test item difficulty across forms and to ensure equity.

FISCAL IMPACT: Ryan Franklin, associate commissioner for educator leadership and quality, has determined that for the first five-year period the proposal is in effect there are no additional costs to state or local government required to comply with the proposal.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not expand, limit, or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state’s economy.

PUBLIC BENEFIT AND COST TO PERSONS: Mr. Franklin has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be providing clarity to educators and others regarding the required passing standards for Texas certification examinations. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no data and reporting impact.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: The TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins May 17, 2019, and ends June 17, 2019. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the Texas Register on May 17, 2019. A form for submitting public comments is available on the TEA website at https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/. Comments on the proposal may also be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701.

STATUTORY AUTHORITY: The amendment is proposed under Texas Education Code, §21.048(a), which requires the commissioner to determine the level of performance considered to be
satisfactory on educator certification examinations and further authorizes the commissioner to require a satisfactory level of performance on each core subject covered by an examination.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §21.048(a).

§151.1001. Passing Standards.

(a) As required by the Texas Education Code, §21.048(a), the commissioner of education shall determine the satisfactory level of performance for each educator certification examination and require a satisfactory level of performance on each core subject covered by an examination. The figures in this section identify the passing standards established by the commissioner for educator certification examinations.

(b) The figures in this subsection identify the passing standards established by the commissioner for classroom teacher examinations.

(1) The figure in this paragraph identifies the passing standards for early childhood through Grade 6 examinations.

Figure: 19 TAC §151.1001(b)(1)

(2) The figure in this paragraph identifies the passing standards for Grades 4-8 examinations.

Figure: 19 TAC §151.1001(b)(2)

(3) The figure in this paragraph identifies the passing standards for secondary mathematics and science examinations.

Figure: 19 TAC §151.1001(b)(3)

(4) The figure in this paragraph identifies the passing standards for secondary English language arts and social studies examinations.

Figure: 19 TAC §151.1001(b)(4)

(5) The figure in this paragraph identifies the passing standards for speech and journalism examinations.

Figure: 19 TAC §151.1001(b)(5)

(6) The figure in this paragraph identifies the passing standards for fine arts examinations.

Figure: 19 TAC §151.1001(b)(6)

(7) The figure in this paragraph identifies the passing standards for health and physical education examinations.

Figure: 19 TAC §151.1001(b)(7)

(8) The figure in this paragraph identifies the passing standards for computer science and technology applications examinations.

Figure: 19 TAC §151.1001(b)(8)

(9) The figure in this paragraph identifies the passing standards for career and technical education examinations.

Figure: 19 TAC §151.1001(b)(9)

(10) The figure in this paragraph identifies the passing standards for bilingual examinations.

Figure: 19 TAC §151.1001(b)(10) (No change.)

(11) The figure in this paragraph identifies the passing standards for languages other than English (LOTE) examinations.

Figure: 19 TAC §151.1001(b)(11)

(12) The figure in this paragraph identifies the passing standards for special education examinations.

Figure: 19 TAC §151.1001(b)(12)

(13) The figure in this paragraph identifies the passing standards for supplemental examinations.

Figure: 19 TAC §151.1001(b)(13)

(14) The figure in this paragraph identifies the passing standards for pedagogy and professional responsibilities examinations.

Figure: 19 TAC §151.1001(b)(14)

(c) The figure in this subsection identifies the passing standards established by the commissioner for student services examinations.

Figure: 19 TAC §151.1001(c)

(d) The figure in this subsection identifies the passing standards established by the commissioner for administrator examinations.

Figure: 19 TAC §151.1001(d)

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

Filed with the Office of the Secretary of State on May 6, 2019.
TRD-201901318
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: June 16, 2019
For further information, please call: (512) 475-1497

PROPOSED RULES  May 17, 2019  44 TexReg 2447