The Agency adopts new Chapter 1, §§1.1 – 1.5, concerning registration of vision support organizations (VSOs). The Agency adopts these rules to implement the new registration requirements for VSOs in Senate Bill 820, enacted by the 88th Legislature, Regular Session, codified at Chapter 74 of the Texas Business and Commerce Code (SB 820).

Sections 1.1 – 1.5 are adopted without changes to the proposed text as published in the June 21, 2024, issue of the *Texas Register* (Texas Register page site) and will not be republished.

BACKGROUND INFORMATION AND JUSTIFICATION

The adoption implements SB 820 (88th Legislature, Regular Session), which establishes a required occupational registration for VSOs in Chapter 74 of the Texas Business and Commerce Code. The bill took effect on September 1, 2023.

As enacted by SB 820, Texas Business and Commerce Code §74.002 requires a VSO (as defined in Texas Business and Commerce Code §74.001(3)) to register annually with the Office. Texas Business and Commerce Code §74.004(a) identifies the information that must be included in the VSO’s registration filed with the Agency. Texas Business and Commerce Code §74.005(c) directs a VSO to file a corrected registration semiannually as necessary. Texas Business and Commerce Code §74.004(b) specifies that a registration and each corrected registration must be accompanied by a fee in an amount set by the Agency.

The purpose of these new rules under Chapter 1 is to provide information regarding the procedures for VSO registration with the Agency, in accordance with SB 820.

COMMENTS

The 30-day comment period ended on July 21, 2024. During this period, the Agency received one comment regarding the proposed rules from the National Association of Retail Optical Companies. A summary of the comment relating to the proposed rules and the Agency’s response follows.

Comment: The commenter suggested revising proposed §1.4(a) to provide that a correction filing is not necessary for the second half of a calendar year if the VSO timely filed a renewal application under proposed §1.3(b). The commenter stated that the correction filing seemed unnecessarily duplicative in such a circumstance and would force the VSO to incur added work and cost.

Response: The Agency declines to revise §1.4(a) as suggested. As reflected in Chapter 74 of the Texas Business and Commerce Code and the Agency’s proposed rules, a statement of correction and a renewal registration are two separate actions that serve different purposes. A registered VSO satisfies the requirement in Texas Business and Commerce Code §74.005(c) to file a corrected registration on a semiannual basis by timely submitting a statement of correction as provided by proposed §1.4. Proposed §1.4(c) sets at the end of each semiannual period (i.e., June 30 and December 31) a forty-five day window to submit a statement of correction that is intended to afford a VSO adequate time to provide a complete and accurate corrected registration. By timely filing a statement of correction, a VSO updates the contents of its immediately preceding registration, whether initial or previously renewed. Conversely, a renewal registration simply continues an existing registration with information current at that time and is typically due by January 31 of each year under Texas Business and Commerce Code §74.005. Changes to the information provided in a registration on file must be made with a statement of correction and cannot be effectuated through a renewal application. The timely filing of a renewal registration does not absolve a VSO of also correcting its registration in accordance with Chapter 74 of the Texas Business and Commerce Code and the Agency’s proposed rules, despite the potential for the correction to be filed after the renewal. Furthermore, the commenter’s suggested revision presumes that the information is unchanged between the second half of a year and the time of filing the renewal application, which may not necessarily be the case in all circumstances.

STATUTORY AUTHORITY

The new rules are adopted as authorized by Texas Government Code §2001.004(1) and Texas Business and Commerce Code §74.004(b). Texas Government Code §2001.004(1) requires a state agency to adopt rules of practice stating the nature and requirements of formal and informal procedures. Texas Business and Commerce Code §74.004(b) directs the Agency to set the applicable VSO filing fees.

<rule>

§1.1. Definitions.

Words and terms defined in Chapter 74 of the Business and Commerce Code shall have the same meaning in this chapter. In addition, the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Non-optometrist owner--A person, including a corporation, association, general partnership, limited partnership, limited liability company, limited liability partnership, other legal entity, or sole proprietorship, who is not a licensed optometrist but maintains 5% or more ownership in a vision support organization.

(2) Professional entity--A professional corporation, professional limited liability company, professional association, general partnership that provides a professional service, or limited partnership that provides a professional service.

(3) Secretary--The Texas Secretary of State.

(4) Vision support agreement--One or more agreements under which a vision support organization provides two or more business support services to an optometrist.

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STATUTORY AUTHORITY

The adopted new rules are authorized by Texas Government Code §2001.004(1) and Texas Business and Commerce Code §74.004(b). Texas Government Code §2001.004(1) requires a state agency to adopt rules of practice stating the nature and requirements of formal and informal procedures. Texas Business and Commerce Code §74.004(b) directs the Agency to set the applicable VSO filing fees.

<rule>

§1.2. Registration and Renewal of Vision Support Organizations.

(a) A complete initial registration or renewal registration is comprised of:

(1) A completed registration form that is signed by a person authorized to act by or on behalf of the vision support organization, in the form promulgated by the secretary (See Form 4101); and

(2) Payment of the filing fee stated in §1.5 of this chapter (relating to Filing Fees).

(b) A registration statement or renewal application must comply with Business and Commerce Code §74.004, and also provide:

(1) For the vision support organization:

(A) The legal name;

(B) The business address and mailing address, if different; and

(C) A contact name, email address, and phone number.

(2) For each optometrist and each entity that employs or contracts with an optometrist to provide eye care services in this state with which the vision support organization has entered into an agreement to provide two or more business support services:

(A) The legal name and business address of each optometrist and each such entity, as applicable;

(B) If the optometrist provides eye care services through a professional entity, the legal name of the professional entity; and

(C) A disclosure of all business support services provided to each optometrist or each entity that employs or contracts with an optometrist to provide eye care services.

(3) For each optometrist who owns any portion of the vision support organization and for each non-optometrist owner who owns 5% or more of the vision support organization:

(A) The legal name and business address of the owner; and

(B) Whether the owner is an optometrist or a non-optometrist owner.

§1.3. Timing of Registration.

(a) Registrations will expire annually on December 31 of each year.

(b) A vision support organization seeking to renew an existing registration must file a renewal registration. Renewals may be submitted from ninety (90) days prior to expiration until January 31 of the year for which the next registration will be effective by submitting a completed registration form and paying the filing fee, except as provided in subsection (c) of this section.

(c) In the event a vision support organization is required to register under Chapter 74 of the Business and Commerce Code after January 31, the vision support organization must file an initial registration within ninety (90) days after the date of execution of a vision support agreement.

(d) The initial registration for a vision support organization that entered into a vision support agreement prior to February 1, 2024 must be filed not later than January 31, 2025.

(e) The initial registration for a vision support organization that first enters into a vision support agreement on or after February 1, 2024 must be filed not later than the ninetieth (90th) day after the date the agreement is executed.

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STATUTORY AUTHORITY

The adopted new rules are authorized by Texas Government Code §2001.004(1) and Texas Business and Commerce Code §74.004(b). Texas Government Code §2001.004(1) requires a state agency to adopt rules of practice stating the nature and requirements of formal and informal procedures. Texas Business and Commerce Code §74.004(b) directs the Agency to set the applicable VSO filing fees.

<rule>

§1.4. Corrections.

(a) A vision support organization must submit a statement of correction semiannually if, during that period, any information provided in the initial registration or renewal registration, as applicable, changes.

(b) A statement of correction must include the following information:

(1) The legal name of the vision support organization;

(2) The date of the last filed registration;

(3) The registration number assigned by the secretary to the vision support organization; and

(4) A statement identifying the information that has changed.

(c) A vision support organization that is required to submit a statement of correction in accordance with subsection (a) of this section shall do so according to the following schedule:

(1) First half (January 1 – June 30) – Statement of correction due not later than the forty-fifth (45th) day after June 30.

(2) Second half (July 1 – December 31) – Statement of correction due not later than the forty-fifth (45th) day after December 31.

(d) The statement of correction must be signed by a person authorized to act by or on behalf of the vision support organization.

(e) The statement of correction must be accompanied by the filing fee stated in §1.5 of this chapter (relating to Filing Fees).

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STATUTORY AUTHORITY

The adopted new rules are authorized by Texas Government Code §2001.004(1) and Texas Business and Commerce Code §74.004(b). Texas Government Code §2001.004(1) requires a state agency to adopt rules of practice stating the nature and requirements of formal and informal procedures. Texas Business and Commerce Code §74.004(b) directs the Agency to set the applicable VSO filing fees.

<rule>

§1.5. Filing Fees.

(a) The filing fee for an initial registration or a renewal registration is $150.

(b) The filing fee for a statement of correction is $50.