

PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 353. MEDICAID MANAGED CARE SUBCHAPTER P. MENTAL HEALTH TARGETED CASE MANAGEMENT AND MENTAL HEALTH REHABILITATION

1 TAC §353.1415

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §353.1415, concerning Staff Member Credentialing.

BACKGROUND AND PURPOSE

Texas Government Code §533.00255(d)(2) requires HHSC to ensure that providers in the Behavioral Health and Physical Services Network in §533.00255 are well-qualified and able to provide an appropriate array of services.

The proposed amendment expands the minimum qualifications for a Qualified Mental Health Professional-Community Services (QMHP-CS) credential to help address mental health workforce shortages.

Currently, the qualifications for a QMHP-CS credential include an option for individuals with a bachelor's degree in a human services discipline to meet the criteria. The proposed amendment expands the list of acceptable human services degrees to include a bachelor's degree in human development and family sciences, public health or child and family welfare.

In addition, the proposed amendment includes a new option for individuals with a non-human services bachelor's degree to meet the criteria for a QMHP-CS credential if the individual has at least one year of documented experience as an intern or employee in a program that provides mental health or substance use services.

The proposed amendment to §353.1415 also updates rule formatting; updates a rule reference; and removes ambiguous language to align more closely with updates to the Texas Medicaid medical policies and state plan for Mental Health Targeted Case Management and Mental Health Rehabilitation Services.

FISCAL NOTE

Trey Wood, HHSC Chief Financial Officer, has determined that for each year of the first five years that the rule will be in effect, enforcing or administering the rule does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rule will be in effect:

- (1) the proposed rule will not create or eliminate a government program;
- (2) implementation of the proposed rule will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rule will result in no assumed change in future legislative appropriations;
- (4) the proposed rule will not affect fees paid to HHSC;
- (5) the proposed rule will not create new regulations;
- (6) the proposed rule will expand an existing regulation;
- (7) the proposed rule will increase the number of individuals subject to the rule; and
- (8) HHSC has insufficient information to determine the proposed rule's effect on the state's economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The rule does not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rules.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule is necessary to protect the health, safety, and welfare of the residents of Texas; and does not impose a cost on regulated persons.

PUBLIC BENEFIT AND COSTS

Emily Zalkovsky, State Medicaid Director, has determined that for each year of the first five years the rule is in effect, the public benefit will be increased access to Texas Medicaid Mental Health Targeted Case Management and Mental Health Rehabilitative services by expanding the applicant pool of individuals who meet the qualifications of a QMHP-CS who primarily delivers these services.

Trey Wood has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because there are no costs associated with expanding the qualifications of a QMHP-CS.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to the owner's property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4601 West Guadalupe Street, Austin, Texas 78751; or emailed to HHSCRulesCoordinationOffice@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 24R081" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; and Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021, which provides HHSC with the authority to administer the federal medical assistance program in Texas and to adopt rules and standards for program administration; and Texas Government Code §533.00255(i) which requires the Commissioner to adopt rules necessary to implement Texas Government Code §533.00255, concerning the behavioral health and physical health services network.

The amendment implements Texas Government Code §531.0055 and §533.00255(d)(2).

§353.1415. Staff Member Credentialing.

(a) ~~QMHP-CS [Qualified Mental Health Professional-Community Services (QMHP-CS)]. A [staff member must meet at least one of three minimum requirements to be credentialed as a] QMHP-CS must have the following minimum requirements:~~

- ~~(1) completed a standardized training curriculum;~~
- ~~(2) demonstrated competency in the work to be performed;~~
- ~~(3) obtained one of the following:~~

~~(A) [(4)] a [The staff member has at least a] bachelor's degree in one of the following disciplines from an accredited college or university [and a minimum number of hours that is equivalent to a major in]:~~

- ~~(i) psychology;[;]~~
- ~~(ii) social work;[;]~~
- ~~(iii) medicine;[;]~~
- ~~(iv) nursing;[;]~~

- ~~(v) rehabilitation;[;]~~
- ~~(vi) counseling;[;]~~
- ~~(vii) sociology;[;]~~
- ~~(viii) human growth and development;[;]~~
- ~~(ix) physician assistant;[;]~~
- ~~(x) gerontology;[;]~~
- ~~(xi) special education;[;]~~
- ~~(xii) educational psychology;[;]~~
- ~~(xiii) early childhood education;[; or]~~
- ~~(xiv) early childhood intervention;[;]~~
- ~~(xv) human development and family sciences;~~
- ~~(xvi) public health; or~~
- ~~(xvii) child and family welfare;~~

~~(B) a bachelor's degree in a discipline other than those listed under subparagraph (A) of this paragraph from an accredited college or university with at least one year of documented experience as an intern or employee in a program that provides mental health or substance use services;~~

~~(C) [(2)] a license as [The staff member is] a registered nurse; or[.]~~

~~(D) [(3)] a license as [The staff member is] a Licensed Practitioner of the Healing Arts (LPHA).~~

~~(b) CSSP [Community Services Specialist (CSSP)]. A CSSP must, [staff member who,] as of August 31, 2004, have met the criteria set forth in 26 TAC §301.303 [~~25 TAC §412.303~~] (relating to Definitions).~~

~~(c) Peer Provider. A peer provider must have the following [The] minimum requirements [to credential a staff member as a peer provider are that the staff member has]:~~

- ~~(1) a high school diploma or high school equivalency certificate issued in accordance with the law of the issuing state;~~
- ~~(2) at least one cumulative year of receiving mental health services; and~~
- ~~(3) demonstrated competency in the provision and documentation of mental health rehabilitative services, supported employment, or supported housing.~~

~~(d) CFP [Certified Family Partners (CFPs)]. A CFP must have the following [The] minimum requirements [to credential a staff member as a CFP include verifying that the staff member]:~~

- ~~(1) be [is] 18 years of age or older;~~
- ~~(2) have [has] a high school diploma or high school equivalency certificate issued in accordance with the law of the issuing state;~~
- ~~(3) have [has] at least one year of personal experience as a parent or LAR raising a child or youth with serious emotional disturbance or mental illness;~~
- ~~(4) have [has] at least one year of personal experience as a parent or LAR navigating a child-service system (e.g., mental health, juvenile justice, social security, or special education); and~~
- ~~(5) have [has] successfully completed and passed the HHSC-approved certification process.~~

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

Filed with the Office of the Secretary of State on January 24, 2025.

TRD-202500223

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

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For further information, please call: (512) 438-2910



TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 1. AGENCY ADMINISTRATION

SUBCHAPTER S. HIGHER EDUCATION STRATEGIC PLANNING COMMITTEE

19 TAC §§1.213 - 1.219

The Texas Higher Education Coordinating Board (Coordinating Board) proposes the repeal of Texas Administrative Code, Title 19, Part 1, Chapter 1, Subchapter S, §§1.213 - 1.219, concerning the Higher Education Strategic Planning Committee. Specifically, this repeal will eliminate the subchapter and the committee itself, which was set to be abolished no later than January 1, 2016, and which no longer meets.

David Troutman, Deputy Commissioner for Academic Affairs, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rules. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

David Troutman, Deputy Commissioner for Academic Affairs, has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering the sections will be the elimination of rules establishing and relating to an advisory committee that was set to be abolished no later than January 1, 2016, and which no longer meets. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

- (1) the rules will not create or eliminate a government program;
- (2) implementation of the rules will not require the creation or elimination of employee positions;
- (3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;

(4) the rules will not require an increase or decrease in fees paid to the agency;

(5) the rules will not create a new rule;

(6) the rules will not limit an existing rule;

(7) the rules will not change the number of individuals subject to the rule; and

(8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to David Troutman, Deputy Commissioner for Academic Affairs, P.O. Box 12788, Austin, Texas 78711-2788, or via email at RulesComments@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The repeal is proposed under Texas Education Code, Section 61.027, which provides the Coordinating Board with the authority to adopt and publish rules in accordance with Texas Government Code, Chapter 2001.

The proposed repeal affects Texas Administrative Code, Title 19, Part 1, Chapter 1, Subchapter S.

§1.213. *Authority and Purpose of the Higher Education Strategic Planning Committee.*

§1.214. *Definitions.*

§1.215. *Committee Membership and Officers.*

§1.216. *Duration.*

§1.217. *Meetings.*

§1.218. *Tasks Assigned to the Committee.*

§1.219. *Report to the Board; Evaluation of Committee Costs and Effectiveness.*

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

Filed with the Office of the Secretary of State on January 23, 2025.

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Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: March 9, 2025

For further information, please call: (512) 427-6520



SUBCHAPTER U. MARKETABLE SKILLS TASK FORCE

19 TAC §§1.230 - 1.236

The Texas Higher Education Coordinating Board (Coordinating Board) proposes the repeal of Texas Administrative Code, Title 19, Part 1, Chapter 1, Subchapter U, §§1.230 - 1.236, concerning the Marketable Skills Task Force. Specifically, this repeal will eliminate the subchapter and the committee itself, which was set to be abolished no later than August 30, 2023, and which no longer meets.

David Troutman, Deputy Commissioner for Academic Affairs, has determined that for each of the first five years the sections

are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rules. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

David Troutman, Deputy Commissioner for Academic Affairs, has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering the sections will be the elimination of rules establishing and relating to an advisory committee that was set to be abolished no later than August 30, 2023, and which no longer meets. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

- (1) the rules will not create or eliminate a government program;
- (2) implementation of the rules will not require the creation or elimination of employee positions;
- (3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will not create a new rule;
- (6) the rules will not limit an existing rule;
- (7) the rules will not change the number of individuals subject to the rule; and
- (8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to David Troutman, Deputy Commissioner for Academic Affairs, P.O. Box 12788, Austin, Texas 78711-2788, or via email at RulesComments@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The repeal is proposed under Texas Education Code, Section 61.027, which provides the Coordinating Board with the authority to adopt and publish rules in accordance with Texas Government Code, Chapter 2001.

The proposed repeal affects Texas Administrative Code, Title 19, Part 1, Chapter 1, Subchapter U.

§1.230. *Authority and Specific Purposes of the Marketable Skills Task Force.*

§1.231. *Definitions.*

§1.232. *Committee Membership and Officers.*

§1.233. *Duration.*

§1.234. *Meetings.*

§1.235. *Tasks Assigned to the Task Force.*

§1.236. *Report to the Board; Evaluation of Committee Costs and Effectiveness.*

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

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Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6520

CHAPTER 2. ACADEMIC AND WORKFORCE EDUCATION

SUBCHAPTER J. APPROVAL OF DISTANCE EDUCATION FOR PUBLIC INSTITUTIONS

19 TAC §2.207

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 2, Subchapter J, §2.207, concerning Effective Date of Rules. Specifically, this amendment will clarify institutional submission deadlines for renewing their Institutional Plan for Distance Education (IPDE).

Section 2.207, Effective Date of Rules, is amended to clarify the submission deadline for the first renewal submission following the effective date of the amended rules to be within one year of the institution's reaffirmation cycle. Currently §2.207 states, "IPDEs currently on file as of December 1, 2023, will remain filed in good standing until the first due date under §2.205(d)(1)," leaving two potential deadline options. To stagger submission dates, the renewal submission deadline following the effective date of the amended rule would only be no later than one year after receiving final disposition of the institution's comprehensive renewal of accreditation report from their institutional accreditor, as required by 34 CFR §602.19. This amendment would allow the Coordinating Board and institutions to manage distance education approval workflows appropriately.

Dr. Michelle Singh, Assistant Commissioner, Digital Learning, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Dr. Michelle Singh, Assistant Commissioner, Digital Learning, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of adopting this rule is reducing regulatory burden on public institutions of higher education while allowing the Coordinating Board to conduct appropriate scrutiny and approval of distance education, in fulfillment of the agency's obligation in Texas Education Code, §61.0512(g). There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

- (1) the rules will not create or eliminate a government program;
- (2) implementation of the rules will not require the creation or elimination of employee positions;
- (3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will not create a new rule;
- (6) the rules will not limit an existing rule;
- (7) the rules will not change the number of individuals subject to the rule; and
- (8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Dr. Michelle Singh, Assistant Commissioner, Digital Learning, P.O. Box 12788, Austin, Texas 78711-2788, or via email at digitallearning@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendment is proposed under Texas Education Code, Section 61.0512, which requires that institutions must seek prior Coordinating Board approval before offering distance learning courses.

The amendment affects Texas Administrative Code, Title 19, Part 1, Chapter 2, Subchapter J, Section 2.207.

§2.207. Effective Date of Rules.

The effective date of this subchapter is December 1, 2023. Each institution must submit an Institutional Plan for Distance Education ("IPDE") in accordance with this subchapter on or after that date by the due dates set out in §2.205(d)(1) of this subchapter (relating to Institutional Plan for Distance Education). IPDEs currently on file as of December 1, 2023, will remain filed in good standing until the [first] due date under §2.205(d)(1)(B)(i) of this subchapter [§2.205(d)(1)]. Learning Technology Advisory Committee shall cease conducting reviews and make recommendations regarding distance education doctoral program proposals under [19 TAC] §1.190(3) of this title (relating to Learning Technology Advisory Committee) upon final adoption of this subchapter. An institution is not required to submit a request for review under [19 TAC] §1.190(3) of this subchapter upon final adoption of this subchapter.

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

Filed with the Office of the Secretary of State on January 23, 2025.

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Nichole Bunker-Henderson
General Counsel

Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6284



CHAPTER 10. GRANT PROGRAMS
SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §§10.1 - 10.8

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new rules in Texas Administrative Code, Title 19, Part 1, Chapter 10, Subchapter A, §§10.1 - 10.8, concerning general provisions for Coordinating Board administered grant programs. Specifically, this new subchapter will set forth definitions and requirements for all Coordinating Board grant programs and establish minimum requirements for all grantees receiving grant funds from the Coordinating Board. The proposed subchapter will allow the Coordinating Board to enforce uniform and fair standards, definitions, and criteria across all grant programs administered by the agency in accordance with the Texas Grant Management Standards.

Sections 61.035 and 61.051(a)(5) of the Texas Education Code provides the Coordinating Board with authority to administer and monitor Coordinating Board grant funds. To effectively and efficiently administer and monitor Coordinating Board grant programs, the Coordinating Board proposes new rules as follows.

Section 10.1, Purpose and Authority, provides the purpose and authority for the general provisions applicable to Coordinating Board administered grant programs. This section sets forth that this purpose allows for the administration of programs and funds while ensuring necessary compliance monitoring.

Section 10.2, Definitions, establishes standard definitions that may be used across all Coordinating Board grant programs to better aid in Coordinating Board consistency in the administration of grant programs. These standard definitions promote efficient operation of Coordinating Board administered programs.

Section 10.3, Competitive Grant Process, sets forth the minimum requirements for the Coordinating Board to administer a competitive grant program. The minimum standards are designed to comply with the Texas Grant Management Standards and allow for Coordinating Board monitoring of grant programs.

Section 10.4, Non-competitive Grant Process, sets forth the minimum requirements for the Coordinating Board to administer a non-competitive grant program. The minimum standards are designed to comply with the Texas Grant Management Standards and allow for Coordinating Board monitoring of grant programs.

Section 10.5, Grant Awards, sets forth the minimum requirements for the Coordinating Board to issue a grant award as well as the minimum requirements a grantee must meet to receive and retain a grant award. This section is proposed in accordance with §61.035 of the Texas Education Code to ensure funds are distributed in accordance with applicable law and Coordinating Board rules

Section 10.6, Reporting, sets forth minimum grantee reporting requirements to enable the Coordinating Board to appropriately monitor grantee's use and progress with the grant award. This section is proposed in accordance with §61.035 of the Texas Education Code to ensure funds are expended in accordance with applicable state laws and Coordinating Board rules.

Section 10.7, Compliance, sets forth the minimum compliance requirements a grantee is subject to by receiving a Coordinating Board grant award. These minimum compliance requirements are developed in accordance with the Texas Grant Management Standards and §61.035 of the Texas Education Code.

Section 10.8, Additional Requirements, requires the Coordinating Board to provide grantee written notice in the event grantee makes unauthorized or prohibited expenditures of

Coordinating Board grant awards. These requirements ensure that grant funds are used in accordance with applicable laws and Coordinating Board rules as well as to ensure programs are administered to reach the state's goals.

Section 10.8 further provides the grantee with an opportunity to contest such notice and requires the grantee to reimburse the Coordinating Board for unauthorized or prohibited expenditures. This rule allows the Grantee an opportunity to be heard and for the Coordinating Board to review. It also helps to ensure that the Coordinating Board is able to administer grant funds in accordance with applicable law and Coordinating Board rules.

Douglas Brock, Assistant General Counsel, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Douglas Brock, Assistant General Counsel, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section is the Coordinating Board's ability to administer grant programs that are not otherwise regulated under Coordinating Board rules allowing for increased efficiency, consistency and transparency in awarding and monitoring grant awards. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

- (1) the rules will not create or eliminate a government program;
- (2) implementation of the rules will not require the creation or elimination of employee positions;
- (3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will not create a new rule;
- (6) the rules will not limit an existing rule;
- (7) the rules will not change the number of individuals subject to the rule; and
- (8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Douglas Brock, Assistant General Counsel, P.O. Box 12788, Austin, Texas 78711-2788, or via email at rulescomments@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new sections are proposed under Texas Education Code, Sections 61.035 and 61.051(a)(5), which provide the Coordinating Board with the authority to administer and monitor the distribution of grant funds.

The proposed new sections affect Texas Administrative Code, Title 19, Part 1, Chapter 10, Grant Programs.

§10.1. Purpose and Authority.

(a) Purpose. This subchapter establishes general procedures to administer grants not otherwise administered in Part 1 of Title 19.

(b) Authority. The authority for this subchapter is found in Texas Education Code, §§61.035 and 61.051(a)(5), which provide the Coordinating Board with the authority to administer and monitor distribution of grant funds.

§10.2. Definitions.

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

(1) Announcement--A public announcement of a Coordinating Board-administered grant opportunity.

(2) Application--The document(s) submitted in response to a RFA or other notice of a grant funding opportunity which include but are not limited to a budget and project description.

(3) Board--The governing body of the agency known as the Texas Higher Education Coordinating Board.

(4) Commissioner--The Texas Commissioner of Higher Education.

(5) Competitive Grants--A type of grant program where grant funds are awarded to the most qualified eligible applicants based on the criteria set forth in the RFA.

(6) Coordinating Board--The agency known as the Texas Higher Education Coordinating Board, including agency staff.

(7) Grant Agreement--A legal instrument of financial assistance between the Coordinating Board and a grantee to transfer grant funds in accordance with state law, federal law, and the General Appropriations Act, as applicable, and to set forth the terms and conditions of the grant award.

(8) Non-competitive Grants--A type of grant program where grant funds are awarded by the Coordinating Board to an eligible applicant pursuant to a formula, allotment, or other directive of the General Appropriations Act or state law.

(9) Notice of Grant Award (NOGA)--An official legal document used in conjunction with a RFA that notifies an entity of a grant award, provides the terms of the award, and is legally binding upon full execution.

(10) Request for Applications (RFA)--A type of solicitation notice in which the Coordinating Board announces available competitive grant funding, sets forth the eligibility and terms and conditions governing the grant program, provides evaluation criteria for submitted applications, and provides instructions for an eligible entity to submit an application for such competitive funding.

§10.3. Competitive Grant Process.

(a) The Coordinating Board shall publish an RFA for competitive grant programs.

(b) The RFA shall set forth the eligibility criteria for the grant program.

(c) The Coordinating Board shall review submitted applications for completeness and eligibility.

(d) The Coordinating Board shall objectively evaluate complete and eligible applications based on the evaluation criteria set forth in the RFA. The Coordinating Board may use external evaluators for evaluation purposes.

(e) The Coordinating Board will base a grant award on the criteria set forth in the RFA.

(f) Prior to the full execution of a NOGA, the Commissioner may adjust the size of an award to a grantee to best fulfill the purpose of the grant program and RFA.

(g) Before the Board releases funds, the grantee and the Coordinating Board must fully execute a NOGA.

§10.4. Non-competitive Grant Process.

(a) The Coordinating Board shall publish an announcement for a non-competitive grant program that provides information on eligibility requirements and application requirements in accordance with state law or federal law and the General Appropriations Act, as applicable.

(b) The Coordinating Board shall review each submitted application for completeness and eligibility.

(c) The Coordinating Board will base each grant award on the allocation methodology set forth in the announcement.

(d) The Commissioner may adjust the allocation methodology or grant award amount to best fulfill the purpose of the grant program and as authorized by state law or federal law and the General Appropriations Act.

(e) Before the Coordinating Board releases funds, the grantee and the Coordinating Board must fully execute a grant agreement.

§10.5. Grant Awards.

(a) The amount of funding available for a grant program is dependent on legislative appropriation for the program for each biennial state budget.

(b) Each grant award shall be subject to Coordinating Board approval pursuant to §1.16 of this title (relating to Contracts, Including Grants, for Materials and/or Services).

(c) A grantee may only use grant funds on the reasonable and necessary costs of the grant program as specified in the RFA or grant agreement.

(d) A grantee must comply with all applicable state and federal statutes, regulations, and standards pertaining to the grant program, including but not limited to the Uniform Grant Guidance and the Texas Grant Management Standards.

(e) The Coordinating Board may advance a grant award or provide advancement in periodic installments to a grantee if necessary for the success of the funded project, subject to grantee's prior compliance with past Coordinating Board monitoring requirements, compliance with state and federal laws pertaining to grant awards and financial monitoring, and the terms and conditions of prior Coordinating Board-administered grant programs.

(f) Grantee shall return all unobligated grant funds to the Coordinating Board no later than thirty (30) days from the grant termination date.

§10.6. Reporting.

(a) Grantee must file program and expenditure reports to the Coordinating Board in the format required by the Coordinating Board by the deadlines set forth in the RFA, grant agreement, or NOGA as applicable.

(b) The Commissioner may withhold or reduce a grant award for failure to meet reporting requirements.

§10.7. Compliance.

(a) The Coordinating Board may conduct compliance monitoring or audits of a grantee as a condition of accepting a grant award.

(b) To avoid duplication of effort and assist the Coordinating Board in identifying risk, a Grantee's internal auditor shall notify the

Coordinating Board of any audits conducted by the grantee's internal or external auditor involving grant funds allocated or administered by the Coordinating Board or reports submitted to the Coordinating Board pursuant to §10.6 of this subchapter (relating to Reporting).

(c) The Coordinating Board may impose additional monitoring requirements on a grantee's use of grant funds as a result of audit, compliance monitoring or other discovery of reporting deficiencies.

(d) The Coordinating Board may impose a reimbursement payment schedule on a grantee's use of grant funds as a result of audit, compliance monitoring, or other discovery of reporting deficiencies.

§10.8. Additional Requirements.

(a) Unless otherwise prohibited by state law, the Commissioner has the right to reject all applications and cancel a grant solicitation.

(b) If the Coordinating Board determines that a data reporting error or any other error resulted in an overallocation of grant funds to the grantee, the Coordinating Board shall use any method authorized under statute or Board rules to make a funding adjustment necessary to correct the over-allocation.

(c) If the Coordinating Board determines that a grantee obligated or expended grants funds on costs prohibited or unauthorized by law, regulations or the terms and conditions of the grant award, the Coordinating Board shall notify the grantee not later than sixty (60) business days from the grant termination date. This notification must contain the amount of the prohibited obligation or expenditure and the basis for the determination.

(d) The grantee may submit a written appeal to the Commissioner within thirty (30) business days of receiving notification of the prohibited or unauthorized expenditures. The grantee may attach any data or other written documentation that supports its appeal. The Commissioner shall review the appeal and determine in his or her sole discretion whether to affirm, deny, or modify the determination of prohibited or unauthorized obligation or expenditure within thirty (30) business days of receipt.

(e) If the grantee does not appeal or the Commissioner affirms the determination that prohibited or unauthorized grant obligations or expenditures occurred, the grantee shall reimburse the Coordinating Board in an amount equal to the prohibited or unauthorized obligation or expenditure.

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

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Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6375



CHAPTER 13. FINANCIAL PLANNING
SUBCHAPTER P. COMMUNITY COLLEGE
FINANCE PROGRAM FOR FISCAL YEAR 2024
19 TAC §§13.470 - 13.477

The Texas Higher Education Coordinating Board (Coordinating Board) proposes the repeal of Texas Administrative Code, Title 19, Part 1, Chapter 13, Subchapter P, §§13.470 - 13.477, concerning the Community College Finance Program for Fiscal Year 2024. Specifically, this repeal will remove sections superseded by rules adopted by the Coordinating Board in April 2024 which are now in Chapter 13, Subchapter S, of this title.

The Coordinating Board initially adopted rules relating to the new community college finance system on an emergency basis in August 2023, including Subchapter P in Chapter 13, allowing for the implementation of H.B. 8 by the start of the 2024 fiscal year. Chapter 13, Subchapter S, which became effective on September 1, 2024, is the primary community college finance subchapter beginning in fiscal year 2025.

Andy MacLaurin, Assistant Commissioner of Funding and Resource Planning, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Andy MacLaurin, Assistant Commissioner of Funding and Resource Planning, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be the removal of rules from the Texas Administrative Code that are superseded by rules approved by the Coordinating Board in April 2024 (Chapter 13, Subchapter S). There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

- (1) the rules will not create or eliminate a government program;
- (2) implementation of the rules will not require the creation or elimination of employee positions;
- (3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will not create a new rule;
- (6) the rules will not limit an existing rule;
- (7) the rules will not change the number of individuals subject to the rule; and
- (8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Andy MacLaurin, Assistant Commissioner of Funding and Resource Planning, P.O. Box 12788, Austin, Texas 78711-2788, or via email at CCFi-nance@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The repeal is proposed under Texas Education Code, Section 130A.005, which provides the Coordinating Board with the authority to adopt rules and take other actions consistent with Texas

Education Code, Chapter 61, Chapter 130, and Chapter 130A to implement Tex. H.B. 8, 88th Leg., R.S. (2023). In addition, Texas Education Code, Section 130.355, permits the Coordinating Board to establish rules for funding workforce continuing education.

The proposed repeal affects Texas Education Code, Sections 28.0295, 61.003, 61.059, 130.003, 130.0031, 130.0034, 130.008, 130.085, 130.310, 130.352 and Chapter 130A.

§13.470. *Purpose and Effective Date.*

§13.471. *Authority.*

§13.472. *Definitions.*

§13.473. *Base Tier Allotment.*

§13.474. *Performance Tier Funding.*

§13.475. *Formula Transition Funding.*

§13.476. *Payment Schedule.*

§13.477. *Close Out.*

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

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Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

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SUBCHAPTER S. COMMUNITY COLLEGE FINANCE PROGRAM: BASE AND PERFORMANCE TIER METHODOLOGY

19 TAC §13.556, §13.557

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 13, Subchapter S, §13.556 and §13.557, concerning Performance Tier Fundable Outcomes. Specifically, the amendments to §13.556 will accomplish two objectives: maintaining the contact hour and semester credit hour guardrails currently enforced on the Institutional Credential Leading to Licensure or Certification (ICLC) and Third-Party Credential performance outcomes, and ensuring that a student cannot earn both the transfer outcome and co-enrollment outcome. The amendments to §13.557 will add Opportunity High School Diploma to the applicable weights for performance tier fundable outcomes.

Rule 13.556(b)(1)(C) is amended to maintain the contact hour and semester credit hour (SCH) threshold for ICLC and Third-Party Credential outcomes. This section also describes the manner by which the Coordinating Board determines whether a credential qualifies as a credential of value and is thereby fundable. ICLCs and Third-Party Credentials are credentials of value when they require a minimum amount of instruction to meet other

programmatic requirements. Currently, the Coordinating Board does not have the data capability to utilize the standard credential of value methodology for these three types of credentials and therefore will need to keep the threshold in place until the data becomes available.

Rule 13.556(e)(1)(C) is amended to ensure that a student who completes the transfer outcome cannot also complete a structured co-enrollment outcome. An institution earns a transfer fundable outcome for students who complete 15 SCH from a single public junior college and enrolls in a general academic teaching institution. Structured co-enrollment is an outcome distinct from transfer because the sequence of enrollment precludes students in these programs from qualifying as transfer students under the transfer methodology, and it would be an inappropriate unintended consequence for a single student's path from a community college to a general academic teaching institution to count as both outcomes.

Rule 13.557(d)(3)(A) is amended to add Opportunity High School Diploma to the outcomes eligible for additional funding weight when the student is economically disadvantaged, academically disadvantaged, or an adult learner. Rule 13.557(e) is amended to make those weights applicable when the necessary student-level data becomes available, which is planned for outcomes completed in FY 2026. Starting in that year, an institution will be able to earn additional funding weights when a qualifying student achieves the Opportunity High School Diploma fundable outcome, as they already can for other outcome types.

Andy MacLaurin, Assistant Commissioner of Funding and Resource Planning, has determined that for each of the first five years the sections are in effect there may be fiscal implications for state or local governments as a result of enforcing or administering the rules, as required to continue the administration of the public junior college finance system established by H.B. 8, 88th Leg., R.S. (2023). Such ancillary fiscal implications may include the need to collect and report additional data in order to obtain additional outcome-based funding.

The increased funding to institutions of higher education has been codified as part of the new public junior college finance system in statute. Participation in the program is voluntary. The rules do not impose additional costs of compliance beyond those provided for in statute. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

Adding the Opportunity High School Diploma to the list of credentials eligible for student-level weights and maintaining quality standards for ICLC and Third-Party Credential Outcomes may have a positive impact on small businesses, micro businesses, rural communities, and local employment, as local employers seeking to hire may be more likely to find appropriately skilled job seekers who can fill job openings with less need for additional training.

Andy MacLaurin, Assistant Commissioner of Funding and Resource Planning, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be the continued refinement of implementing H.B. 8, which established a modern and dynamic finance system that ensures each public junior college has access to adequate state appropriations and local resources to support the education and training of the

workforce. Refinement of this system may strengthen local economies by producing additional skilled employees who can fill job openings with less need for additional training. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

- (1) the rules will not create or eliminate a government program;
- (2) implementation of the rules will not require the creation or elimination of employee positions;
- (3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will not create a new rule;
- (6) the rules will not limit an existing rule;
- (7) the rules will not change the number of individuals subject to the rule; and
- (8) the rules may have a positive effect on the state's economy.

Comments on the proposal may be submitted to Andy MacLaurin, Assistant Commissioner of Funding and Resource Planning, P.O. Box 12788, Austin, Texas 78711-2788, or via email at CCFinance@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendment is proposed under Texas Education Code, Section 130A.005, which provides the Coordinating Board with the authority to adopt rules and take other actions consistent with Texas Education Code, Chapter 61, Chapter 130, and Chapter 130A, to implement Tex. H.B. 8, 88th Leg., R.S. (2023). In addition, Texas Education Code, Section 130.355, permits the Coordinating Board to establish rules for funding workforce continuing education.

The proposed amendment affects Texas Education Code, Sections 28.0295, 61.003, 61.059, 130.003, 130.0031, 130.0034, 130.008, 130.085, 130.310, 130.352, and Chapter 130A.

§13.556. Performance Tier: Fundable Outcomes.

(a) This section contains definitions of Fundable Outcomes eligible for receiving funding through the Performance Tier. An institution's Performance Tier funding will consist of the count of Fundable Outcomes, multiplied by weights identified in §13.557 of this subchapter (relating to Performance Tier: Fundable Outcome Weights) as applicable, multiplied by the monetary rates identified in this subchapter. Fundable Outcomes consist of the following categories:

- (1) Fundable Credentials;
- (2) Credential of Value Premium;
- (3) Dual Credit Fundable Outcomes;
- (4) Transfer Fundable Outcomes;
- (5) Structured Co-Enrollment Fundable Outcomes; and
- (6) Opportunity High School Diploma Fundable Outcomes.

(b) Fundable Credentials.

- (1) A fundable credential is defined as any of the following:

(A) Any of the following credentials awarded by an institution that meets the criteria of a credential of value as defined in

paragraph (2) of this subsection using the data for the year in which the credential is reported that is otherwise eligible for funding, and the institution reported and certified to the Coordinating Board:

- (i) An associate degree;
- (ii) A baccalaureate degree;
- (iii) A Level 1 or Level 2 Certificate;
- (iv) An Advanced Technical Certificate; and
- (v) A Continuing Education Certificate.

(B) An Occupational Skills Award awarded by an institution that the institution reported and certified to the Coordinating Board;

(C) An Institutional Credential Leading to Licensure or Certification (ICLC) not reported pursuant to subparagraph (B) of this paragraph and that the institution reported and certified to the Coordinating Board. ~~The [For fiscal year 2025 or prior only, the]~~ credential shall meet one of the following criteria:

- (i) The credential includes no fewer than 144 contact hours or nine (9) semester credit hours; or
- (ii) The credential is awarded in a high demand field, as defined in Coordinating Board rule, and includes no fewer than 80 contact hours or five (5) semester credit hours; or

(D) A Third-Party Credential that meets the following requirements:

- (i) The third-party credential is listed in the American Council on Education's ACE National Guide with recommended semester credit hours;
- (ii) The third-party credential program content is either embedded in a course, embedded in a program, or is a stand-alone program;
- (iii) The third-party credential is conferred for successful completion of the third-party instructional program in which a student is enrolled;
- (iv) The third-party credential is included on the workforce education, continuing education, or academic transcript from the college; and

(I) ~~The [For fiscal year 2025 only, the]~~ third-party credential includes no fewer than the equivalent of nine (9) semester credit hours or 144 contact hours; or

(II) ~~The [For fiscal year 2025 only, the]~~ third-party credential is awarded in a high-demand field as defined in Coordinating Board rule, and includes no fewer than the equivalent of five (5) semester credit hours or 80 contact hours; and

(v) The student earned the third-party credential on or after September 1, 2024.

(2) Credential of Value Baseline. For fiscal year 2025 or prior only, a credential identified in paragraph (1)(A) of this subsection must meet the Credential of Value Baseline criteria for eligibility as a Fundable Outcome. Beginning in fiscal year 2026, any credential identified in paragraph (1) of this subsection must meet the Credential of Value Baseline criteria for eligibility as a Fundable Outcome. This baseline is met when a credential earned by a student would be expected to provide a positive return on investment within a period of ten years.

(A) A program demonstrates a positive return on investment when the majority of students statewide completing the credential, within a program area, are expected to accrue earnings greater than

the cumulative median earnings of Texas high school graduates who do not hold additional credentials, plus recouping the net cost of attendance within ten years after earning the credential.

(B) This calculation of return on investment shall include students' opportunity cost, calculated as the difference between median earnings for Texas high school graduates and estimated median earnings for students while enrolled:

- (i) Four years for baccalaureate degree holders;
- (ii) Two years for associate degree holders; or
- (iii) One year for holders of a Level 1 certificate, Level 2 certificate, Advanced Technical Certificate, or Continuing Education Certificate.

(C) The Coordinating Board shall calculate the expected return on investment for each program based on the most current data available to the agency for the funding year for each program or a comparable program.

(D) In applying the methodology under this section to a program offering a credential in an emerging or essential high-demand field pursuant to §13.595(a) and (b) of this chapter (relating to Emerging and Essential Fields), the Commissioner of Higher Education shall utilize recent, relevant data, including:

- (i) employer certifications provided under §13.595(b);
- (ii) information on program design, including at minimum the cost and length of the program; and
- (iii) any other information necessary for the Coordinating Board to apply the methodology under this section to the program proposed in an emerging or essential high-demand field.

(3) The following limitations apply to a fundable credential:

(A) For a credential under paragraph (1)(B) or (C) of this subsection, if more than one credential that the institution awarded to a student includes the same contact hours, the institution may only submit one credential for funding;

(B) If an institution awarded to a student a credential eligible for funding under paragraph (1)(B) and (C) of this subsection and those credentials share the same contact hours, the institution shall submit for funding only the credential awarded under paragraph (1)(B) of this subsection; and

(C) For a degree or certificate awarded on or after September 1, 2024, a fundable credential excludes a degree or certificate awarded to a non-resident student enrolled in a 100-percent online degree or certificate program as defined in §2.202(4)(A) of this title (relating to Definitions) for a student who resides out-of-state.

(c) Credential of Value Premium. An institution earns a Credential of Value Premium for each student who completes a Fundable Credential under subsection (b)(1)(A) of this section as follows:

(1) The student completes the credential of value on or before the target year for completion that, for the majority of students who complete comparable programs, would enable the student to achieve a positive return on investment within the timeframe specified for the program as described in paragraph (2) of this subsection.

(2) For each program, the Coordinating Board shall calculate the year in which the majority of comparable programs would be projected to have the majority of their students achieve a positive return on investment.

(3) Each year, the Coordinating Board shall publish a list of the target years for completion for each program.

(d) Dual Credit Fundable Outcome. An institution achieves a Dual Credit Fundable Outcome when a student has earned a minimum number of eligible dual credit semester credit hours, as defined in §13.553(14) of this subchapter (relating to Definitions).

(e) Transfer Fundable Outcome.

(1) An institution earns a transfer fundable outcome when a student enrolls in a general academic teaching institution (GAI), as defined in Texas Education Code, §61.003(3), after earning at least 15 semester credit hours (SCH) from a single public junior college district, subject to the following:

(A) The student is enrolled at the GAI for the first time in the fiscal year for which the public junior college is eligible for a performance tier allocation, as established in this subchapter;

(B) No institution, including the institution that may be awarded a transfer fundable outcome, has achieved a structured co-enrollment fundable outcome or would otherwise achieve a structured co-enrollment fundable outcome in the same year on the basis of the student's participation in a structured co-enrollment program under subsection (f) of this section;

~~(C)~~ The student earned a minimum of 15 SCHs from the public junior community college district seeking the transfer fundable outcome during the period including the fiscal year in which they enroll at the GAI and the four fiscal years prior; and

~~(D)~~ The attainment of the 15 SCHs satisfies the following restrictions:

(i) The transfer fundable outcome shall exclude the 15 SCHs that previously counted toward attainment of a dual credit fundable outcome for the student under subsection (d) of this section.

(ii) The transfer fundable outcome may include any SCHs earned by the student not previously counted toward a dual credit fundable outcome under subsection (d) of this section.

(2) Only one institution may earn a transfer fundable outcome for any individual student, except as provided by subparagraph (C) of this paragraph. An institution may earn the transfer fundable outcome only once per student. The Coordinating Board shall award the transfer fundable outcome in accordance with this subsection.

(A) If a student has earned 15 SCH at more than one institution prior to transfer to any GAI, the Coordinating Board shall award the transfer fundable outcome to the last public junior college at which the student earned the 15 SCH eligible for funding under this section.

(B) If the student earned the 15 SCH at more than one institution during the same academic term, the Coordinating Board shall award the transfer fundable outcome to the public junior college:

(i) from which the student earned the greater number of the SCH that count toward the transfer fundable outcome during the academic term in which they earned the 15 SCH; or

(ii) if the student earned an equal number of SCH that count toward the transfer fundable outcome in the academic term in which the student earned the 15 SCH, to the institution from which the student earned a greater number of SCH that count toward the transfer fundable outcome in total.

(C) If a student has met the SCH requirements of subparagraph (B)(i) and (ii) of this paragraph at more than one public ju-

nior college, each public junior college may receive a transfer fundable outcome.

(f) Structured Co-Enrollment Fundable Outcome. An institution achieves a Structured Co-Enrollment Fundable Outcome when a student has earned a minimum number of eligible semester credit hours in a structured co-enrollment program, as defined in §13.553(30) of this subchapter, and no institution, including the institution that may be awarded a structured co-enrollment fundable outcome, has achieved the transfer fundable outcome on the basis of the student's enrollment in a GAI under subsection (e) of this section.

(g) Opportunity High School Diploma Fundable Outcome. An institution achieves an Opportunity High School Diploma Fundable Outcome when a student has completed the program and attained the credential, as defined in §13.553(28) of this subchapter. A student must earn the Opportunity High School Diploma on or after September 1, 2024 to qualify as a Fundable Outcome.

§13.557. *Performance Tier: Fundable Outcome Weights.*

(a) This section contains definitions of Fundable Outcome Weights that are applied to the Fundable Outcomes specified in §13.556 of this subchapter (relating to Performance Tier: Fundable Outcomes) to generate a Weighted Outcome Completion. A Fundable Outcome that does not qualify for one of the following Fundable Outcome Weight categories receives a weight of 1. The Coordinating Board will apply the following weights to Fundable Outcomes to the extent permitted by data availability. Fundable Outcome Weights consist of the following categories:

(1) Outcomes achieved by economically disadvantaged students;

(2) Outcomes achieved by academically disadvantaged students; and

(3) Outcomes achieved by adult learners.

(b) Economically Disadvantaged Students.

(1) An institution will receive an additional weight of 25% for fundable credentials, transfer fundable outcomes, ~~and~~ structured co-enrollment fundable outcomes, and Opportunity High School Diploma fundable outcomes, as referenced in §13.556 of this subchapter achieved by an economically disadvantaged student, as defined in §13.553(15) of this subchapter (relating to Definitions).

(2) For purposes of calculating economically disadvantaged for the Transfer Fundable Outcome, Opportunity High School Diploma Fundable Outcome, and Fundable Credentials, the student must be classified as economically disadvantaged at any point during the fiscal year in which the outcome was achieved or the four fiscal years prior at the institution in which the outcome was achieved.

(3) For purposes of calculating economically disadvantaged for Structured Co-Enrollment Fundable Outcome, the student must be classified as economically disadvantaged in the initial semester of enrollment in the Structured Co-Enrollment Program at either the community college or general academic institution.

(c) Academically Disadvantaged Students.

(1) An institution will receive an additional weight of 25% for any fundable credentials, transfer fundable outcomes, ~~and~~ structured co-enrollment fundable outcomes, and Opportunity High School Diploma fundable outcomes, as referenced in §13.556 of this subchapter achieved by an academically disadvantaged student, as defined in §13.553(1) of this subchapter.

(2) For purposes of calculating academically disadvantaged for Transfer Fundable Outcome, Opportunity High School

Diploma Fundable Outcome, and Fundable Credentials, the student must be classified as academically disadvantaged at any point during the fiscal year in which the outcome was achieved or the four fiscal years prior at the institution in which the outcome was achieved.

(3) For purposes of calculating academically disadvantaged for Structured Co-Enrollment Fundable Outcome, the student must be classified as academically disadvantaged in the initial semester of enrollment in the Structured Co-Enrollment Program at the institution in which the outcome was achieved.

(d) Adult Learners.

(1) An institution will receive an additional weight of 50% for a fundable credential, transfer fundable outcomes, [and] structured co-enrollment fundable outcomes, and Opportunity High School Diploma fundable outcomes, as referenced in §13.556 of this subchapter achieved by an adult learner, as defined in §13.553(2) of this subchapter.

(2) For purposes of calculating an Adult Learner for a transfer fundable outcome, the Coordinating Board shall calculate age in accordance with this subsection.

(A) The student shall be 25 years of age or older in the earliest fiscal year in which they were enrolled at the public junior college during the current fiscal year or the two fiscal years prior to first enrollment in a general academic institution; or

(B) If the student was not enrolled at the public junior college during the current fiscal year or the two fiscal years prior to the first enrollment in a general academic institution, the student must be 25 years of age or older in the earliest fiscal year of enrollment at the public junior college during the prior four fiscal years.

(3) For purposes of calculating an Adult Learner for a fundable credential, the student's eligibility will be determined as follows:

(A) For a student who completes an Occupational Skills Award, Institutional Credential leading to Licensure or Certification, Third Party Credential, Level I Certificate, Level II Certificate, Continuing Education Certificate, Opportunity High School Diploma, or Advanced Technical Certificate, as defined in §13.556(b) of this subchapter, 25 years of age or older on September 1 of the fiscal year in which the student earned the credential;

(B) For a student who completes an associate degree as defined in §13.556(b) of this subchapter, 25 years of age or older on September 1 of the earliest fiscal year in which the student was enrolled during the period including the year in which the student earned the credential and the prior fiscal year; and

(C) For a student who completes a bachelor's degree as defined in §13.556(b) of this subchapter, 25 years of age or older on September 1 of the earliest fiscal year in which the student was enrolled during the period including the year in which the student earned the credential and the three fiscal years prior.

(4) For purposes of calculating an Adult Learner for Structured Co-Enrollment Fundable Outcome, the student must be classified as an Adult Learner in the initial semester of enrollment in the Structured Co-Enrollment Program at the institution in which the outcome was achieved.

(e) Applicability of Weights. For purposes of transitioning to the new formula model, an institution will receive fundable outcome weights for Occupational Skills Awards, Institutional Credentials Leading to Licensure or Certification, and Third-Party Credentials achieved by economically disadvantaged students, academically disadvantaged students, or adult learners beginning with these awards

reported in Fiscal Year 2025. An institution will receive a fundable outcome weight for an Opportunity High School Diploma earned by an economically disadvantaged student, academically disadvantaged student, or an adult learner beginning with these awards reported in Fiscal Year 2026. [This subsection expires on August 31, 2026.]

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

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Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6495



CHAPTER 21. STUDENT SERVICES

SUBCHAPTER O. PROVISIONS REGARDING SCHOLARSHIPS TO RELATIVES OF BOARD MEMBERS OF INSTITUTIONS OF HIGHER EDUCATION AND UNIVERSITY SYSTEMS

19 TAC §§21.468 - 21.474

The Texas Higher Education Coordinating Board (Coordinating Board) proposes the repeal of Texas Administrative Code, Title 19, Part 1, Chapter 21, Subchapter O, §§21.468 - 21.474, concerning Provisions Regarding Scholarships to Relatives of Board Members of Institutions of Higher Education and University Systems. Specifically, this repeal will allow the relocation of this subchapter to a more appropriate location in Coordinating Board rules. The Coordinating Board is authorized by Texas Education Code, §51.969, to adopt rules relating to the provisions of that section.

Dr. Charles Contéro-Puls, Assistant Commissioner for Student Financial Aid Programs, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Dr. Charles Contéro-Puls, Assistant Commissioner for Student Financial Aid Programs, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be the improved rule navigability by relocating the rule to a more appropriate location. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

- (1) the rules will not create or eliminate a government program;
- (2) implementation of the rules will not require the creation or elimination of employee positions;
- (3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will not create a new rule;
- (6) the rules will not limit an existing rule;
- (7) the rules will not change the number of individuals subject to the rule; and
- (8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Dr. Charles Contéro-Puls, Assistant Commissioner for Student Financial Aid Programs, P.O. Box 12788, Austin, Texas 78711-2788, or via email at SFAPPolicy@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The repeal is proposed under Texas Education Code, Section 51.969, which provides the Coordinating Board with the authority to adopt rules relating to the provisions of that section.

The proposed repeal affects Texas Administrative Code, Title 19, Part 1, Chapter 21.

§21.468. *Authority and Purpose.*

§21.469. *Definitions.*

§21.470. *Relevant Institutions.*

§21.471. *Prohibited Scholarships.*

§21.472. *Declaration of Eligibility.*

§21.473. *Criminal Penalty.*

§21.474. *Dissemination of Information and Rules.*

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

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Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

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CHAPTER 22. STUDENT FINANCIAL AID PROGRAMS

SUBCHAPTER B. [PROVISIONS FOR THE] TUITION EQUALIZATION GRANT PROGRAM

19 TAC §§22.22 - 22.30

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 22, Subchapter B, §§22.22 - 22.30, concerning the Tuition Equalization Grant Program. Specifically, this

amendment will align rule language and terminology with usage throughout Chapter 22, clarify potential ambiguities in rules, and improve the overall readability of the subchapter.

The Coordinating Board is authorized to adopt rules related to the Tuition Equalization Grant (TEG) Program by Texas Education Code (TEC), §61.229.

The subchapter is retitled to conform with naming conventions throughout Chapter 22.

Included throughout the subchapter are a number of nonsubstantive updates to rule language. References to the Coordinating Board as an agency, for example, previously written as "Board" or "Board staff," are revised to "Coordinating Board" to ensure the distinction is clear between the agency and its governing board. Similarly, the word "award" is changed to the more precise "grant" as a noun and "offer" as a verb, to avoid potential confusion.

References to theological seminaries and religious degree programs have been removed in alignment with legal determinations stemming from recent federal court decisions.

Rule 22.22, Definitions, is amended to eliminate definitions that either are duplicative or unnecessary. The terms "forecast" and "private or independent institution of higher education" have been moved to the chapter's General Provisions and therefore are redundant in this subchapter. "Program maximum" is unchanged conceptually but moved to §22.28(a) to align with the rule structure and flow of other programs in this chapter.

Rule 22.23, Eligible Institutions, is amended to enhance readability through more specific citations to other rules and to clarify potential ambiguities. Paragraph (a)(5) is amended to clarify that the Commissioner of Higher Education makes determinations regarding temporary approvals for alternatively accredited institutions and that renewals of that approval may be renewed twice for two years each time, for maximum of six years of temporary approval possible. This does not reflect a change in Coordinating Board practices.

Rule 22.24, Eligible Students, is amended to align eligibility criteria more closely with defined terms and the rules of other programs in this chapter. Paragraph (a)(8) is added to align the rule with current practice regarding the Selective Service requirement for program eligibility. Paragraph (b)(2) is amended to specify which year's Pell Grant eligibility cap is used to establish eligibility for exceptional TEG need and to eliminate a potentially confusing reference to the Financial Aid Database. None of the amendments to this section reflect a change in the eligibility for the Tuition Equalization Grant.

Rule 22.25, Satisfactory Academic Progress, is amended to make clarifying changes to the rule language and citations. Subparagraph (b)(1)(A) is simplified by eliminating confusing and unnecessary language regarding satisfactory academic progress requirements following the student's second year in the TEG program.

Rule 22.26, Discontinuation of Eligibility or Non-Eligibility, is amended by making clarifying changes to the time-based discontinuation of eligibility provisions. The current rule language is ambiguous as to what constitutes the "anniversary" from which the five/six-year eligibility is measured. This language is amended to align both with Coordinating Board practice and with rule language in other programs in this chapter. There is no change in policy as a result of this amendment.

Rule 22.27, Hardship Provisions, is amended to conform the hardship provisions with the rule language throughout the chapter.

Rule 22.28, Grant Amounts, is amended by adding the "program maximum" concept that previously was contained in the term's definition in §22.22. There is no change in Coordinating Board policy or practice as a result of this amendment. The section is retitled to more closely align with naming conventions throughout the chapter, as well as the fact that no provisions in the section currently relate to grant adjustments.

Rule 22.29, Allocation of Funds, is amended to make non-substantive language improvements only. Allocation "base" is changed to "share" in paragraph (a)(2) to reflect that no alterations are made to the figure. There is no change to the allocation methodology as a result of these amendments.

Rule 22.30, Disbursement of Funds, is amended by making non-substantive language improvements and by adding a citation to relevant rules in the chapter's General Provisions.

Dr. Charles Contéro-Puls, Assistant Commissioner for Student Financial Aid Programs, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Dr. Charles Contéro-Puls, Assistant Commissioner for Student Financial Aid Programs, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be improved rule clarity and readability. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

- (1) the rules will not create or eliminate a government program;
- (2) implementation of the rules will not require the creation or elimination of employee positions;
- (3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will not create a new rule;
- (6) the rules will not limit an existing rule;
- (7) the rules will not change the number of individuals subject to the rule; and
- (8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Dr. Charles Contéro-Puls, Assistant Commissioner for Student Financial Aid Programs, P.O. Box 12788, Austin, Texas 78711-2788, or via email at SFAPPolicy@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendment is proposed under Texas Education Code, Section 61.229, which provides the Coordinating Board with the authority to adopt rules related to the Tuition Equalization Grant Program.

The proposed amendments affect Texas Administrative Code, Title 19, Part 1, Chapter 22.

§22.22. Definitions.

In addition to the words and terms defined in §22.1 of this chapter (relating to Definitions) [Texas Administrative Code 22.1] the following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Adjusted Gross Need [~~gross need~~]-An amount equal to a student's financial need less the amount of his or her Federal Pell Grant and any categorical aid the student might have brought to the institution.

(2) First Grant [~~award~~]-The first Tuition Equalization Grant ever offered [~~awarded~~] to and received by a specific student.

~~[(3) Forecast-The FORECAST function in Microsoft Excel.]~~

~~[(4) Private or independent institution-Any college or university defined as a private or independent institution of higher education by Texas Education Code, §61.003.]~~

~~[(5) Program maximum-The TEG Program award maximum determined by the Board in accordance with Texas Education Code, §61.227 (relating to Payment of Grant; Amount).]~~

(3) ~~[(6)]~~ Program or TEG--The Tuition Equalization Grant Program.

~~[(7) Religious ministry-Roles serving as clergy, religious leaders, or similar positions within any sect or religious society, as demonstrated through ordination, licensure to preach, or other mechanisms particular to a given sect or society that are used to identify clergy, religious leaders, or such similar positions.]~~

(4) ~~[(8)]~~ Subsequent Grant [~~award~~]-A TEG grant received in any academic year other than the year in which an individual received his or her first TEG grant [~~award~~].

(5) ~~[(9)]~~ Tuition Differential [~~differential~~]-The difference between the tuition paid at the private or independent institution attended and the tuition the student would have paid to attend a comparable public institution.

§22.23. Eligible Institutions.

(a) Eligibility.

(1) Any private or independent institution of higher education, as defined in §22.1 of this chapter (relating to Definitions), or a branch campus of a private or independent institution of higher education located in Texas and accredited on its own or with its main campus institution by the Commission on Colleges of the Southern Association of Colleges and Schools, [~~other than theological or religious seminaries,~~] is eligible to participate in the TEG Program.

(2) No participating institution may, on the grounds of race, color, national origin, gender, religion, age, or disability exclude an individual from participation in, or deny the benefits of, the program described in this subchapter.

(3) Each participating institution must follow the Civil Rights Act of 1964, Title VI (Public Law 88-352) in avoiding discrimination in admissions or employment.

(4) A private or independent institution of higher education that previously qualified under paragraph (1) of this subsection but no longer holds the same accreditation as public institutions of higher education may temporarily participate in the TEG Program if it is:

(A) accredited by an accreditor recognized by the Board;

(B) actively working toward the same accreditation as public institutions of higher education;

(C) participating in the federal financial aid program under 20 United States Code (U.S.C.) §1070a; and

(D) a "part B institution" as defined by 20 U.S.C. §1061(2) and listed in 34 Code of Federal Regulations §608.2.

(5) The Commissioner [~~Board~~] may grant temporary approval to participate in the TEG program to an institution described under paragraph (4) of this subsection for a period of two years. The Commissioner [~~Board~~] may renew that approval for a given institution twice, each for a period of two additional years.

(6) A private or independent institution of higher education that previously qualified under paragraph (1) of this subsection but no longer holds the same accreditation as public institutions of higher education is eligible to [~~may~~] participate in the TEG Program if it is:

(A) accredited by an accreditor recognized by the Board in accordance with [~~Texas Administrative Code,~~] §7.6 of this title (relating to Recognition of Accrediting Agencies);

(B) a work college, as that term is defined by 20 U.S.C. Section 1087-58; and

(C) participating in the federal financial aid program under 20 U.S.C. §1070(a).

(b) Participation Requirements [~~Approval~~].

(1) Agreement. Each eligible [~~approved~~] institution must enter into an agreement with the Coordinating Board, prior to participating [~~being approved to participate~~] in the program, the terms of which shall be prescribed by the Commissioner [~~or his/her designee~~].

(2) Intent to Participate. An eligible institution interested in participating in the Program must indicate this intent by June 1 of each odd-numbered year in order for qualified students enrolled in that institution to be eligible to receive grants in the following fiscal biennium. An eligible institution's data submissions, as required in §22.29 of this subchapter [~~Section 22.29~~] (relating to Allocation of Funds), must occur on or before the institution's indication of its intent to participate.

(c) Responsibilities. Participating institutions are required to abide by the General Provisions outlined in subchapter A [~~Chapter 22, Subchapter A~~] of this chapter [~~title~~] (relating to General Provisions).

§22.24. Eligible Students.

(a) To receive a grant [~~an award~~] through the TEG Program, a student must:

(1) be enrolled [~~on~~] at least three-quarter-time [~~a three-fourths of full-time enrollment~~];

(2) show financial need, as defined by §22.1 of this chapter (relating to Definitions);

(3) maintain satisfactory academic progress in his or her program of study as determined by the institution at which the person is enrolled and as required by §22.25 of this subchapter [~~title~~] (relating to Satisfactory Academic Progress);

(4) be a resident of Texas, as defined in §22.1 of this chapter [~~determined based on data collected using the Residency Core Questions and in keeping with Chapter 21, Subchapter B of this title (relating to Determination of Resident Status)];~~

(5) be enrolled in a participating [~~an approved~~] institution in an individual degree plan leading to the student's [~~a~~] first associate degree, first baccalaureate degree, first master's degree, first professional degree, or first doctoral degree, but not in a degree plan that is intended to lead to religious ministry;

(6) be required to pay more tuition than is required at a comparable public college or university and be charged no less than the tuition required of all similarly situated students at the institution; [~~and~~]

(7) not concurrently receive [~~be a recipient of~~] any form of athletic scholarship; and [~~during the semester or semesters he or she receives a TEG;~~]

(8) meet applicable standards outlined in §22.3 of this chapter (relating to Student Compliance with Selective Service Registration).

(b) To demonstrate eligibility for exceptional TEG need, a student must:

(1) be an undergraduate student; and

(2) have a Student Aid Index [~~an expected family contribution~~] less than or equal to fifty percent of the Federal Pell Grant eligibility cap for the academic year in which the grant is offered [~~reported in the institution's Financial Aid Database submission~~].

§22.25. Satisfactory Academic Progress.

(a) Eligibility at End of First Grant [~~Award~~] Year. Students who complete their first year receiving a Tuition Equalization Grant in compliance with their institutions' financial aid satisfactory academic progress requirements[;] are eligible to receive subsequent awards in the following year if they meet the other requirements listed in §22.24 of this subchapter [~~title~~] (relating to Eligible Students).

(b) Eligibility at End of a Subsequent Grant [~~Award~~] Year. Students shall, unless granted a hardship provision in accordance with §22.27 of this subchapter [~~title~~] (relating to Hardship Provisions), as of the end of an academic year in which the student receives a subsequent grant [~~award~~]:

(1) have completed at least:

(A) for undergraduate students, 24 semester credit hours in the most recent academic year [~~; or if at the end of the academic year in which the student receives a first award and the student entered college at the beginning of the spring term in the year in which he or she received his or her first award, have completed at least 12 semester credit hours in the most recent academic year~~]; or

(B) for graduate students, 18 semester credit hours in the most recent academic year;

(2) have an overall cumulative grade-point average of at least 2.5 on a four-point scale or its equivalent; and

(3) have completed at least 75 percent of the semester credit hours attempted in the most recent academic year.

(c) The institution shall calculate [~~calculation of~~] a student's GPA [~~is to be completed~~] in accordance with §22.10 of this chapter (relating to Grade Point Average Calculations for Satisfactory Academic Progress) [~~Chapter 22, Subchapter A of this title (relating to General Provisions)~~].

(d) The completion rate calculations may be made in keeping with institutional policies.

§22.26. *Discontinuation of Eligibility or Non-Eligibility.*

(a) Discontinuation of Eligibility.

(1) Unless granted a hardship provision in accordance with §22.27 of this subchapter [title] (relating to Hardship Provisions), an undergraduate student shall no longer be eligible for a TEG as of:

(A) five years from the start of the semester in which the student received his or her first grant [the fifth anniversary of the first award of a TEG to the student], if the student is enrolled in a degree or certificate program of four years or less; or

(B) six years from the start of the semester in which the student received his or her first grant [the sixth anniversary of the first award of a TEG to student], if the student is enrolled in a degree or certificate program of more than four years.

(2) A graduate student may continue to receive grants as long as he or she meets the relevant eligibility requirements of §22.24 and §22.25 of this subchapter [title] (relating to Eligible Students and Satisfactory Academic Progress respectively).

(b) Other than as described in §22.27 of this subchapter [title], if a person fails to meet any of the requirements for receiving a grant [an award] as outlined in §22.24 or §22.25 of this subchapter [title] after completion of any year, the person may not receive a TEG until he or she completes a semester of at least three-quarter-time enrollment while not receiving a TEG and meets all the requirements of §22.24 and [or] §22.25 of this subchapter [title] as of the end of that semester.

§22.27. *Hardship Provisions.*

(a) In the event of a hardship or for other good cause, the Program Officer at an eligible institution may allow an otherwise eligible student to receive a TEG [while]:

(1) while enrolled less than three-quarter-time [three-quarter of full-time enrollment];

(2) if the student's grade point average, number of hours completed, or percent of attempted hours completed falls below the satisfactory academic progress requirements as referred to in §22.25 of this subchapter [title] (relating to Satisfactory Academic Progress); or

(3) if the student has taken more time to complete his/her undergraduate certificate or degree than specified in §22.26 of this subchapter [title] (relating to Discontinuation of Eligibility or Non-Eligibility).

(b) Hardship conditions or other good cause may include, but are not limited to:

(1) documentation [a showing] of a severe illness or other debilitating condition that may affect the student's academic performance;

(2) documentation [an indication] that the student is responsible for the care of a sick, injured, or needy person and that the student's provision of care may affect his or her academic performance; [; or]

(3) documentation of the birth of a child or placement of a child with the student for adoption or foster care, that may affect the student's academic performance; or

(4) [(3)] a student's need to complete fewer than the required minimum number of hours in a given term in order to complete a degree, in which case the grant [award] amount should be determined on a pro rata basis for a full-time grant [award].

(c) The institution shall retain documentation of the approved hardship circumstances in the student's files, and the institution must identify students approved for a grant based on a hardship to the Coordinating Board.

(d) [(e)] Each institution shall adopt a hardship policy under this section and make [have] the policy publicly available to students [in writing in] through the financial aid office [for public review upon request].

§22.28. *Grant [Award] Amounts [and Adjustments].*

(a) The Coordinating Board will determine and announce the TEG program maximum in accordance with Texas Education Code, §61.227.

(b) [(a)] Grant [Award] Amount. Each academic year, no grant [TEG award] shall exceed the least of:

(1) the student's financial need;

(2) the student's tuition differential; or

(3) the maximum grant [award] allowed based on the student's EFC, which is:

(A) 150 percent of the program maximum for undergraduate students demonstrating exceptional TEG need, as outlined in §22.24(b) [§22.24] of this subchapter [Subchapter] (relating to Eligible Students); or

(B) the program maximum for all other eligible students.

(c) [(b)] Term or Semester Disbursement Limit. The amount of any disbursement in a single term or semester may not exceed the student's financial need or tuition differential for that term or semester or the program maximum for the academic year, whichever is the least.

(d) [(e)] Grant [Award] calculations and disbursements are to be completed in accordance with [Chapter 22, Subchapter A] subchapter A of this chapter [title] (relating to General Provisions).

§22.29. *Allocation of Funds.*

(a) The Coordinating Board determines allocations [Allocations] for the TEG Program [are to be determined] on an annual basis as follows:

(1) The Coordinating Board will invite [AH] eligible institutions [will be invited] to participate; those choosing not to participate will be left out of the calculations for the relevant year.

(2) The allocation share [base] for each institution choosing to participate will be its three-year average share of the total statewide amount of the total amount of TEG funds that eligible students at an approved institution could receive if the program were fully funded, subject to the limits in Texas Education Code, §61.227(c) and (e), based on the students who met the following criteria:

(A) Enrollment on at least a three-quarter-time [three-fourths or three-quarters] basis;

(B) A Student Aid Index [An Expected Family Contribution], calculated using federal methodology, that results in demonstrated Adjusted Gross Need greater than zero;

(C) Maintain satisfactory academic progress in his or her program of study as required by §22.24(a)(3) [§22.24(b)] of this subchapter [title] (relating to Eligible Students);

(D) Classified as a Resident of Texas;

(E) Be enrolled in an approved institution in an individual degree plan leading to a first associate [associates] degree, first

baccalaureate degree, first master's degree, first professional degree, or first doctoral degree;

~~[(F)]~~ Not be enrolled in a degree plan that is intended to lead to religious ministry;]

~~(F)~~ [(G)] Be required to pay more tuition than is required at a comparable public college or university and be charged no less than the tuition required of all similarly situated students at the institution; and

~~(G)~~ [(H)] Not be a recipient of any form of athletic scholarship.

(3) The source of data used for the allocations are the three most recently certified Financial Aid Database (FADS) reports submitted to the Coordinating Board by the institutions.

(4) A student's TEG need may not exceed the least of his or her adjusted gross need, tuition differential, or the TEG maximum award as set in accordance with Texas Education Code, §61.227(c).

(5) A student's exceptional TEG need plus TEG need may not exceed the least of the student's adjusted gross need, tuition differential or 150 percent of the current year's statutory TEG maximum award as set in accordance with Texas Education Code, §61.227(c).

(6) The maximum amount of need that may be recorded for any single student in the allocation calculation may not exceed the sum of his or her TEG need plus his or her exceptional TEG need.

(7) The total amount allocated for an institution may not exceed the sum of the individual maximum amount of need for all students calculated using the sources of data outlined in paragraph (3) of this subsection.

(8) Verification of Data. The Coordinating Board will provide the TEG allocation spreadsheet [~~will be provided~~] to the institutions for review and the institutions will be given 10 business [~~working~~] days, beginning the day of the notice's distribution and excluding State holidays, to confirm that the spreadsheet accurately reflects the data they submitted or to advise the Coordinating Board [~~staff~~] of any inaccuracies.

(9) The Coordinating Board will complete allocations [~~Allocations~~] for both years of the state appropriations' biennium [~~will be completed~~] at the same time. For the allocations process of the second year of the state appropriations' biennium, the sources of data outlined in paragraph (3) of this subsection will be utilized to forecast an additional year of data. This additional year of data, in combination with the two most recent years outlined in paragraph (3) of this subsection, will be utilized to calculate the three-year average share outlined in paragraph (2) of this subsection. Institutions will receive notification of their allocations for both years of the biennium at the same time.

(b) Reductions in Funding.

(1) If annual funding for the program is reduced after the start of a fiscal year, the Coordinating Board may take steps to help distribute the impact of reduced funding across all participating institutions by an across-the-board percentage decrease in all institutions' allocations.

(2) If annual funding for the program is reduced prior to the start of a fiscal year, the Coordinating Board may recalculate the allocations according to the allocation methodology outlined in this rule for the affected fiscal year based on available dollars.

§22.30. *Disbursement of Funds.*

As requested by institutions throughout the academic year, the Coordinating Board shall forward to each participating institution a portion of its allocation of funds for timely disbursement to students in accordance with §22.2 of this chapter (relating to Timely Distribution of Funds). Institutions will have until the close of business on August 1, or the first working day thereafter if it falls on a weekend or holiday, to encumber program funds from their allocation. After that date, institutions lose claim to any funds in the current fiscal year not yet drawn down from the Coordinating Board for timely disbursement to students. Funds released in this manner in the first year of the biennium become available to the institution for use in the second year of the biennium. Funds released in this manner in the second year of the biennium become available to the Board's program for utilization in grant processing. Should these unspent funds result in additional funding available for the next biennium's program, revised allocations, calculated according to the allocation methodology specified in §22.29 of this subchapter (relating to Allocation of Funds), will be issued to participating institutions during the fall semester.

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

Filed with the Office of the Secretary of State on January 23, 2025.

TRD-202500214

Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: March 9, 2025

For further information, please call: (512) 427-6365



SUBCHAPTER L. TOWARD EXCELLENCE, ACCESS, AND SUCCESS (TEXAS) GRANT PROGRAM

19 TAC §§22.226 - 22.231, 22.233, 22.234, 22.236, 22.238, 22.241

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments and new rules in Texas Administrative Code, Title 19, Part 1, Chapter 22, Subchapter L, §§22.226 - 22.231, 22.233, 22.234, 22.236, 22.238, and 22.241, concerning the Toward EXcellence, Access, and Success (TEXAS) Grant Program. Specifically, this amendment and new section will align rule language and terminology with rules throughout the chapter, resolve potential ambiguities in rule language, and improve the overall readability of the subchapter.

The Coordinating Board is authorized to adopt rules related to the TEXAS Grant Program by Texas Education Code, §56.303.

Included throughout the subchapter are a number of nonsubstantive updates to rule language. References to the Coordinating Board as an agency, for example, previously written as "Board" or "Board staff," are revised to "Coordinating Board" to ensure the distinction is clear between the agency and its governing board. Similarly, the word "award" is changed to the more precise "grant" as a noun and "offer" as a verb, to avoid potential confusion.

Rule 22.226, Definitions, is amended by eliminating several duplicative or unnecessary definitions and aligning remaining ones

with defined terms in the General Provisions of the chapter. The terms defined in current paragraphs (2), (3), (6), (8), and (13) all are defined in (or are proposed to be defined in) rule 22.1 in the chapter's General Provisions. "Encumbered funds" is unused in the subchapter and accordingly, is eliminated, as "encumber" is already defined in the chapter's General Provisions. The terms "public institution" and "private institution" are eliminated for rule clarity, owing to their proximity to defined terms "institution of higher education" and "private or independent institution of higher education."

Rule 22.227, Eligible Institutions, is amended by eliminating (in paragraph (a)(1)) unnecessary provisions related to the phase out of TEXAS grants offered by two-year institutions of higher education and aligning rule language to defined terms.

Rule 22.228, Eligible Students, is amended to align the rule language with defined terms and clarify a few eligibility criteria. The Coordinating Board's interpretation of the requirement to "have applied for any available financial aid assistance" (paragraph (a)(3)) in this and other programs is for the student to have completed the Free Application for Federal Student Aid or, as needed, the Texas Application for State Financial Aid. The amendments to the rule improve the clarity of the rule and align with current practice. Similarly, the amendments specify that paragraph (a)(5) refers to the Selective Service requirement. Subparagraphs (a)(6)(C) and (a)(6)(D) are clarified by removing the word "continuing" before "undergraduate student." In the context of the rule, it appeared that "continuing" was intended to contrast with "entering undergraduate" in subparagraphs (a)(6)(A) and (a)(6)(B), when in fact, the word does not have a specific meaning. For clarity's sake, then, it is removed. Finally, current paragraph (b)(7) is changed to subsection (c) to establish that it is conceptually different from the continuation grant eligibility criteria listed in subsection (b).

Rule 22.229, Satisfactory Academic Progress, is amended by updating rule language to use defined terms and more specific citations to other rules in the chapter and subchapter.

Rule 22.230, Discontinuation of Eligibility or Non-Eligibility, is amended by adding subsection (a), a restriction on a TEXAS Grant recipient concurrently receiving a Texas Educational Opportunity Grant or Texas Transfer Grant. This restriction aligns with current practice. Rule language in paragraphs (e)(1) and (e)(2) regarding time-related discontinuation of eligibility in certain circumstances is updated to align with the more specific language in subsection (d).

Rule 22.231, Hardship Provisions, is amended to align the subchapter's hardship provisions with those of other programs in this chapter. The provision related to completion rate in paragraph (a)(3) is eliminated as it is no longer relevant to the program.

Rule 22.233, Priority in Grants to Students, is amended to replace the term "expected family contribution" with the newer, "Student Aid Index" (no change in meaning) and to correct a citation.

Rule 22.234, Grant Amounts, is amended by rephrasing subsection (d) for improved readability. The amendments do not represent a change in policy.

Rule 22.236, Allocation and Disbursement of Funds, is amended by aligning rule language with defined terms, making nonsubstantive clarifying edits, and separating provisions relating to disbursement of funds to a separate section. The section is retitled accordingly. Subparagraph (a)(1)(B) is corrected by eliminating

the word "entering" before "undergraduate transfer student." The term "entering undergraduate" is defined in §22.226 of the subchapter but used inadvertently here simply to mean "undergraduate transfer student entering an institution." This amendment does not reflect a change in allocation methodology. Paragraph (a)(2) is eliminated, as it relates to the phase out of TEXAS grants offered by two-year institutions of higher education. Finally, subsection (d) is removed and reconstituted as §22.238. There are no changes to the allocation methodology as a result of any amendment to this rule.

Rule 22.238, Disbursement of Funds, is added as the reconstituted §22.236(b), with no changes other than an added citation to a relevant rule in the chapter's General Provisions.

Rule 22.241, Tolling of Eligibility for Initial Year Grant, is amended by aligning language to defined terms and updating citations to other rules in the subchapter.

Dr. Charles Contéro-Puls, Assistant Commissioner for Student Financial Aid Programs, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Dr. Charles Contéro-Puls, Assistant Commissioner for Student Financial Aid Programs, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be improved rule clarity and readability. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

- (1) the rules will not create or eliminate a government program;
- (2) implementation of the rules will not require the creation or elimination of employee positions;
- (3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will not create a new rule;
- (6) the rules will not limit an existing rule;
- (7) the rules will not change the number of individuals subject to the rule; and
- (8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Dr. Charles Contéro-Puls, Assistant Commissioner for Student Financial Aid Programs, P.O. Box 12788, Austin, Texas 78711-2788, or via email at SFAPPolicy@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments and new section are proposed under Texas Education Code, Section 56.303, which provides the Coordinat-

ing Board with the authority to adopt rules related to the Toward EXcellence, Success, and Access (TEXAS) Grant Program.

The proposed amendments and new section affect Texas Administrative Code, Title 19, Part 1, Chapter 22.

§22.226. *Definitions.*

In addition to the words and terms defined in §22.1 of this chapter (relating to Definitions), the following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Continuation Grant [~~grant~~]-A TEXAS Grant offered to a person who has previously received an initial year grant.

~~[(2) Degree program of four years or less--A baccalaureate degree program, other than a program determined by the Board to require more than four years to complete.]~~

~~[(3) Degree program of more than four years--A baccalaureate degree program determined by the Board to require more than four years to complete.]~~

~~[(4) Encumbered Funds--Funds ready for disbursement to the institution, based on the institution having submitted to the Board the required documentation to request funds.]~~

(2) ~~[(5)]~~ Entering Undergraduate [~~undergraduate~~]-A student enrolled in the first thirty [30] semester credit hours or their equivalent, excluding hours taken during dual enrollment in high school and courses for which the student received credit through examination.

~~[(6) General Academic Teaching Institution--As the term is defined in Texas Education Code, §61.003(3).]~~

(3) ~~[(7)]~~ Initial Year Grant [~~year grant~~]-The TEXAS Grant offered in the student's first year in the TEXAS Grant Program[, typically made up of a fall and spring disbursement].

~~[(8) Medical or dental unit--As the term is defined in Texas Education Code, §61.003(5).]~~

~~[(9) Public Institution--As the term, institution of higher education, is defined in Texas Education Code, §61.003(8).]~~

(4) ~~[(40)]~~ Prior-Prior Year [~~Prior-prior year~~]-For allocation purposes, the state fiscal year that began two years earlier than the fiscal year for which the allocation is being calculated.

~~[(11) Private Institution--As the term, private or independent institution of higher education, is defined in Texas Education Code, §61.003(15).]~~

(5) ~~[(42)]~~ Program-The Toward EXcellence, Access and Success (TEXAS) Grant program.

~~[(13) Public state college--As the term is defined in Texas Education Code, §61.003(16).]~~

(6) ~~[(44)]~~ Required Fees [~~fees~~]-A mandatory fee (required by statute) or discretionary fee (authorized by statute, imposed by the governing board of a [public] institution of higher education) and that a [public] institution of higher education charges to a student as a condition of enrollment at the [public] institution of higher education or in a specific course.

(7) ~~[(45)]~~ Target Grant Amount [~~grant amount~~]-An amount set by the Coordinating Board, in consultation with [public] institutions of higher education participating in the TEXAS Grant Program, and used as the recommended average grant amount for the TEXAS Grant Program for a biennium and in establishing renewal

year allocations to participating [public] institutions of higher education as described in §22.236(a)(1) of this chapter [title] (relating to Allocation and Reallocation of Funds).

(8) ~~[(46)]~~ Tuition--Statutory tuition, designated and/or Board-authorized tuition, as defined in §13.142 of this title (relating to Definitions).

§22.227. *Eligible Institutions.*

(a) Eligibility.

(1) Institutions eligible to make initial year and continuation grants in the program are medical or dental units and general academic teaching institutions, other than the public state colleges, as defined in §22.1 of this chapter (relating to Definitions). ~~[Other public institutions, including public state colleges, are only eligible to make continuation grants, and can make continuation grants only to persons who initially received TEXAS Grants prior to fall 2014 through a public state college, community college, or technical college.]~~

(2) No participating [public] institution may, on the grounds of race, color, national origin, gender, religion, age, or disability exclude an individual from participation in, or deny the benefits of the program described in this subchapter.

(3) Each participating [public] institution must follow the Civil Rights Act of 1964, Title VI (Public Law 88-353) in avoiding discrimination in admissions or employment.

(b) Approval.

(1) Agreement. Each eligible [public] institution must enter into an agreement with the Coordinating Board, the terms of which shall be prescribed by the Commissioner [or his/her designee], prior to being approved to participate in the program.

(2) Approval Deadline. An eligible [public] institution must enter into an agreement with the Coordinating Board and indicate an intent to participate in the program by April 1 in order for qualified students enrolled in that [public] institution to be eligible to receive grants in the following fiscal year.

(c) Responsibilities. Participating [public] institutions are required to abide by the General Provisions outlined in subchapter A of this chapter [Chapter].

§22.228. *Eligible Students.*

(a) To qualify for an initial year grant, a person [who graduates from high school] must:

(1) be enrolled in a baccalaureate program at a participating institution [medical or dental unit or general academic teaching institution other than public state colleges];

(2) be a resident of Texas, as defined in §22.1 of this chapter (relating to Definitions);

(3) show financial need, as defined in §22.1 of this chapter [meet financial need requirements established by the Board];

(4) have applied for [any available] financial aid through the completion of the Federal Application for Federal Student Aid or, if the student is not eligible for federal financial aid, the Texas Application for State Financial Aid [assistance];

(5) meet applicable standards outlined in §22.3 of this chapter (relating to Student Compliance with Selective Service Registration) [Subchapter A of this Chapter]; and

(6) Except as provided under §22.231 of this subchapter [title] (relating to Hardship Provisions), to receive an initial year grant,

an otherwise eligible person must enroll in a baccalaureate degree program at a participating [an eligible public] institution on at least a three-quarter time basis as:

(A) an entering undergraduate student not later than the end of the sixteenth [16th] month after the calendar month in which the person graduated from high school; or

(B) an entering undergraduate student who entered military service not later than the first anniversary of the date of high school graduation and enrolled in an eligible [public] institution no later than twelve [12] months after being released from active duty military service with an Honorable Discharge, General Discharge under Honorable Conditions, or Honorable Separation or Release from Active Duty, as documented by the Certificate of Release or Discharge from Active Duty (DD214) issued by the Department of Defense;

(C) an [a continuing] undergraduate student not later than the end of the twelfth [12th] month after the calendar month in which the student received an associate degree; or

(D) an [a continuing] undergraduate student who has:

(i) previously attended another [a public] institution of higher education, as defined in §22.1 of this chapter;

(ii) received an initial Texas Educational Opportunity Grant under subchapter M [Subchapter M] of this chapter (relating to Texas Educational Opportunity Grant Program) [Chapter] for the 2014 fall semester or a subsequent semester;

(iii) completed at least twenty-four [24] semester credit hours at any institution(s) of higher education or private or independent institution(s) of higher education, as defined in §22.1 of this chapter [public institution(s) or private institution(s)];

(iv) earned an overall grade point average of at least 2.5 on a four-point scale or the equivalent on all course work previously attempted; and

(v) has never previously received a TEXAS Grant.

(b) Continuation Grants. To receive a continuation grant through the TEXAS Grant Program, a student must:

(1) have previously received an initial year grant through this Program [program];

(2) show financial need, as defined in §22.1 of this chapter [in the semester(s) in which a TEXAS Grant is offered];

(3) be enrolled at least three-quarter time [in the semester(s) in which a TEXAS Grant is offered] unless granted a hardship waiver of this requirement under §22.231 of this subchapter (relating to Hardship Provisions) [title];

(4) be enrolled in a baccalaureate program at a participating [the eligible public] institution;

(5) make satisfactory academic progress towards a baccalaureate degree at the participating [eligible public] institution, as defined in §22.229 of this subchapter [title] (relating to Satisfactory Academic Progress); and

(6) meet applicable standards outlined in §22.3 of this chapter (relating to Student Compliance with Selective Service Registration). [Subchapter A of this Chapter; and]

(c) [(7)] If [if] a student's eligibility was based on the expectation that the student would complete a high school diploma or associate degree in time to meet the requirements for Program eligibility, and the student failed to do so, then, in order to resume eligibility, such a student must:

(1) [(A)] receive an associate degree;

(2) [(B)] meet all other qualifications for a TEXAS Grant;

(3) [(C)] if required to do so by the institution through which the TEXAS Grant was made, repay the amount of the TEXAS Grant that was previously received; and

(4) [(D)] enroll in a higher-level undergraduate degree program at a participating [in an eligible public] institution not later than the twelfth [12th] month after the month the student received an associate degree.

§22.229. *Satisfactory Academic Progress.*

(a) To qualify for a continuation grant after the academic year in which a person receives an initial year grant, each recipient of the TEXAS Grant shall meet the academic progress requirements [as indicated by the financial aid office] of his or her institution.

(b) To receive a subsequent grant after he or she receives a continuation grant, a recipient shall, unless granted a hardship waiver of this requirement [postponement] in accordance with §22.231 of this subchapter [title] (relating to Hardship Provisions):

(1) complete at least twenty-four [24] semester credit hours in his or her most recent academic year; and,

(2) maintain an overall grade point average of at least 2.5 on a four point scale or its equivalent, for all coursework attempted at an institution of higher education or private or independent institution of higher education, as defined in §22.1 of this chapter (relating to Definitions) [public institutions and private institutions].

(3) An entering undergraduate student enrolling in a participating [public] institution for the second or later semester in a given academic year meets the semester-credit-hour requirement outlined in paragraph [subparagraph] (1) of this subsection for continuing in the program if he or she completes at least twelve [12] semester credit hours or its equivalent during that semester.

(c) The calculation of a student's GPA is to be completed in accordance with §22.10 of this chapter (relating to Grade Point Average Calculations for Satisfactory Academic Progress) [the General Provisions outlined in Subchapter A of this Chapter].

(d) The completion rate calculations may be made in keeping with institutional policies.

§22.230. *Discontinuation of Eligibility or Non-Eligibility.*

(a) A student may not receive a TEXAS Grant while concurrently receiving a Texas Educational Opportunity Grant or Texas Transfer Grant.

(b) [(a)] A student may not receive a TEXAS Grant after having already being granted a baccalaureate degree.

(c) [(b)] A student may not receive a TEXAS Grant for a semester in which he or she is enrolled for fewer than six hours.

(d) [(c)] Unless granted a hardship postponement in accordance with §22.231 of this subchapter [title] (relating to Hardship Provisions), eligibility for a TEXAS Grant for a student whose eligibility for an initial year TEXAS Grant was not based on the receipt of an associate degree ends:

(1) five years from the start of the semester in which the student received his or her first disbursement of an initial year TEXAS Grant, if the student is enrolled in a degree program of four years or less;

(2) six years from the start of the semester in which the student received his or her first disbursement of an initial year TEXAS

Grant, if the student is enrolled in a degree program of more than four years.

(c) [(d)] Unless granted a hardship postponement in accordance with §22.231 of this subchapter [title], eligibility for a TEXAS Grant for a student whose eligibility was based on receiving an associate degree ends:

(1) three years from the start [date] of the semester in which the student received his or her first disbursement of an initial year TEXAS Grant if the student is enrolled in a degree program of four years or less;

(2) four years from the start [date] of the semester in which the student received his or her first disbursement of an initial year TEXAS Grant if the student is enrolled in a degree program of more than four years.

(f) [(e)] A student's eligibility ends one year from the date of the semester in which the student received his or her first disbursement of an initial year TEXAS Grant, if the student's eligibility was based on the expectation that the student would complete the initial year grant requirements as outlined in §22.228 of this subchapter [title] (relating to Eligible Students), but the student failed to do so. However, if such a student later receives an associate degree and again qualifies for TEXAS Grants, as described by §22.228(c) of this subchapter, he or she can receive an additional three years of eligibility if enrolled in a degree program of four years or less, or an additional four years if enrolled in a degree program of more than four years.

(g) [(f)] A student's eligibility for a TEXAS Grant ends once he or she has attempted 150 semester credit hours or the equivalent unless the student is granted a hardship extension in accordance with §22.231(d) of this subchapter [title (relating to Hardship Provisions)].

(h) [(g)] A person is not eligible to receive an initial year or continuation grant if the person has been convicted of a felony or of an offense under Chapter 481, Health and Safety Code (Texas Controlled Substances Act), or under the law of any other jurisdiction involving a controlled substance as defined by Chapter 481, Health and Safety Code, unless the person has met the other applicable eligibility requirements under this subchapter and has:

(1) received a certificate of discharge by the Texas Department of Criminal Justice or a correctional facility or completed a period of probation ordered by a court, and at least two years have elapsed from the date of the receipt or completion; or

(2) been pardoned, had the record of the offense expunged from the person's record, or otherwise been released from the resulting ineligibility to receive a TEXAS Grant.

(i) [(h)] Other than as described in §22.231 of this subchapter [title], if a person fails to meet any of the requirements for receiving a continuation grant as outlined in §22.228(b) of this subchapter after completion of any semester, the person may not receive a TEXAS Grant until he or she completes a semester while not receiving a TEXAS Grant and meets all the requirements as outlined in §22.228(b) of this subchapter as of the end of that semester.

§22.231. *Hardship Provisions.*

(a) In the event of a hardship or for other good cause, the Program Officer at a participating [an eligible public] institution may allow an otherwise eligible person to receive a TEXAS Grant under the following conditions:

(1) while enrolled in less than nine semester credit hours;

(2) if the student's grade point average falls below the satisfactory academic progress requirements of §22.229 of this subchapter [title] (relating to Satisfactory Academic Progress);

[(3) if the student's completion rate falls below the satisfactory academic progress requirements of §22.229 of this subchapter;]

(3) [(4)] if the student's number of completed hours falls below the satisfactory academic progress requirements of §22.229 of this subchapter; or

(4) [(5)] if the student requires an extension of the year limits found in §22.230 of this subchapter (relating to Discontinuation of Eligibility or Non-Eligibility) to complete his or her degree.

(b) Hardship or other good causes are not limited to, but include:

(1) documentation [a showing] of a severe illness or other debilitating condition that may affect the student's academic performance;

(2) documentation [an indication] that the student is responsible for the care of a sick, injured, or needy person and that the student's provision of care may affect his or her academic performance; [or]

(3) documentation of the birth of a child or placement of a child with the student for adoption or foster care, that may affect the student's academic performance; or

(4) [(3)] the requirement of fewer than nine hours to complete one's degree plan.

(c) The Program Officer may allow a student to receive his/her initial year grant after the time limits described in §22.228(a)(6) of this subchapter [Section 22.228(a)(6)] (relating to Eligible Students) if the student and/or the student's family has suffered a hardship that would now make the student rank as one of the institution's neediest.

(d) The Program Officer may allow a student to receive a grant after attempting more hours than allowed under §22.230(f) of this subchapter [title] (relating to Discontinuation of Eligibility or Non-Eligibility) in the event of hardship. However, the total number of hours paid for, at least in part, with TEXAS Grant funds may not exceed 150 semester credit hours or the equivalent.

(e) Documentation justifying the eligibility granted through the hardship provisions outlined in this rule must be kept in the student's file. Institutions must identify to the Coordinating Board those students granted eligibility through hardship provisions, so that the Coordinating Board may appropriately monitor each student's period of eligibility.

(f) Each participating [public] institution shall adopt a hardship policy under this section and have the policy available in writing in the financial aid office for public review upon request.

§22.233. *Priority in Grants to Students.*

(a) If appropriations for the program are insufficient to allow grants to all eligible students, priority shall be given to those students demonstrating continuing TEXAS Grant eligibility pursuant to §22.228(b) of this subchapter (relating to Eligible Students).

(b) In determining student eligibility for a TEXAS Grant pursuant to §22.228(a) of this subchapter, priority shall be given to those students who demonstrate the greatest financial need at the time the offer is made.

(c) In determining student eligibility for a TEXAS Grant pursuant to §22.228(a) of this subchapter, priority shall be given to those students who have a Student Aid Index [an expected family contribu-

tion] that does not exceed 60 percent of the average statewide amount of tuition and required fees for general academic teaching institutions for the relevant academic year.

(d) In determining initial student eligibility for a TEXAS Grant pursuant to §22.228(a) of this subchapter, priority shall be given to those students who graduate or are on track to graduate from a public or accredited private high school in Texas on or after May 1, 2013, and complete or are on track to complete the Foundation High School program, or its equivalent as amended in keeping with Texas Education Code, §56.009. The person must also be on track to have accomplished any two or more of the following at the time a TEXAS Grant was offered:

(1) successful completion of the course requirements of the international baccalaureate diploma program, or earning of the equivalent of at least twelve [12] semester credit hours of college credit in high school through courses described in Texas Education Code, §28.009(a)(1), (2), and (3), or if graduating prior to September 1, 2020, graduate under the Recommended or Advanced high school curriculum specified in the Texas Education Code, §28.025 as it existed as of January 1, 2013, and the rules promulgated thereunder by the State Board of Education;

(2) satisfaction of the Texas Success Initiative (TSI) college readiness benchmarks prescribed by the Coordinating Board under Texas Education Code, §51.334 [~~§51.3062(f)~~] on any assessment instrument designated by the Coordinating Board under that section [~~Texas Education Code, §51.3062(e)~~] or qualification for an exemption as described by Texas Education Code, §51.338(b), (c), or (d) [~~§51.3062(p), (q), or (q-1)~~];

(3) graduation in the top one-third of the person's high school graduating class or graduation from high school with a grade point average of at least 3.0 on a four-point scale or the equivalent; or

(4) completion for high school credit of at least one advanced mathematics course following the successful completion of an Algebra II course, or at least one advanced career and technical or technical applications course;

(e) If funds remain after TEXAS Grants are offered to all students meeting the criteria in subsection [~~subparagraph~~] (d) of this section [~~paragraph~~], remaining funds may be offered to persons who are otherwise eligible for TEXAS Grants.

§22.234. Grant Amounts.

(a) The amount of a TEXAS Grant offered through an eligible [~~public~~] institution may not be reduced by any gift aid for which the person receiving the grant is eligible, unless the total amount of a person's grant plus any aid other than loans received equals or exceeds the student's financial need.

(b) The Coordinating Board shall determine and announce the maximum amount of a TEXAS Grant not later than the final day of January prior to the start of each fiscal year. The calculation of the maximum amount per semester will be based on the mandates contained in Texas Education Code, §56.307. However, no student's TEXAS Grant shall be greater than the amount of the student's financial need.

(c) A participating [~~An eligible public~~] institution may not charge a person receiving a TEXAS Grant through that institution, an amount of tuition and required fees in excess of the amount of the TEXAS Grant received by the person in that semester unless it also provides the student sufficient aid other than loans to meet his or her full tuition and required fees for that semester. Nor may it deny admission to or enrollment in the institution based on a person's eligibility to receive or actual receipt of a TEXAS Grant.

(d) If a [~~The eligible public institution may require a student to forgo or repay the amount of an initial year grant if the~~] student is determined to have failed to complete the necessary High School Program or Associate Degree [~~]~~ upon which eligibility for the program was determined, a participating institution may require the student to forgo or repay the amount of the student's initial year grant [~~as evidenced by the final high school or college transcript~~].

(e) Grant calculations and disbursements are to be completed in accordance with the General Provisions outlined in subchapter A [~~Subchapter A~~] of this chapter [~~Chapter~~].

§22.236. Allocation [~~and Disbursement~~] of Funds.

(a) Allocations [~~for Fiscal Year 2017 and Later~~].

(1) The share of funds for each eligible institution [~~eligible to make both initial and continuation awards~~] will equal:

(A) the number of Initial Year [~~Award~~] TEXAS Grant recipients at the institution in the Prior-Prior Year multiplied by the percentage of Initial Year [~~Award~~] TEXAS Grant recipients in the year prior to the Prior-Prior Year who received a Continuation Grant [~~Renewal Award~~] in the Prior-Prior Year; plus the number of Continuation Grant [~~Renewal Award~~] TEXAS Grant recipients at the institution in the Prior-Prior Year multiplied by the percentage of Continuation Grant [~~Renewal Award~~] TEXAS Grant recipients in the year prior to the Prior-Prior Year who received a Continuation Grant [~~Renewal Award~~] in the Prior-Prior Year, multiplied by the institution's average TEXAS Grant amount in the Prior-Prior Year, up to the amount of the Target Grant Amount [~~Award~~] for the fiscal year for which allocations are occurring; plus

(B) the institution's proportions of the remaining appropriation is based on the sum of the number of students who were reported as a first time enrolling freshman; or an [~~entering~~] undergraduate transfer student who completed an associate [~~associate's~~] degree within the prior twelve [12] months to enrolling; or an [~~entering~~] undergraduate transfer student who received an Initial TEOG grant [~~award~~] for the Fall 2014 semester or later, has completed at least twenty-four [24] semester credit hours, and has earned an overall GPA of at least 2.5 on a four-point scale on all course work previously attempted, and:

(i) were enrolled as undergraduate students and had not yet received a Bachelor's degree;

(ii) were identified as [~~Texas~~] residents of Texas;

(iii) were enrolled at least three-quarter-time [~~3/4-time~~]; and

(iv) had a 9-month Student Aid Index [~~Expected Family Contribution~~], calculated using federal methodology, that was less than or equal to the cap established for TEXAS Grant in the Prior-Prior Year.

{(2) Institutions who are only eligible to make continuation awards will not receive a specific allocation. Those schools will have until August 1, or the first working day thereafter if it falls on a weekend or holiday, to submit for reimbursement any award for a student who is identified as eligible and is awarded a TEXAS Grant. Those awards will be funded through any unenumerated program funds.}

(2) [(3)] The TEXAS Grant allocation spreadsheet will be provided to the institutions for review and the institutions will be given ten [10] working days, beginning the day of the notice's distribution and excluding State holidays, to confirm that the spreadsheet accurately reflects the data they submitted or to advise the Coordinating Board [~~staff~~] of any inaccuracies.

[(b) Disbursement of Funds to Institutions. As requested by institutions throughout the academic year, the Board shall forward to each participating institution a portion of its allocation of funds for timely disbursement to students. Institutions will have until the close of business on August 1, or the first working day thereafter if it falls on a weekend or holiday, to encumber program funds from their allocation. After that date, institutions lose claim to any funds in the current fiscal year not yet drawn down from the Board for timely disbursement to students. Funds released in this manner in the first year of the biennium become available to the institution for use in the second year of the biennium. Funds released in this manner in the second year of the biennium become available to the Board for utilization in grant processing. Should these unspent funds result in additional funding available for the next biennium's program, revised allocations, calculated according to the allocation methodology outlined in this rule, will be issued to participating institutions during the fall semester.]

(b) [(e)] Reductions in Funding.

(1) If annual funding for the program is reduced after the start of a fiscal year, the Coordinating Board may take steps to help distribute the impact of reduced funding across all participating institutions by an across-the-board percentage decrease in all institutions' allocations.

(2) If annual funding is reduced prior to the start of a fiscal year, the Coordinating Board may recalculate the allocations according to the allocation methodology outlined in this rule for the affected fiscal year based on available dollars.

§22.238. Disbursement of Funds.

As requested by an institution throughout the academic year, the Coordinating Board shall forward to each participating institution a portion of its allocation of funds for timely disbursement to students in accordance with §22.2 of this chapter (relating to Timely Disbursement of Funds). An institution will have until the close of business on August 1, or the first working day thereafter if it falls on a weekend or holiday, to encumber program funds from their allocation. After that date, an institution shall lose claim to any funds in the current fiscal year not yet drawn down from the Coordinating Board for timely disbursement to students. Funds released in this manner in the first year of the biennium become available to the institution for use in the second year of the biennium. Funds released in this manner in the second year of the biennium become available to the Coordinating Board for utilization in grant processing. Should these unspent funds result in additional funding available for the next biennium's program, revised allocations, calculated according to the allocation methodology outlined in this rule, will be issued to participating institutions during the fall semester.

§22.241. Tolling of Eligibility for Initial Year Grant.

(a) A person is eligible for consideration for an Initial Year grant [award] under this subsection if the person was eligible for an initial year grant under §22.228 of this subchapter [title] (relating to Eligible Students) in an academic year for which the Texas Legislature failed to appropriate sufficient funds to make initial year grant to at least 10 percent of the eligible student population, and:

- (1) has not received a TEXAS Grant in the past;
- (2) has not received a baccalaureate degree; and

(3) meets the eligibility requirements for a continuation grant as described in §22.228(b) of this subchapter [§22.228(d) of this title].

(b) A person who meets the requirements outlined in subsection (a) of this section:

(1) cannot be disqualified for a TEXAS Grant by changes in program requirements since the time he or she was originally eligible or by the amount of time that has passed since he or she was originally eligible;

(2) is to receive highest priority in the selection of recipients if he or she met the priority model requirements of §22.233(d) of this title (relating to Priority in Grants [Awards] to Students), when originally determined to be eligible;

(3) may continue receiving grants as long as he or she meets the requirements for such continuation grants; and

(4) may not receive TEXAS Grants for prior academic years.

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

Filed with the Office of the Secretary of State on January 23, 2025.

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Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: March 9, 2025

For further information, please call: (512) 427-6365



SUBCHAPTER M. TEXAS EDUCATIONAL OPPORTUNITY GRANT PROGRAM

19 TAC §§22.254 - 22.262, 22.264, 22.265

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 22, Subchapter M, §§22.254 - 22.262, 22.264, and 22.265, concerning the Texas Educational Opportunity Grant Program. Specifically, this amendment will align rule language and terminology with other programs in the chapter and clarify potential ambiguities in the rules.

The Coordinating Board is authorized to adopt rules relating to the Texas Educational Opportunity Grant (TEOG) Program by Texas Education Code, §56.403.

Included throughout the subchapter are a number of nonsubstantive updates to rule language. References to the Coordinating Board as an agency, for example, previously written as "Board" or "Board staff," are revised to "Coordinating Board" to ensure the distinction is clear between the agency and its governing board. Similarly, the word "award" is changed to the more precise "grant" as a noun and "offer" as a verb, to avoid potential confusion.

Rule 22.254, Definitions, is amended by eliminating the term "forecast," which is being added to §22.1 in the chapter's General Provisions, and by making nonsubstantive changes to existing definitions to align with terminology and usage throughout the chapter.

Rule 22.255, Eligible Institutions, is amended to make nonsubstantive changes related to citations to other rules in the chapter and to clarify references to the TEOG program by capitalizing the word Program as appropriate.

Rule 22.256, Eligible Students, is amended by aligning rule language with defined terms and clarifying subsection (a)(3). The Coordinating Board's interpretation of the requirement to "have applied for any available financial aid assistance" in this and other programs is for the student to have completed the Free Application for Federal Student Aid or, as needed, the Texas Application for State Financial Aid. The amendments to the rule improve the clarity of the rule and align with current practice. Also added is subsection (a)(6), which relates to the Selective Service eligibility requirement. This, too, is current practice but was inadvertently excluded from the rule. None of these amendments reflect a change in eligibility criteria for the program.

Rule 22.257, Satisfactory Academic Progress, is amended by aligning rule language with defined terms, making nonsubstantive clarifying edits, and updating subsection (c) with a more specific citation.

Rule 22.258, Discontinuation of Eligibility or Non-Eligibility, is amended to align rule language with defined terms and specify references to the TEOG program via capitalization.

Rule 22.259, Hardship Provisions, is amended to align hardship provisions for the program with other programs in the chapter.

Rule 22.260, Priorities in Grants to Students, is amended to align rule language with defined terms, replace "expected family contribution" with the newer term, "Student Aid Index" (no change in meaning), and specify references to the TEOG program via capitalization.

Rule 22.261, Grant Amounts, is amended by eliminating the unnecessary subsection (a) -- no rule is required to establish the Coordinating Board's statutory spending limit for the program -- restructuring the rule for improved readability by moving current subsection (b)(1) to become the new subsection (b), and clarifying that the reduction in excess charges described by subsection (c)(2) is considered an exemption, rather than a waiver. There is no change to the overall function of the rule.

Rules 22.262, Allocation of Funds - Public Junior Colleges, and 22.264, Allocation of Funds - Public Technical and State Colleges, are amended to align rule language with defined terms and provide greater detail into the existing allocation methodologies for public junior colleges, and public state colleges and technical institutes, respectively. In both rules, subsection (a)(1)(B) is amended with added language regarding the weighting of half-time, three-quarter time, and full-time students in the allocation formula. This weighting already occurs but had not been stated explicitly in the rule text. It has been added for greater transparency. None of the amendments to either rule should be interpreted as changing the allocation methodologies for this program.

Rule 22.265, Disbursement of Funds to Institutions, is amended by adding a citation to a relevant rule in the chapter's General Provisions.

Dr. Charles Contéro-Puls, Assistant Commissioner for Student Financial Aid Programs, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Dr. Charles Contéro-Puls, Assistant Commissioner for Student Financial Aid Programs, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be improved rule clarity, consistency, and readability. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

- (1) the rules will not create or eliminate a government program;
- (2) implementation of the rules will not require the creation or elimination of employee positions;
- (3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will not create a new rule;
- (6) the rules will not limit an existing rule;
- (7) the rules will not change the number of individuals subject to the rule; and
- (8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Dr. Charles Contéro-Puls, Assistant Commissioner for Student Financial Aid Programs, P.O. Box 12788, Austin, Texas 78711-2788, or via email at SFAPPolicy@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendment is proposed under Texas Education Code, Section 56.403, which provides the Coordinating Board with the authority to adopt rules related to the Texas Educational Opportunity Grant program.

The proposed amendment affects Texas Administrative Code, Title 19, Part 1, Chapter 22.

§22.254. *Definitions.*

In addition to the words and terms defined in §22.1 of this chapter (relating to Definitions), the following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Career and Technical Education Course--A workforce or continuing education college course offered by an institution of higher education for which a student may earn credit toward satisfaction of a requirement necessary to obtain an industry-recognized credential, certificate, or associate degree.

(A) A career and technical education course is listed in the Workforce Education Course Manual (WECM).

(B) For the purpose of this subchapter, this definition excludes:

- (i) an avocational course;
- (ii) a continuing education course that is ineligible for conversion as articulated college credit; and
- (iii) a continuing education course that does not meet the institution's program or instructor accreditation standards.

(2) Certificate Program--For purposes of the Texas Educational Opportunity Grant Program, Level 1 and Level 2 certificates, Occupational Skills Awards, and other credentials of value as defined in §13.472 of this title [chapter] (relating to Definitions). These include programs offered through academic courses or through career and technical education courses, as defined in paragraph (1) of this subsection.

(3) Continuation Grant [Award]--A grant offered [awarded] to a person who has previously received an initial year grant [award].

(4) Entering undergraduate--A student enrolled in the first 45 semester credit hours or their equivalent, excluding hours taken during dual enrollment in high school and courses for which the student received credit through examination.

~~(5) Forecast--The FORECAST function in Microsoft Excel.]~~

~~(5) [(6)] Grant--Funds offered [awarded] to a student through the Texas Educational Opportunity Grant Program.~~

~~(6) [(7)] Initial Year Grant [year award]--The grant offered [award made] in the student's first year in the Program.~~

~~(7) [(8)] Program--The Texas Educational Opportunity Grant Program.~~

§22.255. *Eligible Institutions.*

(a) Eligibility.

(1) Any public junior college, [as defined in Texas Education Code, §61.003(2)]; public technical institute, [as defined in Texas Education Code, §61.003(7)]; and public state college, as defined in §22.1 of this chapter (relating to Definitions), [as defined in Texas Education Code, §61.003(16)] is eligible to participate in the Program [program].

(2) No participating institution may, on the grounds of race, color, national origin, gender, religion, age, or disability exclude an individual from participation in, or deny the benefits of the Program [program] described in this subchapter.

(3) Each participating institution must follow the Civil Rights Act of 1964, Title VI (Public Law 88-352) in avoiding discrimination in admissions or employment.

(b) Approval.

(1) Agreement. Each eligible institution must enter into an agreement with the Coordinating Board, the terms of which shall be prescribed by the Commissioner [or his/her designee], prior to being approved to participate in the Program [program].

(2) Approval Deadline. An institution must indicate an intent to participate in the Program [program] by June 1 and enter into an agreement with the Coordinating Board by August 31 in order for qualified students enrolled in that institution to be eligible to receive grants in the following biennium.

(c) Responsibilities. Participating institutions are required to abide by the General Provisions outlined in subchapter A of this chapter.

§22.256. *Eligible Students.*

(a) To receive an initial year grant [award] through the Program, a student must:

(1) be a resident of Texas, as defined in §22.1 of this chapter (relating to Definitions);

(2) show financial need, as defined in §22.1 of this chapter;

(3) have applied for [any available] financial aid through the completion of the Federal Application for Federal Student Aid or, if the student is not eligible for federal financial aid, the Texas Application for State Financial Aid [assistance];

(4) be enrolled at a participating institution on at least a half-time basis as an entering undergraduate; [student; and]

(5) be enrolled in an associate degree or certificate program at a participating institution; and[-]

(6) meet applicable standards outlined in §22.3 of this chapter (relating to Student Compliance with Selective Service Registration).

(b) To receive a continuation grant [award] through the Program, a student must:

(1) have previously received an initial year grant [award] through this Program [program];

(2) show financial need, as defined in §22.1 of this chapter;

(3) be enrolled on at least a half-time basis;

(4) be enrolled in an associate degree or certificate program at a participating [an eligible] institution; and

(5) make satisfactory academic progress towards an associate degree or certificate program, as defined in §22.257 of this subchapter (relating to Satisfactory Academic Progress).

§22.257. *Satisfactory Academic Progress.*

(a) Eligibility for First Continuation Grant [at End of Initial Year Award]. In addition to the requirements in §22.256(b) of this subchapter (relating to Eligible Students), a student must comply with his or her institution's financial aid satisfactory academic progress requirements to receive his or her first continuation grant. [Students who complete their first year receiving a grant in compliance with their institutions' financial aid academic progress requirements are eligible to receive continuation awards in the following year if they meet the other requirements listed in §22.256 of this subchapter (relating to Eligible Students).]

(b) Eligibility for Subsequent [at End of a] Continuation Grants [Award]. Unless [Students shall, unless] granted a hardship waiver [provision] in accordance with §22.259 of this subchapter (relating to Hardship Provisions), as of the end of an academic year in which the student receives a continuation grant, a student must satisfy the following requirements to be eligible for a subsequent continuation grant [award]:

(1) complete at least 75 percent [75%] of the semester credit hours or their equivalent attempted in the student's most recent academic year; and

(2) maintain an overall cumulative grade point average of at least 2.5 on a four-point scale or its equivalent.

(c) A participating institution shall calculate [The calculation of] a student's GPA [is to be completed] in accordance with §22.10 of this chapter (relating to Grade Point Average Calculations for Satisfactory Academic Progress) [Subchapter A of this chapter (relating to General Provisions)].

(d) A participating institution may calculate [The] completion rates [rate calculations may be made] in keeping with its own institutional policies.

§22.258. *Discontinuation of Eligibility or Non-Eligibility.*

(a) A student may not receive a grant while concurrently receiving a TEXAS Grant.

(b) A student may not receive a grant after having been granted an associate or baccalaureate degree.

(c) A student's eligibility for the Program [~~program~~] ends once a student has attempted 75 semester credit hours or the equivalent, unless the student is granted a hardship extension in accordance with §22.259 of this subchapter (relating to Hardship Provisions).

(d) A student's eligibility for the Program [~~program~~] ends four years from the start of the semester in which the student received an initial year grant [~~award~~], unless the student is granted a hardship extension in accordance with §22.259 of this subchapter.

(e) A person is not eligible to receive a grant if the person has been convicted of a felony or an offense under Chapter 481, Health and Safety Code (Texas Controlled Substances Act), or under the law of any other jurisdiction involving a controlled substance as defined by Chapter 481, Health and Safety Code, unless the person has met the other applicable eligibility requirements under this subchapter and has:

(1) received a certificate of discharge by the Texas Department of Criminal Justice or a correctional facility or completed a period of probation ordered by a court, and at least two years have elapsed from the date of the receipt or completion; or

(2) been pardoned, had the record of the offense expunged from the person's record, or otherwise been released from the resulting ineligibility to receive a grant.

(f) Other than as described in §22.259 of this subchapter, if a person fails to meet any of the requirements for receiving a continuation grant [~~award~~] as outlined in §22.256 of this subchapter (relating to Eligible Students) after completion of any year, the person may not receive a grant until after completing a semester of at least half-time coursework while not receiving a grant and meeting all the requirements of §22.256 of this subchapter as of the end of that semester.

§22.259. *Hardship Provisions.*

(a) In the event of a hardship or for other good cause, the Program Officer at a participating institution may allow an otherwise eligible student to receive a grant: [;]

(1) while maintaining a grade point average below the required level, as defined in §22.257 of this subchapter (relating to Satisfactory Academic Progress);

(2) while maintaining a completion rate below the required level, as defined in §22.257 of this subchapter;

(3) while enrolled less than half time;

(4) while enrolled in semester credit hours in excess of the attempted hour limit, as defined in §22.258(c) of this subchapter (relating to Discontinuation of Eligibility and Non-Eligibility), though the total number of semester credit hours paid for, at least in part, with Program [~~program~~] funding may not exceed 75 or its equivalent; or

(5) while enrolled beyond the time limit restrictions, as defined in §22.258(d) of this subchapter.

(b) Hardship conditions may include, but are not limited to:

(1) documentation [~~a showing~~] of a severe illness or other debilitating condition that may affect the student's academic performance;

(2) documentation [~~an indication~~] that the student is responsible for the care of a sick, injured, or needy person and that the student's provision of care may affect his or her academic performance; [~~or~~]

(3) documentation of the birth of a child or placement of a child with the student for adoption or foster care, that may affect the student's academic performance; or

(4) [(3)] the requirement of fewer than six semester credit hours or their equivalent to complete one's degree or certificate plan.

(c) Documentation of the hardship circumstances approved for a student to receive a grant must be kept in the student's files, and the institution must identify students approved for a grant based on a hardship to the Coordinating Board, so that it may appropriately monitor each student's period of eligibility.

(d) Each institution shall adopt a hardship policy under this section and have the policy available in writing in the financial aid office for public review upon request.

§22.260. *Priorities in Grants to Students.*

(a) If funds available [~~appropriations~~] for the Program [~~program~~] are insufficient to allow grants to all eligible students, continuation grants [~~awards~~] will be given priority.

(b) In determining who should receive an initial year grant [~~award~~], an institution shall give priority to those students who have a Student Aid Index [~~an expected family contribution~~] that does not exceed 60 percent of the average statewide amount of tuition and fees for general academic teaching institutions for the relevant academic year.

(c) In determining who should receive an initial year grant [~~award~~], an institution shall give highest priority to students who demonstrate the greatest financial need at the time the grant is made.

§22.261. *Grant Amounts.*

[(a) Funding. Funds awarded through this program may not exceed the amount of appropriations, grants, and other funds that are available for this use.]

(a) [(b)] Grant Amounts.

[(1) The amount of a grant may not be reduced by any gift aid for which the person receiving the grant is eligible, unless the total amount of a person's grant plus any gift aid received exceeds the student's cost of attendance. However, no student's grant shall be greater than the amount of the student's financial need.]

(1) [(2)] The Coordinating Board shall determine and announce the maximum grant amount in a given state fiscal year by January 31 of the prior fiscal year. The calculation of the maximum grant amount for a semester will be based on the average statewide amount of tuition and required fees at eligible institutions that a resident student enrolled full-time in an associate degree or certificate program measured in semester credit hours would be charged for that semester (Texas Education Code, §56.407).

(2) [(3)] In the Coordinating Board's determination of [~~determining~~] the maximum grant amount, the average amount of tuition and required fees is determined by institution type (public junior colleges, public state colleges, and public technical institutes), utilizing the most recent Integrated Fiscal Reporting System reports to project the value.

(b) The amount of a grant offered by the institution may not be reduced by any gift aid for which the person receiving the grant is eligible, unless the total amount of a person's grant plus any gift aid received exceeds the student's cost of attendance. However, no student's grant shall be greater than the amount of the student's financial need.

(c) An approved institution may not charge a person receiving a grant through that institution an amount of tuition and required fees

in excess of the grant received by the person. Nor may it deny admission to or enrollment in the institution based on a person's eligibility to receive or actual receipt of a grant. If an institution's tuition and fee charges exceed the grant, it may address the shortfall in one of two ways:

(1) ~~[it may]~~ use other available sources of financial aid to cover any difference in the amount of the grant and the student's actual amount of tuition and required fees at the institution, provided that the other available sources of financial aid do not include a loan; or~~;~~

~~[(A) for grants offered for semesters prior to the 2024 fall semester, the other available sources of financial aid do not include a loan or Pell Grant; and]~~

~~[(B) for grants offered beginning with the 2024 fall semester, the other available sources of financial aid do not include a loan; or]~~

(2) ~~exempt~~ ~~[it may waive]~~ the excess charges for the student. However, if an exemption [a waiver] is used, the institution may not report the recipient's tuition and fees in a way that would increase the general revenue appropriations to the institution.

(d) Grant calculations are to be completed in accordance with subchapter A [Subchapter A] of this chapter (relating to General Provisions).

§22.262. Allocation of Funds - Public Junior Colleges.

(a) Allocations are to be determined on an annual basis as follows:

(1) The allocation base for each eligible institution will be the number of students it reported in the most recent certified Financial Aid Database submission who met the following criteria:

(A) were classified as ~~[Texas]~~ residents of Texas as defined in §22.1 of this chapter (relating to Definitions);~~;~~

(B) were enrolled as undergraduates in an associate degree or certificate program half-time, three-quarter time or full-time, with full-time students weighted as 1, three-quarter time students weighted as 0.75, and half-time students weighted as 0.50, as reported in the Financial Aid Database submission; and

(C) have a 9-month Student Aid Index [Expected Family Contribution], calculated using federal methodology, less than or equal to the Federal Pell Grant eligibility Student Aid Index [Expected Family Contribution] cap for the year reported in the Financial Aid Database submission.

(2) Each institution's percent of the available funds will equal its percent of the state-wide need as determined by multiplying each institution's enrollments by the respective grant [award] maximums of students who meet the criteria in subsection (a)(1) of this section.

(3) Allocations for both years of the state appropriations' biennium will be completed at the same time. The three most recent certified Financial Aid Database submissions will be utilized to forecast the data utilized in the calculation of the allocation for the second year of the biennium. Institutions will receive notification of their allocations for both years of the biennium at the same time.

(4) Allocation calculations will be shared with all participating institutions for comment and verification prior to final posting and the institutions will be given ten [10] working days, beginning the day of the notice's distribution and excluding State holidays, to confirm that the allocation report accurately reflects the data they submitted or to advise the Coordinating Board of any inaccuracies.

(b) Reductions in Funding.

(1) If annual funding for the Program [program] is reduced after the start of a fiscal year, the Coordinating Board may take steps to help distribute the impact of reduced funding across all participating institutions by an across-the-board percentage decrease in all institutions' allocations.

(2) If annual funding is reduced prior to the start of a fiscal year, the Coordinating Board may recalculate the allocations according to the allocation methodology outlined in this rule for the affected fiscal year based on available dollars.

§22.264. Allocation of Funds - Public Technical and State Colleges.

(a) Allocations are to be determined on an annual basis as follows:

(1) The allocation base for each eligible institution will be the number of students it reported in the most recent certified Financial Aid Database submission who met the following criteria:

(A) were classified as ~~[Texas]~~ residents of Texas, as defined in §22.1 of this chapter (relating to Definitions);

(B) were enrolled as undergraduates in an associate degree or certificate program half-time, three-quarter time, or full-time, with full-time students weighted as 1, three-quarter time students weighted as 0.75, and half-time students weighted as 0.50, as reported in the Financial Aid Database submission; and

(C) have a 9-month Student Aid Index [Expected Family Contribution], calculated using federal methodology, less than or equal to the Federal Pell Grant eligibility Student Aid Index [Expected Family Contribution] cap for the year reported in the Financial Aid Database submission.

(2) Each institution's percent of the available funds will equal its percent of the state-wide need as determined by multiplying each institution's enrollments by the respective grant [award] maximums of students who meet the criteria in ~~[subsection]~~ paragraph (1) of this subsection.

(3) Allocations for both years of the state appropriations' biennium will be completed at the same time. The three most recent certified Financial Aid Database submissions will be utilized to forecast the data utilized in the calculation of the allocation for the second year of the biennium. Institutions will receive notification of their allocations for both years of the biennium at the same time.

(4) Verification of Data. Allocation calculations will be shared with all participating institutions for comment and verification prior to final posting, and the institutions will be given 10 working days, beginning the day of the notice's distribution and excluding State holidays, to confirm that the allocation report accurately reflects the data they submitted or to advise the Coordinating Board of any inaccuracies.

(b) Reductions in Funding.

(1) If annual funding for the Program [program] is reduced after the start of a fiscal year, the Coordinating Board may take steps to help distribute the impact of reduced funding across all participating institutions by an across-the-board percentage decrease in all institutions' allocations.

(2) If annual funding is reduced prior to the start of a fiscal year, the Coordinating Board may recalculate the allocations according to the allocation methodology outlined in this rule for the affected fiscal year based on available dollars.

§22.265. Disbursement of Funds to Institutions.

As requested by institutions throughout the academic year, the Coordinating Board shall forward to each participating institution a portion of its allocation of funds for timely disbursement to students in accordance with §22.2 of this chapter (relating to Timely Disbursement of Funds). Institutions will have until the close of business on August 1, or the first working day thereafter if it falls on a weekend or holiday, to encumber program funds from their allocation. After that date, institutions lose claim to any funds in the current fiscal year not yet drawn down from the Coordinating Board for timely disbursement to students. Funds released in this manner in the first year of the biennium become available to the institution for use in the second year of the biennium. Funds released in this manner in the second year of the biennium become available to the Coordinating Board for utilization in grant processing. Should these unspent funds result in additional funding available for the next biennium's program, revised allocations, calculated according to the allocation methodology outlined in this rule, will be issued to participating institutions during the fall semester.

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

Filed with the Office of the Secretary of State on January 23, 2025.

TRD-202500218

Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: March 9, 2025

For further information, please call: (512) 427-6365



TITLE 22. EXAMINING BOARDS

PART 6. TEXAS BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS

CHAPTER 133. LICENSING FOR ENGINEERS

SUBCHAPTER C. PROFESSIONAL ENGINEER LICENSE APPLICATION REQUIREMENTS

22 TAC §133.27

The Texas Board of Professional Engineers and Land Surveyors (Board) proposes an amendment to 22 Texas Administrative Code, Chapter 133, regarding Licensing for Engineers, specifically §133.27, Application for Temporary License for Engineers Currently Licensed Outside the United States.

BACKGROUND AND SUMMARY

Texas Occupations Code §1001.311 authorizes the Board to license an applicant that is not a resident of the State of Texas if the applicant holds a license issued by another jurisdiction and has met substantially equivalent licensure requirements to those in Texas. The Board is proposing rules to clearly set the procedure and requirements for licensure for applicants from other US states and territories, as well as international applicants licensed in a country that has a licensure agreement with Texas.

SECTION-BY-SECTION SUMMARY

The proposed rules amend §133.27 by relocating language from a recent amendment to rule §133.11.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Mr. Lance Kinney, Ph.D., P.E., Executive Director, has determined that for each year of the first five years the proposed rules are in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rules.

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

LOCAL EMPLOYMENT IMPACT STATEMENT

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

PUBLIC BENEFITS

Mr. Kinney has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be allowing qualified applicants with licenses in another jurisdiction to have a streamlined reciprocal licensure process.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Kinney has determined that for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because no addition requirements are part of the proposed rules.

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

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

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

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

1. The proposed rules do not create or eliminate a government program.
2. Implementation of the proposed rules do not require the creation of new employee positions or the elimination of existing employee positions.

3. Implementation of the proposed rules do not require an increase or decrease in future legislative appropriations to the agency.
4. The proposed rules do not require an increase or decrease in fees paid to the agency.
5. The proposed rules do not create a new regulation.
6. The proposed rules do not expand, limit, or repeal an existing regulation.
7. The proposed rules do not increase the number of individuals subject to the rule's applicability.
8. The proposed rules do not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

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

ENVIRONMENTAL RULE ANALYSIS

The Board has determined that the proposed rules are not brought with the specific intent to protect the environment or reduce risks to human health from environmental exposure; thus, the Board asserts the proposed rules are not a "major environmental rule," as defined by Government Code §2001.0225. As a result, the Board asserts preparation of an environmental impact analysis, as provided by §2001.0225, is not required.

PUBLIC COMMENTS

Any comments or request for a public hearing may be submitted, no later than 30 days after the publication of this notice, to Lance Kinney, Ph.D., P.E., Executive Director, Texas Board of Professional Engineers, by email to rules@pels.texas.gov, sent by mail to 1917 S. Interstate 35, Austin, Texas 78741, or faxed to his attention at (512) 440-0417.

STATUTORY AUTHORITY

The proposed rules are proposed pursuant to Texas Occupations Code §§1001.201 and 1001.202, which authorize the Board to regulate engineering and land surveying and make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practices of engineering and land surveying in this state. In addition, §1001.311 allow for the licensure of nonresidents.

§133.27. Application for Temporary License for Engineers Currently Licensed Outside the United States.

(a) Pursuant to §1001.311 of the Act, a temporary license may be issued under this section for applicants who:

- (1) are citizens of the Commonwealth of Australia, Canada, the Republic of Korea or the United Mexican States;
- (2) are seeking to perform engineering work in Texas for three years or less;
- (3) are currently licensed or registered in good standing with Engineers Australia, at least one of the jurisdictions of Canada, the Korean Professional Engineers Association or the United Mexican States; and

- (4) meet the following experience requirements:

(A) Applicant currently registered in Australia, Canada or the Republic of Korea shall have at least seven years of creditable engineering experience, three of which must be practicing as a registered or chartered engineer with Engineers Australia, the Korean Professional Engineers Association or Engineers Canada and one of which must be working with or show familiarity with U.S. codes, as evaluated by the board under §133.43 of this chapter (relating to Experience Evaluation).

(B) Applicant currently licensed in United Mexican States shall:

(i) meet the educational requirements of §1001.302(a)(1)(A) of the Act and have 12 or more years of creditable engineering experience, as evaluated by the board under §133.43 of this chapter; or

(ii) meet the educational requirements of §1001.302(a)(1)(B) of the Act and have 16 or more years of creditable engineering experience, as evaluated by the board under §133.43 of this chapter.

(b) The applicant applying for a temporary license from Australia, Canada, the Republic of Korea or the United Mexican States shall submit:

- (1) an application in a format prescribed by the board;
- (2) proof of educational credentials pursuant to §133.33 or §133.35 of this chapter (relating to Proof of Educational Qualifications);
- (3) a supplementary experience record as required under §133.41(1) - (4) of this chapter (relating to Supplementary Experience Record) or a verified curriculum vitae and continuing professional development record;
- (4) at least three reference statements as required under §133.51 and §133.53 of this chapter (relating to Reference Providers and Reference Statements);
- (5) passing score of TOEFL as described in §133.21(c) of this chapter (relating to Application for Standard License);
- (6) information regarding judgments of convictions, deferred judgments or pre-trial diversions, for a misdemeanor or felony provided in a form prescribed by the board, together with copies of any court orders or other legal documentation concerning the criminal charges and the resolution of those charges;
- (7) documentation of submittal of fingerprints for criminal history record check as required by §1001.272 of the Act;
- (8) a statement describing any engineering practice violations, if any, together with documentation from the jurisdictional authority describing the resolution of those charges;
- (9) submit a completed Texas Engineering Professional Conduct and Ethics examination;
- (10) pay the application fee established by the board; and
- (11) a verification of a license in good standing from one of the jurisdictions listed in subsection (a)(3) of this section.

(c) Once an application under this section is accepted for review, the board will follow the procedures in §133.83 of this chapter (relating to Processing, Review, and Evaluation of Applications) to review and approve or deny the application. The board may request additional information or require additional documentation to ensure eligibility pursuant to §1001.302 of the Act, as needed. Pursuant to

§1001.453 of the Act, the board may review the license holder's status and take action if the license was obtained by fraud or error or the license holder may pose a threat to the public's health, safety, or welfare.

(d) A temporary license issued under this section may only be renewed twice for a total maximum duration of three years.

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

Filed with the Office of the Secretary of State on January 21, 2025.

TRD-202500177

Lance Kinney

Executive Director

Texas Board of Professional Engineers and Land Surveyors

Earliest possible date of adoption: March 9, 2025

For further information, please call: (512) 440-7723



TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 357. INDEPENDENT LIVING SERVICES PROGRAM

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §357.101, concerning Purpose; §357.103, concerning Legal Authority; §357.105, concerning Definitions; §357.201, concerning Allocation of Funds; §357.305, concerning Eligibility; §357.307, concerning Independent Living Plan; §357.309, concerning Waiting List; §357.311, concerning Scope of Services; §357.401, concerning Consumer Participation System; §357.403, concerning Fee Schedule Amount; §357.405, concerning Insurance Payments; §357.501, concerning Rights of Consumers; §357.503, concerning Complaint Process; §357.601, concerning Administering Agency's Role in Providing Technical Assistance; and §357.701, concerning Expectations of Administering Agency's Employees; and new §357.107, concerning Service Provider Standards and Contracts.

BACKGROUND AND PURPOSE

The purpose of the proposal is to update references in rule to reflect changes made due to the implementation of Senate Bill (S.B.) 200, 84th Legislature, Regular Session, 2015, which required the dissolution of the Department of Assistive and Rehabilitative Services (DARS). Independent Living Services (ILS) transferred to HHSC from the legacy DARS as part of the Health and Human Services Transformation. The program was subsequently outsourced to the Centers for Independent Living (CIL) on September 1, 2016, as required by House Bill (H.B.) 2463, 84th Legislature, Regular Session, 2015. HHSC continues to oversee ILS, except for Independent Living Services for Older Individuals who are Blind, which transferred to the Texas Workforce Commission as required by S.B. 208, 84th Legislature, Regular Session, 2015.

The proposal updates references from DARS to HHSC, outdated terms such as "individual" or "consumer," and references to "per-

son" or "people" to align with the agency's person-centered language policy. A new rule requires service providers to adhere to the service provider standards and clarifies that they are responsible for any subcontracted services. The proposal changes eligibility criteria to require a person to reside in Texas, instead of merely being present in Texas.

SECTION-BY-SECTION SUMMARY

The proposed amendment to the Chapter 357 title adds the word program to distinguish it from other programs or groups which may offer independent living services.

The proposed amendment to §357.101 makes non-substantive grammatical changes to improve wording.

The proposed amendment to §357.103 updates references to the United States Code (USC) and the Code of Federal Regulations (CFR). 29 USC 711(c) is removed. 34 CFR Parts 364, 365, and 366 have been removed and replaced by 45 CFR, Part 1329. The paragraphs are rearranged for easier readability.

The proposed amendment to §357.105 updates person-centered language, updates references to DARS, removes definitions that are no longer applicable, and adds new definitions for "consumer participation agreement," "HHSC," "Independent Living Services Program," "person," "representative," "support services," "vendor," and "youth with a disability."

Proposed new §357.107 requires a service provider to adhere to the service provider standards and clarifies that the service provider is responsible for any subcontracted services.

The proposed amendment to §357.201 updates references to DARS and makes other non-substantive wording changes.

The proposed amendment to §357.305 updates the citations from the previous location in Title 40, Texas Administrative Code, §104.105, changes the eligibility requirements from being present in Texas to residing in Texas, removes the statement that anyone determined eligible by DARS remains eligible with HHSC, and updates language regarding protections afforded to applicants when eligibility requirements are applied.

The proposed amendment to §357.307 updates text to person-centered language; corrects outdated citations; and includes other community, state, and federal programs that are necessary to the coordination of services.

The proposed amendment to §357.309 updates text to person-centered language and updates a citation.

The proposed amendment to §357.311 removes personal assistance and supported living as independent living services, updates text to person-centered language, and corrects outdated citations.

The proposed amendment to §357.401 adds language prohibiting the collection of consumer participation for support services, updates text to person-centered language, updates references to DARS, and corrects outdated citations.

The proposed amendment to §357.403 updates references to DARS, updates text to person-centered language, and makes non-substantive wording changes.

The proposed amendment to §357.405 simplifies the insurance wording, adds person-centered language, and updates references to DARS.

The proposed amendment to §357.501 changes the title from "Rights of Consumers" to "Personal Rights," uses person-cen-

tered language, updates language prohibiting discrimination by HHSC, and updates references to DARS.

The proposed amendment to §357.503 updates the HHSC Ombudsman's office online contact information, updates references to DARS, and uses person-centered language.

The proposed amendment to §357.601 changes the title from "Administering Agency's Role in Providing Technical Assistance" to "Technical Assistance Provided by HHSC" and updates references to DARS.

The proposed amendment to §357.701 changes the title from "Expectations of Administering Agency's Employees" to "Referrals Received by HHSC," uses person-centered language, updates references to DARS, and updates how a person can find contact information for the Independent Living Services provider.

FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, enforcing or administering the rules does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rules will be in effect:

- (1) the proposed rules will not create or eliminate a government program;
- (2) implementation of the proposed rules will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;
- (4) the proposed rules will not affect fees paid to HHSC;
- (5) the proposed rules will create new regulations;
- (6) the proposed rules will limit existing regulations;
- (7) the proposed rules will not change the number of individuals subject to the rules; and
- (8) the proposed rules will not affect the state's economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The rules only affect the Independent Living Services Program, and S.B. 200 requires that those services be provided exclusively by the Centers for Independent Living. As such, the services could not be provided by small businesses. The proposed amendments do not impact the scope of the program to infringe on any services currently provided by small businesses.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules do not impose a cost on regulated persons.

PUBLIC BENEFIT AND COSTS

Haley Turner, Deputy Executive Commissioner, Community Services, has determined that for each year of the first five years the rules are in effect, the public benefit will be clarity in the community regarding the administering agency. Removing DARS from the rules will help shift public perception to HHSC. The shift in eligibility criteria from a person being present in Texas to residing in Texas will make it clearer for the Centers for Independent Living and those served that Centers for Independent Living staff will need to verify residency, similar to other government programs.

Trey Wood has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because the changes are procedural in nature and do not come with any additional costs for those required to comply.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to the owner's property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4601 West Guadalupe Street, Austin, Texas 78751; or emailed to HHRulesCoordinationOffice@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 24R075" in the subject line.

SUBCHAPTER A. GENERAL RULES

26 TAC §§357.101, 357.103, 357.105, 357.107

STATUTORY AUTHORITY

The amendments and new section are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; and Texas Human Resources Code §117.080(e), which authorizes the Executive Commissioner of HHSC to adopt rules necessary to implement that section, including requirements applicable to CILs providing independent living services under the program.

The amendments and new section implement Texas Government Code §531.0055 and Texas Human Resources Code §117.080.

§357.101. Purpose.

The [This] program provides services that promote to the fullest extent the integration and inclusion of a person [~~individuals~~] with significant disabilities into society.

§357.103. Legal Authority.

[(a)] The legal authority for the program is published in the following federal [~~regulations~~] and state law [~~statutes~~]:

- (1) 29 United States Code (U.S.C.) §§796a-796f-6;
 [(1) 34 Code of Federal Regulations, Parts 364, 365 and 366;]
 (2) 45 Code of Federal Regulations, Part 1329; and
 [(2) 29 U.S.C. §§711(e) and 796a-796f-6; and]
 (3) Texas Human Resources Code[, §117.079 and] §117.080.

[(b) In case of any conflict, federal regulations prevail.]

§357.105. *Definitions.*

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

(1) Ability to pay--The determination that a person [the consumer] is able to contribute financially toward the cost of independent living services.

(2) Accessible format--An alternative way of providing to a person [people] with disabilities the same information, functionality, and services provided to a person without a disability [people without disabilities]. Examples of accessible formats include braille, accessible digital content [ASCH text], large print, American Sign Language, and recorded audio.

(3) Act--The Rehabilitation Act of 1973, as amended.

(4) Adjusted income--The dollar amount that is equal to a household's annual gross income, minus allowable deductions.

(5) Allotment--Funds distributed to a service provider by HHSC [DARS] to provide [provider] services under this chapter.

(6) Allowable deductions--Certain unreimbursed household expenses that are subtracted from a household's annual gross income to calculate the adjusted income.

[(7) Attendant care--A personal assistance service provided to help an individual with significant disabilities perform essential personal tasks, such as bathing, communicating, cooking, dressing, eating, homemaking, toileting, and transportation.]

(7) [(8)] Blind--A condition of having no more than 20/200 visual acuity in the better eye with correcting lenses or having visual acuity greater than 20/200 but with a field of vision in which the widest diameter subtends an angle no greater than 20 degrees.

[(9) Center for Independent Living (CIL)--A private non-profit agency for individuals with significant disabilities (regardless of age or income) that is not residential, is consumer-controlled, is community-based, takes a cross-disability approach, and:]

[(A) is designed and operated within a local community by individuals with disabilities; and]

[(B) provides an array of independent living services, including, at a minimum, independent living core services as they are defined in 29 U.S.C. §705(17).]

(8) [(10)] CAP--Client Assistance Program. [(CAP)]--A federally funded initiative [program] that provides information, assistance, and advocacy for people with disabilities who are seeking or receiving services from CAPs [programs] funded under the Act. The CAP [program] is implemented by Disability Rights Texas (DRTx), a legal services organization whose mission is to protect the human, service, and legal rights of persons with disabilities in Texas.

(9) CIL--Center for Independent Living. A private non-profit agency for people with significant disabilities (regardless of age

or income) that is not residential, is consumer-controlled, is community-based, takes a cross-disability approach; and

[(A) is designed and operated within a local community by persons with disabilities; and]

[(B) provides an array of independent living services, including, at a minimum, independent living core services as they are defined in 29 United States Code (U.S.C.) §705(17).]

(10) [(11)] Comparable services or benefits--Services and benefits that are provided or paid for, in whole or part, by other federal, state, or local public programs; by health insurance, third-party payers, or other private sources; or by the employee benefits that are available to a person [the consumer] and are commensurate in quality and nature to the services that the person [consumer] would otherwise receive from a service provider [providers].

[(12) Consumer--An individual who has applied for or is receiving the independent living services that are referred to under this chapter.]

(11) [(13)] Consumer participation--The financial contribution that a person [consumer] may be required to pay for receiving independent living services.

(12) Consumer participation agreement--A document signed by a person and a CIL that outlines the percentage of adjusted income a person is required to contribute toward the cost of services.

(13) [(14)] Consumer participation system--The system for determining and collecting the financial contribution that a person [consumer] may be required to pay for receiving independent living services.

[(15) Consumer representative--Any person chosen by a consumer, including the consumer's parent, guardian, other family member, or advocate. If a court has appointed a guardian or representative, that person is the consumer's representative. Unless documentation is provided showing otherwise, a parent or court-appointed guardian is presumed to be the consumer representative for a minor who is:]

[(A) younger than 18 years old; and]

[(B) not emancipated; or]

[(C) married.]

[(16) DARS--The Department of Assistive and Rehabilitative Services.]

(14) [(17)] Federal poverty level guidelines--The poverty guidelines updated periodically in the Federal Register by the United States Department of Health and Human Services under the authority of 42 U.S.C. [USC] §9902(2).

(15) [(18)] Fee--A percentage of the full cost for a purchased service that a person [consumer] pays. The percentage is based on the HHSC [DARS] fee schedule and the fee does not exceed the maximum amount prescribed by HHSC.

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

(17) [(19)] Independent living plan--A written plan in which a person [the consumer] and service provider have collaboratively identified the services that are needed to achieve the person's [consumer's] goal of living independently.

(18) Independent Living Services Program--The group authorized to oversee the services outlined in 29 U.S.C. §705(17) and

(18) In Texas, that authority rests with HHSC. May also be referred to as "the program."

(19) [(20)] Nonprofit--An agency, organization, or institution that is owned and operated by one or more corporations or associations whose net earnings do not and cannot lawfully benefit a private shareholder or entity.

(20) Person--Anyone who has requested, applied for, or is receiving services through the Independent Living Services Program.

(21) Private--An agency, organization, or institution that is not under federal or public supervision or control.

(22) Representative--Anyone chosen by a person served in the program, including the person's parent, guardian, other family member, or advocate. If a court has appointed a guardian or representative, that person is the representative. Unless documentation is provided showing otherwise, a parent or court-appointed guardian is presumed to be the representative for a person who is under 18 years of age and is not emancipated or married.

(23) [(22)] Service provider--A CIL [enter for independent living], nonprofit organization, organization, or other person who contracts with HHSC [contracted or subcontracted] to provide independent living services.

(24) [(23)] Severe visual impairment--A condition of having a visual acuity with best correction of 20/70 or less in the better eye, a visual field of 30 degrees or less in the better eye, or having a combination of both.

(25) [(24)] Significant disability--A severe physical, mental, cognitive, or sensory impairment that substantially limits a person's [an individual's] ability to function independently in the family or community.

(26) [(25)] Sliding fee scale--The fee scale HHSC [DARS] uses to determine the maximum financial contribution that a person [consumer] may be required to pay for receiving independent living services. The scale is based on the federal poverty level guidelines.

(27) Support services--Accommodations provided to a person to assist the person at an appointment with a service provider or vendor. Examples include translators, interpreters, braille, large print, and transportation.

(28) [(26)] Transition services--Services that:

(A) facilitate the transition of a person [individuals] with a significant disability [disabilities] from nursing homes and other institutions to home and community-based residences, with the requisite supports and services;

(B) provide assistance to a person [individuals] with a significant disability [disabilities] who is [are] at risk of entering an institution [institutions] so that the person [individuals] may remain in the community; and

(C) facilitate the transition of youth [who are individuals] with significant disabilities, who were eligible for individualized education programs under section 614(d) of the Individuals with Disabilities Education Act, 20 U.S.C. §1414(d) [(20 U.S.C. §1414(d))], and [who] have completed [their] secondary education or have otherwise left school[,] to postsecondary life.

(29) Vendor--A person or organization subcontracted by a service provider to provide independent living services.

(30) [(27)] Waived independent living plan--A written plan in which the service provider identifies on the behalf of the person [consumer] the services that are needed to achieve the person's

[consumer's] goal of living independently. The service provider writes the plan because the person [consumer] has signed a waiver giving up the person's [consumer's] right to participate in the development of such a written plan.

(31) Youth with a disability--A person with a disability who is at least 14 years of age but younger than 24 years of age.

§357.107. Service Provider Standards and Contract Requirements.

(a) A service provider must adhere to the service provider's contracts and either the Independent Living Services Standards for Providers or the Independent Living Base/Operational Grant Standards for Service Providers, depending on the type of contract.

(b) A service provider must ensure the quality of any services subcontracted to a vendor.

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

Filed with the Office of the Secretary of State on January 22, 2025.

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Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: March 9, 2025

For further information, please call: (817) 458-1902



SUBCHAPTER B. ALLOCATION OF FUNDS

26 TAC §357.201

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; and Texas Human Resources Code §117.080(e), which authorizes the Executive Commissioner of HHSC to adopt rules necessary to implement that section, including requirements applicable to CILs providing independent living services under the program.

The amendment implements Texas Government Code §531.0055 and Texas Human Resources Code §117.080.

§357.201. Allocation of Funds.

(a) HHSC [DARS] allocates to each service provider the funds needed to carry out the rules in this chapter. HHSC [DARS] may consider the following when determining the amount allotted to each service provider:

- (1) service area;
- (2) population of the area served; and
- (3) history of service delivery.

(b) Each service provider must administer the [The] funds [are administered by the designated service provider] in accordance with the rules in this chapter.

(c) When HHSC [DARS] determines that a service provider will not spend all of the funds allotted for a fiscal year to carry out the rules in this chapter, HHSC [DARS] may allot the projected unused portion to other service providers to provide the covered services in

this chapter. The extra allotment is considered an increase in the other service providers' allotments for that fiscal year.

(d) A [The] service provider ensures comparable services or benefits are exhausted before using funds allocated under this chapter.

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

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Karen Ray

Chief Counsel

Health and Human Services Commission

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SUBCHAPTER C. INDEPENDENT LIVING SERVICES

26 TAC §§357.305, 357.307, 357.309, 357.311

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; and Texas Human Resources Code §117.080(e), which authorizes the Executive Commissioner of HHSC to adopt rules necessary to implement that section, including requirements applicable to CILs providing independent living services under the program.

The amendments implement Texas Government Code §531.0055 and Texas Human Resources Code §117.080.

§357.305. Eligibility.

(a) To be eligible for independent living services, a person [consumer] must:

(1) have a significant disability as defined in §357.105 [§104.105(24)] of this chapter (relating to Definitions); and

(2) reside [be present] in Texas.

(b) A service provider determines eligibility [Eligibility is determined by the service provider,] based on the documented diagnosis of a licensed practitioner.

(c) [Under Texas Government Code §531.02002, §531.02014, and Texas Labor Code §351.002, consumers who are determined to be eligible for independent living services on or before August 31, 2016, remain eligible on September 1, 2016, and are considered grandfathered under the former DARS independent living program and do not need to reapply for independent living services to the respective receiving agency on September 1, 2016.]

(d) [(d)] Eligibility requirements are applied without regard to a person's [age, color, creed, gender, national origin,] race, religion, color, national origin, disability, age, sex, or in retaliation for prior civil rights activity [religion, or length of time present in Texas].

(e) [(e)] After a service provider documents a person [Once a consumer] is [determined to be] eligible for services, the service provider:

(1) notifies the person [consumer] or the person's [the consumer's] representative in writing about the person's [consumer's] fee [for service], as described in §357.401 [§104.401] of this chapter (relating to Consumer Participation System); and

(2) verifies all potential comparable services or [the] benefits that [of all consumers who] may be covered for independent living services [by comparable services or benefits], as provided under this chapter; and

(3) maintains all related documentation.

(f) [(f)] If a service provider determines that a person [consumer] is ineligible [not eligible] based on the criteria described [explained] in this section, the service provider must document [documents] the determination of ineligibility and provide HHSC [provides DARS] with a copy that is signed and dated by the service provider's executive director or designee.

(g) A [The] service provider may determine a person [consumer] to be ineligible for independent living services only after consultation with the person or the person's representative [consumer] or after providing a clear opportunity for consultation.

(h) A [The] service provider notifies a person [the consumer] in writing of the action taken and informs the person or the person's representative [the consumer] about the person's [the consumer's] rights and the means by which the person [the consumer] may appeal the action taken or file a complaint.

(i) A [The] service provider refers the person [consumer] to other agencies and facilities, if appropriate, including [referring the consumer] to the Texas Workforce Commission's [State's] vocational rehabilitation program.

(j) If a service provider determines that a person [consumer] is ineligible for independent living services, the service provider reviews the person's [the consumer's] status again within 12 months of the determination and whenever the service provider determines that the person's [consumer's] status has materially changed.

(k) A service provider does not conduct a [A] review of an ineligibility determination [need not be conducted] if:

(A) the person refuses one; [consumer has refused one,]

(B) the person [the consumer is] no longer resides [present] in Texas; or

(C) the person's [the consumer's] whereabouts are unknown.

§357.307. Independent Living Plan.

(a) General.

(1) Unless a person [the consumer who will receive independent living services under this chapter] signs a waiver in accordance with paragraph (2) of this subsection, a [the] service provider works with the person or the person's representative [consumer] to develop and periodically review an independent living plan in accordance with this section.

(2) If a person or the person's representative [the consumer] knowingly and voluntarily signs a waiver stating that the person or the person's representative waives the right to participate [consumer's participation] in developing an independent living plan [is unnecessary], a [the] service provider develops a waived independent living plan on the person's behalf.

(3) A [The] service provider must provide [provides] each independent living service in accordance with the independent living plan or waived independent living plan.

(b) Initiation and development of an independent living plan or a waived independent living plan.

(1) A service provider develops a person's [consumer's] independent living plan or waived independent living plan [is created] after the person's [the consumer's] eligibility is documented according to §357.305 [§104.305] of this subchapter [chapter] (relating to Eligibility). The plan explains the goals or objectives established and the services to be provided. The plan [It] indicates the anticipated duration of the service plan and the duration of each [component] service.

{(2) Subject to subsection (a)(2) of this section, the independent living plan is developed by the service provider and the consumer or the consumer's representative.}

(2) [(3)] A service provider provides a [A] copy of the independent living plan or waived independent living plan and any amendments [is provided] in an accessible format to the person [consumer] or the person's [the consumer's] representative.

(c) Review.

(1) An [The] independent living plan or waived independent living plan is reviewed as often as necessary but at least annually to determine whether to continue, modify, or discontinue services or refer the person [consumer] to a vocational rehabilitation program or other [assistance] program.

(2) A person [The consumer] reviews the independent living plan and, if necessary, revises it and agrees by signature to its terms.

(d) Coordinating services. A person's [The] independent living plan or waived independent living plan must be coordinated by the service provider, to the extent possible, with any of the following programs [for the consumer]:

(1) a [A] vocational rehabilitation program;

(2) a [A] habilitation program, prepared under the Developmental Disabilities Assistance and Bill of Rights Act of 2000; [and]

(3) an [An] education program, prepared under Part [part] B of the Individuals with Disabilities Education Act; and[-]

(4) other community, state, or federal programs that align with the person's independent living goals.

(e) Termination of services. If a [the] service provider intends to terminate services to a person [consumer], the service provider documents the reason on the independent living plan or waived independent living plan and follows the procedures described [explained] in §357.305(e)(2) - (5) [§104.305(f)(2) - (5)] of this subchapter [chapter].

§357.309. *Waiting List.*

(a) Independent living services are provided when funding is available.

(b) A person [consumer] is placed on a waiting list by a [the] service provider when:

(1) the service provider determines the person [consumer] meets the eligibility requirements described [explained] in §357.305 [§104.305] of this subchapter [chapter] (relating to Eligibility);

(2) the person [consumer] has an [a signed] independent living plan or a waived [waiver stating that an] independent living plan [is unnecessary]; and

(3) there is no funding for a service on the independent living plan or the waived independent living plan that must be purchased.

(c) A service provider must review the service provider's [The] waiting list [is reviewed] every six months [by the service provider]

to determine whether a person is [consumers are] still eligible for and interested in services.

(d) A person is [Consumers are] removed from a service provider's [the] waiting list when:

(1) funding becomes available;[-]

(2) the person [consumer] is no longer eligible;[-] or

(3) the person [consumer] is no longer interested in receiving services.

§357.311. *Scope of Services.*

(a) All services listed in subsection (d) of [provided in] this section are subject to the funds HHSC allocates to each service provider as described in §357.201 [§104.201(d)] of this chapter (relating to Allocation of Funds).

(b) A service provider must make all [All] services [are] available in an accessible format for a person [consumers] who relies [rely] on alternative modes of communication.

(c) A [The] service provider must provide [provides] each independent living service in accordance with a person's [the] independent living plan or waived independent living plan.

(d) A [The] service provider may provide the following [independent living] services under this chapter:

(1) independent [Independent] living core services, which are:

(A) information and referral services;

(B) independent living skills training;

(C) peer counseling, including cross-disability peer counseling [(including cross-disability peer counseling)];

(D) individual and systems advocacy; and

(E) transition services; and

(2) independent [Independent] living services, which are:

(A) counseling services, including psychological and psychotherapeutic services;

(B) services for securing housing or shelter, including community living, [(including community living)] that support the purposes and titles of the Act, and services related to securing adaptive housing, including making appropriate modifications to spaces that serve or are occupied by a person with a disability [(including making appropriate modifications to spaces that serve or are occupied by individuals with disabilities)];

(C) rehabilitation technology;

(D) mobility training;

(E) services and training for a person [individuals] with cognitive and sensory disabilities, including life skills training and interpreter and reader services;

[(F) personal assistance services, including attendant care and the training of personnel providing such services;]

(F) [(G)] surveys, directories, and other materials that identify appropriate housing, recreation opportunities, accessible transportation, and other support services;

(G) [(H)] consumer information programs on the rehabilitation and independent living services that are available under the Act[-] especially services that are available for minorities and other in-

dividuals with disabilities who have traditionally been unserved or underserved by programs under the Act];

(H) [(H)] education and training necessary for living in a community and participating in community activities;

[(H)] supported livings];

(I) [(K)] transportation, including referral services[, personal assistance,] and training on the use of public transportation vehicles and systems;

(J) [(L)] physical rehabilitation;

(K) [(M)] therapeutic treatment;

(L) [(N)] the provision of needed prostheses and other appliances and devices;

(M) [(O)] social and recreational services, including individual and group [(individual and group)];

(N) [(P)] training for youth with a disability [disabilities] that is designed to develop self-awareness, self-esteem, and the ability to self-advocate, self-empower, and explore career options;

(O) [(Q)] services for children younger than 18 years of age;

(P) [(R)] federal, state, or local training, counseling, or other assistance designed to help a person [individuals] with a significant disability [disabilities] become independent and productive and live a good life;

(Q) [(S)] preventive services that encourage independence and reduce the need for the services that are available [provided] under the Act;

(R) [(T)] awareness programs that encourage an understanding of a person [individuals] with a significant disability [disabilities] and help the person [individuals] integrate into the community; and

(S) [(U)] other services, as needed, which are consistent with the provisions of the Act.

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

Filed with the Office of the Secretary of State on January 22, 2025.

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Karen Ray

Chief Counsel

Health and Human Services Commission

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For further information, please call: (817) 458-1902



SUBCHAPTER D. CONSUMER PARTICIPATION

26 TAC §§357.401, 357.403, 357.405

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of

HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; and Texas Human Resources Code §117.080(e), which authorizes the Executive Commissioner of HHSC to adopt rules necessary to implement that section, including requirements applicable to CILs providing independent living services under the program.

The amendments implement Texas Government Code §531.0055 and Texas Human Resources Code §117.080.

§357.401. Consumer Participation System.

(a) A [The] service provider administers the consumer participation system in accordance with the rules in this chapter, the standards, and the contract requirements.

(b) A [The] service provider provides independent living core services, as described [defined] in §357.311(d)(1) [§104.311(d)(1)] of this chapter (relating to Scope of Services), at no cost to the person [consumer].

(c) Independent living services as described [defined] in §357.311(d)(2) [§104.311(d)(2)] of this chapter are subject to the rules in this subchapter.

(d) A [The] service provider gathers financial information about a person [the consumer] to determine the person's [the consumer's] adjusted gross income and the percentage of the federal poverty level for that income.

(e) A [The] service provider charges a person [the consumer] a fee for each independent living service described [provided] in §357.311(d)(2) [§104.311(d)(2)] of this chapter, according to the person's [consumer's] percentage of the federal poverty level. Medical records charges, support services, and diagnostic assessments or evaluations for the purchase of independent living services are exempt from consumer participation.

(f) A person [The consumer] or the person's [consumer's] representative signs a consumer participation agreement. Signing the agreement acknowledges the amount of the person's [consumer's] fee [for services] and provides written agreement that:

(1) the information provided by the person [consumer] or the person's [the consumer's] representative about the person's [consumer's] household size, annual gross income, allowable deductions, and comparable services or benefits is true and accurate; or

(2) the person [consumer] or the person's [the consumer's] representative chooses not to provide information about the person's [consumer's] household size, annual gross income, allowable deductions, and comparable services or benefits.

(g) A [The] service provider does not initiate or authorize the independent living services described in §357.311(d)(2) [subject to §104.311(d)(2)] of this chapter until the person [consumer] or the person's [the consumer's] representative signs the consumer [consumer's] participation agreement.

(h) If a person or the person's representative [the consumer] chooses not to provide information on the person's [the consumer's] household size, annual gross income, allowable deductions, and comparable services or benefits, the person or the person's representative [consumer] agrees to pay the entire cost of services.

(i) A person [The consumer] reports to the service provider as soon as possible all changes to household size, annual gross income, allowable deductions, and comparable services or benefits and signs a new consumer [consumer's] participation agreement.

(j) When a person [the consumer] signs a new consumer participation agreement, the new amount of the person's [consumer's] fee

[for service] takes effect the beginning of the following month. The new amount is not retroactive.

(k) A [The] service provider must develop a process to reconsider a person's ability to pay the fee and adjust the person's [consumer's] fee [for service] based on circumstances that are both extraordinary and documented. [This may include assessing the consumer's ability to pay the consumer's fee for service.]

(l) Only a [the] service provider's executive director or designee has authority to reconsider and adjust a person's [consumer's] fee [for service].

(m) Extraordinary circumstances are:

- (1) an increase or decrease in income;
- (2) unexpected medical expenses;
- (3) unanticipated disability related expenses;
- (4) a change in family size;
- (5) catastrophic loss, such as a fire, flood, or tornado;
- (6) short-term financial hardship, such as a major repair to the person's [consumer's] home or personally owned vehicle; or
- (7) other extenuating circumstances for which the person [consumer] makes a request and provides supporting documentation.

(n) A person's [The consumer's] calculated fee [for service] remains in effect during the reconsideration and adjustment process.

(o) A [The] service provider must:

(1) only use [uses] program income that is received from the consumer participation system [only] to provide the independent living services described [that are outlined] in §357.311(d)(2) [§104.311(d)(2)] of this chapter; and

(2) report [reports] fees collected to HHSC [DARS] as program income.

(p) A [The] service provider must [does] not use program income received from the consumer participation system to supplement funds from [supplant] any other [fund] sources.

(q) HHSC [DARS] does not pay any portion of a person's [the consumer's] fee [for service].

(r) A consumer [The consumer's] participation agreement and all financial information collected by a [the] service provider are subject to:

- (1) any data use agreement between HHSC [DARS] and the service provider; and
- (2) subpoena.

[(s) The consumer's participation agreement and all financial information collected by the service provider are subject to subpoena.]
§357.403. *Fee Schedule Amount.*

(a) A [The] service provider is required to use the HHSC [DARS] fee schedule and instructions to calculate a person's [the consumer's] fee [for service].

(b) Factors that affect a person's [the consumer's] fee [for service] are:

- (1) household size;
- (2) annual gross income; and
- (3) allowable deductions.

(c) Household [The household] size equals:

(1) any person living inside or outside of the home who is eligible to be claimed as a dependent of a person [the consumer] on the person's [the consumer's] federal income tax return; [;] or [;]

(2) if a person [the consumer] is under 18 years of age [a minor], any other person living inside or outside of the home who is eligible to be claimed as a dependent of the person's [consumer's] parent or guardian on the parent or guardian's federal income tax return.

(d) A person's [The consumer's] annual gross income:

(1) equals the total annual gross income received by the household; and

(2) includes all income classified as taxable income by the Internal Revenue Service before federally allowable deductions are applied.

(e) A person's [The consumer's] allowable deductions are limited to [the consumer's] expenses in the following categories:

- (1) attendant care;
- (2) rent or home mortgage payments;
- (3) court-ordered child support payments made by the person [consumer] for financially dependent children who were not included in the calculation of household size; and
- (4) medical or dental expenses for treatment primarily intended to alleviate or prevent a physical or mental illness or manage a disability, with the expenses limited to the cost of:

- (A) diagnosis, cure, alleviation, treatment, or prevention of disease;
- (B) treatment of any affected body part or function;
- (C) medical services legally delivered by physicians, surgeons, dentists, and other medical practitioners;
- (D) medications, medical supplies, and diagnostic devices;
- (E) medical and dental health care insurance premiums;
- (F) transportation to receive medical or dental care; and
- (G) medical or dental debt that the family is paying on an established payment plan.

(f) A [The] service provider calculates the allowable deductions using the actual amounts a person [the consumer] paid during the previous 12-month period.

(g) A person [The consumer] provides the most recent tax return available as proof of annual gross income and allowable deductions. If a person [the consumer] has no tax return, the person [the consumer] provides bank statements, medical records, receipts, proof of benefits awards, or [and] other documentation to demonstrate annual gross income and allowable deductions.

(h) If a person [the consumer] does not provide documentation supporting the household's allowable deductions, the service provider determines the person's [consumer's] fee [for service] based on the person's [the consumer's] documented annual gross income with no allowable deductions.

(i) A person's [The consumer's] fee [for service] is equal to the amount on the HHSC [DARS sliding] fee schedule [scale] according to the household's annual adjusted income, that is, the annual gross income minus the allowable deductions [(that is, the annual gross income minus the allowable deductions)].

(j) A [The] service provider uses the most current [sliding] fee schedule [seale] and instructions published by HHSC [DARS] to determine a person's [the consumer's] fee [for service].

(k) The procedures, fee schedule, and instructions used [that DARS uses] to calculate a person's [consumer's] fee [for service] is available from HHSC [DARS,] between 8:00 a.m. and 5:00 p.m. on business days.

§357.405. *Insurance Payments.*

(a) If a person [the consumer] has medical [and dental] insurance that covers an independent living service received by the person [consumer and the agreement for in-network services made between the insurance company and the service provider or service provider's subcontractor requires that the service provider or subcontractor accept as payment in full the deductible, copayment, or coinsurance and insurance reimbursement], then the person's [consumer's] fee [for service] is either the insurance deductible, copayment, or coinsurance, or the amount calculated by the HHSC [DARS] fee schedule, whichever is less.

(b) A person [The consumer] pays the premiums for medical [and dental] insurance. Neither HHSC [DARS] nor a [the] service provider pays the premiums.

(c) The premiums for medical [and dental] insurance do not count toward meeting the person's [consumer's] fee [for service].

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

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Health and Human Services Commission

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SUBCHAPTER E. PERSONAL [CONSUMER] RIGHTS

26 TAC §357.501, §357.503

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; and Texas Human Resources Code §117.080(e), which authorizes the Executive Commissioner of HHSC to adopt rules necessary to implement that section, including requirements applicable to CILs providing independent living services under the program.

The amendments implement Texas Government Code §531.0055 and Texas Human Resources Code §117.080.

§357.501. *Personal Rights [of Consumers].*

(a) In accordance with applicable legal provisions, HHSC [DARS] does not, directly or through contractual or other arrangements, exclude, deny benefits to, limit the participation of, or otherwise discriminate against any person [individual] on the basis of race,

religion, [age,] color, [disability,] national origin, disability, [political belief, race, religion,] sex, age, or in retaliation for prior civil rights activity [or sexual orientation]. For the purposes of receiving independent living services, a person [the consumer] must have a significant disability; however, that requirement is not considered discrimination against anyone [any individual] on the basis of disability.

(b) A [The] service provider must notify a person [notifies the consumer] in writing about the rights included in subsection (a) of this section; §357.401 of this chapter (relating to Consumer Participation System); and §357.503 [§104.503] of this subchapter [chapter] (relating to Complaint Process); and §104.401 of this chapter (relating to Consumer Participation System):

(1) when a person [consumer] applies for services;

(2) when the service provider determines that a person [consumer] is ineligible for services; and

(3) when the service provider intends to terminate a person's services.

(c) A service provider must make personal [Consumer] rights [are] available in an accessible format for a person [consumers] who relies [rely] on alternative modes of communication.

§357.503. *Complaint Process.*

(a) Filing a complaint [with DARS] through the HHSC [Health and Human Services Commission] Office of Ombudsman.

(1) A person [consumer] may file a complaint with the HHSC Office of Ombudsman [DARS] alleging that a service provider violated a requirement of the program [independent living services was violated]. A person may file a complaint [may be filed] directly with the HHSC Office of Ombudsman [DARS] without filing the complaint [having been filed] with the service provider.

(2) A complaint may be filed by:

(A) mail: [to DARS:] Texas Health and Human Services Commission, Office of the Ombudsman, MC H-700, P.O. Box 13247, Austin, Texas 78711-3247;

(B) phone: 1-877-787-8999 or Relay Texas for people with a hearing or speech disability at[:] 7-1-1 or 1-800-735-2989;

(C) fax: 1-888-780-8099; or

(D) online: on the HHS website, HHS Office of the Ombudsman. [: <http://www.hhsc.state.tx.us/ombudsman/contact.shtml>]

(3) More information regarding the complaint process may be obtained by calling the Office of the Ombudsman at 1-877-787-8999 or Relay Texas for people with a hearing or speech disability at[:] 7-1-1 or 1-800-735-2989.

(b) Filing a discrimination complaint with the HHSC Civil Rights Office (CRO).

(1) The HHSC CRO sets policies and procedures to address complaints resulting from alleged discrimination.

(2) A person may file a complaint with the HHSC CRO alleging that HHSC or an HHSC agency contractor discriminated against the person based on a protected category listed in §357.501(a) of this subchapter (relating to Personal Rights). A person may file a complaint directly with the HHSC CRO without filing the complaint with the service provider.

(3) A discrimination complaint may be filed by:

(A) phone: 1-888-388-6322 or 512-438-4313;

(B) email: HHSCivilRightsOffice@hhs.texas.gov;

(C) fax: 512-438-5885; or

(D) mail: Civil Rights Office, Health and Human Services Commission, P.O. Box 13247, Mail Code 1560, Austin, Texas 78711.

(c) [(b)] Filing a complaint with the Client Assistance Program (CAP).

(1) The CAP is implemented by Disability Rights Texas (DRTx), a legal services organization whose mission is to protect the human, service, and legal rights of persons with disabilities in Texas.

(2) DRTx advocates are not employees of HHSC [DARS]. There are no fees for CAP services, which are provided by advocates and attorneys when necessary. Services are confidential.

(3) A person [consumer] enrolled in the program [independent living services] or the person's [the consumer's] representative may file a complaint with DRTx alleging that a service provider violated a requirement of the program [independent living services]. A person may file a [The] complaint directly with DRTx without filing the complaint [need not be filed] with the service provider.

(4) A complaint may be filed by:

(A) phone: 1-800-252-9108; or

(B) videophone: 1-866-362-2851.

(5) More information about the complaint process is available by calling DRTx at 1-800-252-9108 or videophone at 1-866-362-2851.

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Karen Ray

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Health and Human Services Commission

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SUBCHAPTER F. TECHNICAL ASSISTANCE AND TRAINING

26 TAC §357.601

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; and Texas Human Resources Code §117.080(e), which authorizes the Executive Commissioner of HHSC to adopt rules necessary to implement that section, including requirements applicable to CILs providing independent living services under the program.

The amendment implements Texas Government Code §531.0055 and Texas Human Resources Code §117.080.

§357.601. [Administering Agency's Role in Providing] Technical Assistance Provided by HHSC.

(a) HHSC provides [DARS gives the service provider] technical assistance to a service provider, as needed, to help the service provider offer a full range of independent living services.

(b) Technical assistance provided by HHSC may include:

(1) help to expand a service provider's capacity to provide a full range of independent living services; and

(2) training on:

(A) the independent living philosophy; and

(B) the administration, operation, evaluation, and performance of independent living services according to the rules in this chapter, the standards, and the contract requirements.

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Chief Counsel

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SUBCHAPTER G. REFERRALS

26 TAC §357.701

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; and Texas Human Resources Code §117.080(e), which authorizes the Executive Commissioner of HHSC to adopt rules necessary to implement that section, including requirements applicable to CILs providing independent living services under the program.

The amendment implements Texas Government Code §531.0055 and Texas Human Resources Code §117.080.

§357.701. *Referrals Received by HHSC [Expectations of Administering Agency's] Employees.*

(a) HHSC refers a person [Individuals] seeking independent living services to a service provider as described in subsection (b) of this section [are referred to the local service provider].

(b) If a person [an individual] calls HHSC [DARS] to request independent living services, HHSC [DARS]:

(1) gives the person [individual] the contact information for the nearest service provider, which can be found on the HHSC website under Independent Living Services;

(2) obtains the person's [individual's] permission to forward the person's [the individual's] name and contact information to the service provider; and

(3) forwards the person's [individual's] name and contact information to the service provider.

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Karen Ray

Chief Counsel

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