

# ADOPTED RULES

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

## TITLE 19. EDUCATION

### PART 2. TEXAS EDUCATION AGENCY

#### CHAPTER 61. SCHOOL DISTRICTS

##### SUBCHAPTER BB. COMMISSIONER'S RULES ON REPORTING REQUIREMENTS

###### 19 TAC §61.1025

The Texas Education Agency (TEA) adopts an amendment to §61.1025, concerning Public Education Information Management System (PEIMS) data and reporting standards. The amendment is adopted without changes to the proposed text as published in the April 29, 2022 issue of the *Texas Register* (47 TexReg 2410) and will not be republished. The adopted amendment reflects modifications to Texas Education Code (TEC), §48.009, made by Senate Bill (SB) 2050, 87th Texas Legislature, Regular Session, 2021, relating to the reporting of bullying incidents, including cyberbullying.

**REASONED JUSTIFICATION:** Section 61.1025 defines PEIMS data and reporting standards used by school districts and open-enrollment charter schools to submit data required by TEA to perform its legally authorized functions.

SB 2050, 87th Texas Legislature, Regular Session, 2021, added TEC, §48.009(b-4), to require that school districts and open-enrollment charter schools annually report through PEIMS the number of reported incidents of bullying that have occurred at each campus, including the number of incidents of bullying that included cyberbullying.

The adopted amendment implements SB 2050 by updating §61.1025(b)(2) to clarify that PEIMS data elements include the number of reported incidents of bullying that have occurred at each campus, including the number of incidents of bullying that included cyberbullying.

**SUMMARY OF COMMENTS AND AGENCY RESPONSES:** The public comment period on the proposal began April 29, 2022, and ended May 31, 2022. Following is a summary of the public comment received and the agency response.

**Comment:** A school district administrator commented that schools currently have 17 PEIMS submissions in a given school year, which is burdensome and unnecessary since much of the data requested is being repeated. The commenter stated that adding more reporting requirements taxes school front offices and administrators, giving them less time to support and work with students.

**Response:** The agency provides the following clarification. TEC, §48.009(b-4), as added by SB 2050, 87th Texas Legislature, Regular Session, 2021, requires that each school district and

open-enrollment charter school annually report through PEIMS the number of reported incidents of bullying, including cyberbullying, that have occurred at each campus.

**STATUTORY AUTHORITY.** The amendment is adopted under Texas Education Code, §48.009(b-4), as added by Senate Bill 2050, 87th Texas Legislature, Regular Session, 2021, which requires the agency to adopt rules necessary to require school districts and open-enrollment charter schools to annually report through the Public Education Information Management System the number of reported incidents of bullying that have occurred at each campus, including the number of incidents of bullying that included cyberbullying.

**CROSS REFERENCE TO STATUTE.** The amendment implements Texas Education Code, §48.009(b-4), as added by Senate Bill 2050, 87th Texas Legislature, Regular Session, 2021.

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

Filed with the Office of the Secretary of State on July 6, 2022.

TRD-202202554

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Texas Education Agency

Effective date: July 26, 2022

Proposal publication date: April 29, 2022

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



## PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

### CHAPTER 231. REQUIREMENTS FOR PUBLIC SCHOOL PERSONNEL ASSIGNMENTS

The State Board for Educator Certification (SBECE) adopts amendments to 19 Texas Administrative Code (TAC) §§231.3, 231.9, 231.11, 231.13, 231.15, 231.17, 231.19, 231.21, 231.23, 231.25, 231.27, 231.41, 231.43, 231.45, 231.49, 231.51, 231.57, 231.59, 231.61, 231.63, 231.65, 231.67, 231.69, 231.71, 231.73, 231.79, 231.131, 231.135, 231.153, 231.173, 231.271, 231.281, 231.289, 231.291, 231.301, 231.303, 231.305, 231.307, 231.309, 231.311, 231.313, 231.333, 231.335, 231.337, 231.339, 231.341, 231.381, 231.401, 231.403, 231.405, 231.421, 231.423, 231.425, 231.427, 231.441, 231.443, 231.469, 231.481, 231.483, 231.485, 231.487, 231.489, 231.501, 231.503, 231.521, 231.523, 231.525, 231.543, 231.561, 231.563, 231.565, 231.567, 231.569, 231.571, 231.573, 231.575, 231.577, 231.579,

231.581, 231.583, 231.587, 231.589, 231.591, 231.593, 231.631, 231.633, and 231.651 and new §§231.31, 231.293, and 231.429, concerning requirements for public school personnel assignments. The amendments are adopted without changes to the proposed text as published in the March 18, 2022, issue of the *Texas Register* (47 TexReg 1371) and will not be republished. The adopted revisions incorporate courses approved by the State Board of Education (SBOE), add certificate areas to the list of credentials appropriate for placement into an assignment, and incorporate technical edits where needed to improve readability and align citations.

**REASONED JUSTIFICATION:** The SBEC rules in 19 TAC Chapter 231 establish the personnel assignments that correlate with appropriate certifications and are organized as follows: Subchapter A, Criteria for Assignment of Public School Personnel; Subchapter B, Prekindergarten-Grade 6 Assignments; Subchapter C, Grades 6-8 Assignments; Subchapter D, Electives, Disciplinary Courses, Local Credit Courses, and Innovative Courses, Grades 6-12 Assignments; Subchapter E, Grades 9-12 Assignments, Subchapter F, Special Education-Related Services Personnel Assignments, and Subchapter G, Paraprofessional Personnel, Administrators, and Other Instructional and Professional Support Assignments. These subchapters offer guidance to school districts and educators by providing the list of courses by grade level and subject area and identifying the corresponding certificates and other requirements for placement of individuals into classroom and/or campus assignments.

Proposed revisions to 19 TAC Chapter 231, Subchapters B, C, and E, are described below.

#### *Subchapter B. Prekindergarten-Grade 6 Assignments*

##### *Science of Teaching Reading Personnel Assignments*

To align with statutory requirements in House Bill (HB) 3, 86th Texas Legislature, Regular Session, 2019, the adopted revisions add certificates that reflect the requirement that educators demonstrate proficiency in the science of teaching reading to teach certain courses. Changes to §§231.3, 231.9, 231.21, 231.23, and 231.27 add "Core Subjects with Science of Teaching Reading: Early Childhood-Grade 6" and "Early Childhood: Prekindergarten-Grade 3" certificates. Changes to §231.15 and §231.17 add "Core Subjects with Science of Teaching Reading: Early Childhood-Grade 6," "Early Childhood: Prekindergarten-Grade 3 (Prekindergarten-Grade 3 only)," and "Core Subjects with Science of Teaching Reading: Grades 4-8 (Grades 4-6 only) certificates. Changes to §231.25 and new §231.31 add the "Early Childhood: Prekindergarten-Grade 3 (Prekindergarten-Grade 3 only)" certificate.

##### *Titles, Assignments, and Technical Changes*

The adopted amendment to §231.11 updates the title to "Bilingual, Prekindergarten-Grade 6" to reflect the appropriate course title with the assignment and provides technical edits to align the appropriate certificates with the course.

The adopted amendment to §231.13 updates the title to "English as a Second Language, Prekindergarten-Grade 6" to reflect the appropriate course title with the assignment.

The adopted amendment to §231.15 updates the title to "Elementary, Prekindergarten-Grade 6" to reflect the appropriate course title with the assignment and provides technical edits to align the appropriate certificates with the course.

The adopted amendment to §231.17 updates the title to "Reading, Prekindergarten-Grade 6" to reflect the appropriate course title with the assignment and provides technical edits to align the appropriate certificates with the course.

The adopted amendment to §231.19 updates the title to "Languages Other Than English, Prekindergarten-Grade 6," adds American Sign Language to the list of courses and provides technical edits to align the appropriate certificates with the course.

Adopted new §231.31, "Health, Prekindergarten-Grade 6," adds to the course offerings with existing certificates appropriate for the assignment and updates content previously inadvertently left out of the rules.

#### *Subchapter C. Grades 6-8 Assignments*

##### *Science of Teaching Reading Personnel Assignments:*

To align with statutory requirements in HB 3, 86th Texas Legislature, Regular Session, 2019, the adopted revisions add certificates that reflect the requirement that educators demonstrate proficiency in the science of teaching reading to teach certain courses. Changes to §§231.41, 231.43, 231.45, 231.49, 231.51, 231.57, 231.61, and 231.63 add "Core Subjects with Science of Teaching Reading: Early Childhood-Grade 6" and "Core Subjects with Science of Teaching Reading: Grades 4-8" certificates. Changes to §§231.67, 231.69, 231.71, and 231.73 add the "Core Subjects with Science of Teaching Reading: Early Childhood-Grade 6" certificate. Changes to §231.59 and §231.65 add the "Core Subjects with Science of Teaching Reading: Grades 4-8" certificate. Changes to §§231.45, 231.49, and 231.51 add the "English Language Arts and Reading with Science of Teaching Reading: Grades 4-8," and "English Language Arts and Reading/Social Studies with Science of Teaching Reading: Grades 4-8" certificates. Changes to §231.57 and new §231.59 add the "English Language Arts and Reading/Social Studies with Science of Teaching Reading: Grades 4-8" certificate.

##### *Titles, Assignments, and Technical Changes*

The adopted amendment to §231.67, Health, Grades 6-8, deletes outdated certificate references in paragraphs (11) and (23) and provides further clarity around appropriate qualifications for the assignment. The remaining rules are renumbered accordingly.

The adopted amendment to §231.69, Physical Education, Grades 6-8, deletes outdated certificate references in paragraphs (8) and (16) and provides further clarity around appropriate qualifications for the assignment. The remaining rules are renumbered accordingly.

The adopted amendment to §231.79, Career Development, Grades 6-8, adds Technology Applications: Early Childhood-Grade 12 and Technology Applications: Grades 8-12 to the list of certificates appropriate to teach this course.

#### *Subchapter E. Grades 9-12 Assignments*

##### *Titles, Assignments, and Technical Changes*

*Division 1. English Language Arts and Reading, Grades 9-12 Assignments.*

The adopted amendments to §231.131, Writing, Grades 9-12, and §231.135, Journalism, Grades 9-12, incorporate minor technical edits for both courses to remove nonexistent courses, correct course name titles, and delete outdated certificate and semester credit hour references. The remaining information in these sections are renumbered accordingly, as applicable.

*Division 2. Languages Other Than English, Grades 9-12 Assignments.*

The adopted amendment to §231.153, American Sign Language, Grades 9-12, subsection (a), adds "or American Sign Language, Advanced Independent Study" to reflect a complete listing of courses for assignments to teach this subject at this grade level. All other information remains unchanged as presented in rule.

*Division 3. Social Studies, Grades 9-12 Assignments.*

The adopted amendment to §231.173, Economics with Emphasis on the Free Enterprise System and Its Benefits, Grades 9-12, adds "or Economics Advanced Studies" to reflect a complete listing of courses for assignments to teach this subject at this grade level. All other information remains unchanged as presented in rule.

*Division 9. Career Development, Grades 9-12 Assignments.*

The adopted amendment to §231.271, Career Development, Grades 9-12, subsections (a) and (c), adds Technology Applications: Early Childhood-Grade 12 and Technology Applications: Grades 8-12 to the list of certificates appropriate for the specified assignments.

*Division 10. Agriculture, Food, and Natural Resources, Grades 9-12 Assignments.*

The adopted amendment to §231.281, Agriculture, Food, and Natural Resources, Grades 9-12, removes Energy and Natural Resource Technology from the list of courses to create adopted new §231.293, Energy and Natural Resource Technology, Grades 9-12, and lists the certificates appropriate for placement into the assignment. The adopted change clarifies that individuals already teaching courses in the Renewable Energy Program of Study will also be eligible to teach this course.

*Division 12. Arts, Audio Video Technology, and Communications, Grades 9-12 Assignments.*

The adopted amendments incorporate a minor technical edit to the division title to read, "Arts, Audio/Video Technology, and Communications, Grades 9-12 Assignments." The technical edit aligns the division title reference with all other course listings in rule.

*Division 19. Human Services, Grades 9-12 Assignments.*

The adopted amendment to §231.469, Cosmetology, Grades 9-12, removes the reference to "a valid license as a cosmetology instructor issued by the Texas Department of Licensing and Regulation (TDLR)," eliminated during the 2021 legislative session, and replaces the reference to a required credential with "a valid Cosmetology Operator license or Class A Barber Operator license."

Adopted amendments as specified by divisions and sections add Trade and Industrial Workforce Training: Grades 6-12 to the list of certificates appropriate for placement into the following assignments: Division 10: §231.289 and §231.291; Division 11: §§231.301, 231.303, 231.305, 231.307, 231.309, 231.311, and 231.313; Division 12: §§231.333, 231.335, 231.337, 231.339, and 231.341; Division 16: §§231.401, 231.403, and 231.405; Division 18: §231.441 and §231.443; Division 20: §§231.481, 231.483, 231.485, 231.487, and 231.489; Division 21: §231.501 and §231.503; Division 22: §§231.521, 231.523, and 231.525; Division 23: §231.543; and Division 25: §231.631 and §231.633.

*Aligning with SBOE and Necessary Updates*

To reflect courses approved by the SBOE and to make other necessary updates, the changes adopted in the specified divisions below identify the appropriate certificates and/or training requirements for placement into various assignments.

*Division 14. Education and Training, Grades 9-12 Assignments.*

The adopted amendment to §231.381, Education and Training, Grades 9-12, adds two new SBOE-approved courses: Practicum in Early Learning, Grades 9-12, and Extended Practicum in Early Learning, Grades 9-12. The adopted changes to subsections (b) and (c) confirm that certificates and training requirements already established in rule are appropriate for assignment to teach the two new courses.

*Division 17. Health Science, Grades 9-12 Assignments.*

The adopted amendment to §231.421(a) adds the new SBOE-approved course, Pharmacy II, to the list of course offerings. The certificates already established in rule are applicable for placement into this new course assignment.

The adopted amendment to §231.421(b) adds the new SBOE-approved course, Medical Assistant, to the list of course offerings. The certificates already established in rule are applicable for placement into this new course assignment.

The adopted amendment to §231.423, Anatomy and Physiology, Medical Microbiology, and Pathophysiology, Grades 9-12, adds the new SBOE-approved course, Respiratory Therapy I, to the list of course offerings. The certificates already established in rule are applicable for placement into this new course assignment.

The adopted amendment to §231.425, Mathematics for Medical Professionals, Grades 9-12, adds the new SBOE-approved course, Medical Coding and Billing, to the list of course offerings. The certificates already established in rule are applicable for placement into this new course assignment.

The adopted amendment to §231.427, Health Informatics, Grades 9-12, deletes business, office education, and marketing certificates specified in paragraphs (5) through (9). These adopted changes align with SBOE changes to content prerequisites to teach this course.

Adopted new §231.429, Healthcare Administration and Management; Leadership and Management in Nursing, Grades 9-12, adds two new SBOE-approved courses and the certificates appropriate for placement into these course assignments.

*Division 24. Science, Technology, Engineering, and Mathematics, Grades 9-12 Assignments.*

The adopted amendments to this division delete references to Science, Technology, Engineering, and Mathematics: Grades 6-12 certificate from 12 sections: §§231.561, 231.563, 231.565, 231.567, 231.569, 231.571, 231.573, 231.575, 231.577, 231.579, 231.581, and 231.583. A Science, Technology, Engineering, and Mathematics (STEM) certificate does not exist, nor are there any plans to create an SBEC-issued certificate for this subject area. The adopted deletion of references to this non-existent certificate reduces confusion in the field regarding STEM certification. The remaining information in these sections are renumbered accordingly, as applicable.

The adopted amendments also add Trade and Industrial Education: Grades 6-12, Trade and Industrial Education: Grades 8-12, and Trade and Industrial Workforce Training: Grades 6-12 certificates, as applicable, to the list of credentials appro-

ropriate for placement into assignments specified in 16 sections: §§231.561, 231.563, 231.565, 231.567, 231.569, 231.571, 231.573, 231.575, 231.577, 231.579, 231.581, 231.583, 231.587, 231.589, 231.591, and 231.593. The remaining information in these sections are renumbered accordingly, as applicable.

#### *Division 26. Energy, Grades 9-12 Assignments.*

The adopted amendment to §231.651, Energy and Natural Resources, Grades 9-12, changes the heading to "Energy" for this series of course listings and adds the Trade and Industrial Workforce Training: Grades 6-12 certificate to the list of credentials appropriate to teach the specified courses. The remaining information in these sections are renumbered accordingly, and as applicable.

**SUMMARY OF COMMENTS AND RESPONSES.** The public comment period on the proposal began March 18, 2022, and ended April 18, 2022. The SBEC also provided an opportunity for registered oral and written comments on the proposal at the April 29, 2022, meeting in accordance with the SBEC board operating policies and procedures. The following is a summary of the public comments received on the proposal and the responses.

**Comment:** Three individuals commented in favor of the addition of Technology Applications to the list of certificates appropriate to teach Investigating Careers/Career Development courses.

**Response:** The SBEC agrees. The revisions reflect the ongoing collaboration of TEA staff who support the SBEC and the SBOE in the identification of certificates appropriate for placement of educators into various personnel assignments and the effective implementation of TEKS that ensure strong curriculum and student success in the Kindergarten-Grade 12 setting.

**Comment:** One educator commented against the addition of Technology Applications to the list of certificates appropriate to teach Career Preparation because Technology Applications certification does not require the skills necessary to place students in appropriate jobs for their individual talents and interests.

**Response:** The SBEC disagrees. The revisions reflect the ongoing collaboration of TEA staff who support the SBEC and the SBOE to increase flexibility in educator assignments by identifying certificates that are appropriate for various personnel assignments without compromising the effective implementation of TEKS that ensure strong curriculum and student success in the Kindergarten-Grade 12 setting. Several career and technical education-related certifications have already been identified as appropriate to teach these courses. Educators certified in Technology Applications are aware of the current job market and opportunities for students leaving school and seeking to enter the technology sector. Additionally, the rules do not create a requirement for school districts to hire individuals with the Technology Applications certificates; they simply allow hiring flexibility.

**Comment:** One individual commented neither in support nor against the proposed rule change. The commenter stated that teachers should be allowed to create lesson plans that can be utilized to engage the learner in the development of essential skills and to advance in public information. The administrator also shared that living experiences allow teachers to apply information and experiences to master skills.

**Response:** The comment is outside the scope of the rule. The comment does not address any of the revisions, but instead of-

fers a general opinion about the importance of lesson plans to teacher success.

The State Board of Education (SBOE) took no action on the review of amendments to §§231.3, 231.9, 231.11, 231.13, 231.15, 231.17, 231.19, 231.21, 231.23, 231.25, 231.27, 231.41, 231.43, 231.45, 231.49, 231.51, 231.57, 231.59, 231.61, 231.63, 231.65, 231.67, 231.69, 231.71, 231.73, 231.79, 231.131, 231.135, 231.153, 231.173, 231.271, 231.281, 231.289, 231.291, 231.301, 231.303, 231.305, 231.307, 231.309, 231.311, 231.313, 231.333, 231.335, 231.337, 231.339, 231.341, 231.381, 231.401, 231.403, 231.405, 231.421, 231.423, 231.425, 231.427, 231.441, 231.443, 231.469, 231.481, 231.483, 231.485, 231.487, 231.489, 231.501, 231.503, 231.521, 231.523, 231.525, 231.543, 231.561, 231.563, 231.565, 231.567, 231.569, 231.571, 231.573, 231.575, 231.577, 231.579, 231.581, 231.583, 231.587, 231.589, 231.591, 231.593, 231.631, 231.633, and 231.651 and new §§231.31, 231.293, and 231.429 at the June 17, 2022, SBOE meeting.

### **SUBCHAPTER B. PREKINDERGARTEN- GRADE 6 ASSIGNMENTS**

#### **19 TAC §§231.3, 231.9, 231.11, 231.13, 231.15, 231.17, 231.19, 231.21, 231.23, 231.25, 231.27, 231.31**

**STATUTORY AUTHORITY.** The amendments and new section are adopted under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.064, which requires the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued, and to recognize these certificates until they expire.

**CROSS REFERENCE TO STATUTE.** The adopted amendments and new section implement Texas Education Code §§21.003(a), 21.031(a), 21.041(b)(1) and (2), and 21.064.

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

Filed with the Office of the Secretary of State on July 1, 2022.

TRD-202202482

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Director, Rulemaking

State Board for Educator Certification

Effective date: July 21, 2022

Proposal publication date: March 18, 2022

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

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SUBCHAPTER C. GRADES 6-8  
ASSIGNMENTS

**19 TAC §§231.41, 231.43, 231.45, 231.49, 231.51, 231.57, 231.59, 231.61, 231.63, 231.65, 231.67, 231.69, 231.71, 231.73, 231.79**

STATUTORY AUTHORITY. The amendments are adopted under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.064, which requires the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued, and to recognize these certificates until they expire.

CROSS REFERENCE TO STATUTE. The adopted amendments implement Texas Education Code, §§21.003(a), 21.031(a), 21.041(b)(1) and (2), and 21.064.

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

Filed with the Office of the Secretary of State on July 1, 2022.

TRD-202202483  
Cristina De La Fuente-Valadez  
Director, Rulemaking  
State Board for Educator Certification  
Effective date: July 21, 2022  
Proposal publication date: March 18, 2022  
For further information, please call: (512) 475-1497

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SUBCHAPTER E. GRADES 9 - 12  
ASSIGNMENTS  
DIVISION 1. ENGLISH LANGUAGE ARTS  
AND READING, GRADES 9-12 ASSIGNMENTS

**19 TAC §231.131, §231.135**

STATUTORY AUTHORITY. The amendments are adopted under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter

B; TEC, §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.064, which requires the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued, and to recognize these certificates until they expire.

CROSS REFERENCE TO STATUTE. The adopted amendments implement Texas Education Code, §§21.003(a), 21.031(a), 21.041(b)(1) and (2), and 21.064.

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

Filed with the Office of the Secretary of State on July 1, 2022.

TRD-202202484  
Cristina De La Fuente-Valadez  
Director, Rulemaking  
State Board for Educator Certification  
Effective date: July 21, 2022  
Proposal publication date: March 18, 2022  
For further information, please call: (512) 475-1497

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DIVISION 2. LANGUAGES OTHER THAN  
ENGLISH, GRADES 9-12 ASSIGNMENTS

**19 TAC §231.153**

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.064, which requires the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued, and to recognize these certificates until they expire.

CROSS REFERENCE TO STATUTE. The adopted amendment implements Texas Education Code, §§21.003(a), 21.031(a), 21.041(b)(1) and (2), and 21.064.

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

Filed with the Office of the Secretary of State on July 1, 2022.

TRD-202202485

Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

Effective date: July 21, 2022

Proposal publication date: March 18, 2022

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



## DIVISION 3. SOCIAL STUDIES, GRADES 9-12 ASSIGNMENTS

### 19 TAC §231.173

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.064, which requires the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued, and to recognize these certificates until they expire.

CROSS REFERENCE TO STATUTE. The adopted amendment implements Texas Education Code, §§21.003(a), 21.031(a), 21.041(b)(1) and (2), and 21.064.

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

Filed with the Office of the Secretary of State on July 1, 2022.

TRD-202202486

Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

Effective date: July 21, 2022

Proposal publication date: March 18, 2022

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



## DIVISION 9. CAREER DEVELOPMENT, GRADES 9-12 ASSIGNMENTS

### 19 TAC §231.271

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.064, which requires the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued, and to recognize these certificates until they expire.

CROSS REFERENCE TO STATUTE. The adopted amendment implements Texas Education Code, §§21.003(a), 21.031(a), 21.041(b)(1) and (2), and 21.064.

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

Filed with the Office of the Secretary of State on July 1, 2022.

TRD-202202487

Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

Effective date: July 21, 2022

Proposal publication date: March 18, 2022

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



## DIVISION 10. AGRICULTURE, FOOD, AND NATURAL RESOURCES, GRADES 9-12 ASSIGNMENTS

### 19 TAC §§231.281, 231.289, 231.291, 231.293

STATUTORY AUTHORITY. The amendments and new section are adopted under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, includ-

ing emergency certificates; and TEC, §21.064, which requires the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued, and to recognize these certificates until they expire.

CROSS REFERENCE TO STATUTE. The adopted amendments and new section implement Texas Education Code, §§21.003(a), 21.031(a), 21.041(b)(1) and (2), and 21.064.

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Filed with the Office of the Secretary of State on July 1, 2022.

TRD-202202488

Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

Effective date: July 21, 2022

Proposal publication date: March 18, 2022

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



## DIVISION 11. ARCHITECTURE AND CONSTRUCTION, GRADES 9-12 ASSIGNMENTS

### 19 TAC §§231.301, 231.303, 231.305, 231.307, 231.309, 231.311, 231.313

STATUTORY AUTHORITY. The amendments are adopted under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.064, which requires the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued, and to recognize these certificates until they expire.

CROSS REFERENCE TO STATUTE. The adopted amendments implement Texas Education Code, §§21.003(a), 21.031(a), 21.041(b)(1) and (2), and 21.064.

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

Filed with the Office of the Secretary of State on July 1, 2022.

TRD-202202489

Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

Effective date: July 21, 2022

Proposal publication date: March 18, 2022

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



## DIVISION 12. ARTS, AUDIO/VIDEO TECHNOLOGY, AND COMMUNICATIONS, GRADES 9-12 ASSIGNMENTS

### 19 TAC §§231.333, 231.335, 231.337, 231.339, 231.341

STATUTORY AUTHORITY. The amendments are adopted under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.064, which requires the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued, and to recognize these certificates until they expire.

CROSS REFERENCE TO STATUTE. The adopted amendments implement Texas Education Code, §§21.003(a), 21.031(a), 21.041(b)(1) and (2), and 21.064.

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

Filed with the Office of the Secretary of State on July 1, 2022.

TRD-202202490

Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

Effective date: July 21, 2022

Proposal publication date: March 18, 2022

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



## DIVISION 14. EDUCATION AND TRAINING, GRADES 9-12 ASSIGNMENTS

### 19 TAC §231.381

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator,

educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.064, which requires the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued, and to recognize these certificates until they expire.

CROSS REFERENCE TO STATUTE. The adopted amendment implements Texas Education Code, §§21.003(a), 21.031(a), 21.041(b)(1) and (2), and 21.064.

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

Filed with the Office of the Secretary of State on July 1, 2022.

TRD-202202491

Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

Effective date: July 21, 2022

Proposal publication date: March 18, 2022

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



## DIVISION 16. GOVERNMENT AND PUBLIC ADMINISTRATION, GRADES 9-12 ASSIGNMENTS

### 19 TAC §§231.401, 231.403, 231.405

STATUTORY AUTHORITY. The amendments are adopted under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.064, which requires the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued, and to recognize these certificates until they expire.

CROSS REFERENCE TO STATUTE. The adopted amendments implement Texas Education Code, §§21.003(a), 21.031(a), 21.041(b)(1) and (2), and 21.064.

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

Filed with the Office of the Secretary of State on July 1, 2022.

TRD-202202492

Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

Effective date: July 21, 2022

Proposal publication date: March 18, 2022

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



## DIVISION 17. HEALTH SCIENCE, GRADES 9-12 ASSIGNMENTS

### 19 TAC §§231.421, 231.423, 231.425, 231.427, 231.429

STATUTORY AUTHORITY. The amendments are adopted under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.064, which requires the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued, and to recognize these certificates until they expire.

CROSS REFERENCE TO STATUTE. The adopted amendments implement Texas Education Code, §§21.003(a), 21.031(a), 21.041(b)(1) and (2), and 21.064.

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

Filed with the Office of the Secretary of State on July 1, 2022.

TRD-202202565

Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

Effective date: July 21, 2022

Proposal publication date: March 18, 2022

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



## DIVISION 18. HOSPITALITY AND TOURISM, GRADES 9-12 ASSIGNMENTS

### 19 TAC §231.441, §231.443

STATUTORY AUTHORITY. The amendments are adopted under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.064, which requires the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued, and to recognize these certificates until they expire.

CROSS REFERENCE TO STATUTE. The adopted amendments implement Texas Education Code, §§21.003(a), 21.031(a), 21.041(b)(1) and (2), and 21.064.

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

Filed with the Office of the Secretary of State on July 1, 2022.

TRD-202202493

Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

Effective date: July 21, 2022

Proposal publication date: March 18, 2022

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



## DIVISION 19. HUMAN SERVICES, GRADES 9-12 ASSIGNMENTS

### 19 TAC §231.469

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B;

TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.064, which requires the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued, and to recognize these certificates until they expire.

CROSS REFERENCE TO STATUTE. The adopted amendment implements Texas Education Code, §§21.003(a), 21.031(a), 21.041(b)(1) and (2), and 21.064.

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

Filed with the Office of the Secretary of State on July 1, 2022.

TRD-202202494

Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

Effective date: July 21, 2022

Proposal publication date: March 18, 2022

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



## DIVISION 20. INFORMATION TECHNOLOGY, GRADES 9-12 ASSIGNMENTS

### 19 TAC §§231.481, 231.483, 231.485, 231.487, 231.489

STATUTORY AUTHORITY. The amendments are adopted under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.064, which requires the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued, and to recognize these certificates until they expire.

CROSS REFERENCE TO STATUTE. The adopted amendments implement Texas Education Code, §§21.003(a), 21.031(a), 21.041(b)(1) and (2), and 21.064.

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

Filed with the Office of the Secretary of State on July 1, 2022.

TRD-202202495

Cristina De La Fuente-Valadez  
Director, Rulemaking  
State Board for Educator Certification  
Effective date: July 21, 2022  
Proposal publication date: March 18, 2022  
For further information, please call: (512) 475-1497



## DIVISION 21. LAW, PUBLIC SAFETY, CORRECTIONS, AND SECURITY, GRADES 9-12 ASSIGNMENTS

### 19 TAC §231.501, §231.503

**STATUTORY AUTHORITY.** The amendments are adopted under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.064, which requires the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued, and to recognize these certificates until they expire.

**CROSS REFERENCE TO STATUTE.** The adopted amendments implement Texas Education Code, §§21.003(a), 21.031(a), 21.041(b)(1) and (2), and 21.064.

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

Filed with the Office of the Secretary of State on July 1, 2022.

TRD-202202496  
Cristina De La Fuente-Valadez  
Director, Rulemaking  
State Board for Educator Certification  
Effective date: July 21, 2022  
Proposal publication date: March 18, 2022  
For further information, please call: (512) 475-1497



## DIVISION 22. MANUFACTURING, GRADES 9-12 ASSIGNMENTS

### 19 TAC §§231.521, 231.523, 231.525

**STATUTORY AUTHORITY.** The amendments are adopted under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern

or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.064, which requires the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued, and to recognize these certificates until they expire.

**CROSS REFERENCE TO STATUTE.** The adopted amendments implement Texas Education Code, §§21.003(a), 21.031(a), 21.041(b)(1) and (2), and 21.064.

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

Filed with the Office of the Secretary of State on July 1, 2022.

TRD-202202497  
Cristina De La Fuente-Valadez  
Director, Rulemaking  
State Board for Educator Certification  
Effective date: July 21, 2022  
Proposal publication date: March 18, 2022  
For further information, please call: (512) 475-1497



## DIVISION 23. MARKETING, GRADES 9-12 ASSIGNMENTS

### 19 TAC §231.543

**STATUTORY AUTHORITY.** The amendment is adopted under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.064, which requires the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued, and to recognize these certificates until they expire.

CROSS REFERENCE TO STATUTE. The adopted amendment implements Texas Education Code, §§21.003(a), 21.031(a), 21.041(b)(1) and (2), and 21.064.

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

Filed with the Office of the Secretary of State on July 1, 2022.

TRD-202202498

Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

Effective date: July 21, 2022

Proposal publication date: March 18, 2022

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



## DIVISION 24. SCIENCE, TECHNOLOGY, ENGINEERING, AND MATHEMATICS, GRADES 9-12 ASSIGNMENTS

**19 TAC §§231.561, 231.563, 231.565, 231.567, 231.569, 231.571, 231.573, 231.575, 231.577, 231.579, 231.581, 231.583, 231.587, 231.589, 231.591, 231.593**

STATUTORY AUTHORITY. The amendments are adopted under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.064, which requires the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued, and to recognize these certificates until they expire.

CROSS REFERENCE TO STATUTE. The adopted amendments implement Texas Education Code, §§21.003(a), 21.031(a), 21.041(b)(1) and (2), and 21.064.

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

Filed with the Office of the Secretary of State on July 1, 2022.

TRD-202202562

Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

Effective date: July 21, 2022

Proposal publication date: March 18, 2022

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



## DIVISION 25. TRANSPORTATION, DISTRIBUTION, AND LOGISTICS, GRADES 9-12 ASSIGNMENTS

**19 TAC §231.631, §231.633**

STATUTORY AUTHORITY. The amendments are adopted under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.064, which requires the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued, and to recognize these certificates until they expire.

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

Filed with the Office of the Secretary of State on July 1, 2022.

TRD-202202563

Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

Effective date: July 21, 2022

Proposal publication date: March 18, 2022

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



## DIVISION 26. ENERGY, GRADES 9-12 ASSIGNMENTS

**19 TAC §231.651**

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator,

educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.064, which requires the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued, and to recognize these certificates until they expire.

**CROSS REFERENCE TO STATUTE.** The adopted amendment implements Texas Education Code, §§21.003(a), 21.031(a), 21.041(b)(1) and (2), and 21.064.

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

Filed with the Office of the Secretary of State on July 1, 2022.

TRD-202202564

Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

Effective date: July 21, 2022

Proposal publication date: March 18, 2022

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



## CHAPTER 250. ADMINISTRATION SUBCHAPTER B. RULEMAKING PROCEDURES

### 19 TAC §250.20

The State Board for Educator Certification (SBEC) adopts an amendment to 19 Texas Administrative Code (TAC) §250.20, concerning petition for adoption of rules or rule changes. The amendment is adopted without changes to the proposed text as published in the March 18, 2022 issue of the *Texas Register* (47 TexReg 1410) and will not be republished. The adopted amendment updates the SBEC's petition procedures to allow for increased ease in submitting a petition for rulemaking for the SBEC's consideration.

**REASONED JUSTIFICATION:** Texas Government Code (TGC), §2001.021, requires that procedures to petition for the adoption of rule changes be adopted by rule. To comply with statute, the SBEC rules in 19 TAC Chapter 250, Subchapter B, establish procedures for SBEC petition for rulemaking in §250.20, Petition for Adoption of Rules or Rule Changes.

The adopted amendment to §250.20(a) updates the SBEC's petition procedures, including the petition form included as Figure: 19 TAC §250.20(a), to improve efficiency by ensuring that an interested person can submit the petition electronically. In addition, the adopted amendment to Figure: 19 TAC §250.20(a)

specifies one Texas Education Agency (TEA) division as the collection point for all petitions submitted to the SBEC and allows the petitioner to provide an email address on the petition form. This ensures timely acknowledgement, communication, review, status, and final decision of a petition by TEA staff for consideration by the SBEC at a future meeting.

The adopted new §250.20(d)(5) allows the SBEC the opportunity to deny a petition for any other reason the SBEC determines is grounds for denial. This clarifies that SBEC has the authority to deny for any reasons not specified in the enumerated list in subsection (d).

The adopted amendment to §250.20 also includes technical edits to improve readability.

**SUMMARY OF COMMENTS AND RESPONSES.** The public comment period on the proposal began March 18, 2022, and ended April 18, 2022. The SBEC also provided an opportunity for registered oral and written comments on the proposal at the April 29, 2022 meeting in accordance with the SBEC board operating policies and procedures. No public comments were received on the proposal.

The State Board of Education (SBOE) took no action on the review of the amendment to §250.20 at the June 17, 2022 SBOE meeting.

**STATUTORY AUTHORITY.** The amendment is adopted under Texas Education Code (TEC), §21.035(b), which requires the Texas Education Agency (TEA) to provide the SBEC's administrative functions and services; TEC, §21.041(a), which authorizes the SBEC to adopt rules as necessary to implement its procedures; and TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and Texas Government Code, §2001.021, which authorizes a state agency to prescribe by rule the form for a petition and the procedure for the submission, consideration, and disposition.

**CROSS REFERENCE TO STATUTE.** The adopted amendments implement Texas Education Code (TEC), §21.035(b) and §21.041(a) and (b)(1), and Texas Government Code (TGC), §2001.021.

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

Filed with the Office of the Secretary of State on July 1, 2022.

TRD-202202481

Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

Effective date: July 21, 2022

Proposal publication date: March 18, 2022

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



## TITLE 26. HEALTH AND HUMAN SERVICES

### PART 1. HEALTH AND HUMAN SERVICES COMMISSION

## CHAPTER 266. MEDICAID HOSPICE PROGRAM

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts in the Texas Administrative Code (TAC), Title 26, Part 1, new Chapter 266, Medicaid Hospice Program, Subchapters A - C, comprised of §§266.101, 266.103, 266.201, 266.203, 266.205, 266.207, 266.209, 266.211, 266.213, 266.215, 266.217, 266.219, 266.221, 266.223, 266.225, 266.227, 266.301, 266.303, 266.305, 266.307, 266.309, and 266.311.

Sections 266.101, 266.203, 266.217, and 266.219 are adopted with changes to the proposed text as published in the March 18, 2022, issue of the *Texas Register* (47 TexReg 1428). These rules will be republished.

Sections 266.103, 266.201, 266.205, 266.207, 266.209, 266.211, 266.213, 266.215, 266.221, 266.223, 266.225, 266.227, 266.301, 266.303, 266.305, 266.307, 266.309, and 266.311 are adopted without changes to the proposed text as published in the March 18, 2022, issue of the *Texas Register* (47 TexReg 1428). These rules will not be republished.

### BACKGROUND AND JUSTIFICATION

The purpose of the adoption is to update and relocate the Medicaid Hospice Program rules from 40 TAC Chapter 30 to 26 TAC Chapter 266 as part of the consolidation of HHSC's rules in 26 TAC. The repeal of the rules in 40 TAC Chapter 30 is adopted elsewhere in this issue of the *Texas Register*.

The adoption of new 26 TAC Chapter 266 will make HHSC's Medicaid Hospice Program rules consistent with the federal Medicare hospice regulations, add definitions used in the chapter, include details of utilization review policy requirements, such as describing what the individualized plan of care must include, types of required documentation that a hospice must maintain, and specifics regarding the certification of terminal illness, and update standards to protect the health and safety of individuals receiving hospice care.

The adopted new rules incorporate the federal rate changes in Title 42, Code of Federal Regulations (CFR), Chapter IV, Part 418, Subpart G, Payment for Hospice Care, that HHSC implemented on January 1, 2016. These changes allow providers to be paid at a higher rate during the first 60 days of routine home care and during the final seven days. Additionally, the new rules create an annual aggregate cap and align it with the federal fiscal year. The proposed new rules also align hospice election periods to those in 42 CFR, Chapter IV, Part 418, Subpart B, §418.21 Duration of hospice care coverage - Election periods.

The new rules also include hospice documentation requirements, recoupment of payments, and the option to request an informal review of and appeal proposed recoupment.

The new rules also update agency names, replace references to the "initial period of care" with references to the "initial election period," and replace references to "recipient" or "beneficiary" with references to "individual."

### COMMENTS

The 31-day comment period ended April 18, 2022.

During this period, HHSC received comments regarding the proposed rules from three commenters, including the Texas Academy of Physician Assistants, the Texas New Mexico Hospice Or-

ganization, and the Texas Medical Association. A summary of comments relating to the rules and HHSC responses follows.

Comment: A commenter recommended that HHSC change the term "palliative care" used in proposed new §266.217(f)(2) to "supportive palliative care" because the latter term is the term defined in Texas Health and Safety Code §142A.0001, and that §142A.0002 provides that notwithstanding any other law, a reference in this code or other law to palliative care means supportive palliative care. The commenter also provided information that this change in terminology has been made in another set of HHSC rules.

Response: HHSC declines to make the recommended changes. While reviewing the recommendations, HHSC noted that the term "palliative care" was removed from 40 TAC §30.4, relating to Definitions, in the proposed repeal of 40 TAC Chapter 30. HHSC also noted that 40 TAC Chapter 30 does not use the term "palliative care" elsewhere in the chapter. HHSC also noted that 26 TAC §266.217(f)(2) is the only rule in which "palliative care" is used in 26 TAC Chapter 266. Therefore, HHSC made a change in 26 TAC §266.217(f)(2) to replace "palliative care" with "hospice services," the term that is used throughout the chapter.

Comment: A commenter recommends physician assistants be included since the language in the rule mentions physicians and nurse practitioners regarding hospice care. Physician assistants are also members of the advanced practice providers team.

Response: HHSC agrees with the recommendation and made changes in §266.101 to add "physician assistant" in the definition of "attending physician" and to add a definition of "physician assistant."

Comment: A commenter expressed concern that 40 TAC §30.14(b) currently only requires a physician narrative that clearly identifies the reasons the individual is considered terminally ill, whereas in proposed §266.203(c)(2), a physician narrative would have to state "individual-specific clinical findings of signs and symptoms, anthropometric measurements, weights, oral intake, and laboratory and diagnostic testing results supporting the conclusion the individual is terminally ill." The commenter recommends that HHSC not heighten the requirements for physician narratives because the clinical findings required by proposed §266.203(c)(2) are not always relevant to a physician's determination that an individual is terminally ill and because requiring physicians to fulfill a new checklist when writing narratives increases the administrative burden on physicians, which takes time away from patients and contribute significantly to physician burnout. The changes the commenter recommended in §266.203(c)(2) would require a physician narrative to state the "individual-specific clinical findings, such as laboratory and diagnostic testing results, that support the physician's judgment that the individual is terminally ill."

Response: HHSC agrees with the comment and made changes in §266.203(c)(2) regarding the content of a physician narrative. However, the changes made will require a physician narrative to state the "individual-specific clinical course, exam findings, and laboratory and diagnostic testing results, that support the physician's judgment that the individual is terminally ill."

Comment: A commenter recommended that child life specialist services be added to the list of services in proposed §266.211(3) that supplement the skilled nursing care provided as part of continuous home care. Child life specialist services can help to reduce the stress and anxiety experienced by children who are terminally ill or involved in the lives of terminally ill family members.

Providing for such services would further the goal of Medicaid hospice care to bring care and comfort to the terminally ill individual during the final months of their life.

Response: HHSC notes that this is outside the scope of this rule project; however, HHSC will consider in future hospice rule projects.

Comment: A commenter recommended changes to proposed §266.217(e) and proposed §266.219(c) to clarify that the recoupments under §266.217 and §266.219 are subject to the same due process standards as other recoupments in Chapter 266. The commenter recommended adding "pursuant to Section 266.225 and Section 266.227 of this Subchapter."

Response: HHSC agrees with the recommendation and added "pursuant to §266.225 and §266.227 of this subchapter" in proposed §266.217(e) and proposed §266.219(c) as suggested.

HHSC made revisions to §266.101 to add a definition of "APRN--Advanced practice registered nurse" and to add "APRN" in the definition of "Attending physician." These changes are made because an APRN is also a member of the hospice advanced practice providers team. Because of the new definitions added in §266.101, changes are also made to reformat the section. "Advanced practice registered nurse" is replaced with "APRN" throughout the section.

"APRN" is also added to the definition of "IDT--Interdisciplinary team" to change "RN" to "an APRN who is an employee or under contract with the hospice and may perform the assessment described in §266.203(d) of this chapter (relating to Certification of Terminal Illness). The change is made to clarify that a hospice APRN must be included as a member of an IDT. Minor edits were also made in the definition of "IDT--Interdisciplinary team."

The definitions of "Licensed vocational nurse" and "RN--Registered nurse" were revised to replace "currently licensed by the Texas Board of Nursing" with "licensed under Texas Occupations Code Chapter 301." The changes are made to reference the Texas state law that provides for the licensing of nurses.

HHSC made a revision to §266.203(d) to change "hospice advanced practice RN" to "hospice APRN." The change is made to use the acronym "APRN" that was added in §266.101.

## SUBCHAPTER A. INTRODUCTION

### 26 TAC §266.101, §266.103

#### STATUTORY AUTHORITY

The new rules are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code Chapter 531, Subchapter A-1, which provides for the consolidation of the health and human services system; Texas Government Code §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code §32.021, which provides that HHSC will adopt necessary rules for the proper and efficient administration of the Medicaid program.

#### §266.101. Definitions.

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

Individual subchapters may have definitions that are specific to the subchapter.

(1) **APRN--Advanced practice registered nurse.** A registered nurse licensed under Texas Occupations Code Chapter 301 to practice as an advanced practice registered nurse.

(2) **Attending physician--A person who:**

(A) is any of the following:

(i) a doctor of medicine or osteopathy legally authorized to practice medicine and surgery by the State in which he or she performs that function or action;

(ii) an APRN who meets the training, education, and experience requirements as described in 42 CFR §410.75(b); or

(iii) a physician assistant who meets the requirements in 42 CFR §410.74(c); and

(B) is identified by the individual, at the time he or she elects to receive hospice care, as having the most significant role in the determination and delivery of the individual's medical care.

(3) **Cap year--The 12-month period ending September 30 used in the application of the caps on hospice reimbursement specified in §266.217 of this chapter (relating to Medicaid Hospice Payments and Limitations).**

(4) **CFR--Code of Federal Regulations.**

(5) **CHC--Continuous home care.** A category of care provided during a period of crisis consisting primarily of skilled nursing care.

(6) **CMS--Centers for Medicare and Medicaid Services.** The federal agency that provides funding and oversight for the Medicare and Medicaid programs.

(7) **Crisis--A sudden or severe intensification of symptoms that appropriate medical intervention and nursing services could reasonably be expected to ameliorate. Expected fluctuations in an individual's condition related to the end of life process are not a crisis.**

(8) **Curative--Designed to restore a person to health.**

(9) **Employee--An employee, as defined in the Social Security Act §210(j) (42 U.S.C. §410), of the hospice or, if the hospice is a subdivision of an agency or organization, an employee of the agency or organization who is appropriately trained and assigned to the hospice unit. The term "employee" also refers to a volunteer under the jurisdiction of the hospice.**

(10) **HHSC--Texas Health and Human Services Commission.**

(11) **ICF/IID--Intermediate care facility for individuals with an intellectual disability or related conditions.**

(12) **IDT--Interdisciplinary team.** An interdisciplinary team must include persons who are qualified and competent to practice in the following professional roles:

(A) physician who is an employee or under contract with the hospice who may also be the hospice medical director or the hospice medical director's designee;

(B) an APRN who:

(i) is an employee or under contract with the hospice; and

(ii) may perform the assessment described in §266.203(d) of this chapter (relating to Certification of Terminal Illness);

- (C) a registered nurse;
- (D) a social worker; and
- (E) a pastoral or other counselor.

(13) Licensed vocational nurse--A nurse licensed under Texas Occupations Code Chapter 301 to practice vocational nursing.

(14) Period of crisis--A period of time during which an individual requires continuous care that is primarily skilled nursing care to achieve palliation or management of acute medical symptoms.

(15) Physician--A doctor of medicine or doctor of osteopathy currently licensed by the Texas Medical Board to practice medicine or osteopathy at the time and place the service is provided.

(16) Physician Assistant--An individual who is licensed as a physician assistant under Texas Occupations Code Chapter 204.

(17) Representative--An individual who has been authorized under state law to terminate medical care or to elect or revoke the election of hospice care on behalf of a terminally ill individual who is mentally or physically incapacitated.

(18) RN--Registered nurse. An individual licensed under Texas Occupations Code Chapter 301 to practice professional nursing.

(19) SIA--Service intensity add-on. Payments for direct patient care provided by a social worker or an RN during the last seven days of life when provided during routine home care.

(20) Skilled nursing care--Tasks that are determined by the assessing RN to require the skill of a licensed nurse when considering the inherent complexity of the task, the condition of the individual, and the accepted standards of medical and nursing practice.

(21) Social worker--A person who is currently licensed as a social worker under Texas Occupations Code Chapter 505.

(22) TAC--Texas Administrative Code.

(23) Terminally ill--The individual has a medical prognosis that his or her life expectancy is six months or less if the illness runs its normal course.

(24) TMHP--Texas Medicaid & Healthcare Partnership. The Texas Medicaid program claims administrator.

(25) Utilization review--Medical record review of paid hospice claims to determine if provider compliance meets the requirements for payment of services.

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

Filed with the Office of the Secretary of State on July 6, 2022.

TRD-202202544

Karen Ray

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Health and Human Services Commission

Effective date: July 26, 2022

Proposal publication date: March 18, 2022

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## SUBCHAPTER B. UTILIZATION REVIEW

**26 TAC §§266.201, 266.203, 266.205, 266.207, 266.209, 266.211, 266.213, 266.215, 266.217, 266.219, 266.221, 266.223, 266.225, 266.227**

### STATUTORY AUTHORITY

The new rules are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code Chapter 531, Subchapter A-1, which provides for the consolidation of the health and human services system; Texas Government Code §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code §32.021, which provides that HHSC will adopt necessary rules for the proper and efficient administration of the Medicaid program.

#### §266.203. *Certification of Terminal Illness.*

##### (a) Written certification.

(1) For the initial election period, a hospice must obtain a signed and dated Physician Certification of Terminal Illness Form that meets the requirements of this section before the hospice submits an initial request for payment, but no more than 15 days before the election period begins.

(2) For an election period after the initial election period, a hospice must obtain a signed and dated Physician Certification of Terminal Illness Form that meets the requirements of this section before the previous period expires, but no more than 15 days before the next election period begins.

(3) The hospice must submit the Physician Certification of Terminal Illness Form to the TMHP Long Term Care Online Portal.

(b) Oral certification. If a hospice does not obtain the written certification required by subsection (a)(1) of this section within two days after an initial election period begins, the hospice must obtain an oral certification that meets the requirements of this section no later than two days after the initial election period begins. The hospice must obtain a written certification before it submits a claim for payment. An election period is described in §266.201 of this subchapter (relating to Duration of Hospice Care Coverage: Election Periods).

(c) Content of certification. An oral or written certification must:

(1) specify that an individual's prognosis is for a life expectancy of six months or less if the terminal illness runs its normal course;

(2) include a physician narrative that states individual-specific clinical course, exam findings, and laboratory and diagnostic testing results that support the physician's judgement that the individual is terminally ill; and

(3) include clinical information that supports the medical prognosis, which may be provided orally for an oral certification and must be provided with accompanying documentation for a written certification.

(d) Additional requirement for election period after the subsequent 90-day election period. To determine an individual's continued eligibility for hospice care for an election period after the subsequent

90-day election period, a hospice physician or hospice APRN must perform a face-to-face assessment of the individual.

(1) The hospice must ensure a face-to-face assessment is performed before each subsequent election period begins, but no more than 30 days before the subsequent election period begins.

(2) For an individual who is dually eligible for Medicare and Medicaid, a Medicare face-to-face encounter satisfies the requirement for a face-to-face assessment.

(e) Sources of certification. The hospice must obtain the certification required by subsection (a) or (b) of this section from:

(1) for the initial election period:

(A) the medical director of the hospice or a physician who is a member of the hospice IDT; and

(B) the individual's attending physician, if the individual has an attending physician; and

(2) for an election period after the initial election period, a physician described in paragraph (1)(A) of this subsection.

(f) Documentation.

(1) After the hospice receives a certification:

(A) for an oral certification, the hospice physician or RN must make an entry in the individuals' hospice record that includes the name of the physician who made the oral certification, the clinical information that supports the prognosis, the date the hospice received the certification, the signature of the staff person who makes the entry, and the date of the entry; and

(B) for a written certification, the hospice staff must file the written certification and supporting documentation in the individual's hospice record.

(2) For an election period after the subsequent 90-day election period, the hospice record must include clearly labeled documentation of the face-to-face assessment.

*§266.217. Medicaid Hospice Payments and Limitations.*

(a) Medicaid hospice per diem and hourly rates. For each day that an individual is under the care of a hospice, the hospice is paid an amount applicable to the type and intensity of the services furnished to the individual. HHSC pays a daily rate for routine home care, in-patient respite care, and general inpatient care. For CHC and the SIA, the amount of payment is based on the number of hours of care furnished to the individual on that day.

(1) Routine home care. The hospice is paid the routine home care rate for each day the individual is at home, under the care of the hospice, and not receiving CHC. The appropriate routine home care rate is determined as follows.

(A) For routine home care delivered during the first 60 days an individual is receiving hospice care, the routine home care rate is the higher base payment rate.

(B) For routine home care delivered after the first 60 days an individual is receiving hospice care, the routine home care rate is the reduced base payment rate.

(C) If an individual receiving hospice services is discharged and readmitted to hospice not more than 60 days after the discharge, HHSC will count all days the individual received hospice services since the original hospice admission in determining the proper base payment rate.

(D) If an individual receiving hospice services is discharged and readmitted to hospice more than 60 days after the discharge, HHSC disregards the previous hospice admission in determining the proper base payment rate.

(2) Service Intensity Add-on. The hospice is paid an SIA in addition to the routine home care rate for visits provided by an RN or social worker during the last seven days of a hospice election ending with an individual discharged due to death. The SIA is the CHC hourly rate, multiplied by the number of hours of care provided by the RN or social worker, up to 4 hours during a 24-hour day that begins and ends at midnight. To claim the SIA, a hospice must submit:

(A) documentation of the in-person, skilled services provided by the RN, the social worker, or both;

(B) the times the services were provided; and

(C) the Individual Election/Cancellation/Update Form indicating the hospice election was canceled due to death.

(3) Continuous Home Care. The hospice is paid the CHC rate when direct patient care is provided. The CHC rate is divided by 24 hours to arrive at an hourly rate. A minimum of 8 hours of direct patient care must be provided per day. For every hour, or part of an hour, direct patient care is furnished, the hourly rate is paid to the hospice up to 24 hours a day. HHSC pays for a maximum of five consecutive days of CHC unless HHSC receives and grants a request for an extension of CHC. If the hospice ceases to provide direct patient care, CHC has ended.

(4) Inpatient respite care. The hospice is paid at the inpatient respite care rate for each day on which the individual is in an approved inpatient facility and is receiving respite care. Payment for respite care may be made for a maximum of five days at a time including the date of admission but not counting the date of discharge. Payment for the sixth and any subsequent days is at the routine home care rate.

(A) An individual who receives hospice respite care in a nursing facility and returns home after the respite care does not have to be in a Medicaid bed in the nursing facility.

(B) Respite care days are subject to the limitation on total hospice inpatient care days, as outlined in subsection (c) of this section.

(C) If the individual dies while receiving inpatient respite care, HHSC pays the inpatient respite care rate for the day of death.

(5) General Inpatient Care. Payment is made at the general inpatient rate for each day on which the individual is in an approved inpatient facility and is receiving general inpatient care.

(A) The general inpatient care rate is paid for the day of admission and all subsequent inpatient days except the day of discharge.

(B) For the day of discharge, HHSC pays the routine home care rate.

(C) If the individual dies while in an inpatient facility, HHSC pays the general inpatient care rate for the day of death.

(D) General inpatient care days are subject to the limitation on total hospice inpatient care days, as outlined in subsection (c) of this section.

(b) Medicaid payments for physician services. The hospice:

(1) is paid for hospice physician services in accordance with the HHSC reimbursement rates for physician services;

(2) is paid for physician services on the day of discharge if the physician provides direct patient services on that day;

(3) is not paid for hospice physician services when the services are provided by physicians who are not on staff with the hospice or who are independent contractors under contract with the hospice; and

(4) must include physician services in the hospice plan of care and clinical records.

(c) Medicaid payment limitations for inpatient care. During the cap year, the aggregate number of inpatient hospice care days must not exceed 20 percent of the total number of hospice care days for the same cap year. This limitation is applied once each year, at the end of the cap year for each Medicaid hospice provider. A day counts as an inpatient hospice care day only if it is a day on which the individual who has elected hospice care receives inpatient respite care or general inpatient care. The limitation is calculated as follows.

(1) The maximum allowable number of inpatient days is calculated by multiplying the total number of days of Medicaid hospice care by 0.2.

(2) If the total number of days of inpatient care furnished to Medicaid hospice patients is less than or equal to the maximum, no adjustment is necessary.

(3) If the total number of days of inpatient care exceeds the maximum allowable number, the limitation is determined by:

(A) calculating a ratio of the maximum allowable days to the number of actual days of inpatient care and multiplying this ratio by the total reimbursement for inpatient care that was made;

(B) multiplying excess inpatient care days by the reduced base payment routine home care rate;

(C) adding together the amounts calculated in subparagraphs (A) and (B) of this paragraph; and

(D) comparing the amount calculated under subparagraph (C) of this paragraph with interim payments made to the hospice for inpatient care during the cap year.

(d) Medicaid aggregate payment limitations. During the cap year, the aggregate payments to a hospice are subject to an annual aggregate cap. This limitation is applied once each year, at the end of the cap year for each Medicaid hospice provider. A hospice's aggregate cap is calculated by multiplying the adjusted cap amount, as determined under paragraph (1) of this subsection, by the number of Medicaid beneficiaries, as determined under paragraph (2) of this subsection.

(1) Cap Amount. The cap amount was set at \$6,500 in 1983 and is updated using one of two methodologies described in subparagraphs (A) and (B) of this paragraph.

(A) For accounting years that end on or after October 1, 2025, the cap amount is adjusted for inflation by using the percentage change in the medical care expenditure category of the Consumer Price Index (CPI) for urban consumers that is published by the Bureau of Labor Statistics. This adjustment is made using the change in the CPI from March 1984 to the fifth month of the cap year.

(B) For accounting years that end before October 1, 2025, the cap amount is the cap amount for the preceding accounting year updated by the percentage update to payment rates for hospice care for services furnished during the fiscal year beginning on October

1st preceding the beginning of the accounting year as determined pursuant to the Social Security Act §1814(i)(1)(C) (42 U.S.C. §1395f), including the application of any productivity or other adjustments to the hospice percentage update.

(2) Number of Medicaid Beneficiaries. For purposes of this paragraph, HHSC adopts by reference the streamlined methodology and the patient-by-patient proportional methodology in 42 CFR §418.309(b) and (c), effective October 1, 2018, to determine the number of Medicaid beneficiaries for purposes of the aggregate cap. A hospice determines the number of Medicaid beneficiaries using the same methodology it uses to determine the number of Medicare beneficiaries under 42 CFR §418.309(b) or (c).

(e) Recoupment of Excess Payments. HHSC recoups payments in excess of the limitations for inpatient care and the aggregate payment limitations, pursuant to §266.225 and §266.227 of this subchapter (relating to Informal Review and Review Decision and Notice), from subsequent Medicaid hospice provider claims.

(f) Pediatric Concurrent Care.

(1) An individual under 21 years of age who elects to receive Medicaid hospice care may receive Medicaid services related to the treatment of the terminal illness, or a related condition, for which the hospice care was elected concurrently with the hospice care.

(2) The hospice is responsible for hospice services related to the terminal illness or a related condition. The hospice is not responsible for acute care services related to the treatment of the terminal illness or a related condition or for services unrelated to the terminal illness or a related condition.

§266.219. *Utilization Review and Control Activities Performed by HHSC.*

(a) Hospice staff must cooperate with HHSC staff during utilization review of hospice services and the review of hospice clinical records.

(b) The hospice must respond within 30 calendar days after HHSC makes a request for information.

(c) HHSC staff review most claims for payment after they are paid and recoup any overpayments, pursuant to §266.225 and §266.227 of this subchapter (relating to Informal Review and Review Decision and Notice).

(d) HHSC staff review claims for the SIA before paying the SIA.

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

Filed with the Office of the Secretary of State on July 6, 2022.

TRD-202202545

Karen Ray

Chief Counsel

Health and Human Services Commission

Effective date: July 26, 2022

Proposal publication date: March 18, 2022

For further information, please call: (512) 438-2941

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SUBCHAPTER C. CONTRACTING  
REQUIREMENTS

**26 TAC §§266.301, 266.303, 266.305, 266.307, 266.309, 266.311**

**STATUTORY AUTHORITY**

The new rules are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code Chapter 531, Subchapter A-1, which provides for the consolidation of the health and human services system; Texas Government Code §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code §32.021, which provides that HHSC will adopt necessary rules for the proper and efficient administration of the Medicaid program.

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

Filed with the Office of the Secretary of State on July 6, 2022.

TRD-202202546

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Health and Human Services Commission

Effective date: July 26, 2022

Proposal publication date: March 18, 2022

For further information, please call: (512) 438-2941



**CHAPTER 745. LICENSING**

The Texas Health and Human Services Commission (HHSC) adopts amendments to §745.115, concerning What programs regulated by other governmental entities are exempt from Licensing regulation; §745.139, concerning What will Licensing do if I operate a combination of exempt and regulated programs; and §745.8605, concerning When can Licensing recommend or impose an enforcement action against my operation, in Texas Administrative Code, Title 26, Part 1, Chapter 745, Licensing.

Amended §§745.115, 745.139, and 745.8605 are adopted without changes to the proposed text as published in the May 20, 2022, issue of the *Texas Register* (47 TexReg 3030). These rules will not be republished.

**BACKGROUND AND JUSTIFICATION**

The purpose of the rulemaking is to support Governor Abbott's May 31, 2021, proclamation declaring a state of disaster in certain Texas counties and for affected agencies. In this proclamation, Governor Abbott directed HHSC to discontinue state licensing of certain child-care facilities that provide care or shelter to undocumented immigrants. The Governor suspended §42.046 and §42.048 of Texas Human Resources Code and all other relevant laws to the extent necessary for HHSC to comply with this direction. HHSC accordingly finds that an imminent peril to the public health, safety, and welfare of the state requires the rules to be adopted with an expedited effective date.

In July 2021 and January 2022, HHSC adopted emergency rules relating to operations that are exempt from licensure and regulation by HHSC. Based on the declared disaster, HHSC found that imminent peril to the public health, safety, and welfare of the

state required immediate adoption of emergency rules. HHSC adopted an emergency amendment to clarify that a program that provides care exclusively to unlawfully present individuals is exempt from licensure and regulation by HHSC. HHSC also adopted an emergency rule to require a General Residential Operation (GRO) either to cease providing care or shelter to an unlawfully present individual by August 30, 2021, or to surrender its license to HHSC. The emergency rules also provided that child-care programs that are exempt from licensing and regulation by HHSC must be operated separately from GROs that are licensed or certified by HHSC and outlined the enforcement actions HHSC may take if a GRO provides care or shelter to an unlawfully present individual.

The present rulemaking substantially adapts the content of the emergency rules into standard rules. Accordingly, the amended rules reflect the intent and content of the emergency rules but have been updated to (1) make the licensure exemption outlined in the emergency rule amendment ongoing; (2) clarify that an existing rule that allows HHSC Child Care Regulation (CCR) to regulate an exempt program, when combined with a regulated program does not apply to the exempt operations in the proposed new rules; and (3) incorporate the enforcement components in the emergency rule into CCR's existing enforcement framework.

**COMMENTS**

The 31-day comment period ended June 20, 2022. During this period, HHSC did not receive any comments regarding the proposed rules.

**SUBCHAPTER C. OPERATIONS THAT ARE EXEMPT FROM REGULATION  
DIVISION 2. EXEMPTIONS FROM REGULATION**

**26 TAC §745.115, §745.139**

**STATUTORY AUTHORITY**

The amended rules are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

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

Filed with the Office of the Secretary of State on July 6, 2022.

TRD-202202515

Karen Ray

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Health and Human Services Commission

Effective date: July 8, 2022

Proposal publication date: May 20, 2022

For further information, please call: (512) 438-3269



**SUBCHAPTER L. ENFORCEMENT ACTIONS**

## DIVISION 1. OVERVIEW OF ENFORCEMENT ACTIONS

### 26 TAC §745.8605

#### STATUTORY AUTHORITY

The amended rule is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

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

Filed with the Office of the Secretary of State on July 6, 2022.

TRD-202202516

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Health and Human Services Commission

Effective date: July 8, 2022

Proposal publication date: May 20, 2022

For further information, please call: (512) 438-3269



## CHAPTER 745. LICENSING

### SUBCHAPTER F. BACKGROUND CHECKS

## DIVISION 2. REQUESTING BACKGROUND CHECKS

### 26 TAC §§745.609, 745.611, 745.613, 745.615, 745.617

The Texas Health and Human Services Commission (HHSC) adopts amendments to §745.609, concerning What types of background checks are required for persons at my operation; §745.611, concerning Which persons at my operation require either a fingerprint-based criminal history check or a name-based Texas criminal history check; §745.613, concerning Which persons at my operation must have an out-of-state criminal history check, an out-of-state child abuse and neglect registry check, and an out-of-state sex offender registry check; §745.615, concerning What types of background checks are required for persons at listed family homes that only provide care to related children; and §745.617, concerning How do I submit a request for a background check.

The amendments to §§745.609, 745.611, 745.613, 745.615, and 745.617 are adopted without changes to the proposed text as published in the April 8, 2022, issue of the *Texas Register* (47 TexReg 1841). These rules will not be republished.

#### BACKGROUND AND JUSTIFICATION

The amendments are necessary to comply with Senate Bill 1061, 87th Legislature, Regular Session, 2021, which amends §42.159 and §42.206 of Texas Human Resources Code (HRC), relating to Small Employer-Based Child Care (SEBCC) Operations and Shelter Care Operations. Currently, persons required to have a background check at these operation types are only

required to have a name-based Texas criminal history check. The amendments will now require most persons at these operations to submit fingerprints so a fingerprint-based criminal history check may be conducted. The change will allow HHSC Child Care Regulation (CCR) access to the Federal Bureau of Investigations National Rap Back Service by receiving immediate notification of a change in a person's criminal history. The amendments will also make the criminal history background check requirements for SEBCC Operations and Shelter Care Operations more consistent with the criminal history background check requirements for other operation types that CCR regulates.

#### COMMENTS

The 31-day comment period ended May 9, 2022. During this period, HHSC did not receive any comments regarding the proposed rules.

#### STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of Chapter 42 of the HRC.

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

Filed with the Office of the Secretary of State on July 6, 2022.

TRD-202202520

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Effective date: July 26, 2022

Proposal publication date: April 8, 2022

For further information, please call: (512) 438-3269



## CHAPTER 748. MINIMUM STANDARDS FOR GENERAL RESIDENTIAL OPERATIONS

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §748.7, concerning How are these regulations applied to family residential centers; and new §748.81, concerning What do certain terms mean in this division, §748.83, concerning May I provide care to or shelter an unlawfully present individual, and §748.85, concerning What are the requirements if I operate my general residential operation while an exempt program separately provides care for an unlawfully present individual, in Texas Administrative Code, Title 26, Part 1, Chapter 748, Minimum Standards for General Residential Operations.

Amended §748.7 and new §§748.81, 748.83, and 748.85 are adopted without changes to the proposed text as published in the May 20, 2022, issue of the *Texas Register* (47 TexReg 3033). These rules will not be republished.

#### BACKGROUND AND JUSTIFICATION

The purpose of the rulemaking is to support Governor Abbott's May 31, 2021, proclamation declaring a state of disaster in certain Texas counties and for affected agencies. In this proclamation, Governor Abbott directed HHSC to discontinue state licensing of certain child-care facilities that provide care or shelter to undocumented immigrants. The Governor suspended §42.046 and §42.048 of Texas Human Resources Code and all other relevant laws to the extent necessary for HHSC to comply with this direction. HHSC accordingly finds that an imminent peril to the public health, safety, and welfare of the state requires the rules to be adopted with an expedited effective date.

In July 2021 and January 2022, HHSC adopted emergency rules to require a GRO either to cease providing care or shelter to an unlawfully present individual by August 30, 2021, or to surrender its license to HHSC. The emergency rules also provided that child-care programs that are exempt from licensing and regulation by HHSC must be operated separately from GROs that are licensed or certified by HHSC and outlined the enforcement actions HHSC may take if a GRO provides care or shelter to an unlawfully present individual.

The present rulemaking substantially adapts the content of the emergency rules into standard rules. Accordingly, the new rules and amendment reflect the intent and content of the emergency rule but have been updated to (1) clarify that rules relating to family residential centers are only applicable when a GRO may provide care to children who are unlawfully present in the United States and in the custody of the federal government; and (2) remove the definition for the term General Residential Operation because the term is defined elsewhere in Chapter 748.

#### COMMENTS

The 31-day comment period ended June 20, 2022. During this period, HHSC did not receive any comments regarding the proposed rules.

### SUBCHAPTER A. PURPOSE AND SCOPE

#### 26 TAC §748.7

##### STATUTORY AUTHORITY

The amended rule is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

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

Filed with the Office of the Secretary of State on July 6, 2022.

TRD-202202517

Karen Ray

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Health and Human Services Commission

Effective date: July 8, 2022

Proposal publication date: May 20, 2022

For further information, please call: (512) 438-3269



## SUBCHAPTER B. DEFINITIONS AND SERVICES

### DIVISION 3. CARE OF UNLAWFULLY PRESENT INDIVIDUALS

#### 26 TAC §§748.81, 748.83, 748.85

##### STATUTORY AUTHORITY

The new rules are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

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

Filed with the Office of the Secretary of State on July 6, 2022.

TRD-202202518

Karen Ray

Chief Counsel

Health and Human Services Commission

Effective date: July 8, 2022

Proposal publication date: May 20, 2022

For further information, please call: (512) 438-3269



## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

#### CHAPTER 30. MEDICAID HOSPICE PROGRAM

As required by Texas Government Code §531.0202(b), the Department of Aging and Disability Services (DADS) was abolished effective September 1, 2017, after all of its functions were transferred to the Texas Health and Human Services Commission (HHSC) in accordance with Texas Government Code §531.0201 and §531.02011. Rules of the former DADS are codified in Title 40, Part 1, and will be repealed or administratively transferred to Title 26, Health and Human Services, as appropriate. Until such action is taken, the rules in Title 40, Part 1 govern functions previously performed by DADS that have transferred to HHSC. Texas Government Code §531.0055, requires the Executive Commissioner of HHSC to adopt rules for the operation and provision of services by the health and human services system, including rules in Title 40, Part 1. Therefore, the Executive Commissioner of HHSC adopts the repeal of rules in Texas Administrative Code (TAC) Title 40, Part 1, Chapter 30, concerning Medicaid Hospice Program consisting of §§30.2, 30.4, 30.10, 30.12, 30.14, 30.16, 30.18, 30.20, 30.30, 30.34, 30.36, 30.40, 30.50, 30.52, 30.54, 30.60, 30.62, 30.90, 30.92, and 30.100.

The repeals are adopted without changes to the proposed text as published in the March 18, 2022, issue of the *Texas Register* (47 TexReg 1444). The repeals will not be republished.

#### BACKGROUND AND JUSTIFICATION

The repeal of 40 TAC Chapter 30 deletes rules of the former DADS from the TAC. HHSC adopts new rules governing the Medicaid Hospice Program in 26 TAC Chapter 266, elsewhere in this issue of the *Texas Register*.

#### COMMENTS

The 31-day comment period ended April 18, 2022.

During this period, HHSC did not receive any comments regarding the proposed rules.

### SUBCHAPTER A. INTRODUCTION

#### 40 TAC §30.2, §30.4

##### STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code Chapter 531, Subchapter A-1, which provides for the consolidation of the health and human services system; Texas Government Code §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code §32.021, which provides that HHSC will adopt necessary rules for the proper and efficient administration of the Medicaid program.

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

Filed with the Office of the Secretary of State on July 6, 2022.

TRD-202202535

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Effective date: July 26, 2022

Proposal publication date: March 18, 2022

For further information, please call: (512) 438-2941



### SUBCHAPTER B. ELIGIBILITY REQUIREMENTS

#### 40 TAC §§30.10, 30.12, 30.14, 30.16, 30.18, 30.20

##### STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code Chapter 531, Subchapter A-1, which provides for the consolidation of the health and human services system; Texas Government Code §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a

portion of the Medicaid program; and Texas Human Resources Code §32.021, which provides that HHSC will adopt necessary rules for the proper and efficient administration of the Medicaid program.

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

Filed with the Office of the Secretary of State on July 6, 2022.

TRD-202202536

Karen Ray

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Effective date: July 26, 2022

Proposal publication date: March 18, 2022

For further information, please call: (512) 438-2941



### SUBCHAPTER C. CONTRACTING AND DISCLOSURE REQUIREMENTS

#### 40 TAC §§30.30, 30.34, 30.36

##### STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code Chapter 531, Subchapter A-1, which provides for the consolidation of the health and human services system; Texas Government Code §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code §32.021, which provides that HHSC will adopt necessary rules for the proper and efficient administration of the Medicaid program.

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

Filed with the Office of the Secretary of State on July 6, 2022.

TRD-202202537

Karen Ray

Chief Counsel

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Effective date: July 26, 2022

Proposal publication date: March 18, 2022

For further information, please call: (512) 438-2941



### SUBCHAPTER D. PROVIDERS' CONDITIONS OF PARTICIPATION: OTHER SERVICES

#### 40 TAC §30.40

##### STATUTORY AUTHORITY

The repeal is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the

health and human services agencies; Texas Government Code Chapter 531, Subchapter A-1, which provides for the consolidation of the health and human services system; Texas Government Code §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code §32.021, which provides that HHSC will adopt necessary rules for the proper and efficient administration of the Medicaid program.

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

Filed with the Office of the Secretary of State on July 6, 2022.

TRD-202202538

Karen Ray

Chief Counsel

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Effective date: July 26, 2022

Proposal publication date: March 18, 2022

For further information, please call: (512) 438-2941



## SUBCHAPTER E. COVERED SERVICES

### 40 TAC §§30.50, 30.52, 30.54

#### STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code Chapter 531, Subchapter A-1, which provides for the consolidation of the health and human services system; Texas Government Code §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code §32.021, which provides that HHSC will adopt necessary rules for the proper and efficient administration of the Medicaid program.

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

Filed with the Office of the Secretary of State on July 6, 2022.

TRD-202202539

Karen Ray

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Effective date: July 26, 2022

Proposal publication date: March 18, 2022

For further information, please call: (512) 438-2941



## SUBCHAPTER F. REIMBURSEMENT

### 40 TAC §30.60, §30.62

#### STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code Chapter 531, Subchapter A-1, which provides for the consolidation of the health and human services system; Texas Government Code §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code §32.021, which provides that HHSC will adopt necessary rules for the proper and efficient administration of the Medicaid program.

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

Filed with the Office of the Secretary of State on July 6, 2022.

TRD-202202540

Karen Ray

Chief Counsel

Department of Aging and Disability Services

Effective date: July 26, 2022

Proposal publication date: March 18, 2022

For further information, please call: (512) 438-2941



## SUBCHAPTER I. MEDICAL REVIEW AND RE-EVALUATION

### 40 TAC §30.90, §30.92

#### STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code Chapter 531, Subchapter A-1, which provides for the consolidation of the health and human services system; Texas Government Code §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code §32.021, which provides that HHSC will adopt necessary rules for the proper and efficient administration of the Medicaid program.

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

Filed with the Office of the Secretary of State on July 6, 2022.

TRD-202202542

Karen Ray

Chief Counsel

Department of Aging and Disability Services

Effective date: July 26, 2022

Proposal publication date: March 18, 2022

For further information, please call: (512) 438-2941



SUBCHAPTER J. MISCELLANEOUS

40 TAC §30.100

STATUTORY AUTHORITY

The repeal is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code Chapter 531, Subchapter A-1, which provides for the consolidation of the health and human services system; Texas Government Code §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code §32.021, which provides that HHSC will adopt necessary rules for the proper and efficient administration of the Medicaid program.

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

Filed with the Office of the Secretary of State on July 6, 2022.

TRD-202202543

Karen Ray

Chief Counsel

Department of Aging and Disability Services

Effective date: July 26, 2022

Proposal publication date: March 18, 2022

For further information, please call: (512) 438-2941

