TITLE 1. ADMINISTRATION

PART 1. OFFICE OF THE GOVERNOR

CHAPTER 5. GENERAL ADMINISTRATION

SUBCHAPTER C. REGULATORY COMPLIANCE DIVISION

1 TAC §§5.206, 5.209 - 5.211, 5.213

The Regulatory Compliance Division of the Office of the Governor ("Division") adopts amendments to 1 TAC §§5.206, 5.209, 5.210, and 5.213, concerning the Division's procedure for reviewing a supplemental amendment to a previously reviewed proposed rule. The Division also adopts a new rule at 1 TAC §5.211, concerning the Division's ability to request information from a state agency when deciding whether to direct the state agency to submit a proposed rule for review. The amendments and new rule are adopted without changes to the proposed text as published in the September 3, 2021, issue of the Texas Register (46 TexReg 5491) and will not be republished.

REASONED JUSTIFICATION

Pursuant to Texas Occupations Code, Chapter 57, Subchapter C, the Division is responsible for conducting an independent review of certain state agencies' proposed rules that affect market competition. The primary purpose of the adopted amendments and new rule is to increase efficiencies in the Division's processes for identifying and reviewing proposed rules that affect market competition.

The adopted amendments to §5.206 allow the Division to review an additional amendment to a previously reviewed proposed rule and issue an addendum to the Division's original determination letter.

The adopted amendments to §5.209 set out the procedures and timeline for issuing an addendum to a determination letter.

The adopted amendments to §5.210 explain how a state agency may adopt and implement a proposed rule if an addendum is issued.

The adopted amendments to §5.213 require that any addenda issued by the Division be maintained on the Division's website.

The adopted new §5.211 makes clear that, prior to initiating a review, the Division may request information from a state agency to determine whether a proposed rule affects market competition.

SUMMARY OF COMMENTS

The Division received one comment from the Texas Behavioral Health Executive Council in support of the adopted amendments and new rule.

STATUTORY AUTHORITY

The amendments and new rule are adopted under Texas Occupations Code §57.107, which provides that the Division may adopt rules to carry out its functions under Texas Occupations Code, Chapter 57, Subchapter C.

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

Filed with the Office of the Secretary of State on October 8, 2021.

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Erin Bennett

Director, Regulatory Compliance Division

Office of the Governor

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Proposal publication date: September 3, 2021

For further information, please call: (512) 463-8500

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES

SUBCHAPTER F. REIMBURSEMENT METHODOLOGY FOR PROGRAMS SERVING PERSONS WITH MENTAL ILLNESS OR INTELLECTUAL OR DEVELOPMENTAL DISABILITY

1 TAC §355.727

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §355.727, concerning Add-on Payment Methodology for Home and Community-Based Services Supervised Living and Residential Support Services. Section 355.727 is adopted without changes to the proposed text as published in the August 13, 2021, issue of the Texas Register (46 TexReg 4927). This rule will not be republished.

BACKGROUND AND JUSTIFICATION

The purpose of the adopted amendment extends the period in which add-on payments for Home and Community-based Services Waiver (HCS) Supervised Living and Residential Support Services (SL/RSS) are effective.

The amendment is necessary to comply with 2022-23 General Appropriations Act, Senate Bill (S.B.) 1, 87th Legislature, Regular Session, 2021 (Article II, HHSC, Rider 30), which requires

ADOPTED RULES  October 22, 2021  46 TexReg 7205
BACKGROUND AND JUSTIFICATION

The purpose of the amendment is to comply with Senate Bill (S.B.) 1, Article II, HHSC, Rider 8(f), 87th Legislature, Regular Session 2021, and to make other amendments to enhance clarity, consistency, and specificity. HHSC is required by S.B. 1 to allocate certain funds appropriated to provide an increase to outpatient reimbursement rates for rural hospitals. HHSC will implement an increase to outpatient services reimbursement by removing the cap that was established September 1, 2013, and applying a percentage increase to the cost to charge ratios for rural hospitals.

The amendment will also eliminate the cost settlement of payments to maintain the level of payment directed by the rider. Rider 8 states that reimbursement for outpatient emergency department services which do not qualify as emergency visits may not exceed 65 percent of the cost. Therefore, HHSC will decrease the allowable percentage to 55 percent for these services to accommodate the increase in cost to charge ratios and retain the payments below 65 percent of the cost.

Pursuant to S.B. 170, 86th Legislature, Regular Session, 2019 and S.B. 1621, 86th Legislature, Regular Session, 2019, HHSC's managed care contracts require managed care organizations to reimburse rural hospitals using a minimum fee schedule for services delivered through the Medicaid managed care program. The proposed amendment adds subsection (e), requiring a Medicaid minimum fee schedule for all rural hospitals, to conform the rule to the current law as well.

In addition, the amendment explains the cost to charge ratio (CCR) rate-setting process by including a section specific to rural hospitals.

COMMENTS

The 21-day comment period ended September 3, 2021.

During this period, HHSC received three comments regarding the amendment from one entity: Texas Hospital Association (THA). A summary of the comments relating to the rule and HHSC's responses are as follows.

Comment: The first comment requested clarification on the effective date of the rule.
Response: HHSC will implement the outpatient rate changes with an effective date of September 1, 2021 to comply with S.B. 1, Article II, Rider 8(f), 87th Legislature, Regular Session 2021. However, the rule amendment will take effect on a subsequent date. Pursuant to §355.201, rate changes may be implemented in compliance with either the methodology described in Chapter 355 or consistent with legislative appropriations. No changes were made to the rule text as a result of this comment.

Comment: The second comment requested confirmation on whether the full amount of funds would be allocated over ten months if implemented November 1, 2021.
Response: HHSC will implement an increase to outpatient service reimbursement by applying a percentage increase to the cost to charge ratios for rural hospitals effective September 1, 2021. No changes were made to the rule text as a result of this comment.

Comment: The third comment asked for clarification regarding the way funds will be distributed by the managed care organizations (MCO).

SUBCHAPTER J. PURCHASED HEALTH SERVICES

DIVISION 4. MEDICAID HOSPITAL SERVICES

1 TAC §355.8061

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §355.8061, concerning Outpatient Hospital Reimbursement. The amendment to §355.8061 is adopted with changes to the proposed text as published in the August 13, 2021, issue of the Texas Register (46 TexReg 4931). This rule will be republished.
Response: HHSC adopted a methodology effective September 1, 2020 through contracts with the MCOs requiring the MCOs to reimburse rural hospitals for Medicaid managed care services using a minimum fee schedule as contemplated by S.B. 170, 86th Legislature, Regular Session, 2019 and S.B. 1621, 86th Legislature, Regular Session, 2019.

HHSC amended subsection (e) to reflect the correct effective date of the MCO contract amendments.

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out HHSC’s duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Texas Human Resources Code Chapter 32; and Texas Government Code §531.02194, which requires adoption of a prospective reimbursement methodology for the payment of rural hospitals.

§355.8061. Outpatient Hospital Reimbursement.

(a) Introduction. The Texas Health and Human Services Commission (HHSC), or its designee reimburses outpatient hospital services under the reimbursement methodology described in this section. Except as described in subsections (c) and (d) of this section, HHSC will reimburse for outpatient hospital services based on a percentage of allowable charges and an outpatient interim rate.

(b) Interim reimbursement.

(1) HHSC will determine a percentage of allowable charges, which are charges for covered Medicaid services determined through claims adjudication.

(A) For high volume providers that received Medicaid outpatient payments equaling at least $200,000 during calendar year 2004.

(i) For children’s hospitals and state-owned hospitals as defined in §355.8052 of this division (relating to Inpatient Hospital Reimbursement), the percentage of allowable charges is 76.03 percent, except as described in subparagraph (C) of this paragraph.

(ii) For rural hospitals as defined in §355.8052 of this division, the percentage of allowable charges is 100 percent.

(iii) For all other providers, the percentage of allowable charges is 72.00 percent.

(B) For all providers not considered high volume providers as determined in paragraph (1)(A) of this subsection.

(i) For children’s hospitals and state-owned hospitals as defined in §355.8052 of this division, the percentage of allowable charges is 72.27 percent, except as described in subparagraph (C) of this paragraph.

(ii) For rural hospitals as defined in §355.8052 of this division, the percentage of allowable charges is 100 percent.

(iii) For all other providers, the percentage of allowable charges is 68.44 percent.

(C) For children’s hospitals:

(i) The percentage of allowable charges described in subparagraphs (A)(i) and (B)(i) of this paragraph are subject to the prior written approval of the Legislative Budget Board and the Governor, as required by the 2014-2015 General Appropriations Act (Article II, Health and Human Services Comm., S.B. 1, 83rd Leg., Regular Session, 2013, Rider 83 and Special Provisions Relating to All Health and Human Services Agencies, Section 44, Rate Limitations and Reporting Requirements).

(ii) If the percentages of allowable charges described in subparagraphs (A)(i) and (B)(i) of this paragraph are not approved as described in clause (i) of this subparagraph, the percentages of allowable charges described in subparagraphs (A)(iii) and (B)(iii) of this paragraph apply.

(D) For outpatient emergency department (ED) services that do not qualify as emergency visits, which are listed in the Texas Medicaid Provider Procedures Manual and other updates on the claims administrator’s website, HHSC will reimburse:

(i) rural hospitals, as defined in §355.8052 of this division, an amount not to exceed 65 percent of allowable charges after application of the methodology in paragraph (2)(C) of this subsection, which will result in a payment that does not exceed 65 percent of allowable cost; and

(ii) all other hospitals, a flat fee set at a percentage of the Medicaid acute care physician office visit amount for adults.

(2) HHSC will determine an outpatient interim rate for each non-rural hospital, which is the ratio of Medicaid allowable outpatient costs to Medicaid allowable outpatient charges derived from the hospital's Medicaid cost report.

(A) For a non-rural hospital with at least one tentative cost report settlement completed prior to September 1, 2013, the interim rate is the rate in effect on August 31, 2013, except the hospital will be assigned the interim rate calculated upon completion of any future cost report settlement if that interim rate is lower.

(B) For a non-rural new hospital that does not have at least one tentative cost report settlement completed prior to September 1, 2013, the default interim rate is 50 percent until the interim rate is adjusted as follows:

(i) If the non-rural hospital files a short-period cost report for its first cost report, the hospital will be assigned the interim rate calculated upon completion of the hospital's first tentative cost report settlement.

(ii) The hospital will be assigned the interim rate calculated upon completion of the hospital's first full-year tentative cost report settlement.

(iii) The hospital will retain the interim rate calculated as described in clause (ii) of this subparagraph, except it will be assigned the interim rate calculated upon completion of any future cost report settlement if that interim rate is lower.

(C) Interim claim reimbursement for non-rural hospitals is determined by multiplying the amount of a hospital's outpatient allowable charges after applying any reductions to allowable charges made under paragraph (1) of this subsection by the outpatient interim rate in effect on the date of service.

(D) Cost settlement. Interim claim reimbursement determined in subparagraph (C) of this paragraph will be cost-settled at both tentative and final audit of a non-rural hospital's cost report. The calculation of allowable costs will be determined based on the amount
of allowable charges after applying any reductions to allowable charges made under paragraph (1) of this subsection.

(i) Interim payments for claims with a date of service prior to September 1, 2013, will be cost settled.

(ii) Interim payments for claims with a date of service on or after September 1, 2013, will be included in the cost report interim rate calculation, but will not be adjusted due to cost settlement unless the settlement calculation indicates an overpayment.

(iii) HHSC will calculate an interim rate at tentative and final cost settlement for the purposes described in subparagraph (B) of this paragraph.

(iv) If a hospital's interim claim reimbursement for all outpatient services, excluding imaging, clinical lab and outpatient emergency department services that do not qualify as emergency visits, for the hospital's fiscal year exceeded the allowable costs for those services, HHSC will recoup the amount paid to the hospital in excess of allowable costs.

(v) If a hospital's interim claim reimbursement for all outpatient services, excluding imaging, clinical lab and outpatient emergency department services that do not qualify as emergency visits, for the hospital's fiscal year was less than the allowable costs for those services, HHSC will not make additional payments through cost settlement to the hospital for service dates on or after September 1, 2013.

(3) HHSC will determine an outpatient interim rate for each rural hospital, which is the ratio of Medicaid allowable outpatient costs to Medicaid allowable outpatient charges derived from the hospital's Medicaid cost report.

(A) For a rural hospital with at least one tentative cost report settlement completed prior to September 1, 2021, the interim rate effective on September 1, 2021, is the rate calculated in the latest initial cost report with an additional percentage increase, not to exceed an interim rate of 100 percent. After September 1, 2021, a rural hospital will be assigned the interim rate calculated upon completion of each initial or amended initial cost report, with an additional percentage increase, not to exceed an interim rate of 100 percent.

(B) For a new rural hospital that does not have at least one initial cost report completed prior to September 1, 2021, the default interim rate is 50 percent until the interim rate is adjusted as follows.

(i) If the rural hospital files a short-period cost report for their first cost report, the hospital will continue to receive the default rate until completion of the first full-year initial cost report.

(ii) The rural hospital will be assigned the interim rate calculated upon completion of a review of the hospital's first full-year initial or amended initial cost report, with an additional percentage increase, not to exceed an interim rate of 100 percent.

(C) Interim claim reimbursement for a rural hospital is determined by multiplying the amount of a hospital's outpatient allowable charges after applying any reductions to allowable charges made under paragraph (1) of this subsection by the outpatient interim rate in effect on the date of service as described in subparagraph (A) of this paragraph.

(D) Interim claim reimbursement determined in subparagraph (C) of this paragraph will not be cost-settled for services rendered on or after September 1, 2021.

(c) Outpatient hospital surgery. Outpatient hospital non-emergency surgery is reimbursed in accordance with the methodology for ambulatory surgical centers as described in §355.8121 of this subchapter (relating to Reimbursement).

(d) Outpatient hospital imaging.

(1) For all hospitals except rural hospitals, as defined in §355.8052 of this division, outpatient hospital imaging services are not reimbursed under the outpatient reimbursement methodology described in subsection (b) of this section. Outpatient hospital imaging services are reimbursed according to an outpatient hospital imaging service fee schedule that is based on a percentage of the Medicare Outpatient Prospective Payment System fee schedule for similar services. If a resulting fee for a service provided to any Medicaid beneficiary is greater than 125 percent of the Medicaid adult acute care fee for a similar service, the fee is reduced to 125 percent of the Medicaid adult acute care fee.

(2) For rural hospitals, outpatient hospital imaging services are reimbursed based on a percentage of the Medicare Outpatient Prospective Payment System fee schedule for similar services.

(e) Minimum Fee Schedule. Effective September 1, 2020, Managed Care Organizations are required to reimburse rural hospitals based on a minimum fee schedule. The minimum fee schedules are the rates specific to rural hospitals, as described in subsections (b) - (d) of this section.

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

Filed with the Office of the Secretary of State on October 4, 2021.

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Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Effective date: October 24, 2021
Proposal publication date: August 13, 2021
For further information, please call: (512) 839-9493

STAR

TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 74. CURRICULUM REQUIREMENTS

SUBCHAPTER BB. COMMISSIONER’S RULES CONCERNING HIGH SCHOOL GRADUATION

19 TAC §74.1023

The Texas Education Agency (TEA) adopts new §74.1023, concerning the financial aid application requirement for high school graduation. The new section is adopted with changes to the proposed text as published in the April 16, 2021 issue of the Texas Register (46 TexReg 2545) and will be republished. The adopted new rule reflects the requirements in House Bill (HB) 3, 86th Texas Legislature, 2019, that each student complete and submit a free application for federal student aid (FAFSA) or a Texas application for state financial aid (TASFA) before graduating from high school and that school districts and open-enrollment charter schools report completion information to TEA.

REASONED JUSTIFICATION: The 86th Texas Legislature, 2019, passed HB 3, adding new Texas Education Code (TEC),
§28.0256, to require a student to complete a financial aid application, either the FAFSA or the TASFA, in order to graduate. The statute provides an exception for students to opt out of the financial aid application requirement by submitting a form signed by a parent, guardian, or student aged 18 years old or older that authorizes the student to decline to comply with the financial aid application graduation requirement. A high school counselor may also authorize a student to decline to comply with the financial aid application graduation requirement for good cause. The opt-out form must be approved by TEA. At the January 2021 State Board of Education (SBOE) meeting, the SBOE took action to add the financial aid application requirement to 19 TAC Chapter 74, Curriculum Requirements, Subchapter B, Graduation Requirements, §74.11, High School Graduation Requirements, effective beginning with students enrolled in Grade 12 during the 2021-2022 school year.

Adopted new §74.1023 establishes requirements for school districts and open-enrollment charter schools regarding the implementation of the financial aid application requirement.

Adopted subsections (b) and (c) address the conditions under which a student may decline to complete a financial aid application by formally opting out and establish requirements for the opt-out form. Based on public comment, subsection (b)(3) was amended at adoption by striking the sentence "In accordance with TEC, §28.0256(d), if a school counselor notifies a school district that a student has declined to complete and submit a financial aid application for good cause, the school counselor may not indicate details regarding what constitutes good cause."

Adopted subsection (d) establishes standards for required notifications school districts and open-enrollment charter schools must provide to students regarding the financial aid requirement, the financial aid applications, and the opt-out form and would establish timelines for the distribution of the information.

Adopted subsection (e) identifies the methods school districts and open-enrollment charter schools must require as proof that a student has completed and submitted the FAFSA or TASFA. This subsection also permits school districts and open-enrollment charter schools to adopt a local policy for the method by which a student must provide proof that the student has completed a FAFSA. The subsection also requires school districts and open-enrollment charter schools to adopt a local policy for the method by which a student must provide proof that the student has completed a TASFA.

Adopted subsection (f) establishes a requirement for school districts and open-enrollment charter schools to report the number of students who completed and submitted a financial aid application and the number of students who submitted exceptions in accordance with TEC, §28.0256(b).

Adopted subsection (g) ensures that school districts and open-enrollment charter schools maintain student financial aid application information securely and ensure compliance with federal and state law regarding the confidentiality of student educational information.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began April 16, 2021, and ended May 17, 2021. Following is a summary of public comments received and agency responses.

Comment. Two counselors and one parent stated that the financial aid application requirement seems to be an unfair disad-
Comment. One administrator stated that schools already have long lists of documents to track without the additional requirements of financial aid application or opt-out forms.

Response. This comment is outside the scope of the proposed rulemaking.

Comment. One counselor stated that it will be difficult to track when a family is opting out.

Response. This comment is outside the scope of the proposed rulemaking.

Comment. One counselor expressed concern that the financial aid application requirement will add to the amount of paperwork school counselors are required to track and complete and that time spent assisting students with this requirement will take away support time for student behavioral and mental health.

Response. This comment is outside the scope of the proposed rulemaking.

Comment. Three parents stated that they are against the financial aid application requirement.

Response. The agency provides the following clarification. A student may graduate without completing a financial aid application by submitting an opt-out form signed by the parent or guardian, counselor, or student if age 18 or older to authorize the student to decline to submit a financial aid application.

Comment. One parent stated that more funding should be provided for additional school counseling staff to provide support to families.

Response. This comment is outside the scope of the proposed rulemaking.

Comment. One administrator and one community member stated that the financial aid application requirement seems to be unfair and provides no benefit to students.

Response. The agency disagrees and has determined that there is a clear benefit to students' submitting a financial aid application, including promoting their postsecondary education and eligibility for state and federal funds. The agency also provides the following clarification. TEC, §28.0256, provides an exception for students to opt out of the financial aid application requirement by submitting a form signed by a parent, guardian, or student aged 18 years old or older that authorizes the student to decline to comply with the financial aid application graduation requirement.

Comment. One administrator stated that their school provides training to parents and students on financial aid applications and that this requirement is unnecessary.

Response. The agency disagrees and has determined that the requirement to complete and submit a financial aid application is necessary to comply with state law, TEC, §28.0256, and appropriately included in commissioner rule.

Comment. One administrator and one counselor stated that the FAFSA is not law but an optional activity and that parents and students should not be required to complete a financial aid application.

Response. The agency disagrees and has determined that the requirement to complete and submit a financial aid application is aligned with state law, TEC, §28.0256, and appropriately included in commissioner rule.

Comment. One counselor expressed concern that the financial aid application requirement promotes the belief that it is school counselors' responsibility to make sure students test for admission, apply to college, receive scholarships, etc.

Response. This comment is outside the scope of the proposed rulemaking.

Comment. One counselor stated that schools should not be responsible for the financial aid application requirement.

Response. The agency disagrees and has determined that the requirement to complete and submit a financial aid application is aligned with state law, TEC, §28.0256, and appropriately included in commissioner rule.

Comment. The Texas Association of School Boards (TASB) expressed concern that TEC, §28.0256(d), conflicts with proposed 19 TAC §74.1023(b)(3) and requested clarification. TASB noted that TEC, §28.0256(d), states that a school counselor "may not indicate the manner" in which the student complies with the high school graduation requirements under the section but that the proposed rule requires the school counselor to notify the district that the student "declined to complete and submit a financial aid application for good cause." TASB stated that TEC, §28.0256(d), seems to prohibit the counselor from indicating which of the options for exemption the student used (student authorization, parent authorization, or counselor authorization), i.e., the "manner" in which the student complied by receiving an exemption.

Response. The agency agrees that the language could be confusing and modified §74.1023(b)(3) at adoption to strike the sentence that reads, "In accordance with TEC, §28.0256(d), if a school counselor notifies a school district that a student has declined to complete and submit a financial aid application for good cause, the school counselor may not indicate details regarding what constitutes good cause."

Comment. TASB recommended that the language in proposed 19 TAC §74.1023(e)(2) be changed to require procedures instead of policy to clarify that a school board does not need to adopt a policy regarding the method by which a student provides proof that he or she completed the FAFSA and TASFA. TASB stated that allowing the adoption of the TEA-provided opt-out form to be handled at the administrative level reduces time spent in board meetings on ministerial tasks and allows for efficient changes if the form is ever updated.

Response. The agency disagrees and has determined that the establishment of a local policy by the school board was in keeping with the recommendations of the Financial Aid Application Requirement Advisory Committee.

STATUTORY AUTHORITY. The new section is adopted under Texas Education Code (TEC), §28.0256(a), as added by House Bill (HB) 3, 86th Texas Legislature, 2019, which requires each student to complete and submit a free application for federal student aid (FAFSA) or a Texas application for state financial aid (TASFA) before graduating from high school. TEC, §28.0256(c), allows a student to formally opt out of the financial aid application requirement by submitting a TEA-approved form; TEC, §28.0256(e)(1), as added by HB 3, 86th Texas Legislature, 2019, which requires the commissioner of education by rule to establish timelines for the distribution to students of the FAFSA and TASFA and for the submission of the opt-out form. The rule is required to include standards for information school districts and open-enrollment charter schools must provide to students regarding filling out the FAFSA and TASFA and the option for
students to decline to complete a financial aid application. Additionally, the rule is required to establish the method by which a student must provide proof to the school district or open-enrollment charter school that the student has submitted a FAFSA or TASFA; TEC, §28.0256(e)(2), as added by HB 3, 86th Texas Legislature, 2019, which requires the commissioner to adopt rules regarding the requirement that school districts report information regarding the number of students who completed and submitted a financial aid application and the number of students who received an exception by submitting an opt-out form; and TEC, §28.0256(e)(3), as added by HB 3, 86th Texas Legislature, 2019, which requires the commissioner to ensure compliance with federal law regarding confidentiality of student educational information, including the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g), and any state law relating to the privacy of student information.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §28.0256(a), (c), and (e), as added by House Bill 3, 86th Texas Legislature, 2019.


(a) In accordance with Texas Education Code (TEC), §28.0256, beginning with students enrolled in Grade 12 during the 2021-2022 school year, a student shall complete and submit a free application for federal student aid (FAFSA) or a Texas application for state financial aid (TASFA) as a requirement for receiving a high school diploma.

(b) A student may opt out of the financial aid application requirement in subsection (a) of this section under one of the following conditions:

1. the student's parent or other person standing in parental relation submits a signed form indicating that the parent or other person authorizes the student to decline to complete and submit the financial aid application;

2. the student signs and submits the form described by paragraph (1) of this subsection on the student’s own behalf if the student is 18 years of age or older or is emancipated under the Texas Family Code, Chapter 31; or

3. a school counselor signs and submits the form described by paragraph (1) of this subsection indicating that the school counselor authorizes the student to decline to complete and submit the financial aid application for good cause, as determined by the school counselor.

(c) The board of trustees for each school district and open-enrollment charter school shall adopt the standard opt-out form provided by the Texas Education Agency (TEA) for the purpose of the exceptions under subsection (b) of this section.

1. The opt-out form shall be available in English, Spanish, and any other language spoken by a majority of the students enrolled in a bilingual education or special language program under TEC, Chapter 29, Subchapter B, in the district or charter school. Districts and charter schools are responsible for translations not provided by TEA.

2. The opt-out form must include the student's signature of intent to decline to complete a financial aid application prior to the student's anticipated graduation date.

(d) Each school district and open-enrollment charter school shall provide students with the following notifications regarding the financial aid application requirement.

1. Standard information regarding the financial aid requirement and the exceptions under subsection (b) of this section shall be provided at the time a student first registers for one or more classes required for high school graduation.

2. Detailed information regarding instructions for the completion and submission of a financial aid application shall be provided to a student at the beginning of Grade 12 or at the time a student in Grade 12 transfers into a high school from a non-public school or a public school outside of Texas. The instructions shall include:

   A. an explanation of the FAFSA and TASFA and the difference between the two;

   B. instructions for how to access the FAFSA and TASFA, including key dates and deadlines for completion and submission;

   C. resources available to support completion and submission of the FAFSA and TASFA;

   D. documents and information required to complete the FAFSA or TASFA; and

   E. contact information for school staff or local community resources available to support completion of the forms.

3. Options available to a student under subsection (b) of this section if a student wishes to decline to complete and submit a financial aid application shall be provided to a student at the beginning of Grade 12 or at the time a student in Grade 12 transfers into a high school from a non-public school or a public school outside of Texas. The options shall include:

   A. the opt-out form and explanation of required signatures; and

   B. notification that if the student chooses to opt out for the purposes of graduation, the student will still be eligible to complete the FAFSA or TASFA that year or in subsequent years.

4. Each school district and open-enrollment charter school shall require one of the following methods of proof that a student has completed and submitted the FAFSA or TASFA as required by this section.

   1. Completion and submission of the FAFSA shall be confirmed through one of the following methods:

      A. ApplyTexas Counselor Suite FAFSA data;

      B. notification from the United States Department of Education that demonstrates a student has completed and submitted a FAFSA; or

      C. a local policy developed by a school district or an open-enrollment charter school for the method by which a student must provide proof that the student has completed a FAFSA.

   2. School districts and open-enrollment charter schools shall develop a local policy for the method by which a student must provide proof that the student has completed a TASFA.

5. Each school district and open-enrollment charter school shall report through the Texas Student Data System Public Education Information Management System (TSDS PEIMS) the following information not later than December 1 of each school year for students awarded diplomas in the previous school year:

   1. the number of students who completed and submitted a financial aid application; and

   2. the number of students who submitted an exception.
(g) Each school district and open-enrollment charter school shall maintain student financial aid application information securely and ensure compliance with federal law regarding the confidentiality of student educational information, including the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g), and any state law relating to the privacy of student information.

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

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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
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Proposal publication date: April 16, 2021
For further information, please call: (512) 475-1497

CHAPTER 89. ADAPTATIONS FOR SPECIAL POPULATIONS
SUBCHAPTER D. SPECIAL EDUCATION SERVICES AND SETTINGS

19 TAC §89.61, §89.63

The State Board of Education (SBOE) adopts the repeal of §89.61 and §89.63, concerning special education services and settings. The repeals are adopted without changes to the proposed text as published in the July 23, 2021 issue of the Texas Register (46 TexReg 4430) and will not be republished. The adopted repeals implement House Bill (HB) 3, 86th Texas Legislature, 2019, which removed the SBOE's rulemaking authority related to instructional arrangements in special education.

REASONED JUSTIFICATION: Section 89.61 allows a school district to contract for residential placement of a student when the student's admission, review, and dismissal (ARD) committee determines that a residential placement is necessary in order for the student to receive a free appropriate public education. Section 89.63 allows a school district to provide services through special education personnel to students with disabilities in order to meet the special needs of those students, defines the regular school day as the period of time determined appropriate by the ARD committee, defines special education instructional arrangements//settings, and requires that the instructional arrangements/settings be based on the individual needs and individualized education programs of eligible students receiving special education.

HB 3, 86th Texas Legislature, 2019, redesignated Texas Education Code (TEC), §42.151, as TEC, §48.102, and amended the statute to transfer rulemaking authority related to residential placements and instructional arrangements from the SBOE to the commissioner of education. New 19 TAC §89.1005, Instructional Arrangements and Settings, and §89.1092, Contracting for Residential Educational Placements for Students with Disabilities, were adopted under the commissioner's rulemaking authority effective March 14, 2021. The repeal of §89.61 and §89.63 is necessary as statutory authority for the rules no longer exists.

The SBOE approved the proposed repeals for first reading and filing authorization at its June 25, 2021 meeting and for second reading and final adoption at its September 3, 2021 meeting.

In accordance with TEC, §7.102(f), the SBOE approved the repeals for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2022-2023 school year. The earlier effective date will remove rules whose statutory authority no longer exists as soon as possible. The effective date is 20 days after filing as adopted with the Texas Register.

SUMMARY OF COMMENTS AND RESPONSES: The public comment period on the proposal began July 23, 2021, and ended at 5:00 p.m. on August 27, 2021. The SBOE also provided an opportunity for registered oral and written comments at its September 2021 meeting in accordance with the SBOE board operating policies and procedures. Following is a summary of the public comments received and the corresponding responses.

Comment: An educator commented that with limited public resources, residential facilities are typically not appropriate placements. The commenter added that these facilities do not provide age-appropriate nondisabled peers as role models for students with disabilities.
Response: The SBOE provides the following clarification. Section 89.61 and §89.63 are being repealed because rulemaking authority transferred from the SBOE to the commissioner of education. Substantially similar rules were adopted in 19 TAC §89.1005 and §89.1092 under the commissioner's rulemaking authority effective March 14, 2021.

Comment: A dyslexia coordinator commented that if the state only includes evaluation under IDEA, many students may not be identified early and would lose the chance for early intervention.
Response: This comment is outside the scope of the current rule proposal.

STATUTORY AUTHORITY. The repeals are adopted under Texas Education Code (TEC), §48.102(e), as amended and redesignated by House Bill (HB) 3, 86th Texas Legislature, 2019, which requires the commissioner of education by rule to prescribe the qualifications and instructional arrangements that must be met in order to be funded as a particular instructional arrangement under TEC, §48.102(2); and TEC, §48.102(g), as amended and redesignated by HB 3, 86th Texas Legislature, 2019, which requires the commissioner of education to adopt rules governing contracts for residential placement of special education students.

CROSS REFERENCE TO STATUTE. The repeals implement Texas Education Code, §48.102(e) and (g).

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

Filed with the Office of the Secretary of State on October 6, 2021.

TRD-202103957
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: October 26, 2021
Proposal publication date: July 23, 2021
For further information, please call: (512) 475-1497
CHAPTER 109. BUDGETING, ACCOUNTING, AND AUDITING

SUBCHAPTER B. TEXAS EDUCATION AGENCY AUDIT FUNCTIONS

19 TAC §109.25

The State Board of Education (SBOE) adopts an amendment to §109.25, concerning the state compensatory education program reporting and auditing system. The amendment is adopted without changes to the proposed text as published in the July 23, 2021, issue of the Texas Register (46 TexReg 4431) and will not be republished. The adopted amendment updates references to statutory citations that were renumbered by House Bill (HB) 3, 86th Texas Legislature, 2019.

REASONED JUSTIFICATION: Section 109.25 addresses the requirement for each school district and charter school to report financial information relating to the expenditure of the state compensatory education allotment under the Foundation School Program to the Texas Education Agency.

Changes to §109.25 are necessary as a result of the statutorily required rule review of Chapter 109. The adopted amendment replaces Texas Education Code (TEC), §42.152(c), with §48.104(k) and TEC, §42.152(q), with §48.104(o) to reflect the renumbering of statute by HB 3, 86th Texas Legislature, 2019.

The SBOE approved the proposed amendment for first reading and filing authorization at its June 25, 2021 meeting and for second reading and final adoption at its September 3, 2021 meeting.

In accordance with TEC, §7.102(f), the SBOE approved the amendment for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2022-2023 school year. The earlier effective date will update references to statute as soon as possible. The effective date is 20 days after filing as adopted with the Texas Register.

SUMMARY OF COMMENTS AND RESPONSES: The public comment period on the proposal began July 23, 2021, and ended at 5:00 p.m. on August 27, 2021. The SBOE also provided an opportunity for registered oral and written comments at its September 2021 meeting in accordance with the SBOE board operating policies and procedures. Following is a summary of the public comment received and the corresponding response.

Comment: The National Parents Union expressed thanks to the SBOE for their due diligence with Chapter 109, Budgeting, Accounting, and Auditing.

Response: The SBOE agrees.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code, §48.104, as redesignated and amended by House Bill 3, 86th Texas Legislature, 2019, which requires the State Board of Education to adopt rules requiring a report on the use of compensatory education funds as part of the annual audit and develop minimum requirements for that report.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §48.104.

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

Filed with the Office of the Secretary of State on October 6, 2021.

TRD-202103958
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: October 26, 2021
Proposal publication date: July 23, 2021
For further information, please call: (512) 475-1497

TITLE 22. EXAMINING BOARDS

PART 16. TEXAS BOARD OF PHYSICAL THERAPY EXAMINERS

CHAPTER 322. PRACTICE

22 TAC §322.1

The Texas Board of Physical Therapy Examiners adopts amendments to 22 Texas Administrative Code (TAC) §322.1(a), concerning Initiation of physical therapy services, pursuant to HB 1363 amendments to Sec. 453.301, Occupations Code during the 87th Legislative Session. The amendment is adopted in order to include physical therapists who have a doctoral degree in physical therapy and are certified by an entity approved by the PT Board in the group that can treat patients for fifteen (15) consecutive business days before requiring a referral from a qualified healthcare practitioner. The amendments are adopted without changes to the proposed text as published in the August 27, 2021, issue of the Texas Register (46 TexReg 5338). The rule will not be republished.

No public comment was received.

The amended rule is adopted under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

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

Filed with the Office of the Secretary of State on October 11, 2021.

TRD-202104004
Ralph A. Harper
Executive Director
Texas Board of Physical Therapy Examiners
Effective date: November 1, 2021
Proposal publication date: August 27, 2021
For further information, please call: (512) 305-6900

CHAPTER 329. LICENSING PROCEDURE

22 TAC §329.7

The Texas Board of Physical Therapy Examiners adopts amendments to 22 Texas Administrative Code (TAC) §329.7, Exemptions from Licensure, pursuant to HB 139 amendment of Sec. 55.0041. RECOGNITION OF OUT-OF-STATE LICENSE OF

ADMITTED RULES October 22, 2021 46 TexReg 7213
MILITARY SPOUSE to Chapter 55, Occupations Code during the 87th Legislative Session. The amendment is adopted in order to include providing a copy of the permanent change of station order for the military service member to whom the spouse is married to the proof of residency requirement. The amendments are adopted without changes to the proposed text as published in the August 27, 2021, issue of the Texas Register (46 TexReg 5339). The rule will not be republished.

No public comment was received.

The amended rule is adopted under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

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

Filed with the Office of the Secretary of State on October 11, 2021.
TRD-202104005
Ralph A. Harper
Executive Director
Texas Board of Physical Therapy Examiners
Effective date: November 1, 2021
Proposal publication date: August 27, 2021
For further information, please call: (512) 305-6900

PART 39. TEXAS BOARD OF PROFESSIONAL GEOScientISTS

CHAPTER 851. TEXAS BOARD OF PROFESSIONAL GEOScientISTS LICENSING AND ENFORCEMENT RULES
SUBCHAPTER B. P.G. LICENSING, FIRM REGISTRATION, AND GIT CERTIFICATION

22 TAC §851.41, §851.80

The Texas Board of Professional Geoscientists (TBPG) adopts amendments concerning the licensure and regulation of Professional Geoscientists in Texas. TBPG adopts amendments to 22 TAC §851.41 and §851.80 to add the Texas Fundamentals of Geophysics exam as an option to qualify for Geoscientist-in-Training (GIT) certification and to add a fee for that examination, respectively. These rules are adopted without changes to the proposed text as published in the July 9, 2021, issue of the Texas Register (46 TexReg 4079) and will not be republished.

The adopted amendments will allow applicants for the GIT certification in the discipline of Geophysics to utilize the Texas Fundamentals of Geophysics examination as the qualifying examination for obtaining the certificate. These changes will benefit applicants who apply for the GIT certification in the discipline of geophysics because the current examination tests knowledge of both fundamentals and professional practice of geophysics. The new fundamentals-only examination is better suited to applicants at this early stage in their careers because it eliminates the need for these applicants to answer the professional practice questions before they have had the opportunity to gain the necessary knowledge and experience. The adopted amendments add an examination fee for applicants requesting to sit for the new Texas Fundamentals of Geophysics Examination. The adopted cost to take the new Texas Fundamentals of Geophysics Examination is $75. This fee represents a reduction in cost to applicants for GIT certification because the fee for the currently-required examination for the geophysics GIT certification is $175. Therefore, in offering a new fundamentals examination, there is a decrease in the cost to applicants for requesting GIT certification in geophysics. The certification for GIT is also optional, so the cost is not mandatory for applicants. The adopted amendments also revise the name “National Association of State Boards of Geology (ASBOG®)” to be “ASBOG™” to reflect ASBOG’s shortened name.

The adopted amendment to 22 TAC §851.41 adds language in subsection (a)(2)(c), to show that the "Texas Fundamentals of Geophysics Examination (TFGE)" is the qualifying examination for the GIT certification in geophysics. The adopted amendment also revises the name "National Association of State Boards of Geology (ASBOG®)" to be “ASBOG™” to reflect ASBOG’s shortened name.

The adopted amendment to 22 TAC §851.80 adds the Texas Fundamentals of Geophysics examination fee of $75. The adopted amendment also removes the name “National Association of State Board of Geology (ASBOG®)” and replaces it with the shortened name “ASBOG™” in subsection (d)(1) when referring to the provider of the Geology Fundamentals and Practice exams. It also renumbers the section.

The public benefit anticipated as a result of enforcing or administering the sections includes ensuring that TBPG rules are clear and consistent regarding the examination requirements for a GIT certification in the discipline of geophysics. It is also beneficial to GIT applicants in geophysics because the Texas Fundamentals of Geophysics Exam is an appropriate measure of an applicant’s knowledge at this stage of their career. There is also the added benefit of a reduced cost to those applicants who apply for certification as a GIT in geophysics in Texas.

No comments were received regarding these amendments.

This section is adopted under the Texas Geoscience Practice Act, Occupations Code §1002.151, which authorizes the Board to adopt and enforce all rules consistent with the Act as necessary for the performance of its duties; Occupations Code §1002.152, which provides that Board shall set reasonable and necessary fees to be charged applicants for examination; Occupations Code §1002.352, which allows the Board to establish criteria by which an individual may register with the board as a GIT.

This section affects the Texas Geoscience Practice Act, Occupations Code §§1002.151, 1002.152, and 1002.352.

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

Filed with the Office of the Secretary of State on October 8, 2021.
TRD-202103992
TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 742. MINIMUM STANDARDS FOR LISTED FAMILY HOMES

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §742.401, concerning What are the notification requirements; and new §742.806, concerning What are the requirements if my home chooses to maintain and administer unassigned epinephrine auto-injectors, in Title 26, Texas Administrative Code (TAC), Chapter 742, Minimum Standards for Listed Family Homes. The amended §742.401 and new §742.806 are adopted without changes to the proposed text as published in the July 30, 2021, issue of the Texas Register (46 TexReg 4545). These rules will not be republished.

BACKGROUND AND JUSTIFICATION

The amended and new rules are necessary to implement House Bill (H.B.) 4260, 86th Legislature, Regular Session, 2019. H.B. 4260 added §773.0145 to Texas Health and Safety Code. This statute allows the Texas Department of State Health Services (DSHS) to designate in rule an entity that would benefit from the possession and use of unassigned epinephrine auto-injectors, so that the entity could then adopt a policy regarding the maintenance, administration, and disposal of unassigned epinephrine auto-injectors. This statute also includes specific requirements that an entity must follow and requires DSHS to adopt rules regarding an entity’s maintenance, administration, and disposal of unassigned epinephrine auto-injectors.

In February 2021, the Executive Commissioner of HHSC, on behalf of DSHS, adopted the rules required by Texas Health and Safety Code §773.0145 in 25 TAC Chapter 40, Subchapter C (relating to Epinephrine Auto-Injector Policies in Youth Facilities). These rules allow certain youth facilities, including listed family homes, to voluntarily adopt policies relating to maintenance, administration, and disposal of unassigned epinephrine auto-injectors. The amended and new rule further support the rules adopted on behalf of DSHS by allowing a listed family home to voluntarily adopt unassigned epinephrine auto-injector policies, provided the listed family home follows the rules adopted on behalf of DSHS.

COMMENTS

The 31-day comment period ended August 30, 2021. During this period, HHSC did not receive any comments regarding the proposed rules.

SUBCHAPTER D. NOTIFICATIONS AND LIABILITY INSURANCE REQUIREMENTS

26 TAC §742.401

STATUTORY AUTHORITY

The amendment 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 October 5, 2021.
TRD-202103920
Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: October 25, 2021
Proposal publication date: July 30, 2021
For further information, please call: (512) 438-3269

SUBCHAPTER H. HEALTH AND SAFETY PRACTICES

26 TAC §742.806

STATUTORY AUTHORITY

The new section 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.

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Karen Ray
Chief Counsel
Health and Human Services Commission
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For further information, please call: (512) 438-3269

CHAPTER 743. MINIMUM STANDARDS FOR SHELTER CARE

SUBCHAPTER D. SAFETY PRACTICES

26 TAC §743.301

ADOPTED RULES  October 22, 2021  46 TexReg 7215
The Texas Health and Human Services Commission (HHSC) adopts new §743.301, concerning What are the requirements if my operation chooses to maintain and administer unassigned epinephrine auto-injectors, in Title 26, Texas Administrative Code (TAC), Chapter 743, Minimum Standards for Shelter Care, new Subchapter D, Safety Practices. New §743.301 is adopted without changes to the proposed text as published in the July 30, 2021, issue of the Texas Register (46 TexReg 4547). This rule will not be republished.

BACKGROUND AND JUSTIFICATION
The new rule is necessary to implement House Bill (H.B.) 4260, 86th Legislature, Regular Session, 2019. H.B. 4260 added §773.0145 to Texas Health and Safety Code. This statute allows the Texas Department of State Health Services (DSHS) to designate in rule an entity that would benefit from the possession and use of unassigned epinephrine auto-injectors, so that the entity could then adopt a policy regarding the maintenance, administration, and disposal of unassigned epinephrine auto-injectors. This statute also includes specific requirements that an entity must follow and requires DSHS to adopt rules regarding an entity’s maintenance, administration, and disposal of unassigned epinephrine auto-injectors.

In February 2021, the Executive Commissioner of HHSC, on behalf of DSHS, adopted the rules required by Texas Health and Safety Code §773.0145 in 25 TAC Chapter 40, Subchapter C (relating to Epinephrine Auto-Injector Policies in Youth Facilities). These rules allow certain youth facilities, including temporary shelter care operations, to voluntarily adopt policies relating to maintenance, administration, and disposal of unassigned epinephrine auto-injectors. The new rule further supports the rules adopted on behalf of DSHS by allowing a temporary shelter care operation to voluntarily adopt unassigned epinephrine auto-injector policies, provided the operation follows the rules adopted on behalf of DSHS.

COMMENTS
The 31-day comment period ended August 30, 2021. During this period, HHSC did not receive any comments regarding the proposed rule.

STATUTORY AUTHORITY
The new section 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 October 5, 2021.

Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: October 25, 2021
Proposal publication date: July 30, 2021
For further information, please call: (512) 438-3269

CHAPTER 744. MINIMUM STANDARDS FOR SCHOOL-AGE AND BEFORE OR AFTER-SCHOOL PROGRAMS
The Texas Health and Human Services Commission (HHSC) adopts amendments to §744.307, concerning What emergency or medical situations must I notify parents about; §744.501, concerning What written operational policies must I have; and §744.701, concerning What written records must I keep of accidents and incidents that occur at my operation, in Title 26, Texas Administrative Code (TAC), Chapter 744, Minimum Standards for School-Age and Before or After-School Programs.

The amended §§744.307, 744.501, and 744.701 are adopted without changes to the proposed text as published in the July 30, 2021, issue of the Texas Register (46 TexReg 4548). These rules will not be republished.

BACKGROUND AND JUSTIFICATION
The amendments are necessary to implement House Bill (H.B.) 4260, 86th Legislature, Regular Session, 2019. H.B. 4260 added §773.0145 to Texas Health and Safety Code. This statute allows child-care facilities, as defined in Texas Human Resources Code §42.002, and other entities to adopt a policy regarding the maintenance, administration, and disposal of unassigned epinephrine auto-injectors. This statute also includes specific requirements that an entity must follow and requires the Department of State Health Services (DSHS) to adopt rules regarding an entity’s maintenance, administration, and disposal of unassigned epinephrine auto-injectors.

In February 2021, the Executive Commissioner of HHSC, on behalf of DSHS, adopted the rules required by Texas Health and Safety Code §773.0145 in 25 TAC Chapter 40, Subchapter C (relating to Epinephrine Auto-Injector Policies in Youth Facilities). Consistent with Health and Safety Code §773.0145, these rules allow certain youth facilities, including child-care facilities, to voluntarily adopt policies relating to maintenance, administration, and disposal of unassigned epinephrine auto-injectors. The amended rules further support the rules adopted on behalf of DSHS by allowing a child-care facility to voluntarily adopt unassigned epinephrine auto-injector policies, provided the child-care facility follows the rules adopted on behalf of DSHS.

COMMENTS
The 31-day comment period ended August 30, 2021. During this period, HHSC did not receive any comments regarding the proposed rules.

SUBCHAPTER B. ADMINISTRATION AND COMMUNICATION
DIVISION 2. REQUIRED NOTIFICATIONS
26 TAC §744.307
STATUTORY AUTHORITY

46 TexReg 7216   October 22, 2021   Texas Register
The amendment 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 October 5, 2021.

TRD-202103925
Karen Ray
Chief Counsel
Health and Human Services Commission
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Proposal publication date: July 30, 2021
For further information, please call: (512) 438-3269

SUBCHAPTER B. ADMINISTRATION AND COMMUNICATION
DIVISION 4. OPERATIONAL POLICIES
26 TAC §744.501

STATUTORY AUTHORITY

The amendment 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 October 5, 2021.

TRD-202103926
Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: October 25, 2021
Proposal publication date: July 30, 2021
For further information, please call: (512) 438-3269

SUBCHAPTER C. RECORD KEEPING
DIVISION 2. RECORDS OF ACCIDENTS AND INCIDENTS
26 TAC §744.701

STATUTORY AUTHORITY

The amendment 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 October 5, 2021.

TRD-202103927
Karen Ray
Chief Counsel
Health and Human Services Commission
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Proposal publication date: July 30, 2021
For further information, please call: (512) 438-3269

CHAPTER 745. LICENSING
SUBCHAPTER D. APPLICATION PROCESS
DIVISION 11. EMPLOYER-BASED CHILD CARE
26 TAC §745.469

The Texas Health and Human Services Commission (HHSC) adopts new §745.469, concerning What are the requirements if my operation chooses to maintain and administer unassigned epinephrine auto-injectors, in Title 26, Texas Administrative Code (TAC), Chapter 745, Licensing, Subchapter D, Application Process, Division 11, Employer-Based Child Care.

New §745.469 is adopted without changes to the proposed text as published in the July 30, 2021, issue of the Texas Register (46 TexReg 4551). This rule will not be republished.

BACKGROUND AND JUSTIFICATION

The new rule is necessary to implement House Bill (H.B.) 4260, 86th Legislature, Regular Session, 2019. H.B. 4260 added §773.0145 to Texas Health and Safety Code. This statute allows the Texas Department of State Health Services (DSHS) to designate in rule an entity that would benefit from the possession and use of unassigned epinephrine auto-injectors, so that the entity could then adopt a policy regarding the maintenance, administration, and disposal of unassigned epinephrine auto-injectors. This statute also includes specific requirements that an entity must follow and requires DSHS to adopt rules regarding an entity's maintenance, administration, and disposal of unassigned epinephrine auto-injectors.

In February 2021, the Executive Commissioner of HHSC, on behalf of DSHS, adopted the rules required by Texas Health and Safety Code §773.0145 in 25 TAC Chapter 40, Subchapter C (relating to Epinephrine Auto-Injector Policies in Youth Facilities). These rules allow certain youth facilities, including employer-based child-care facilities, to voluntarily adopt policies
relating to maintenance, administration, and disposal of unassigned epinephrine auto-injectors. The new rule supports the rules adopted on behalf of DSHS by allowing an employer-based child-care facility to voluntarily adopt unassigned epinephrine auto-injector policies, provided the facility follows the rules adopted on behalf of DSHS.

COMMENTS
The 31-day comment period ended August 30, 2021. During this period, HHSC did not receive any comments regarding the proposed rule.

STATUTORY AUTHORITY
The new section 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 October 5, 2021.
TRD-202103928
Karen Ray
Chief Counsel
Health and Human Services Commission
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Proposal publication date: July 30, 2021
For further information, please call: (512) 438-3269

CHAPTER 746. MINIMUM STANDARDS FOR CHILD-CARE CENTERS
The Texas Health and Human Services Commission (HHSC) adopts amendments to §746.307, concerning What emergency or medical situations must I notify parents about; §746.501, concerning What written operational policies must I have; §746.701, concerning What written records must I keep of accidents and incidents that occur at my child-care center; and §746.801, concerning What records must I keep at my child-care center, in Title 26, Texas Administrative Code (TAC), Chapter 746, Minimum Standards for Child-Care Centers. The amended §§746.307, 746.501, 746.701, and 746.801 are adopted without changes to the proposed text as published in the July 30, 2021, issue of the Texas Register (46 TexReg 4553). These rules will not be republished.

BACKGROUND AND JUSTIFICATION
The amendments are necessary to implement House Bill (H.B.) 1849 and H.B. 4260, 86th Legislature, Regular Session, 2019. H.B. 1849 added §42.067 to Texas Human Resources Code, to allow a licensed child-care center to administer and store unassigned epinephrine auto-injectors, provided the child-care center meets certain requirements when an unassigned epinephrine auto-injector has been used on a child, and requirements related to storage, training, and notification.

H.B. 4260 added §773.0145 to Texas Health and Safety Code. This statute allows child-care facilities, as defined in Texas Human Resources Code §42.002, and other entities, to adopt a policy regarding maintenance, administration, and disposal of unassigned epinephrine auto-injectors. This statute also includes specific requirements that an entity must follow and requires the Texas Department of State Health Services (DSHS) to adopt rules regarding an entity's maintenance, administration, and disposal of unassigned epinephrine auto-injectors.

In February 2021, the Executive Commissioner of HHSC, on behalf of DSHS, adopted the rules required by Texas Health and Safety Code §773.0145 in 25 TAC Chapter 40, Subchapter C (relating to Epinephrine Auto-Injector Policies in Youth Facilities). Consistent with Health and Safety Code §773.0145, these rules allow certain youth facilities, including child-care facilities, to voluntarily adopt policies relating to maintenance, administration, and disposal of unassigned epinephrine auto-injectors. The rules adopted on behalf of DSHS also generally address the requirements listed in Texas Human Resources Code §42.067. The amended rules further support the rules adopted on behalf of DSHS by allowing a child-care facility to voluntarily adopt unassigned epinephrine auto-injector policies, provided the child-care facility follows the rules adopted on behalf of DSHS.

COMMENTS
The 31-day comment period ended August 30, 2021. During this period, HHSC received one comment regarding the proposed rules from Kids Count Too, a licensed child-care center. A summary of the comment relating to the rules and HHSC's response follows.

Comment: Regarding §746.801(23), one commenter opposed the rule based on concerns that Child Care Regulation will require all child-care centers to obtain an unassigned prescription for an epinephrine auto-injector. The commenter stated child-care centers do not have the ability or expertise to obtain and administer medications to children for whom the medication is not explicitly prescribed.

Response: HHSC disagrees with the comment and declines to revise the rule. §746.801(23) relates to documentation requirements for child-care centers that choose to maintain admin-strate unassigned epinephrine auto-injectors. Any requirements associated with the use of an auto-injector are contingent on whether a child-care center volunteers to administer and maintain unassigned epinephrine auto-injectors. If a child-care center finds that administering and maintaining unassigned epinephrine auto-injectors is beyond the scope of the center's abilities, the center is not required to obtain, maintain, or administer an unassigned epinephrine auto-injector.

SUBCHAPTER B. ADMINISTRATION AND COMMUNICATION
DIVISION 2. REQUIRED NOTIFICATION
26 TAC §746.307
STATUTORY AUTHORITY
The amendment 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 October 5, 2021.
 TRD-202103931
 Karen Ray
 Chief Counsel
 Health and Human Services Commission
 Effective date: October 25, 2021
 Proposal publication date: July 30, 2021
 For further information, please call: (512) 438-3269

DIVISION 4. OPERATIONAL POLICIES

26 TAC §746.501

STATUTORY AUTHORITY

The amendment 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.

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 Karen Ray
 Chief Counsel
 Health and Human Services Commission
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 For further information, please call: (512) 438-3269

SUBCHAPTER C. RECORD KEEPING

DIVISION 2. RECORDS OF ACCIDENTS AND INCIDENTS

26 TAC §746.701

STATUTORY AUTHORITY

The amendment 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 October 5, 2021.
 TRD-202103932
 Karen Ray
 Chief Counsel
 Health and Human Services Commission
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 Proposal publication date: July 30, 2021
 For further information, please call: (512) 438-3269

CHAPTER 747. MINIMUM STANDARDS FOR CHILD-CARE HOMES

The Texas Health and Human Services Commission (HHSC) adopts amendments to §747.305, concerning What emergency and medical situations must I notify parents about; §747.501, concerning What written operational policies must I have; and §747.701, concerning What written records must I keep of accidents and incidents that occur at my child-care home; and the repeal of §747.2107, concerning Am I required to have a written activity plan, in Title 26, Texas Administrative Code (TAC), Chapter 747, Minimum Standards for Child-Care Homes. The amended §§§747.305, 747.501, and 747.701, and the repeal of §747.2107 are adopted without changes to the proposed text as published in the July 30, 2021, issue of the Texas Register (46 TexReg 4557). These rules will not be republished.

BACKGROUND AND JUSTIFICATION
The amendments are necessary to implement House Bill (H.B.) 4260, 86th Legislature, Regular Session, 2019. H.B. 4260 added §773.014 to Texas Health and Safety Code. This statute allows child-care facilities, as defined in Texas Human Resources Code §42.002, and other entities to adopt a policy regarding the maintenance, administration, and disposal of unassigned epinephrine auto-injectors. This statute also includes specific requirements that an entity must follow and requires the Texas Department of State Health Services (DSHS) to adopt rules regarding an entity’s maintenance, administration, and disposal of unassigned epinephrine auto-injectors.

In February 2021, the Executive Commissioner of HHSC, on behalf of DSHS, adopted the rules required by Texas Health and Safety Code §773.0145 in 25 TAC Chapter 40, Subchapter C (relating to Epinephrine Auto-Injector Policies in Youth Facilities). Consistent with Texas Health and Safety Code §773.0145, these rules allow certain youth facilities, including child-care facilities, to voluntarily adopt policies relating to maintenance, administration, and disposal of unassigned epinephrine auto-injectors. The amended rules further support the rules adopted on behalf of DSHS by allowing a child-care facility to voluntarily adopt unassigned epinephrine auto-injector policies, provided the child-care facility follows the rules adopted on behalf of DSHS.

The repeal is necessary to update the implementation of Senate Bill (S.B.) 952, 86th Legislature, Regular Session, 2019. S.B. 952 added §42.042(e-3), (e-4), and (e-5) to Texas Human Resources Code. New §42.042(e-3)(1) required HHSC Child Care Regulation (CCR) to align the minimum standards for child-care centers and registered child-care homes with standards for physical activity and screen time in Caring for Our Children (CFOC), 4th edition. CCR extended these requirements to licensed child-care homes in Chapter 747 and adopted rules in March 2021 that incorporated the physical activity and screen time requirements outlined by CFOC. The rules added a new requirement for licensed and registered child-care homes to maintain a written activity plan that includes the physical activity components of the CFOC. This proposal clarifies that requirement by repealing a contradictory rule that allows licensed and registered child-care homes the option of having a written activity plan.

COMMENTS
The 31-day comment period ended August 30, 2021. During this period, HHSC did not receive any comments regarding the proposed rules.

SUBCHAPTER B. ADMINISTRATION AND COMMUNICATION
DIVISION 2. REQUIRED NOTIFICATIONS
26 TAC §747.305
STATUTORY AUTHORITY
The amendment 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 October 5, 2021.
TRD-202103934
Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: October 25, 2021
Proposal publication date: July 30, 2021
For further information, please call: (512) 438-3269

DIVISION 4. OPERATIONAL POLICIES
26 TAC §747.501
STATUTORY AUTHORITY
The amendment 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.

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Karen Ray
Chief Counsel
Health and Human Services Commission
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Proposal publication date: July 30, 2021
For further information, please call: (512) 438-3269

SUBCHAPTER C. RECORD KEEPING
DIVISION 2. RECORDS OF ACCIDENTS AND INCIDENTS
26 TAC §747.701
STATUTORY AUTHORITY
The amendment 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.

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Karen Ray
Chief Counsel
Health and Human Services Commission
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For further information, please call: (512) 438-3269

SUBCHAPTER F. DEVELOPMENTAL ACTIVITIES AND ACTIVITY PLAN
26 TAC §747.2107

STATUTORY AUTHORITY

The repeal 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 October 5, 2021.
TRD-202103936
Karen Ray
Chief Counsel
Health and Human Services Commission
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Proposal publication date: July 30, 2021
For further information, please call: (512) 438-3269

CHAPTER 748. MINIMUM STANDARDS FOR GENERAL RESIDENTIAL OPERATIONS
SUBCHAPTER L. MEDICATION
DIVISION 8. UNASSIGNED EPINEPHRINE AUTO-INJECTORS
26 TAC §748.2271

The Texas Health and Human Services Commission (HHSC) adopts new §748.2271, concerning What are the requirements if my operation chooses to maintain and administer unassigned epinephrine auto-injectors, in Title 26, Texas Administrative Code (TAC), Chapter 748, Minimum Standards for General Residential Operations, Subchapter L, Medication, new Division 8, Unassigned Epinephrine Auto-Injectors.

New §748.2271 is adopted without changes to the proposed text as published in the July 30, 2021, issue of the Texas Register (46 TexReg 4561). This rule will not be republished.

BACKGROUND AND JUSTIFICATION

The new rule is necessary to implement House Bill (H.B.) 4260, 86th Legislature, Regular Session, 2019. H.B. 4260 added §773.0145 to Texas Health and Safety Code. This statute allows child-care facilities, as defined in Texas Human Resources Code §42.002, and other entities to adopt a policy regarding the maintenance, administration, and disposal of unassigned epinephrine auto-injectors. This statute also includes specific requirements that an entity must follow and requires the Texas Department of State Health Services (DSHS) to adopt rules regarding an entity's maintenance, administration, and disposal of unassigned epinephrine auto-injectors.

In February 2021, the Executive Commissioner of HHSC, on behalf of DSHS, adopted the rules required by Texas Health and Safety Code §773.0145 in 25 TAC Chapter 40, Subchapter C (relating to Epinephrine Auto-Injector Policies in Youth Facilities). Consistent with Texas Health and Safety Code §773.0145, these rules allow certain youth facilities, including child-care facilities, to voluntarily adopt policies relating to maintenance, administration, and disposal of unassigned epinephrine auto-injectors. The new rule further supports the rules adopted on behalf of DSHS by allowing a child-care facility to voluntarily adopt unassigned epinephrine auto-injector policies, provided the child-care facility follows the rules adopted on behalf of DSHS.

COMMENTS

The 31-day comment period ended August 30, 2021. During this period, HHSC did not receive any comments regarding the proposed rule.

STATUTORY AUTHORITY

The new section 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.

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Karen Ray
Chief Counsel
Health and Human Services Commission
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Proposal publication date: July 30, 2021
For further information, please call: (512) 438-3269

TITLE 31. NATURAL RESOURCES AND CONSERVATION

ADOPTED RULES  October 22, 2021  46 TexReg 7221
PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 58. OYSTERS, SHRIMP, AND FINFISH

SUBCHAPTER A. STATEWIDE OYSTER FISHERY PROCLAMATION

31 TAC §58.21

The Texas Parks and Wildlife Commission in a duly noticed meeting on August 26, 2021, adopted an amendment to 31 TAC §58.21, concerning Taking or Attempting to Take Oysters from Public Oyster Beds: General Rules, without changes to the proposed text as published in the June 25, 2021, issue of the Texas Register (46 TexReg 3851). The adopted rule will not be republished.

The amendment prohibits the harvest of oysters for two years within the boundary of the restoration area on four reefs: two sites in Conditionally Approved Area TX-6 in Galveston Bay (Dollar Reef and North Todd's Dump, approximately 50 and 65 acres, respectively), one site in Conditionally Approved Area TX-1 in Galveston Bay (Pepper Grove Reef - Middle Site, 2 acres), and one site in Approved Area TX-18 at the mouth of Keller Bay in the Matagorda Bay system (Keller Bay Reefs, 82 acres). The amendment temporarily closes a total of 199 acres of oyster reef for two years. The Texas Department of State Health Services (DSSH) regulates shellfish sanitation and designates specific areas where oysters may be harvested for human consumption. The designation of "Conditionally Approved" or "Approved" is determined by DSSH.

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

Under Parks and Wildlife Code, §76.115, the department may close an area to the taking of oysters when the commission finds that the area is being overworked or damaged or the area is to be reseeded or restocked. Oyster reefs in Texas have been impacted due to drought, flooding, and hurricanes (Hurricane Ike, September 2008 and Hurricane Harvey, August 2017), as well as high harvest pressure. The department’s oyster habitat restoration efforts to date have resulted in a total of approximately 1,640 acres of oyster habitat returned to productive habitat within these bays.

House Bill 51 (85th Legislature, 2017) included a requirement that certified oyster dealers re-deposit department-approved cultch materials in an amount equal to thirty percent of the total volume of oysters purchased in the previous license year. For the 2021 - 2022 fiscal years, the department anticipates this requirement will result in the restoration of approximately 47 acres. Funds and materials generated from House Bill 51 are expected to be used to restore up to 35.6 acres on Todd’s Dump Reef and up to 20 acres on Keller Bay Reefs in 2021-2022.

Following Hurricane Harvey in 2017, the National Marine Fisheries Service (NMFS) awarded the Texas Parks and Wildlife Department over $13 million of fisheries disaster relief funding that was appropriated by Congress under the Bipartisan Budget Act of 2018 (P.L. 115-123). The notification to the governor of Texas from National Marine Fisheries Service (NMFS) stated that funds should be spent to “strengthen the long-term economic and environmental sustainability of the fishery” and over $4 million was dedicated specifically to oyster restoration activities. A portion of these funds, combined with funding generated by House Bill 51 (85th Texas Legislature, 2017) and the Shell Recovery Program (82nd Texas Legislature, 2011), will be used to restore up to 120 acres of oyster habitat in Galveston and Matagorda bay systems in 2021-2022. Within Matagorda Bay system, oyster habitats will be restored within an 82-acre area on Keller Bay reefs. Within the Galveston Bay system, oyster habitats will be restored in a 50-acre area on Dollar Reef and a 65-acre area on North Todd’s Dump Reef. In addition, the Coastal Conservation Association has donated funding to restore a 2-acre area on Pepper Grove reef (“Pepper Grove Reef - Middle Site”) during this large restoration event. Oyster abundance on these reefs has severely declined over time; average oyster abundance on these reefs is 50-75% less than the average oyster abundance on other reefs in the Matagorda Bay and Galveston Bay systems. The portion of the reefs selected for restoration is characterized by degraded substrates. The restoration activities will focus on establishing stable substrate and providing suitable conditions for spat settlement and oyster bed development.

The amendment also removes references to restoration sites in Copano Bay, which re-opened for harvest under the terms of a previous rulemaking.

The department received 14 comments opposing adoption of the rule as proposed.

One commenter opposed adoption and stated that there is no reason to close South Bay, large amounts of sewage are pumped into the bay, and the U.S. Army Corps of Engineers is not helpful, none of which are germane to the rule as proposed. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department should instead focus on siltation of reefs. The department disagrees with the comment and responds that the Parks and Wildlife Commission has no authority to regulate the causes of siltation; however, the restoration efforts typically result in oyster habitat that is more resilient to siltation due to the increase in vertical relief, and the two-year closure improves the restored reef’s ability to survive future siltation events. No changes were made as a result of the comment.

Four commenters opposed adoption and stated that areas in other bay systems should be closed. The department neither agrees nor disagrees with the comments and responds that the rule contemplates closures in Galveston and Matagorda bay systems; however, the department continues to evaluate all suitable areas on the coast for future additional oyster restoration efforts. No changes were made as a result of the comments.

Two commenters opposed adoption and stated that the closed areas in Copano Bay should not be reopened. The department disagrees with the comment and responds that the terms of restoration efforts for the sites in Copano Bay have been satisfied and those sites are therefore being opened for oyster harvest efforts. No changes were made as a result of the comments.

One commenter opposed adoption and stated that closures should apply only to commercial activities. The department disagrees with the comment and responds that the fastest pathway to restoration is to close an area to all harvest, which is also the most equitable method of resource opportunity distribution. No changes were made as a result of the comment.
One commenter opposed adoption and stated that oyster reefs should be closed on an alternating basis for nutrient regeneration and that fees on non-resident oyster license should be raised to counter negative impacts to oyster reefs from out-of-state boats. The department disagrees with the comment and responds that the most effective method for reef restoration is full closure, which is also less confusing for the public. The department also responds that because environmental factors are the chief components driving reef degradation there is no benefit from attempting to reduce out-of-state effort by way of fee increases. No changes were made as a result of the comment.

One commenter opposed adoption and stated that licenses should be issued for specific bays. The department neither agrees nor disagrees with the comment and responds that the rule as adopted contemplates only the restoration efforts at the identified locations and not the management of oyster resources via licensure requirements or applicability. No changes were made as a result of the comment.

One commenter opposed adoption and stated that permanent oyster sanctuaries are necessary, along with prohibitions on shrimping and other commercial exploitation. The department neither agrees nor disagrees with the comment and responds the rule as adopted contemplates restoration efforts at the identified locations and not sanctuary creation or management of harvest effort other than that directed at oysters; however, the department will continue to monitor and evaluate oyster resources, and all appropriate management strategies will be considered. No changes were made as a result of the comment.

The department received 508 comments supporting adoption of the rule as proposed.

The amendment is adopted under Parks and Wildlife Code, §76.301, which authorizes the commission to regulate the taking, possession, purchase and sale of oysters, including prescribing the times, places, conditions, and means and manner of taking oysters, and §76.115, which authorizes the commission to close an area to the taking of oysters when the area is to be reseeded or restocked.

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

Filed with the Office of the Secretary of State on October 6, 2021.

TRD-202103960
James Murphy
General Counsel
Texas Parks and Wildlife Department
Effective date: November 1, 2021
Proposal publication date: June 25, 2021
For further information, please call: (512) 389-4775

TITLE 34. PUBLIC FINANCE
PART 1. COMPTROLLER OF PUBLIC ACCOUNTS
CHAPTER 5. FUNDS MANAGEMENT (FISCAL AFFAIRS)

SUBCHAPTER S. NEXT GENERATION 9-1-1 SERVICE FUND

34 TAC §5.480
The Comptroller of Public Accounts adopts new §5.480, concerning next generation 9-1-1 service fund, without changes to the proposed text as published in the August 27, 2021, issue of the Texas Register (46 TexReg 5360). The new section will be located in Chapter 5, new Subchapter S, Next Generation 9-1-1 Service Fund. The rule will not be republished.

The new section is adopted to comply with House Bill 2911, §5, 87th Legislature, 2021, effective September 1, 2021, which requires the comptroller to adopt rules necessary to establish and administer the next generation 9-1-1 service fund (fund) established under Health and Safety Code, §771.0713, by December 1, 2021.

Subsection (a) provides definitions.

Subsection (b) requires the comptroller, except as provided by federal law, to transfer the credit of the fund as authorized by the legislature any amount available from federal money provided to this state from the Coronavirus State and Local Fiscal Recovery Funds under §9901 of the American Rescue Plan Act of 2021 (Pub. L. No. 117-2) or from any other federal governmental source for purposes of Health and Safety Code, Chapter 771. This subsection also requires the comptroller to transfer the money as soon as practicable following the receipt by this state of a sufficient amount of federal money for the transfer.

Subsection (c) sets forth the administration, distribution, and allowable use of money deposited to the credit of the fund. Specifically, the Commission on State Emergency Communications (commission) will administer the fund and will distribute all money deposited to the credit of the fund as appropriated by the legislature, including any interest earned on money deposited to the credit of the fund, by December 31, 2022. The money deposited to the credit of the fund may be used only for the purpose of supporting the deployment and reliable operation of next generation 9-1-1 service, including the costs of equipment, operations, and administration; may be distributed to only the commission and emergency communication districts; and must be used in a manner that complies with state and federal law, including the requirements of Health and Safety Code, §771.0713. All money distributed under this rule must be spent by December 31, 2024.

No comments were received regarding adoption of the new section.

The new section is adopted under House Bill 2911, §5, 87th Legislature, 2021, effective September 1, 2021, which requires the comptroller to adopt rules necessary to establish and administer the next generation 9-1-1 service fund established under Health and Safety Code, §771.0713, by December 1, 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 October 5, 2021.

TRD-202103952

ADOPTED RULES  October 22, 2021  46 TexReg 7223
Victoria North  
General Counsel for Fiscal and Agency Affairs  
Comptroller of Public Accounts  
Effective date: October 25, 2021  
Proposal publication date: August 27, 2021  
For further information, please call: (512) 475-2220