

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 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 100. CHARTERS

SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING OPEN-ENROLLMENT CHARTER SCHOOLS

The Texas Education Agency (TEA) proposes the repeal of §§100.1001 - 100.1007, 100.1010, 100.1013, 100.1015, 100.1017, 100.1019, 100.1021 - 100.1023, 100.1025 - 100.1027, 100.1029, 100.1031 - 100.1033, 100.1035, 100.1041, 100.1043, 100.1045, 100.1047, 100.1049 - 100.1052, 100.1063, 100.1065, 100.1067, 100.1069, 100.1071, 100.1073, 100.1101 - 100.1108, 100.1111 - 100.1116, 100.1131 - 100.1135, 100.1151, 100.1153, 100.1155, 100.1157, 100.1159, and 100.1217; new §§100.1001, 100.1003, 100.1011, 100.1013, 100.1015, 100.1017, 100.1021, 100.1023, 100.1025, 100.1031, 100.1035, 100.1037, 100.1039, 100.1041, 100.1043, 100.1045, 100.1047, 100.1049, 100.1051, 100.1053, 100.1055, 100.1061, 100.1063, 100.1065, 100.1067, 100.1069, 100.1071, 100.1073, 100.1075, 100.1077, 100.1079, 100.1091, 100.1093, 100.1095, 100.1097, 100.1099, 100.1101, 100.1111, 100.1113, 100.1115, 100.1117, 100.1119, 100.1121, 100.1123, 100.1125, 100.1127, 100.1131, 100.1133, 100.1135, 100.1137, 100.1139, 100.1141, 100.1143, 100.1145, 100.1147, 100.1149, 100.1151, 100.1153, 100.1155, 100.1157, 100.1159, 100.1161, and 100.1163; and amendments to §§100.1203, 100.1205, 100.1207, 100.1209, and 100.1211 - 100.1213, concerning open-enrollment charter schools. The proposed revisions would reorganize the subchapter as well as reflect changes to the Texas Education Code (TEC) resulting from House Bill (HB) 1707, 88th Texas Legislature, Regular Session, 2023; Senate Bill (SB) 2032, 88th Texas Legislature, Regular Session, 2023; SB 879, 87th Texas Legislature, Regular Session, 2021; HB 189, 87th Texas Legislature, Regular Session, 2021; SB 1615, 87th Texas Legislature, Regular Session, 2021; and SB 2293, 86th Texas Legislature, 2019.

BACKGROUND INFORMATION AND JUSTIFICATION: Chapter 100, Subchapter AA, outlines the commissioner's rules concerning open-enrollment charter schools. The proposed revisions would allow for an overall reorganization of the chapter, amend existing rules, and add new rules. Following is a summary of the significant changes proposed to Chapter 100, Subchapter AA.

Section 100.1001, Definitions, would include new definitions for various types of charter schools referenced throughout Chapter 100, as defined in TEC, Chapter 12. This would provide clarity throughout Chapter 100 as to which types of charter schools are being addressed in each section. The section would also include

a definition for "related party transactions" as required by TEC, §12.1166. The definition of "former charter holder" would be updated to include provisions for high quality operators. A provision for allowing scaled scores to be used for discretionary decision making in lieu of academic accountability ratings when such ratings are not issued for any reason would also be included.

Section 100.1002, Application and Selection Procedures and Criteria, would be proposed as new §100.1011, Application Requirements and Selection Process, and would contain changes including grammatical edits, organization of information into smaller paragraphs and subparagraphs, and a reformatted reference structure that assumes all paragraphs and subparagraphs are applicable to all charter applications unless expressly provided elsewhere. The reformatted reference structure would provide a clearer applicability of rule to each of TEA's authorization pathways.

Section 100.1003, Application to Dropout Recovery Charters, would be proposed as new §100.1015 and would modify eligibility criteria to align with updated statute.

Section 100.1004, Application to Public Senior College or University Charters and Public Junior College Charters, and §100.1015, Applicants for an Open-Enrollment Charter, Public Senior College or University Charter, or Public Junior College Charter, would be combined and proposed as new §100.1017, Applicant Eligibility and Form Contents. The new section would contain the following changes: a new section title to more accurately reflect the section's contents, grammatical edits, organization of information into smaller paragraphs and subparagraphs, and a reformatted reference structure that assumes all paragraphs and subparagraphs are applicable to all charter applications unless expressly provided elsewhere. The reformatted reference structure would provide a clearer applicability of rule to each of TEA's authorization pathways. Additionally, new applicability of the TEC, Subchapter G application pathway and educational, financial, governance, and operational standards by which applicants are assessed would be updated to better align with statute and current organizational priorities. The new section would also include a change to reflect TEC, §12.265(c), regarding the enrollment cap for adult high school charter programs.

Section 100.1005, Notification of Charter Application, would be proposed as new §100.1013 and contain the following changes: updates to who is responsible for notification of charter and a clarification of who is required to be notified. These changes would be made to decrease the administrative burden on applicants and provide a streamlined method of communication with potentially impacted stakeholders.

Section 100.1006, Optional Open-Enrollment Charter Provisions for Contracting and Purchasing, would be proposed as

new §100.1079 and include non-substantive technical edits; no content changes would be made.

Section 100.1007, Annual Report on Open-Enrollment Charter Governance, would be proposed as new §100.1111 and contain the following proposed changes: modifications to the filing of governance information on an annual basis from no later than December 1 to a timeline approved by the commissioner; removal of the requirement for the charter holder to file amendments, articles of incorporation, and bylaws because TEA already possesses these documents; and removal of the requirement for a screenshot of the names of governing body members and a screenshot of the superintendent's salary, since the posting of this information is already required in statute. This new section would also remove outdated language.

Section 100.1010, Performance Frameworks, would be proposed as new §100.1031, Performance Frameworks for Subchapters D and E Charter Schools, and would contain the following proposed changes: clarification that Subchapter D and E charters will be evaluated against criteria set forth in the Charter School Performance Frameworks (CSPF) Manual and clarification that the manual will be updated annually to reflect the requirements and data sources for each indicator. Additional proposed changes would include clarification that tier ratings will be assigned based on academic, financial, operational, and governance criteria set forth in the CSPF Manual to allow further delineation as to the indicators that measure operational standards and those that measure governance standards. These changes are proposed based on feedback from stakeholders to make the CSPF a more useful instrument that communicates charter performance in a clear and concise manner.

Section 100.1013, Filing of Documents, would be proposed as new §100.1003 and include a change to define and outline the requirements for electronic transmission of documents.

Section 100.1017, Application of Law and Rules to Public Senior College or University Charters and Public Junior College Charters, would be proposed as new §100.1021, Applicability of Law and Rules to Public Senior College or University Charters and Public Junior College Charters, to more accurately reflect statutory language.

Section 100.1019, Application to Adult High School Charters, would be proposed as new §100.1023, Applicability of Law and Rules to Adult High School Charters, to more accurately reflect statutory language. This new section would include new provisions to govern applicability of TEC, Chapter 12, Subchapter D, to adult high school charter schools. These changes would be made to account for programmatic requirements that were not otherwise explicitly addressed in existing law. The requirements would be aligned to other provisions that govern charters and public schools as appropriate.

Section 100.1021, Revocation and Modification of Governance of an Open-Enrollment Charter, would be proposed as new §100.1049 and include a change to remove outdated references to academic performance ratings and financial accountability performance ratings for specific years.

Section 100.1022, Standards to Revoke and Modify the Governance of an Open-Enrollment Charter, would be proposed as new §100.1051 and include the removal of language defining "imminently insolvent" as this is included in another rule.

Section 100.1023, Intervention Based on Charter Violations, would be proposed as new §100.1045 with no substantive changes to rule text.

Section 100.1025, Intervention Based on Health, Safety, or Welfare of Students, would be proposed as new §100.1047 with no changes in rule text.

Proposed new §100.1025, Authorization for High-Performing Entities, would be added to implement TEC, §12.1011, which requires the commissioner to adopt rules regarding charter authorization for high-performing entities.

Section 100.1026, Management of Charter Campus(es) Following Revocation, Surrender, or Expiration, would be proposed as new §100.1053 with no substantive changes in rule text.

Section 100.1027, Accountability Ratings and Sanctions, would be proposed as new §100.1041 and include clarification that the commissioner may take any action relating to the charter holder or its campus as authorized by TEC, Chapter 39A. This change would remove outdated language.

Section 100.1029, Agency Audits, Monitoring, and Investigations, would be proposed as new §100.1043 and include non-substantive technical edits; no content changes would be made.

Section 100.1031, Renewal of an Open-Enrollment Charter, would be proposed as new §100.1037, including a clarification that written notice from the commissioner regarding renewal decisions will be provided electronically and removing references to academic performance ratings and financial accountability performance ratings for specific school years. These changes remove outdated language.

Section 100.1032, Standards for Discretionary Renewal, would be proposed as new §100.1039 and include a change to remove failure to operate a campus with at least 50% of students in tested grades as a standard for non-renewal of a charter. This change reflects the current practice of some campuses serving only early childhood grades that are not considered tested grades.

Section 100.1033, Charter Amendment, would be proposed as new §100.1035 and include reorganization of the text to eliminate duplicative and contradictory language. The following changes would also be made. The timeline for amendment submission would be updated from 18 to 36 months to reflect changes to statutory language. Language would clarify that expansion requests can be expedited expansion requests if charters meet the requirements in TEC, §12.101(b-4), or discretionary expansion requests if charters do not meet the expedited requirements. Geographic boundary would be eliminated as a type of expansion amendment request. Language would classify types of non-expansion requests as material non-expansion amendments with the charter holder receiving a commissioner decision with 60 calendar days of a completed amendment request or non-material non-expansion requests that allow the charter to proceed with the request 30 calendar days after the submission of a completed amendment request unless otherwise notified by the commissioner. These changes would be made to reflect current best practices for authorizing as well as feedback from stakeholders to improve the overall process for amending a charter.

Section 100.1035, Compliance Records on Nepotism, Conflicts of Interest, and Restrictions on Serving, would be proposed as new §100.1163 and include non-substantive technical edits; no content changes would be made.

Section 100.1041, State Funding, would be proposed as new §100.1061 and include clarification on statutory references on allowable and unallowable fees.

Section 100.1043, Status and Use of State Funds; Depository Contract, would be proposed as new §100.1063 with no changes to rule text.

Section 100.1045, Investment of State Funds, would be proposed as new §100.1065 and include non-substantive technical edits; no content changes would be made.

Section 100.1047, Accounting for State and Federal Funds, would be proposed as new §100.1067 and include non-substantive technical edits; no content changes would be made.

Section 100.1049, Disclosure of Campaign Contributions, would be proposed as new §100.1071 and include non-substantive technical edits; no content changes would be made.

Section 100.1050, Disclosure of Financial Information, would be proposed as new §100.1073 with no changes to rule text.

Section 100.1051, Audit by Commissioner; Records in the Possession of a Management Company, would be proposed as new §100.1075 with no changes to rule text.

Section 100.1052, Final Audit Upon Revocation, Surrender, or Closure of an Open-Enrollment Charter, would be proposed as new §100.1077 with no changes to rule text.

Section 100.1063, Use of Public Property by a Charter Holder, would be proposed as new §100.1091 with no changes to rule text.

Section 100.1065, Property Acquired with State Funds Received Before September 1, 2001--Special Rules, would be proposed as new §100.1093 and include non-substantive technical edits; no content changes would be made.

Section 100.1067, Possession and Control of the Public Property of a Former Charter Holder, would be proposed as new §100.1095 with no changes to rule text.

Section 100.1069, Rights and Duties Not Affected, would be proposed as new §100.1097 and include non-substantive technical edits; no content changes would be made.

Proposed new §100.1069, Disclosure of Related Party Transactions, would include requirements from TEC, §12.1166, which requires the commissioner to adopt a rule defining "related party."

Section 100.1071, Real Property Held in Trust, would be proposed as new §100.1099 and include non-substantive technical edits; no content changes would be made.

Section 100.1073, Improvements to Real Property, would be proposed as new §100.1101 and include non-substantive technical edits; no content changes would be made.

Section 100.1101, Delegation of Powers and Duties, would be proposed as new §100.1113 and move the non-delegable duties of board members and superintendents from another rule. This change would align the provisions with other information on governance powers and duties.

Section 100.1102, Training for Members of Governing Bodies of Charter Holder and School, would be proposed as new §100.1115, Training Requirements for Governing Board Members and Officers, and would add the opportunity for training to be provided online. This change would remove outdated language.

Section 100.1103, Training for Chief Executive and Central Administrative Officers, would be proposed as new §100.1117, Core Training for New Governing Board Members and Officers, and would clarify core training content for governance board members and officers under each training topic. This change would update curriculum training requirements to reflect current statute, rule, and best practice.

Section 100.1104, Training for Campus Administrative Officers, would be proposed as new §100.1119, Additional Training for New Governing Board Members and Officers, and would clarify additional training content for campus administrative officers under each training topic. This change would update curriculum training requirements to reflect current statute, rule, and best practice.

Section 100.1105, Training for Business Managers, would be proposed as new §100.1121, Continuing Training for Governing Board Members and Officers, and would outline continuing training content for governance board members and officers under each training topic. This change would update curriculum training requirements to reflect current statute, rule, and best practice.

Section 100.1106, Exemption for Participation in a Shared Services Cooperative, would be proposed as new §100.1123 with no changes to rule text.

Section 100.1107, Course Providers, would be proposed as new §100.1125, Training Providers, and would clarify that training for governance board members and officers must be provided by an authorized training provider; specify that training providers may be required to complete a charter training program prior to initial authorization as a trainer; and make initial authorization as a training provider effective for 24 months with re-registration available for a period of up to three years. These changes would help ensure that the individuals who train charter governing boards and charter officers have a deep understanding of the statutes, rules, and best practices associated with Texas charter schools.

Section 100.1108, Record of Compliance and Disclosure of Non-compliance, would be proposed as new §100.1127 and include non-substantive technical edits; no content changes would be made.

Section 100.1111, Applicability of Nepotism Provisions; Exception for Acceptable Performance, would be proposed as new §100.1131 and include non-substantive technical edits; no content changes would be made.

Section 100.1112, General Nepotism Provisions, would be proposed as new §100.1133 and include non-substantive technical edits; no content changes would be made.

Section 100.1113, Relationships By Consanguinity or By Affinity, would be proposed as new §100.1135 with no changes to rule text.

Section 100.1114, Nepotism Prohibitions, would be proposed as new §100.1137 and include non-substantive technical edits; no content changes would be made.

Section 100.1115, Nepotism Exceptions, would be proposed as new §100.1139 and include non-substantive technical edits; no content changes would be made.

Section 100.1116, Enforcement of Nepotism Prohibitions, would be proposed as new §100.1141 and include non-substantive technical edits; no content changes would be made.

Section 100.1131, Conflicts of Interest and Board Member Compensation; Exception, would be proposed as new §100.1143 and include non-substantive technical edits; no content changes would be made.

Section 100.1132, General Conflict of Interest Provisions, would be proposed as new §100.1145 and include non-substantive technical edits; no content changes would be made.

Section 100.1133, Conflicts Requiring Affidavit and Abstention From Voting, would be proposed as new §100.1147 with no changes to rule text.

Section 100.1134, Conflicts Requiring Separate Vote on Budget, would be proposed as new §100.1149 with no changes to rule text.

Section 100.1135, Acting as Surety and other Conflicts; Criminal Penalties, would be proposed as new §100.1151 and include non-substantive technical edits; no content changes would be made.

Section 100.1151, Criminal History; Restrictions on Serving, would be proposed as new §100.1153 and include non-substantive technical edits; no content changes would be made.

Section 100.1153, Substantial Interest in Management Company; Restrictions on Serving, would be proposed as new §100.1155 and include non-substantive technical edits; no content changes would be made.

Section 100.1155, Procedures for Prohibiting a Management Contract, would be proposed as new §100.1157 and align the process for review of proposed management contracts with the charter amendment process.

Section 100.1157, Loan from Management Company Prohibited, would be proposed as new §100.1159 and include non-substantive technical edits; no content changes would be made.

Section 100.1159, Public Records Maintained by Management Company; Contract Provision, would be proposed as new §100.1161 with no changes to rule text.

The proposed amendment to §100.1203, Records Management, would include non-substantive technical edits.

The proposed amendment to §100.1205, Procurement of Professional Services, would include non-substantive technical edits.

The proposed amendment to §100.1207, Student Admission, would include changes regarding the updated requirements of TEC, §12.1173, which requires the commissioner to adopt rules to implement charter school waiting lists for admission, including a common application form published by TEA.

The proposed amendment to §100.1209, Municipal Ordinances, would incorporate changes resulting from HB 1707, 88th Texas Legislature, Regular Session, 2023, by including notification to political subdivisions as required by TEC, §12.1058.

The proposed amendment to §100.1211, Students, would include an updated cross reference.

The proposed amendment to §100.1212, Personnel, would require charter schools to consult the do not hire registry prior to hiring and at least every three years thereafter.

The proposed amendment to §100.1213, Failure to Operate, would update provisions related to charter school dormancy and

move information related to written notice of suspended operation to §100.1035.

Section 100.1217, Eligible Entity; Change in Status or Revocation, would be proposed as new §100.1055 with no changes to rule text.

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

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

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

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

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

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would repeal existing regulations, create new regulations, and expand existing regulations to implement statute and reorganize the subchapter.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not limit existing regulations; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Ms. Oeser has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be to provide guidance for the administration of open-enrollment charter schools. As outlined in TEC, §12.001, the intention of charter schools is to improve student learning, increase the choice of learning opportunities, and encourage different learning models, which would provide a direct benefit to the public. There is no anticipated economic cost to persons who are required to comply with the proposal.

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

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

PUBLIC COMMENTS: The public comment period on the proposal begins March 15, 2024, and ends April 15, 2024. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on March 15, 2024. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_\(TAC\)/Proposed_Commissioner_of_Education_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/).

DIVISION 1. GENERAL PROVISIONS

19 TAC §§100.1001 - 100.1007, 100.1010, 100.1013, 100.1015, 100.1017, 100.1019

STATUTORY AUTHORITY. The repeals are proposed under Texas Education Code (TEC), §12.101, which requires the commissioner to adopt rules regarding the criteria for granting a charter and providing notification for the establishment of new charters or campuses; TEC, §12.1011, which requires the commissioner to adopt rules regarding charter authorization for high-performing entities; TEC, §12.103, which allows the commissioner to adopt rules regarding applicable provisions to open-enrollment charter schools; TEC, §12.104, as amended by House Bill (HB) 189, 87th Texas Legislature, Regular Session, 2021, which allows the commissioner to adopt rules permitting an open-enrollment charter school to voluntarily participate in any state program available to school districts if the school complies with all terms of the program; TEC, §12.1055, which allows the commissioner to adopt rules regarding nepotism under Texas Government Code, Chapter 573; TEC, §12.1058, as amended by HB 1707, 88th Texas Legislature, Regular Session, 2023, which requires a political subdivision to consider an open-enrollment charter school as a school district for the purposes of municipal ordinances if the open-enrollment charter school meets notification requirements; TEC, §12.110, which requires the commissioner to adopt an application form and procedure that must be used to apply for an open-enrollment charter school; TEC, §12.1101, which requires the commissioner to adopt a procedure for providing notice to the outlined persons on receipt by the commissioner of an application for a charter for an open-enrollment charter school or of notice of the establishment of a campus; TEC, §12.114, which allows the commissioner to define expansion amendment requests; TEC, §12.1141, as amended by Senate Bill (SB) 879, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to adopt a procedure for renewal, denial of renewal, or expiration of a charter for an open-enrollment charter school at the end of the term of the charter; TEC, §12.1166, which requires the commissioner to adopt a rule defining "related party;" TEC, §12.1173, as amended by SB 2293, 86th Texas Legislature, 2019, which requires the commissioner to adopt rules to implement charter school waiting lists for admission; TEC, §12.1181, requires the commissioner to adopt performance frameworks that establish standards by which to measure the performance of an open-enrollment charter school; TEC, §12.123, which requires the commissioner to adopt rules prescribing the training for members of the governing body of a charter school and its officers; TEC, §12.153, which allows the commissioner to adopt rules to implement college of university or junior college charter schools; TEC, §12.265, as amended by SB 1615, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to adopt rules necessary to

administer adult high school charter school programs; and TEC, §39.0548, which requires the commissioner to authorize and determine designation as a dropout recovery school.

CROSS REFERENCE TO STATUTE. The repeals implement Texas Education Code, §§12.101; 12.1011; 12.103; 12.104, as amended by House Bill (HB) 189, 87th Texas Legislature, Regular Session, 2021; 12.1055; 12.1058, as amended by HB 1707, 88th Texas Legislature, Regular Session, 2023; 12.110; 12.1101; 12.114; 12.1141, as amended by Senate Bill (SB) 879, 87th Texas Legislature, Regular Session, 2021; 12.1166; 12.1173, as amended by SB 2293, 86th Texas Legislature, 2019; 12.1181; 12.123; 12.153; 12.265, as amended by SB 1615, 87th Texas Legislature, Regular Session, 2021; and 39.0548.

§100.1001. *Definitions.*

§100.1002. *Application and Selection Procedures and Criteria.*

§100.1003. *Application to Dropout Recovery Charters.*

§100.1004. *Application to Public Senior College or University Charters and Public Junior College Charters.*

§100.1005. *Notification of Charter Application.*

§100.1006. *Optional Open-Enrollment Charter Provisions for Contracting and Purchasing.*

§100.1007. *Annual Report on Open-Enrollment Charter Governance.*

§100.1010. *Performance Frameworks.*

§100.1013. *Filing of Documents.*

§100.1015. *Applicants for an Open-Enrollment Charter, Public Senior College or University Charter, or Public Junior College Charter.*

§100.1017. *Application of Law and Rules to Public Senior College or University Charters and Public Junior College Charters.*

§100.1019. *Application to Adult High School Charters.*

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 March 4, 2024.

TRD-202400941

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: April 14, 2024

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



DIVISION 2. COMMISSIONER ACTION AND INTERVENTION

19 TAC §§100.1021 - 100.1023, 100.1025 - 100.1027, 100.1029, 100.1031 - 100.1033, 100.1035

STATUTORY AUTHORITY. The repeals are proposed under Texas Education Code (TEC), §12.101, which requires the commissioner to adopt rules regarding the criteria for granting a charter and providing notification for the establishment of new charters or campuses; TEC, §12.1011, which requires the commissioner to adopt rules regarding charter authorization for high-performing entities; TEC, §12.103, which allows the commissioner to adopt rules regarding applicable provisions to open-enrollment charter schools; TEC, §12.104, as amended by House Bill (HB) 189, 87th Texas Legislature, Regular Session, 2021, which allows the commissioner to adopt rules permitting an open-enrollment charter school to voluntarily participate in

any state program available to school districts if the school complies with all terms of the program; TEC, §12.1055, which allows the commissioner to adopt rules regarding nepotism under Texas Government Code, Chapter 573; TEC, §12.1058, as amended by HB 1707, 88th Texas Legislature, Regular Session, 2023, which requires a political subdivision to consider an open-enrollment charter school as a school district for the purposes of municipal ordinances if the open-enrollment charter school meets notification requirements; TEC, §12.110, which requires the commissioner to adopt an application form and procedure that must be used to apply for an open-enrollment charter school; TEC, §12.1101, which requires the commissioner to adopt a procedure for providing notice to the outlined persons on receipt by the commissioner of an application for a charter for an open-enrollment charter school or of notice of the establishment of a campus; TEC, §12.114, which allows the commissioner to define expansion amendment requests; TEC, §12.1141, as amended by Senate Bill (SB) 879, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to adopt a procedure for renewal, denial of renewal, or expiration of a charter for an open-enrollment charter school at the end of the term of the charter; TEC, §12.1166, which requires the commissioner to adopt a rule defining "related party;" TEC, §12.1173, as amended by SB 2293, 86th Texas Legislature, 2019, which requires the commissioner to adopt rules to implement charter school waiting lists for admission; TEC, §12.1181, requires the commissioner to adopt performance frameworks that establish standards by which to measure the performance of an open-enrollment charter school; TEC, §12.123, which requires the commissioner to adopt rules prescribing the training for members of the governing body of a charter school and its officers; TEC, §12.153, which allows the commissioner to adopt rules to implement college of university or junior college charter schools; TEC, §12.265, as amended by SB 1615, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to adopt rules necessary to administer adult high school charter school programs; and TEC, §39.0548, which requires the commissioner to authorize and determine designation as a dropout recovery school.

CROSS REFERENCE TO STATUTE. The repeals implement Texas Education Code, §§12.101; 12.1011; 12.103; 12.104, as amended by House Bill (HB) 189, 87th Texas Legislature, Regular Session, 2021; 12.1055; 12.1058, as amended by HB 1707, 88th Texas Legislature, Regular Session, 2023; 12.110; 12.1101; 12.114; 12.1141, as amended by Senate Bill (SB) 879, 87th Texas Legislature, Regular Session, 2021; 12.1166; 12.1173, as amended by SB 2293, 86th Texas Legislature, 2019; 12.1181; 12.123; 12.153; 12.265, as amended by SB 1615, 87th Texas Legislature, Regular Session, 2021; and 39.0548.

§100.1021. *Revocation and Modification of Governance of an Open-Enrollment Charter.*

§100.1022. *Standards to Revoke and Modify the Governance of an Open-Enrollment Charter.*

§100.1023. *Intervention Based on Charter Violations.*

§100.1025. *Intervention Based on Health, Safety, or Welfare of Students.*

§100.1026. *Management of Charter Campus(es) Following Revocation, Surrender, or Expiration.*

§100.1027. *Accountability Ratings and Sanctions.*

§100.1029. *Agency Audits, Monitoring, and Investigations.*

§100.1031. *Renewal of an Open-Enrollment Charter.*

§100.1032. *Standards for Discretionary Renewal.*

§100.1033. *Charter Amendment.*

§100.1035. *Compliance Records on Nepotism, Conflicts of Interest, and Restrictions on Serving.*

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

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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



DIVISION 3. CHARTER SCHOOL FUNDING AND FINANCIAL OPERATIONS

19 TAC §§100.1041, 100.1043, 100.1045, 100.1047, 100.1049 - 100.1052

STATUTORY AUTHORITY. The repeals are proposed under Texas Education Code (TEC), §12.101, which requires the commissioner to adopt rules regarding the criteria for granting a charter and providing notification for the establishment of new charters or campuses; TEC, §12.1011, which requires the commissioner to adopt rules regarding charter authorization for high-performing entities; TEC, §12.103, which allows the commissioner to adopt rules regarding applicable provisions to open-enrollment charter schools; TEC, §12.104, as amended by House Bill (HB) 189, 87th Texas Legislature, Regular Session, 2021, which allows the commissioner to adopt rules permitting an open-enrollment charter school to voluntarily participate in any state program available to school districts if the school complies with all terms of the program; TEC, §12.1055, which allows the commissioner to adopt rules regarding nepotism under Texas Government Code, Chapter 573; TEC, §12.1058, as amended by HB 1707, 88th Texas Legislature, Regular Session, 2023, which requires a political subdivision to consider an open-enrollment charter school as a school district for the purposes of municipal ordinances if the open-enrollment charter school meets notification requirements; TEC, §12.110, which requires the commissioner to adopt an application form and procedure that must be used to apply for an open-enrollment charter school; TEC, §12.1101, which requires the commissioner to adopt a procedure for providing notice to the outlined persons on receipt by the commissioner of an application for a charter for an open-enrollment charter school or of notice of the establishment of a campus; TEC, §12.114, which allows the commissioner to define expansion amendment requests; TEC, §12.1141, as amended by Senate Bill (SB) 879, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to adopt a procedure for renewal, denial of renewal, or expiration of a charter for an open-enrollment charter school at the end of the term of the charter; TEC, §12.1166, which requires the commissioner to adopt a rule defining "related party;" TEC, §12.1173, as amended by SB 2293, 86th Texas Legislature, 2019, which requires the commissioner to adopt rules to implement charter school waiting lists for

admission; TEC, §12.1181, requires the commissioner to adopt performance frameworks that establish standards by which to measure the performance of an open-enrollment charter school; TEC, §12.123, which requires the commissioner to adopt rules prescribing the training for members of the governing body of a charter school and its officers; TEC, §12.153, which allows the commissioner to adopt rules to implement college of university or junior college charter schools; TEC, §12.265, as amended by SB 1615, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to adopt rules necessary to administer adult high school charter school programs; and TEC, §39.0548, which requires the commissioner to authorize and determine designation as a dropout recovery school.

CROSS REFERENCE TO STATUTE. The repeals implement Texas Education Code, §§12.101; 12.1011; 12.103; 12.104, as amended by House Bill (HB) 189, 87th Texas Legislature, Regular Session, 2021; 12.1055; 12.1058, as amended by HB 1707, 88th Texas Legislature, Regular Session, 2023; 12.110; 12.1101; 12.114; 12.1141, as amended by Senate Bill (SB) 879, 87th Texas Legislature, Regular Session, 2021; 12.1166; 12.1173, as amended by SB 2293, 86th Texas Legislature, 2019; 12.1181; 12.123; 12.153; 12.265, as amended by SB 1615, 87th Texas Legislature, Regular Session, 2021; and 39.0548.

§100.1041. *State Funding.*

§100.1043. *Status and Use of State Funds; Depository Contract.*

§100.1045. *Investment of State Funds.*

§100.1047. *Accounting for State and Federal Funds.*

§100.1049. *Disclosure of Campaign Contributions.*

§100.1050. *Disclosure of Financial Information.*

§100.1051. *Audit by Commissioner; Records in the Possession of a Management Company.*

§100.1052. *Final Audit Upon Revocation, Surrender, or Closure of an Open-Enrollment Charter.*

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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DIVISION 4. PROPERTY OF OPEN-ENROLLMENT CHARTER SCHOOLS

19 TAC §§100.1063, 100.1065, 100.1067, 100.1069, 100.1071, 100.1073

STATUTORY AUTHORITY. The repeals are proposed under Texas Education Code (TEC), §12.101, which requires the commissioner to adopt rules regarding the criteria for granting a charter and providing notification for the establishment of new charters or campuses; TEC, §12.1011, which requires the commissioner to adopt rules regarding charter authorization for high-performing entities; TEC, §12.103, which allows the

commissioner to adopt rules regarding applicable provisions to open-enrollment charter schools; TEC, §12.104, as amended by House Bill (HB) 189, 87th Texas Legislature, Regular Session, 2021, which allows the commissioner to adopt rules permitting an open-enrollment charter school to voluntarily participate in any state program available to school districts if the school complies with all terms of the program; TEC, §12.1055, which allows the commissioner to adopt rules regarding nepotism under Texas Government Code, Chapter 573; TEC, §12.1058, as amended by HB 1707, 88th Texas Legislature, Regular Session, 2023, which requires a political subdivision to consider an open-enrollment charter school as a school district for the purposes of municipal ordinances if the open-enrollment charter school meets notification requirements; TEC, §12.110, which requires the commissioner to adopt an application form and procedure that must be used to apply for an open-enrollment charter school; TEC, §12.1101, which requires the commissioner to adopt a procedure for providing notice to the outlined persons on receipt by the commissioner of an application for a charter for an open-enrollment charter school or of notice of the establishment of a campus; TEC, §12.114, which allows the commissioner to define expansion amendment requests; TEC, §12.1141, as amended by Senate Bill (SB) 879, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to adopt a procedure for renewal, denial of renewal, or expiration of a charter for an open-enrollment charter school at the end of the term of the charter; TEC, §12.1166, which requires the commissioner to adopt a rule defining "related party;" TEC, §12.1173, as amended by SB 2293, 86th Texas Legislature, 2019, which requires the commissioner to adopt rules to implement charter school waiting lists for admission; TEC, §12.1181, requires the commissioner to adopt performance frameworks that establish standards by which to measure the performance of an open-enrollment charter school; TEC, §12.123, which requires the commissioner to adopt rules prescribing the training for members of the governing body of a charter school and its officers; TEC, §12.153, which allows the commissioner to adopt rules to implement college of university or junior college charter schools; TEC, §12.265, as amended by SB 1615, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to adopt rules necessary to administer adult high school charter school programs; and TEC, §39.0548, which requires the commissioner to authorize and determine designation as a dropout recovery school.

CROSS REFERENCE TO STATUTE. The repeals implement Texas Education Code, §§12.101; 12.1011; 12.103; 12.104, as amended by House Bill (HB) 189, 87th Texas Legislature, Regular Session, 2021; 12.1055; 12.1058, as amended by HB 1707, 88th Texas Legislature, Regular Session, 2023; 12.110; 12.1101; 12.114; 12.1141, as amended by Senate Bill (SB) 879, 87th Texas Legislature, Regular Session, 2021; 12.1166; 12.1173, as amended by SB 2293, 86th Texas Legislature, 2019; 12.1181; 12.123; 12.153; 12.265, as amended by SB 1615, 87th Texas Legislature, Regular Session, 2021; and 39.0548.

§100.1063. *Use of Public Property by a Charter Holder.*

§100.1065. *Property Acquired with State Funds Received Before September 1, 2001--Special Rules.*

§100.1067. *Possession and Control of the Public Property of a Former Charter Holder.*

§100.1069. *Rights and Duties Not Affected.*

§100.1071. *Real Property Held in Trust.*

§100.1073. *Improvements to Real Property.*

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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DIVISION 5. CHARTER SCHOOL GOVERNANCE

19 TAC §§100.1101 - 100.1108, 100.1111 - 100.1116, 100.1131 - 100.1135, 100.1151, 100.1153, 100.1155, 100.1157, 100.1159

STATUTORY AUTHORITY. The repeals are proposed under Texas Education Code (TEC), §12.101, which requires the commissioner to adopt rules regarding the criteria for granting a charter and providing notification for the establishment of new charters or campuses; TEC, §12.1011, which requires the commissioner to adopt rules regarding charter authorization for high-performing entities; TEC, §12.103, which allows the commissioner to adopt rules regarding applicable provisions to open-enrollment charter schools; TEC, §12.104, as amended by House Bill (HB) 189, 87th Texas Legislature, Regular Session, 2021, which allows the commissioner to adopt rules permitting an open-enrollment charter school to voluntarily participate in any state program available to school districts if the school complies with all terms of the program; TEC, §12.1055, which allows the commissioner to adopt rules regarding nepotism under Texas Government Code, Chapter 573; TEC, §12.1058, as amended by HB 1707, 88th Texas Legislature, Regular Session, 2023, which requires a political subdivision to consider an open-enrollment charter school as a school district for the purposes of municipal ordinances if the open-enrollment charter school meets notification requirements; TEC, §12.110, which requires the commissioner to adopt an application form and procedure that must be used to apply for an open-enrollment charter school; TEC, §12.1101, which requires the commissioner to adopt a procedure for providing notice to the outlined persons on receipt by the commissioner of an application for a charter for an open-enrollment charter school or of notice of the establishment of a campus; TEC, §12.114, which allows the commissioner to define expansion amendment requests; TEC, §12.1141, as amended by Senate Bill (SB) 879, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to adopt a procedure for renewal, denial of renewal, or expiration of a charter for an open-enrollment charter school at the end of the term of the charter; TEC, §12.1166, which requires the commissioner to adopt a rule defining "related party;" TEC, §12.1173, as amended by SB 2293, 86th Texas Legislature, 2019, which requires the commissioner to adopt rules to implement charter school waiting lists for admission; TEC, §12.1181, requires the commissioner to adopt performance frameworks that establish standards by which to measure the performance of an open-enrollment charter school; TEC, §12.123, which requires the commissioner to adopt rules prescribing the training for members of the governing body of a charter school and its officers; TEC, §12.153, which allows the

commissioner to adopt rules to implement college of university or junior college charter schools; TEC, §12.265, as amended by SB 1615, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to adopt rules necessary to administer adult high school charter school programs; and TEC, §39.0548, which requires the commissioner to authorize and determine designation as a dropout recovery school.

CROSS REFERENCE TO STATUTE. The repeals implement Texas Education Code, §§12.101; 12.1011; 12.103; 12.104, as amended by House Bill (HB) 189, 87th Texas Legislature, Regular Session, 2021; 12.1055; 12.1058, as amended by HB 1707, 88th Texas Legislature, Regular Session, 2023; 12.110; 12.1101; 12.114; 12.1141, as amended by Senate Bill (SB) 879, 87th Texas Legislature, Regular Session, 2021; 12.1166; 12.1173, as amended by SB 2293, 86th Texas Legislature, 2019; 12.1181; 12.123; 12.153; 12.265, as amended by SB 1615, 87th Texas Legislature, Regular Session, 2021; and 39.0548.

§100.1101. *Delegation of Powers and Duties.*

§100.1102. *Training for Members of Governing Bodies of Charter Holder and School.*

§100.1103. *Training for Chief Executive and Central Administrative Officers.*

§100.1104. *Training for Campus Administrative Officers.*

§100.1105. *Training for Business Managers.*

§100.1106. *Exemption for Participation in a Shared Services Cooperative.*

§100.1107. *Course Providers.*

§100.1108. *Record of Compliance and Disclosure of Non-compliance.*

§100.1111. *Applicability of Nepotism Provisions; Exception for Acceptable Performance.*

§100.1112. *General Nepotism Provisions.*

§100.1113. *Relationships By Consanguinity or By Affinity.*

§100.1114. *Nepotism Prohibitions.*

§100.1115. *Nepotism Exceptions.*

§100.1116. *Enforcement of Nepotism Prohibitions.*

§100.1131. *Conflicts of Interest and Board Member Compensation; Exception.*

§100.1132. *General Conflict of Interest Provisions.*

§100.1133. *Conflicts Requiring Affidavit and Abstention From Voting.*

§100.1134. *Conflicts Requiring Separate Vote on Budget.*

§100.1135. *Acting as Surety and other Conflicts; Criminal Penalties.*

§100.1151. *Criminal History; Restrictions on Serving.*

§100.1153. *Substantial Interest in Management Company; Restrictions on Serving.*

§100.1155. *Procedures for Prohibiting a Management Contract.*

§100.1157. *Loan from Management Company Prohibited.*

§100.1159. *Public Records Maintained by Management Company; Contract Provision.*

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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DIVISION 6. CHARTER SCHOOL OPERATIONS

19 TAC §100.1217

STATUTORY AUTHORITY. The repeal is proposed under Texas Education Code (TEC), §12.101, which requires the commissioner to adopt rules regarding the criteria for granting a charter and providing notification for the establishment of new charters or campuses; TEC, §12.1011, which requires the commissioner to adopt rules regarding charter authorization for high-performing entities; TEC, §12.103, which allows the commissioner to adopt rules regarding applicable provisions to open-enrollment charter schools; TEC, §12.104, as amended by House Bill (HB) 189, 87th Texas Legislature, Regular Session, 2021, which allows the commissioner to adopt rules permitting an open-enrollment charter school to voluntarily participate in any state program available to school districts if the school complies with all terms of the program; TEC, §12.1055, which allows the commissioner to adopt rules regarding nepotism under Texas Government Code, Chapter 573; TEC, §12.1058, as amended by HB 1707, 88th Texas Legislature, Regular Session, 2023, which requires a political subdivision to consider an open-enrollment charter school as a school district for the purposes of municipal ordinances if the open-enrollment charter school meets notification requirements; TEC, §12.110, which requires the commissioner to adopt an application form and procedure that must be used to apply for an open-enrollment charter school; TEC, §12.1101, which requires the commissioner to adopt a procedure for providing notice to the outlined persons on receipt by the commissioner of an application for a charter for an open-enrollment charter school or of notice of the establishment of a campus; TEC, §12.114, which allows the commissioner to define expansion amendment requests; TEC, §12.1141, as amended by Senate Bill (SB) 879, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to adopt a procedure for renewal, denial of renewal, or expiration of a charter for an open-enrollment charter school at the end of the term of the charter; TEC, §12.1166, which requires the commissioner to adopt a rule defining "related party;" TEC, §12.1173, as amended by SB 2293, 86th Texas Legislature, 2019, which requires the commissioner to adopt rules to implement charter school waiting lists for admission; TEC, §12.1181, requires the commissioner to adopt performance frameworks that establish standards by which to measure the performance of an open-enrollment charter school; TEC, §12.123, which requires the commissioner to adopt rules prescribing the training for members of the governing body of a charter school and its officers; TEC, §12.153, which allows the commissioner to adopt rules to implement college of university or junior college charter schools; TEC, §12.265, as amended by SB 1615, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to adopt rules necessary to administer adult high school charter school programs; and TEC, §39.0548, which requires the commissioner to authorize and determine designation as a dropout recovery school.

CROSS REFERENCE TO STATUTE. The repeal implements Texas Education Code, §§12.101; 12.1011; 12.103; 12.104, as amended by House Bill (HB) 189, 87th Texas Legislature, Regular Session, 2021; 12.1055; 12.1058, as amended by HB 1707, 88th Texas Legislature, Regular Session, 2023; 12.110; 12.1101; 12.114; 12.1141, as amended by Senate Bill (SB) 879, 87th Texas Legislature, Regular Session, 2021; 12.1166;

12.1173, as amended by SB 2293, 86th Texas Legislature, 2019; 12.1181; 12.123; 12.153; 12.265, as amended by SB 1615, 87th Texas Legislature, Regular Session, 2021; and 39.0548.

§100.1217. Eligible Entity; Change in Status or Revocation.

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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DIVISION 1. GENERAL PROVISIONS

19 TAC §100.1001, §100.1003

STATUTORY AUTHORITY. The new sections are proposed under Texas Education Code (TEC), §12.101, which requires the commissioner to adopt rules regarding the criteria for granting a charter and providing notification for the establishment of new charters or campuses; TEC, §12.1011, which requires the commissioner to adopt rules regarding charter authorization for high-performing entities; TEC, §12.103, which allows the commissioner to adopt rules regarding applicable provisions to open-enrollment charter schools; TEC, §12.104, as amended by House Bill (HB) 189, 87th Texas Legislature, Regular Session, 2021, which allows the commissioner to adopt rules permitting an open-enrollment charter school to voluntarily participate in any state program available to school districts if the school complies with all terms of the program; TEC, §12.1055, which allows the commissioner to adopt rules regarding nepotism under Texas Government Code, Chapter 573; TEC, §12.1058, as amended by HB 1707, 88th Texas Legislature, Regular Session, 2023, which requires a political subdivision to consider an open-enrollment charter school as a school district for the purposes of municipal ordinances if the open-enrollment charter school meets notification requirements; TEC, §12.110, which requires the commissioner to adopt an application form and procedure that must be used to apply for an open-enrollment charter school; TEC, §12.1101, which requires the commissioner to adopt a procedure for providing notice to the outlined persons on receipt by the commissioner of an application for a charter for an open-enrollment charter school or of notice of the establishment of a campus; TEC, §12.114, which allows the commissioner to define expansion amendment requests; TEC, §12.1141, as amended by Senate Bill (SB) 879, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to adopt a procedure for renewal, denial of renewal, or expiration of a charter for an open-enrollment charter school at the end of the term of the charter; TEC, §12.1166, which requires the commissioner to adopt a rule defining "related party;" TEC, §12.1173, as amended by SB 2293, 86th Texas Legislature, 2019, which requires the commissioner to adopt rules to implement charter school waiting lists for admission; TEC, §12.1181, requires the commissioner to adopt performance frameworks that establish standards by which to measure the performance of an open-enrollment charter school;

TEC, §12.123, which requires the commissioner to adopt rules prescribing the training for members of the governing body of a charter school and its officers; TEC, §12.153, which allows the commissioner to adopt rules to implement college of university or junior college charter schools; TEC, §12.265, as amended by SB 1615, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to adopt rules necessary to administer adult high school charter school programs; and TEC, §39.0548, which requires the commissioner to authorize and determine designation as a dropout recovery school.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §§12.101; 12.1011; 12.103; 12.104, as amended by House Bill (HB) 189, 87th Texas Legislature, Regular Session, 2021; 12.1055; 12.1058, as amended by HB 1707, 88th Texas Legislature, Regular Session, 2023; 12.110; 12.1101; 12.114; 12.1141, as amended by Senate Bill (SB) 879, 87th Texas Legislature, Regular Session, 2021; 12.1166; 12.1173, as amended by SB 2293, 86th Texas Legislature, 2019; 12.1181; 12.123; 12.153; 12.265, as amended by SB 1615, 87th Texas Legislature, Regular Session, 2021; and 39.0548.

§100.1001. Definitions.

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

(1) Business manager--A person charged with managing the finances of a charter holder or charter school.

(2) Campus administration officer--A person charged with the duties of, or acting as, a principal or assistant principal of a charter school campus, including one or more of the following functions:

(A) approving teacher or staff appointments for a charter school campus, unless this function is performed by a central administration officer under the terms of the open-enrollment charter;

(B) setting specific education objectives for a charter school campus, unless this function is performed by a central administration officer under the terms of the open-enrollment charter;

(C) developing budgets for a charter school campus, unless this function is performed by a central administration officer under the terms of the open-enrollment charter;

(D) assuming the administrative responsibility or instructional leadership, under the supervision of a central administration officer, for discipline at a charter school campus;

(E) assigning, evaluating, or promoting personnel assigned to a charter school campus, unless this function is performed by a central administration officer under the terms of the open-enrollment charter; or

(F) recommending to a central administration officer the termination or suspension of an employee assigned to a charter school campus, or recommending the non-renewal of a term contract of such an employee.

(3) Capitalized personal property, fixed assets, ownership interest, cost basis, accumulated depreciation, loan, debt, credit, and fair market valuation--The definitions of these terms are as assigned either by §109.41 of this title (relating to Financial Accountability System Resource Guide) and/or by generally accepted accounting principles.

(4) Central administration officer--A person charged with the duties of, or acting as, a chief operating officer, director, or assistant

director of a charter holder or charter school, including one or more of the following functions:

(A) assuming administrative responsibility and leadership for the planning, operation, supervision, or evaluation of the education programs, services, or facilities of a charter holder or charter school, or for appraising the performance of the charter holder's or charter school's staff;

(B) assuming administrative authority or responsibility for the assignment or evaluation of any of the personnel of the charter holder or charter school, including those employed by a management company;

(C) making recommendations to the governing body of the charter holder or the charter school regarding the selection of personnel of the charter holder or charter school, including those employed by a management company;

(D) recommending the termination, non-renewal, or suspension of an employee or officer of the charter holder or charter school, including those employed by a management company; or recommending the termination, non-renewal, suspension, or other action affecting a management contract;

(E) managing the day-to-day operations of the charter holder or charter school as its administrative manager;

(F) preparing or submitting a proposed budget to the governing body of the charter holder or charter school (except for developing budgets for a charter school campus, if this is a function performed by a campus administration officer under the terms of the open-enrollment charter);

(G) preparing recommendations for policies to be adopted by the governing body of the charter holder or charter school, or overseeing the implementation of adopted policies, except for legal services provided by an attorney licensed to practice law in this state or public accountancy services provided by a certified public accountant licensed to practice public accountancy services in this state;

(H) developing or causing to be developed appropriate administrative regulations to implement policies established by the governing body of the charter holder or charter school, except for legal services provided by an attorney licensed to practice law in this state or public accountancy services provided by a certified public accountant licensed to practice public accountancy services in this state;

(I) providing leadership for the attainment of student performance in a charter school operated by the charter holder, based on the indicators adopted under Texas Education Code (TEC), §39.053 and §39.054, or other indicators adopted by the charter holder in its open-enrollment charter; or

(J) organizing the central administration of the charter holder or charter school.

(5) Charter holder, governing body of a charter holder, and governing body of a charter school--The definitions of these terms are assigned in TEC, §12.1012. The charter holder shall reference an entity authorized by one or more of the following:

(A) TEC, Chapter 12, Subchapter D--An eligible entity as defined in TEC, §12.101, that is authorized to operate an open-enrollment charter school;

(B) TEC, Chapter 12, Subchapter E--A public junior college, senior college, or university as defined in TEC, §61.003, that is authorized to operate an open-enrollment charter school; or

(C) TEC, Chapter 12, Subchapter G--An eligible entity as defined in TEC, §12.256, that is authorized to operate an open-enrollment charter school for adults ages 18-50.

(6) Charter school--A Texas public school operated by a charter holder under an open-enrollment charter contract granted either by the State Board of Education (SBOE) or commissioner of education, whichever is applicable, pursuant to TEC, §12.101, identified with its own county district number.

(A) An "employee of a charter school," as used in this subchapter, means a person paid to work at a charter school under the direction and control of an officer of a charter school, regardless of whether the person is on the payroll of the charter holder, a charter school operated by the charter holder, a management company providing management services to the charter holder, or any other person.

(B) A charter school "campus," as used in this subchapter, means an organizational unit of a charter school determined by the Texas Education Agency (TEA) to be an instructional campus for purposes of data collection and reporting. A campus may be a single site or may include multiple sites as described in subparagraph (C) of this paragraph.

(C) A charter school "site," as used in this subchapter, means an organizational unit of a charter school with administrative personnel identified by a separate street address within 25 miles of the campus with which it is associated and fully described in the open-enrollment charter. A "site" must be approved for instructional use either in the original open-enrollment charter as granted by the SBOE or commissioner or in an amendment granted under §100.1035 of this title (relating to Charter Amendment).

(D) A charter school "facility," as used in this subchapter, means a building located on the same contiguous land as the campus with which it is associated or within one mile of the campus. The facility and its associated address must be approved for instructional use through the submission of a certificate of occupancy to the commissioner prior to serving students in said facility.

(7) Chief executive officer--A person (or persons) directly responsible to the governing body of the charter holder for supervising one or more central administration officers, campus administration officers, and/or business managers.

(8) Determination of academic accountability--The process used to determine the applicable year's accountability ratings to measure the academic performance of a charter.

(A) For the purposes of this chapter, the term "academically acceptable" for the following rating years shall mean:

(i) 2004-2011: the category of acceptable performance shall include a rating of Exemplary, Recognized, Academically Acceptable, and alternative education accountability (AEA): Academically Acceptable;

(ii) 2013-2016: the category of acceptable performance shall include a rating of Met Standard and Met Alternative Standard; and

(iii) 2017 and beyond: the category of acceptable performance shall include a grade of A, B, or C, or as otherwise indicated in the applicable year's academic accountability manual.

(B) For purposes of determination, an academic performance rating during the 2011-2012 school year will not be considered.

(C) For the purposes of this chapter, the term "academically unacceptable" performance means a rating of Academically

Unacceptable, AEA: Academically Unacceptable, Improvement Required, or Unacceptable Performance or as otherwise indicated in the applicable year's academic accountability manual.

(D) If academic ratings are not issued for any reason, scaled scores may be used to determine "academically acceptable" and "academically unacceptable" performance.

(9) Determination of financial accountability--The process used to determine the applicable year's Financial Integrity Rating System of Texas (FIRST) rating to measure the financial performance of a charter.

(A) For purposes of this chapter, a satisfactory rating shall mean: Superior Achievement, Above Standard Achievement, or Standard Achievement.

(B) For the purposes of this chapter, a lower than satisfactory financial performance rating shall mean a FIRST rating of Substandard Achievement, Suspended: Data Integrity, or as otherwise indicated in the applicable year's financial accountability manual.

(10) Donate--Services are donated if:

(A) given free of any charge, cost, fee, compensation, reimbursement, remuneration, or any other thing of value or consideration, whether direct or indirect, from the donee to the donor, or from any other person or entity to the donor on behalf of the donee;

(B) given free of any condition, stipulation, promise, requirement, or any other obligation, whether direct or indirect, enforceable by the donor or by any other person or entity; and

(C) separately and clearly recorded in the accounting, auditing, budgeting, reporting, and recordkeeping systems for the management and operation of the charter school.

(11) Employee of a charter holder--A charter holder employee who engages in no charter school activity, is not compensated with public funds, and is not an officer of any charter school.

(12) Former charter holder--An entity that is or was a charter holder, but that has ceased to operate a charter school because its open-enrollment charter has been revoked, surrendered, abandoned, or denied renewal, or because all programs have been ordered closed under TEC, Chapter 39.

(A) A charter holder whose authority to operate has been suspended under TEC, §12.1162, is not a former charter holder.

(B) A charter holder with more than one open-enrollment charter is a former charter holder only with respect to the open-enrollment charter that authorizes a charter school that has ceased to operate. The charter holder is not a former charter holder with respect to an open-enrollment charter that authorizes a charter school that continues to operate.

(C) A charter holder who was eligible for high quality designation under §100.1035 of this title immediately prior to ceasing to operate that has surrendered its charter, provided that there was no settlement agreement requiring closure or a required closure under TEC, Chapter 39. A former charter holder that has relinquished its charter is not subject to the prohibitions in TEC, §12.101(b), or §100.1017 of this title (relating to Applicant Eligibility and Form Contents).

(13) High-performing entity--An entity that satisfies the criteria under TEC, §12.1011(a)(1), for out-of-state operations or an entity that satisfies the criteria for TEC, §12.1011(a)(2), for in-state operations that meets the performance criteria for the most recent rating years available.

(14) Lease interest--The legal rights obtained under a capital or operating lease. These include the right to occupy, use, and enjoy the real estate given by the property owner in exchange for rental payments or other consideration specified in the lease, together with any associated rights that the lease confers on the tenant under the lease or other law.

(15) Management company--A natural person or a corporation, partnership, sole proprietor, association, agency, or other legal entity that provides any management services to a charter holder or charter school, except that:

(A) a charter holder and its employees may provide management services to a charter school that is under the charter holder's supervision and control pursuant to the open-enrollment charter, and such charter holder is not thereby a management company;

(B) a nonprofit corporation that is exempt from taxation under 26 United States Code (U.S.C.), §501(c)(3), may donate management services to a charter holder, and the donor corporation is not thereby a management company if the donee charter holder is a subsidiary corporation controlled by the donor corporation under the articles of incorporation and bylaws of the donee charter holder;

(C) a regional education service center providing services to a charter school under TEC, Chapter 8, is not a management company;

(D) the fiscal agent of a shared services cooperative providing services to a member of the shared services cooperative is not a management company; and

(E) a nonprofit corporation that is exempt from taxation under 26 U.S.C., §115, is not a management company if it performs management services exclusively for a charter holder that is an eligible entity under TEC, §12.101(a)(1) or (4) or §12.152, and if:

(i) its articles of incorporation and bylaws, and any changes thereto, must be approved by such charter holder;

(ii) its board of directors must be appointed by such charter holder; and

(iii) its assets become the property of such charter holder upon dissolution.

(16) Management company breach--An action or failure to act by a management company that is contrary to a duty owed under a management contract, a rule adopted under TEC, Chapter 12, Subchapter D, or any other legal obligation, and constitutes sufficient grounds for action against the management company under TEC, §12.127 (Liability of Management Company), and/or §100.1157 of this title (relating to Procedures for Prohibiting a Management Contract). Where a provision in this subchapter uses this term, such use is for clarity and emphasis only and does not:

(A) establish that any breach of a duty occurred in a given case or what sanction is appropriate under the facts of that case; or

(B) imply that any other provision where the term is not used is not material or less important, or that the breach of a duty imposed by the provision is not grounds for action against the management company.

(17) Management services--Services related to the management or operation of a charter school. Management services include any of the following:

(A) planning, operating, supervising, or evaluating a charter school's educational programs, services, or facilities;

(B) making recommendations to the governing body of a charter holder or charter school relating to the selection of school personnel;

(C) managing a charter school's day-to-day operations as an administrative manager;

(D) preparing a proposed budget or budget amendments or submitting it to the governing body of a charter holder or charter school;

(E) recommending policies to be adopted by the governing body of a charter holder or charter school, except that legal services provided by an attorney licensed to practice law in this state, and public accountancy services provided by a certified public accountant licensed to practice public accountancy services in this state, are not management services, notwithstanding that such services may include recommending policies to be adopted by the governing body of a charter holder or charter school;

(F) developing procedures or practices to implement policies adopted by the governing body of a charter holder or charter school, except that legal services by an attorney licensed to practice law in this state and public accountancy services provided by a certified public accountant licensed to practice public accountancy services in this state are not management services, notwithstanding that such services may include developing procedures or practices to implement policies adopted by the governing body of a charter holder or charter school;

(G) overseeing the implementation of policies adopted by the governing body of a charter holder or charter school; or

(H) providing leadership for the attainment of student performance at a charter school based on the indicators adopted under TEC, §39.053 and §39.054, or adopted by the governing body of a charter holder or charter school.

(18) Material charter violation--An action or failure to act by a charter holder that is contrary to the terms of its open-enrollment charter and constitutes sufficient grounds for action against the charter holder under §§100.1049, 100.1045, 100.1047, and/or 100.1037 of this title (relating to Revocation and Modification of Governance of an Open-Enrollment Charter; Intervention Based on Charter Violations; Intervention Based on Health, Safety, or Welfare of Students; and Renewal of an Open-Enrollment Charter).

(19) Misuse or misapplication of funds or property--A use of state funds or public property that is contrary to:

(A) the open-enrollment charter under which a charter holder holds the funds or property;

(B) an agreement under which an employee or contractor holds the funds or property;

(C) a law, regulation, or rule that prescribes the manner of acquisition, sale, lease, custody, or disposition of the funds or property, including, but not limited to, violations of Local Government Code, §§171.002-171.007 and Chapter 271, Subchapter B, and TEC, §12.1053 and §12.1054, unless otherwise stated in the charter contract;

(D) a limited purpose for which the funds or property is delivered or received; or

(E) the use authorized by the governing body of the charter holder.

(20) Officer of a charter school--A person charged with the duties of, or acting as, a chief executive officer, a central administration officer, a campus administration officer, or a business manager, regard-

less whether the person is an employee or contractor of a charter holder, charter school, management company, or any other person; or a volunteer working under the direction of a charter holder, charter school, or management company. A charter holder employee or independent contractor engaged solely in non-charter activities for the charter holder is not an "officer of a charter school."

(21) Open-enrollment charter--A charter holder's authorization to operate a publicly funded charter school consistent with TEC, §12.102 (Authority Under Charter). The terms of an open-enrollment charter include:

(A) the applicable contract for charter ("charter contract") between the charter holder and the SBOE or commissioner of education;

(B) all applicable state and federal laws, rules, and regulations;

(C) the request for application issued by TEA to which the charter holder's application for open-enrollment charter responds;

(D) any condition, amendment, modification, revision, or other change to the open-enrollment charter adopted or ratified by the SBOE or the commissioner; and

(E) to the extent they are consistent with subparagraphs (A)-(D) of this paragraph, all statements, assurances, written submissions, commitments, and/or representations made by the charter holder in writing in its application for charter, attachments, or related documents or orally during its interview with the commissioner or commissioner's designee or orally at a public meeting of the SBOE or any of its committees.

(22) Personal property--An interest in personal property recognized by Texas law, including:

(A) furniture, equipment, supplies, and other goods;

(B) computer hardware and software;

(C) contract rights, intellectual property such as patents, and other intangible property;

(D) cash, currency, funds, bank accounts, securities, and other investment instruments;

(E) the right to repayment of a loan, advance, or prepayment or to the payment of other receivables; and

(F) any other form of personal property recognized by Texas law.

(23) Property acquired, improved, or maintained using state funds--Property for which the title, control over the property, use of the property, or benefit from the property is obtained directly or indirectly through expenditure of or control over state funds. This includes property acquired, improved, or maintained through a management company under a contract for management services, and includes the proceeds of loans, credit, or other financing that:

(A) is secured with state funds, or with property acquired, improved, or maintained using state funds; or

(B) is extended, in whole or part, based on the charter holder's control over state funds.

(24) Real estate--An interest, including a lease interest, in real property recognized by Texas law or in improvements such as buildings, fixtures, utilities, landscaping, construction in progress, or other improvements.

(25) Related party transaction--Includes a transaction between the charter holder or charter school and:

(A) a person who is:

(i) a current or former (within the last five years) board member for the charter holder or the charter school;

(ii) a current or former (within the last five years) administrator for the charter holder or the charter school;

(iii) a current officer of a charter school;

(iv) a person who is related to a person described in clauses (i)-(iii) of this subparagraph within the third degree of consanguinity or second degree of affinity, as determined under Texas Government Code, Chapter 573;

(v) a person who within the last five years ending on the date of the transaction was in a position to exercise substantial influence over the organization including any "disqualified person" as defined under Internal Revenue Code (IRC), §4958, or Treasury Regulation 26 CFR §53.4958-3;

(vi) a family member of a person described in clause (v) of this subparagraph, which includes:

(I) the person's spouse or ancestor; or

(II) the person's children, grandchildren, great grandchildren, siblings, half-siblings, and their spouses;

(vii) any person described in clause (v) or (vi) of this subparagraph with respect to an organization described in IRC, §509(a)(3), that was organized and operated exclusively for the benefit of, to perform the functions of, or to carry out the purposes of the charter holder; or

(viii) any person who is a donor or donor advisor;

(B) an entity that:

(i) is related to the charter holder;

(ii) is participating in a joint venture with the charter holder;

(iii) is jointly governed with the charter holder;

(iv) has a current or former (within last five years) board member, administrator, or officer who is either:

(I) a current board member, administrator or officer of the charter holder or charter school; or

(II) related to within the third degree of consanguinity or second degree of affinity of a person described in clause (i) of this subparagraph as determined under Texas Government Code, Chapter 573;

(v) is more than 35% controlled by individuals described in subparagraph (A)(v) and (vi) of this paragraph, including:

(I) a corporation in which such persons own more than 35% of the total combined voting power;

(II) a partnership in which such persons own more than 35% of the profits interest;

(III) a trust or estate in which such persons own more than 35% of the beneficial interest; or

(IV) for purposes of this subsection, an entity for which the constructive ownership rules of IRC, §4946(a)(3) and (a)(4), apply; or

(vi) any entity that is described in IRC, §509(a)(3), that:

(I) is organized and operated exclusively for the benefit of, to perform the functions of, or to carry out the purposes of the charter holder; and

(II) meets the control test in clause (v) of this subparagraph;

(C) a donor-advised fund if a donor (or any person appointed or designated by such donor) has, or reasonably expects to have, advisory privileges with respect to the distribution or investment of amounts held in such fund or account by reason of the donor's status as a donor;

(D) any person or entity associated with the section regarding sponsoring entity;

(E) a lender providing secured or unsecured debt to the charter holder or charter school other than bonds or tax-exempt facility financing, for any transaction other than the loan or note agreement; or

(F) a major donor to the charter holder or charter school under a written grant agreement or other contract, for any transaction with the donor other than the written grant agreement.

(26) Shared services cooperative or shared services arrangement--A contractual arrangement among charter holders or between a charter holder(s) and other Texas governmental entities, through which one member of the cooperative, acting as the fiscal and administrative agent for the other members, provides educational services, operational services and/or management services to member charter holders under a written contract executed by each member. A contract establishing a shared services cooperative must at a minimum:

(A) establish clear procedures for administering services under the direction and control of the cooperative and for assigning responsibility for all costs and liabilities associated with services provided under the contract;

(B) establish the duties, responsibilities, and accountability of the fiscal agent and of each member for services provided under the contract;

(C) establish clear procedures for withdrawal of a member from the agreement and for the dissolution and winding up of the affairs of the cooperative; and

(D) be approved in writing by the commissioner before any services are provided.

(27) State funds--Funds received by the charter holder under TEC, §12.106, and any grant or discretionary funds received through or administered by TEA, including all federal funds. The rules in this division apply to property acquired, improved, or maintained with federal funds to the extent that such application is consistent with applicable federal law or regulations.

(28) State funds received before September 1, 2001--State funds are received before September 1, 2001, if the Texas Comptroller of Public Accounts issued a warrant for such funds before that date, or if an electronic transfer of such funds was made before that date.

(29) State funds received on or after September 1, 2001--State funds are received on or after September 1, 2001, if the Texas Comptroller of Public Accounts issues a warrant for such funds on or after that date, or if an electronic transfer of such funds is made on or after that date.

§100.1003. Filing of Documents.

The following provisions apply to a document filed with the Texas Education Agency (TEA) under a provision of this subchapter. Grant applications and other documents filed with TEA under provisions other than this subchapter are governed by the filing rules specific to those documents.

(1) Hand delivery. A document shall be deemed filed only when stamped received by the receiving division of TEA. A document stamped received after 5:00 p.m. Central Time (CT) shall be deemed filed on the following business day.

(2) Mail or courier. A document may be filed by mail if sent by certified United States mail, return receipt requested, or by an overnight courier service. A document shall be deemed timely filed if it is mailed on the filing deadline, as evidenced by a legible postmark placed on the envelope by the United States Postal Service or date provided by courier service, and the document is stamped received by the receiving division by 5:00 p.m. CT on the fifth business day following the filing deadline.

(3) Facsimile transmission. Where facsimile transmission is permitted by the receiving division, the following provisions apply.

(A) Facsimile transmission of a document via telecopier to the receiving division constitutes filing if received in legible form. Filing by facsimile completed after 5:00 p.m. CT shall be deemed filed on the following business day.

(B) If the document requires an original signature or must be an original under applicable rules, then facsimile transmission constitutes filing only if, by 5:00 p.m. on the tenth calendar day following the filing deadline, the original is stamped received by the receiving division.

(4) Electronic transmission. Where electronic transmission is permitted by the receiving division, the following provisions apply.

(A) Electronic transmission of a document shall constitute electronic mail, secure file sharing, or any other digital exchange of information.

(B) An electronic document shall be deemed timely filed if it is received on the filing deadline, as evidenced by an electronic time stamp. Filing by electronic transmission received after 5:00 p.m. CT shall be deemed filed on the following business day.

(5) Receiving division. The receiving division is the division of TEA specified by any rule in Part 2 of this title (relating to Texas Education Agency), requiring that a document be filed with TEA. If a rule does not specify a division, the receiving division is the TEA division responsible for charter schools.

(6) Misdirected filing. A document sent to a division other than the receiving division shall not be deemed filed unless and until received by the receiving division. It shall not be the responsibility of any division to timely redirect a document sent to a division other than the receiving division.

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 March 4, 2024.

TRD-202400942

Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: April 14, 2024
For further information, please call: (512) 475-1497

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DIVISION 2. APPLICATION [COMMISSIONER ACTION] AND SELECTION PROCESS [INTERVENTION]

19 TAC §§100.1011, 100.1013, 100.1015, 100.1017, 100.1021, 100.1023, 100.1025

STATUTORY AUTHORITY. The new sections are proposed under Texas Education Code (TEC), §12.101, which requires the commissioner to adopt rules regarding the criteria for granting a charter and providing notification for the establishment of new charters or campuses; TEC, §12.1011, which requires the commissioner to adopt rules regarding charter authorization for high-performing entities; TEC, §12.103, which allows the commissioner to adopt rules regarding applicable provisions to open-enrollment charter schools; TEC, §12.104, as amended by House Bill (HB) 189, 87th Texas Legislature, Regular Session, 2021, which allows the commissioner to adopt rules permitting an open-enrollment charter school to voluntarily participate in any state program available to school districts if the school complies with all terms of the program; TEC, §12.1055, which allows the commissioner to adopt rules regarding nepotism under Texas Government Code, Chapter 573; TEC, §12.1058, as amended by HB 1707, 88th Texas Legislature, Regular Session, 2023, which requires a political subdivision to consider an open-enrollment charter school as a school district for the purposes of municipal ordinances if the open-enrollment charter school meets notification requirements; TEC, §12.110, which requires the commissioner to adopt an application form and procedure that must be used to apply for an open-enrollment charter school; TEC, §12.1101, which requires the commissioner to adopt a procedure for providing notice to the outlined persons on receipt by the commissioner of an application for a charter for an open-enrollment charter school or of notice of the establishment of a campus; TEC, §12.114, which allows the commissioner to define expansion amendment requests; TEC, §12.1141, as amended by Senate Bill (SB) 879, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to adopt a procedure for renewal, denial of renewal, or expiration of a charter for an open-enrollment charter school at the end of the term of the charter; TEC, §12.1166, which requires the commissioner to adopt a rule defining "related party;" TEC, §12.1173, as amended by SB 2293, 86th Texas Legislature, 2019, which requires the commissioner to adopt rules to implement charter school waiting lists for admission; TEC, §12.1181, requires the commissioner to adopt performance frameworks that establish standards by which to measure the performance of an open-enrollment charter school; TEC, §12.123, which requires the commissioner to adopt rules prescribing the training for members of the governing body of a charter school and its officers; TEC, §12.153, which allows the commissioner to adopt rules to implement college of university or junior college charter schools; TEC, §12.265, as amended by SB 1615, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to adopt rules necessary to

administer adult high school charter school programs; and TEC, §39.0548, which requires the commissioner to authorize and determine designation as a dropout recovery school.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §§12.101; 12.1011; 12.103; 12.104, as amended by House Bill (HB) 189, 87th Texas Legislature, Regular Session, 2021; 12.1055; 12.1058, as amended by HB 1707, 88th Texas Legislature, Regular Session, 2023; 12.110; 12.1101; 12.114; 12.1141, as amended by Senate Bill (SB) 879, 87th Texas Legislature, Regular Session, 2021; 12.1166; 12.1173, as amended by SB 2293, 86th Texas Legislature, 2019; 12.1181; 12.123; 12.153; 12.265, as amended by SB 1615, 87th Texas Legislature, Regular Session, 2021; and 39.0548.

§100.1011. Application Requirements and Selection Process.

(a) Except as expressly provided in the rules in this subchapter, provisions in this section apply to applications affiliated and published under the following Texas Education Code (TEC) subchapters:

- (1) TEC, Chapter 12, Subchapter D;
- (2) TEC, Chapter 12, Subchapter E; and
- (3) TEC, Chapter 12, Subchapter G.

(b) Prior to each application cycle, the commissioner of education shall approve an application form for submission by new and returning applicants seeking to operate a high quality open-enrollment charter school. The application form shall address the content requirements specified in TEC, §12.111, for the Subchapter D form; TEC, §12.154, for the Subchapter E form; and TEC, §12.257, for the Subchapter G form, and contain the following:

- (1) the timeline for selection;
- (2) applicant conferences and training prerequisites;
- (3) scoring criteria and procedures for use by the review panel selected under subsection (d) of this section;
- (4) the minimum score necessary for an application to be eligible for capacity interview; and
- (5) the earliest date an open-enrollment charter school selected in the cycle may open.

(c) The Texas Education Agency (TEA) shall review applications submitted under this section.

(1) No applicant will be considered if it meets either of the conditions in the following subparagraphs. This paragraph does not apply to an applicant that has previously relinquished a charter, under the circumstances described in §100.1001(12)(C) of this title (relating to Definitions).

(A) Within the preceding 10 years, the applicant had a charter under Texas law or similar charter under the laws of another state surrendered under a settlement agreement, revoked, denied renewal, or returned.

(B) The applicant is considered to be a corporate affiliate of, or substantially related to, an entity that within the preceding 10 years, had a charter under Texas law or similar charter under the laws of another state surrendered under a settlement agreement, revoked, denied renewal, or returned.

(2) The commissioner of education may not grant more than one charter for an open-enrollment charter school to any charter holder.

(3) Upon receipt, TEA shall review applications for completeness and provide each applicant with a notice that documents the status of each requirement as complete or incomplete.

(A) TEA shall remove applications without further processing if documents are:

(i) received after the submission deadline as provided in the request for application;

(ii) substantially incomplete; or

(iii) determined not to meet the standards in TEC, §§12.101, 12.152, 12.257, or 12.255, or §100.1011 or §100.1017 of this title (relating to Application Requirements and Selection Process and Applicant Eligibility and Form Contents).

(B) If TEA determines that an application is not complete, TEA shall notify the applicant of all documents that are eligible for remedy and allow five business days for the applicant to submit the requested documentation.

(C) Once additional review is complete, the decision of the commissioner or commissioner's designee is final and may not be appealed.

(D) Failure of TEA to identify any deficiency, or notify an applicant thereof, does not constitute a waiver of the requirement and does not bind the commissioner.

(E) Upon written notice to TEA and without penalty for future application cycles, an applicant may withdraw an application.

(F) Applications that are determined complete shall be reviewed and scored by an external application review panel.

(i) The external application review panel shall be selected from a pool of qualified candidates. To the greatest extent practicable, an external review panelist will not be assigned applications for schools planning to locate within the geographic area in which they have a primary physical address or employment address and served by the same regional education service center.

(ii) Members of the review panel shall disclose to TEA immediately the discovery of any past or present relationship with an open-enrollment charter applicant, including any current or prospective employee, agent, officer, or director of the sponsoring entity, an affiliated entity, or other party with an interest in the selection of the application.

(iii) Reviewers must be individuals with the knowledge and skills associated with one or more of the following: curriculum and instruction, education service and delivery, charter authorization, charter school organization and management, facilities use and management, pedagogy, innovative education programs or technologies, assessments, diverse learning populations, school leadership, human resources, school finance, and/or charter school governance and policy.

(iv) The panel shall review and score applications in accordance with the procedures and criteria established in the application form.

(v) Review panel members shall not discuss applications with anyone except TEA staff. Review panel members shall not accept meals, entertainment, gifts, or gratuities in any form from any person or organization with an interest in the results of the selection process for open-enrollment charters.

(vi) Applications that are not scored at or above the minimum score established in the application form are not eligible for commissioner selection during that cycle.

(vii) Upon completion of external review, TEA will provide all applicants with the results of their reviews by the panel, notice of their status as meeting or not meeting the minimum score, whether the applicant will advance to capacity interviews, the average scores, and individual scoring rubrics, including comments from independent external review panelists.

(G) The commissioner may, at the commissioner's sole discretion, decline to grant an open-enrollment charter to an applicant whose application was scored at or above the minimum score.

(i) No recommendation, ranking, or other type of endorsement by a member or members of the review panel is binding on the commissioner.

(ii) The commissioner or commissioner's designee shall provide written notice to any applicant that is removed under this paragraph.

(iii) The decision of the commissioner or commissioner's designee is final and may not be appealed.

(H) All parts of the application are releasable to the public under the Texas Public Information Act and will be posted to the TEA website; therefore, the following must be excluded or redacted:

(i) personal email addresses;

(ii) proprietary material;

(iii) copyrighted material;

(iv) documents that could violate the Family Educational Rights and Privacy Act by identifying potential students of the charter school, including, but not limited to, sign-in lists at public meetings about the school, photographs of existing students if the school is currently operating or photographs of prospective students, and/or letters of support from potential charter school parents and/or students; and

(v) any other information or documentation that cannot be released in accordance with Texas Government Code, Chapter 552.

(I) The commissioner or the commissioner's designee(s) in coordination with TEA staff shall conduct a capacity interview with applicants whose applications received the minimum score established in the application form. The commissioner may specify individuals required to attend the interview and may require the submission of additional information and documentation prior or subsequent to an interview.

(d) The commissioner shall approve or deny a Subchapter D charter school application based on:

(1) documented evidence gathered through the application review process;

(2) merit;

(3) criteria for applicants that apply as new operators that include, at a minimum:

(A) indications that the charter school will possess the capability to carry out responsibilities as provided in the charter;

(B) indications that the charter school will improve student performance and encourage innovative programs;

(C) indications that the charter school will be high-quality, including:

(i) evidence that the school will receive the highest or second highest performance rating category under TEC, Chapter 39, Subchapter C, beginning in the first year of eligibility; and

(ii) evidence that the charter school will earn seventy or more points without failing a critical indicator on the Charter Financial Integrity Rating System of Texas beginning in Year 1; and

(D) a statement from any school district whose enrollment is likely to be affected by the charter school, including information relating to any financial difficulty that a loss in enrollment may have on the district;

(4) criteria for applicants that apply as experienced operators that include, at a minimum:

(A) the criteria described in paragraphs (1)-(3) of this subsection;

(B) the strength of the applicant's existing portfolio, or their affiliate; and

(C) the likelihood of operating a high-quality charter; and

(5) all other criteria published in the application.

(e) The commissioner shall approve or deny a Subchapter E charter school application based on:

(1) the criteria described in subsection (d)(1)-(3) of this section;

(2) indications that the applicant's educational program will be implemented under the direct supervision of a member of the teaching or research faculty of the public junior college, senior college, or university;

(3) indications that the faculty member supervising the applicant's educational program has substantial experience and expertise in education research, teacher education, classroom instruction, or educational administration;

(4) indications that the applicant's educational program has been designed to meet specific goals described in the charter application and each aspect of the program is directed toward the attainment of the goals;

(5) indications that the financial operations of the applicant will be supervised by the business office of the public junior college, senior college, or university; and

(6) all other criteria published in the application.

(f) The commissioner shall approve or deny a Subchapter G charter school application based on:

(1) documented evidence gathered through the application review process;

(2) merit; and

(3) criteria that include:

(A) indications that the education program will enable program participants to successfully earn a diploma and take career and technology education courses that can lead to an industry certification;

(B) indications that the applicant, or a member of the applicant's executive leadership has a successful history of providing education services, including industry certifications and job placement services, to adults 18 years of age and older whose educational and training opportunities have been limited by educational disadvantages,

disabilities, homelessness, criminal history, or similar marginalizing circumstances;

(C) indications that a significant portion of instruction will be delivered in a teacher-led, interactive classroom environment;

(D) indications that the educational program will provide access to:

(i) career readiness training;

(ii) postsecondary counseling; and

(iii) job-placement services;

(E) indications that the educational program will provide support services that include:

(i) child care at no cost to students;

(ii) life coaching services as outlined in TEC, §12.159;

(iii) mental health counseling;

(iv) instructional support services for students with identified disabilities; and

(v) transportation assistance;

(F) indications that the charter school will possess the capability to carry out responsibilities as provided in the charter;

(G) indications that the proposed governance structure will maintain sound fiscal management and administrative practices; and

(H) indications that the financial plan is viable.

(g) Priority shall be given to applicants that propose a school in an attendance zone of a school district campus assigned an unacceptable performance rating under TEC, §39.054, for two preceding years. This paragraph does not apply to an application form released under TEC, Chapter 12, Subchapter G.

(h) An applicant or any person or entity acting on behalf of an applicant for an open-enrollment charter shall not knowingly communicate with any member of an external application review panel concerning a charter school application beginning on the date the application is submitted and ending 90 days after the commissioner's proposal. On finding a material violation of the no-contact period, the commissioner may reject the application and deem it ineligible for award.

(i) An applicant or any person or entity acting on behalf of an applicant for an open-enrollment charter shall not knowingly communicate with any member of the State Board of Education beginning on the date the application is submitted and ending on the date the applicant passes through an external review with a qualifying score. On finding a material violation of the no-contact period, the commissioner may reject the application and deem it ineligible for award. This paragraph does not apply to a charter the commissioner authorizes under TEC, Chapter 12, Subchapter E and Subchapter G.

(j) The commissioner shall notify the SBOE of each charter the commissioner proposes to authorize. A charter proposed by the commissioner will be granted on the 90th day after the date on which the SBOE receives the notice from the commissioner unless either of the conditions in the following paragraphs are met. This paragraph does not apply to a charter the commissioner proposed to authorize under TEC, Chapter 12, Subchapters E and G.

(1) The SBOE votes against the charter in accordance with TEC, §12.101(b-0).

(2) The commissioner withdraws the proposal.

(k) The commissioner may defer granting an open-enrollment charter subject to contingencies and shall require fulfillment of such contingencies before the charter school is issued a contract. Such conditions must be fulfilled by the awardee, as determined by the commissioner, no later than 60 days after the date of the notification of contingencies by the commissioner or the proposal of the charter is withdrawn. The commissioner may establish timelines for submission by the awardee of any documentation to be considered by the commissioner in determining whether contingencies have been met.

(l) The commissioner may decline to finally grant or award a charter based on misrepresentations during the application process or failure to comply with commissioner rules, application requirements, or State Board of Education rules.

(m) An open-enrollment charter shall be in the form and substance of a written contract signed by the commissioner, the board chair of the charter holder or charter school, and the chief operating officer of the school but is not a contract for goods or services within the meaning of Texas Government Code, Chapter 2260. The chief operating officer of the school shall mean the chief executive officer of the open-enrollment charter holder under TEC, §12.1012.

(n) The charter contract shall be for an initial term of five years beginning on July 1 following the execution of the initial contract or July 1 following an approved extension under subsection (o) of this section.

(o) The charter must open and serve students within one school year of the awarding of the charter contract, unless an extension is approved by the commissioner. Failure to operate by the approved extension date shall constitute an automatic abandonment of the charter contract and the charter is automatically considered void and returned to the commissioner.

§100.1013. Notification of Charter Application.

(a) Upon receipt of an application for an open-enrollment charter school, the commissioner of education or the commissioner's designee shall provide notification by electronic mail to:

(1) the board of trustees and superintendent for each school district from which the proposed open-enrollment charter school or campus is likely to draw students, as defined by the applicant's anticipated zip code of location; and

(2) each member of the legislature and State Board of Education that represents the geographic area to be served by each applicant, as defined by the anticipated zip code of location.

(b) Should a change in the location of the charter school be approved after notification but prior to opening, the commissioner or the commissioner's designee is required to notify as required by subsection (a) of this section based on the zip code of the new location.

(c) This section does not apply to an application published under Texas Education Code, Chapter 12, Subchapter G.

§100.1015. Application to Dropout Recovery Charters.

A charter granted under Texas Education Code, §12.101(b-7), for a dropout recovery school shall not be considered for the purposes of the limit on the number of charters for open enrollment under the cap. A dropout recovery school shall be defined as a school that:

(1) serves students in Grades 9-12;

(2) has an enrollment of which 60% of students are 16 years of age or older as of September 1 of the school year as reported for the fall semester Public Education Information Management System submission; and

(3) meets eligibility requirements for and is registered under alternative education accountability procedures.

§100.1017. Applicant Eligibility and Form Contents.

(a) Except as expressly provided in the rules in this subchapter, provisions in this section apply to all applications affiliated and published under the following Texas Education Code (TEC) subchapters:

(1) TEC, Chapter 12, Subchapter D;

(2) TEC, Chapter 12, Subchapter E; and

(3) TEC, Chapter 12, Subchapter G.

(b) Any existing entity applying for the charter must be in good standing with the Internal Revenue Service (IRS), the Texas Secretary of State, and the Texas Comptroller of Public Accounts. An existing entity must also be in good standing with all regulatory agencies in its home state.

(c) Notwithstanding any other provisions in this chapter, the following provisions apply to charter applicants and successful charter awardees authorized by the commissioner under requests for applications adopted after November 1, 2012.

(1) Financial standards. An applicant for a TEC, Chapter 12, Subchapter D, E, or G charter school, as applicable, shall meet each of the following financial standards to demonstrate the financial viability of the charter, as determined by the commissioner of education or the commissioner's designee, prior to being considered for award of a charter and must attest that any failure to maintain ongoing compliance with these requirements, if awarded a charter, will be considered a material violation of the charter contract and may be grounds for revocation.

(A) Each entity must provide evidence of financial competency and sustainability by providing evidence of an appropriate financial plan that includes each of the following:

(i) a brief analysis of the educational opportunities in the area(s) for the same students and the methods that the proposed school will use to recruit and retain students;

(ii) a brief narrative of the growth plan for the first five years of operation of the proposed school that matches all projections included in the budget;

(iii) an unqualified opinion as provided in the most recent audited financial statements of the applicant if the entity has been in existence at least a year;

(iv) a five-year budget projection of revenue and expenditures for the proposed charter using the template that will be provided in the application;

(v) a response, based on the revenue and expenditures provided in the template that will be provided in the application, detailing the ways in which the budget projections were derived, including any assumptions used; and

(vi) support documentation for budget projections as detailed in the budget template that will be provided with the application.

(B) Loans and lines of credit are liabilities that must be repaid and will be considered as available funding. Loans or lines of credit may be characterized as assets and as cash on hand.

(C) The applicant must identify in the template provided in the application available funding for start-up costs, as

documented by current assets listed in the balance sheet and/or pledges for donation that do not require repayment.

(D) The applicant must identify revenue and expenses on a per-student amount and may not reflect a net operating loss for any projection year.

(E) To ensure financial viability, the entity must commit to serving a minimum of 100 students at all times.

(F) The entity applying for the charter must have liabilities that are less than 80% of its assets.

(G) The aggregate of projected budgeted expenses must be less than the aggregate of projected total revenues by the end of the first year of operation provided that:

(i) projected revenues are documented and use the amount per student designated in the application when calculating Foundation School Program funding that will begin during the first year of operation; and

(ii) all reasonable start-up and first-year expenditures are included in the budgets or an explanation for not needing to include them is included in the budget narratives.

(2) Governing standards. An applicant for a TEC, Chapter 12, Subchapter D, E, or G charter school, as applicable, shall meet each of the following governing standards to demonstrate sound establishment and oversight of the charter's educational mission, as determined by the commissioner or the commissioner's designee, prior to being considered for award of a charter and must attest that any failure to maintain ongoing compliance with these requirements, if awarded a charter, will be considered a material violation of the charter contract and may be grounds for revocation, except as provided by TEC, §12.1054(a)(2).

(A) To qualify as an eligible entity in accordance with TEC, §12.101(a)(3), as an organization that is exempt under 26 United States Code (U.S.C.), §501(c)(3), the applicant must have its own 501(c)(3) exemption in its own name, as evidenced by a 501(c)(3) letter of determination issued by the IRS.

(i) An applicant cannot attain status as an eligible entity that is exempt under 26 U.S.C., §501(c)(3), as a disregarded entity, a supporting organization, or a member of a group exemption of a currently recognized 501(c)(3) tax-exempt organization.

(ii) Entities that have applied for 501(c)(3) status but have yet to receive the exemption from the IRS must provide the letter of determination of the 501(c)(3) status issued by the IRS prior to a recommendation by the commissioner. Failure to secure 501(c)(3) status deems an entity ineligible.

(iii) A religious organization, sectarian school, or religious institution that applies must have an established separate non-sectarian entity that is exempt under 26 U.S.C., §501(c)(3), to be considered an eligible entity.

(B) The articles of incorporation or certificate of formation as applicable, and the bylaws of the applicant must vest the management of the corporate affairs in the board of directors.

(i) The charter holder may not vest the management of corporate affairs in any member or members.

(ii) Articles of incorporation, certificate of formation, bylaws, or any policy or other agreement may not confer on or reserve to any other entity or person the ability to overrule, remove, replace, or name the members of the governing body or board of the charter holder or charter school at any time.

(C) Any other change in the aforementioned governance documents pursuant to the management of the corporate affairs of the nonprofit entity may only occur with the approval of the commissioner in accordance with §100.1035(b) of this title (relating to Charter Amendment) or in accordance with any other power granted to the commissioner in state law or rule.

(D) If the sponsoring entity is a 501(c)(3) nonprofit corporation, its bylaws must clearly state that the charter holder and charter school will comply with the Texas Open Meetings Act and will appropriately respond to Texas Public Information Act requests.

(E) No family members within the third degree of consanguinity or second degree of affinity shall simultaneously serve on the charter holder or charter school board.

(F) No family member within the third degree of consanguinity or second degree of affinity of any charter holder board member, charter school board member, or superintendent shall receive compensation in any form from the charter school, the charter holder, or any management company that operates or provides services to the charter school.

(G) The applicant shall specify that the governing body accepts and will not delegate ultimate responsibility for the school, including academic performance and financial and operational viability, and is responsible for overseeing any management company providing management services for the school.

(3) Educational and operational standards for applications published under TEC, Chapter 12, Subchapters D and E. An applicant shall successfully meet each of the following educational and operational standards to ensure alignment of curricula to the Texas Essential Knowledge and Skills, as determined by the commissioner or the commissioner's designee, prior to being considered for award of a charter and must attest that any failure to maintain ongoing compliance with these requirements, if awarded a charter, will be considered a material violation of the charter contract and may be grounds for revocation.

(A) The charter applicant must provide a succinct long-term vision for the proposed school and clearly explain the overall educational philosophy to be promoted at the school, if authorized.

(B) The charter applicant must provide a succinct explanation of the reasons for choosing the target location.

(C) The charter applicant must clearly explain in succinct terms the specific curricular programs that the school, if authorized, will provide to students and the ways in which the charter staff, board members, and others will use these programs to maintain high expectations for and the continuous improvement of student performance.

(D) The charter applicant must clearly explain in succinct terms the ways in which the school, if authorized, will improve student learning, increase the choice of high-quality educational opportunities in the proposed area, create professional environments that will attract new teachers to the public school system, set a high standard for school accountability and student achievement, and encourage different and innovative learning methods.

(E) The charter applicant must clearly explain how classroom practices will reflect the connections among curriculum, instruction, and assessment.

(F) The charter applicant must describe in succinct terms the specific ways in which the school, if authorized, will:

(i) address the instructional needs of students performing both below and above grade levels in major content areas;

(ii) differentiate instruction to meet the needs of diverse learners;

(iii) provide a continuum of services in the least restrictive environment for students with special needs as required by state and federal law;

(iv) provide bilingual and/or English as a second language instruction to English language learners as required by state law; and

(v) implement an educational program that supports compliance with all course requirements pursuant to state law.

(G) As evidenced in required documentation, the charter applicant must commit to hiring personnel with appropriate qualifications as follows.

(i) Except as provided in clause (iv) of this subparagraph, all teachers, regardless of subject matter taught, must have a baccalaureate degree.

(ii) Special education teachers, bilingual teachers, and teachers of English as a second language must be certified in the fields in which they are assigned to teach as required in state and/or federal law.

(iii) Paraprofessionals must be certified as required to meet state and/or federal law.

(iv) In an open-enrollment charter school that serves youth referred to or placed in a residential trade center by a local or state agency, a person may be employed as a teacher for a noncore vocational course without holding a baccalaureate degree, subject to the requirements described in §100.1212 of this title (relating to Personnel).

(H) With the exception of an early education (prekindergarten for age three through Grade 2) or prekindergarten-only model, the charter applicant must commit to serving, by its fourth year of operation, students in grades assessed for state accountability purposes.

(I) The charter applicant must provide a final copy of any management contract, if applicable, that will be entered into by the charter holder that will provide any management services, including the monetary amount that will be paid to the management company for providing school services.

(J) This paragraph does not apply to an application published under TEC, Chapter 12, Subchapter G.

(4) Educational and operational standards for applications published under TEC, Chapter 12, Subchapter G. An applicant for an adult high school charter shall successfully meet each of the following educational and operational standards to ensure careful alignment of curricula to the industry-based certifications, and workforce preparation and training as determined by the commissioner or the commissioner's designee, prior to being considered for award of a charter and must attest that any failure to maintain ongoing compliance with these requirements, if awarded a charter, will be considered a material violation of the charter contract and may be grounds for revocation.

(A) The charter applicant must provide a succinct long-term vision for the proposed school and clearly explain the overall educational philosophy to be promoted at the school, if authorized.

(B) The charter applicant must clearly explain in succinct terms the specific curricular programs that the school, if authorized, will provide to program participants in order to earn a high school diploma and the ways in which the charter staff, board members, and

others will use these programs to maintain high expectations for and the continuous improvement of student performance.

(C) The charter applicant must clearly explain in succinct terms the ways in which the school, if authorized, will offer interactive, teacher-led instruction to program participants.

(D) The charter applicant must clearly explain how career and technology programs for industry-based certifications will be implemented at the school.

(E) The charter applicant must submit a letter of intent if contracting with a public junior college, provider, organization approved by the Texas Workforce Commission to provide career and technology courses that lead to an industry certification.

(F) The charter applicant must provide evidence that the entity or a member of its executive leadership has a successful history of providing education services, including industry certifications and job placement services, to adults 18 years of age and older whose educational and training opportunities have been limited by educational disadvantages, disabilities, homelessness, criminal history, or similar marginalizing circumstances.

(G) The charter applicant must describe in succinct terms the specific ways in which the school, if authorized, will:

(i) address how participants can receive a diploma through successful completion of the Foundation High School program curriculum requirements or other appropriate curriculum requirements applicable to the program participant;

(ii) provide career readiness training, post-secondary counseling, and job placement services;

(iii) offer support services, including childcare at no cost, life coaching services, mental health counseling, and transportation assistance;

(iv) provide a continuum of services in the least restrictive environment for program participants with special needs as required by state and federal law;

(v) provide bilingual and/or English as a second language instruction to emergent bilingual students as required by state law; and

(vi) implement an educational program that supports compliance with all course requirements pursuant to state law.

(H) As evidenced in required documentation, the charter applicant must commit to hiring personnel with appropriate qualifications as follows.

(i) Except as provided in §100.1212(b) of this title, all teachers, regardless of subject matter taught, must have a baccalaureate degree.

(ii) Special education teachers, bilingual teachers, and teachers of English as a second language must be certified in the fields in which they are assigned to teach as required in state and/or federal law.

(iii) Paraprofessionals must be certified as required to meet state and/or federal law.

(I) The charter applicant may not propose to serve more than 2,000 students.

(J) The charter applicant must provide a final copy of any management contract, if applicable, that will be entered into by the charter holder that will provide any management services, including

the monetary amount that will be paid to the management company for providing school services.

(K) The charter applicant must provide a final memorandum of understanding if partnering with a public junior college, provider, organization approved by the Texas Workforce Commission to provide career and technology courses that lead to an industry certification.

§100.1021. Applicability of Law and Rules to College or University or Junior College Charters.

(a) Except as expressly provided in the rules in this subchapter, or where required by Texas Education Code (TEC), Chapter 12, Subchapter E (College or University or Junior College Charter School), a provision of the rules in this subchapter applies to a public senior college or university charter school or junior college charter school as though the public senior college or university charter school or junior college charter school were granted a charter under TEC, Chapter 12, Subchapter D (Open-Enrollment Charter School).

(b) Section 100.1011(b) of this title (relating to Application Requirements and Selection Process) applies, except that the commissioner of education may adopt a separate application form for applicants seeking a charter to operate a public senior college or university charter school or a public junior college charter school, which need not be similar to the application form adopted under that subsection for other charter applicants. The commissioner may approve or amend this separate application form without regard to the selection cycle referenced in that subsection.

(c) Section 100.1011(b), (c), (e), (g), (h), and (k)-(o) of this title apply unless provided otherwise in the charter contract.

(d) The following provisions of this subchapter do not apply to a public senior college or university charter school or a public junior college charter school:

(1) §100.1031 and §100.1113 of this title (relating to Performance Frameworks for Subchapters D and E Charter Schools and Delegation of Powers and Duties), except as authorized in the charter contract upon written request of the governing body of the university, college, or junior college;

(2) §100.1127 of this title (relating to Record of Compliance and Disclosure of Non-compliance);

(3) §100.1101 of this title (relating to Improvements to Real Property);

(4) §§100.1131-100.1141 of this title (relating to Applicability of Nepotism Provisions; Exception for Acceptable Performance; General Nepotism Provisions; Relationships By Consanguinity or By Affinity; Nepotism Prohibitions; Nepotism Exceptions; and Enforcement of Nepotism Prohibitions);

(5) §100.1145 and §100.1147 of this title (relating to General Conflict of Interest Provisions and Conflicts Requiring Affidavit and Abstention from Voting);

(6) §100.1203(a) of this title (relating to Records Management); and

(7) §100.1205 of this title (relating to Procurement of Professional Services).

§100.1023. Applicability of Law and Rules to Adult High School Charters.

The following provisions apply as indicated in this section to an adult education charter school as though the adult education charter school was granted a charter under Texas Education Code (TEC), Chapter 12, Subchapter D.

(1) Section 100.1011(b) of this title (relating to Application Requirements and Selection Process) applies, except that the commissioner of education may adopt a separate application form for applicants seeking a charter to operate an adult education charter school, which need not be similar to the application form adopted under that subsection for other charter applicants. The commissioner may approve or amend this separate application form without regard to the selection cycle referenced in that subsection.

(2) Section 100.1011(b); (c)(3)(A)(i), (B)-(E), (F)(i)-(v) and (vii), and (G)-(I); (f); (h); and (k)-(o) apply unless provided otherwise in the charter contract.

(3) The following sections of TEC, Chapter 12.

(A) TEC, §12.1012, related to definitions.

(B) TEC, §12.10125, related to open-enrollment charter schools not in operation.

(C) TEC, §12.105, related to status.

(D) TEC, §12.1051, related to open meetings and public information laws.

(E) TEC, §12.1052, related to local government records applicability.

(F) TEC, §12.1053, related to public purchasing and contracting laws.

(G) TEC, §12.1054, related to conflict of interest law applicability.

(H) TEC, §12.1055, related to nepotism law applicability.

(I) TEC, §12.1056, related to immunity from liability and suit.

(J) TEC, §12.1057, related to membership in Teacher Retirement System of Texas.

(K) TEC, §12.1059, related to employment requirements.

(L) TEC, §12.107, related to status and use of funds.

(M) TEC, §12.108, related to tuition and fees.

(N) TEC, §12.109, related to transportation.

(O) TEC, §12.1141, related to renewal and expiration.

(P) TEC, §12.1162, related to sanctions.

(Q) TEC, §12.1163, related to audit by commissioner.

(R) TEC, §12.1164, related to notice to Teacher Retirement System of Texas.

(S) TEC, §12.1166, related to related party transactions.

(T) TEC, §12.1168, related to financial report of certain schools.

(U) TEC, §12.117, related to admission.

(V) TEC, §12.119, related to bylaws and annual report.

(W) TEC, §12.101(b)(2), related to prohibition of charter holder having had a charter removed or surrendered in the 10 years prior.

(X) TEC, §12.101(b-5), related to the initial term of a charter.

(Y) TEC, §12.120, related to board member restrictions.

(Z) TEC, §12.1202, related to qualified voter requirement.

(AA) TEC, §12.1211, related to board website posting requirement.

(BB) TEC, §12.122, related to liability of board members.

(CC) TEC, §12.123, related to training for board members and officers.

(DD) TEC, §12.124, related to management company loans.

(EE) TEC, §12.125, related to management services contracts.

(FF) TEC, §12.126, related to prohibitions of certain management services contracts.

(GG) TEC, §12.127, related to management company liability.

(HH) TEC, §12.128, related to property purchased or leased with state funds.

(II) TEC, §12.129, related to minimum qualifications for principals and teachers.

(JJ) TEC, §12.130, related to notice of teacher qualifications.

(KK) TEC, §12.131, related to removal of students to disciplinary alternative education program and expulsion of students.

(LL) TEC, §12.135, related to designation as charter district for purposes of bond guarantee.

(MM) TEC, §12.136, related to posting of chief executive officer salary.

(NN) TEC, §12.137, related to certain charter holders authorized to provide combined services for certain adult and high school dropout recovery programs.

(OO) TEC, §12.141, related to reclaimed funds.

(PP) TEC, §12.104(a-1)(1), related to security officer employment.

(QQ) TEC, §12.104(a-1)(2), related to memorandums of understanding with law enforcement.

(RR) TEC, §12.104(a-2), related to peace officer applicability.

(SS) TEC, §12.104(b)(1), related to criminal offense.

(TT) TEC, §12.104(b)(2), related to protections for reporting violations.

(UU) TEC, §12.104(b)(3)(A), related to PEIMS.

(VV) TEC, §12.104(b)(3)(B), related to criminal history records.

(WW) TEC, §12.104(b)(3)(F), related to special education programs.

(XX) TEC, §12.104(b)(3)(G), related to bilingual education.

(YY) TEC, §12.104(b)(3)(J), related to discipline management techniques.

(ZZ) TEC, §12.104(b)(3)(K), related to health and safety.

(AAA) TEC, §12.104(b)(3)(L), related to accountability.

(BBB) TEC, §12.104(b)(3)(M), related to accountability and investigations.

(CCC) TEC, §12.104(b)(3)(N), related to reporting educator misconduct.

(DDD) TEC, §12.104(b)(3)(O), related to intensive programs of instruction.

(EEE) TEC, §12.104(b)(3)(P), related to right of employees to report crimes.

(FFF) TEC, §12.104(b)(3)(R), related to the right to place a student in a disciplinary alternative education program or to expel the student for certain behaviors.

(GGG) TEC, §12.104(b)(3)(S), related to right to report assault or harassment.

(HHH) TEC, §12.104(b)(3)(T), related to parent rights to information regarding interventions.

(III) TEC, §12.104(b)(3)(V), related to school safety requirements.

(JJJ) TEC, §12.104(b)(3)(X), related to college, career, and military readiness plans.

(KKK) TEC, §12.104(b)(3)(Y), related to parent option to retain a student.

(LLL) TEC, §12.1058, related to applicability of municipal and government codes.

§100.1025. Authorization for High-Performing Entities.

(a) In accordance with Texas Education Code (TEC), §12.1011, notwithstanding TEC, §12.101(b), the commissioner of education may grant a charter to high-performing entities.

(b) For an applicant to be eligible for consideration as a high-performing entity, the applicant must demonstrate the following criteria.

(1) The entity is affiliated with a charter operator that operates one or more charter schools in another state. The affiliated charter operator must have performed at an overall level that is comparable to the highest or second highest performance rating category under TEC, Chapter 39, Subchapter C.

(A) The entity must propose to operate the charter school program that is currently implemented in the affiliated charter operator's existing charter schools.

(B) A charter operator may be considered affiliated with an entity if it utilizes shared structures, practices, or materials, including, but not limited to, a shared management structure, shared financial management or staff development practices, or shared proprietary materials, including those related to instruction.

(2) The entity is currently operating charter programs under TEC, Chapter 12, Subchapter C or E. The entity must have performed at an overall level in the highest or second highest performance rating category under TEC, Chapter 39, Subchapter C.

(c) Failure to disclose past or present accountability data is a material violation of the charter.

(d) If the applicant or its affiliate is a high-performing entity, then it may vest management of corporate affairs in a member provided that the entity may change the members of the governing body of the charter holder prior to the expiration of a member's term only with commissioner's written approval.

(e) Entities granted a charter under this provision have an initial contract term of five years.

(f) In determining a charter award for a high-performing entity, the commissioner will consider the criteria identified in §100.1011(d)(4) of this title (relating to Application Requirements and Selection Process) as established for experienced operators.

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

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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



**DIVISION 3. COMMISSIONER ACTION,
PERFORMANCE MONITORING, [CHARTER
SCHOOL FUNDING] AND INTERVENTION
[FINANCIAL OPERATIONS]**

**19 TAC §§100.1031, 100.1035, 100.1037, 100.1039,
100.1041, 100.1043, 100.1045, 100.1047, 100.1049, 100.1051,
100.1053, 100.1055**

STATUTORY AUTHORITY. The new sections are proposed under Texas Education Code (TEC), §12.101, which requires the commissioner to adopt rules regarding the criteria for granting a charter and providing notification for the establishment of new charters or campuses; TEC, §12.1011, which requires the commissioner to adopt rules regarding charter authorization for high-performing entities; TEC, §12.103, which allows the commissioner to adopt rules regarding applicable provisions to open-enrollment charter schools; TEC, §12.104, as amended by House Bill (HB) 189, 87th Texas Legislature, Regular Session, 2021, which allows the commissioner to adopt rules permitting an open-enrollment charter school to voluntarily participate in any state program available to school districts if the school complies with all terms of the program; TEC, §12.1055, which allows the commissioner to adopt rules regarding nepotism under Texas Government Code, Chapter 573; TEC, §12.1058, as amended by HB 1707, 88th Texas Legislature, Regular Session, 2023, which requires a political subdivision to consider an open-enrollment charter school as a school district for the purposes of municipal ordinances if the open-enrollment charter school meets notification requirements; TEC, §12.110, which requires the commissioner to adopt an application form and procedure that must be used to apply for an open-enrollment charter school; TEC, §12.1101, which requires the commissioner to adopt a procedure for providing notice to the outlined

persons on receipt by the commissioner of an application for a charter for an open-enrollment charter school or of notice of the establishment of a campus; TEC, §12.114, which allows the commissioner to define expansion amendment requests; TEC, §12.1141, as amended by Senate Bill (SB) 879, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to adopt a procedure for renewal, denial of renewal, or expiration of a charter for an open-enrollment charter school at the end of the term of the charter; TEC, §12.1166, which requires the commissioner to adopt a rule defining "related party;" TEC, §12.1173, as amended by SB 2293, 86th Texas Legislature, 2019, which requires the commissioner to adopt rules to implement charter school waiting lists for admission; TEC, §12.1181, requires the commissioner to adopt performance frameworks that establish standards by which to measure the performance of an open-enrollment charter school; TEC, §12.123, which requires the commissioner to adopt rules prescribing the training for members of the governing body of a charter school and its officers; TEC, §12.153, which allows the commissioner to adopt rules to implement college of university or junior college charter schools; TEC, §12.265, as amended by SB 1615, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to adopt rules necessary to administer adult high school charter school programs; and TEC, §39.0548, which requires the commissioner to authorize and determine designation as a dropout recovery school.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §§12.101; 12.1011; 12.103; 12.104, as amended by House Bill (HB) 189, 87th Texas Legislature, Regular Session, 2021; 12.1055; 12.1058, as amended by HB 1707, 88th Texas Legislature, Regular Session, 2023; 12.110; 12.1101; 12.114; 12.1141, as amended by Senate Bill (SB) 879, 87th Texas Legislature, Regular Session, 2021; 12.1166; 12.1173, as amended by SB 2293, 86th Texas Legislature, 2019; 12.1181; 12.123; 12.153; 12.265, as amended by SB 1615, 87th Texas Legislature, Regular Session, 2021; and 39.0548.

§100.1031. Performance Frameworks for Subchapters D and E Charter Schools.

(a) The performance of an open-enrollment charter school will be measured annually against a set of criteria set forth in the Charter School Performance Framework (CSPF) Manual established under Texas Education Code (TEC), §12.1181. Notwithstanding substantial modifications to the framework, the manual will be updated annually to reflect the requirements and data sources for each indicator.

(b) The CSPF Manual will include measures for Subchapters D and E charter schools registered under the standard accountability system and measures for charters registered under the alternative education accountability system as adopted under §97.1001 of this title (relating to Accountability Rating System).

(c) The assignment of performance levels, Tier 1, Tier 2, or Tier 3 for charter schools on the CSPF report is based on specific criteria, which include:

(1) Academic Indicator: the charter school's overall academic rating as assigned under TEC, §39.053. For charter schools not issued a rating under TEC, §39.053, the CSPF Manual will identify substitute academic indicators;

(2) Financial Indicator: the charter school's overall financial rating as assigned under TEC, Chapter 39, Subchapter D;

(3) Operational Indicators, which evaluate each charter school's compliance with educational, operational, safety, and report-

ing requirements as required by federal law, state law, state rules or regulations, and/or the charter contract, including those outlined in TEC, Chapter 12, and this chapter; and

(4) Governance Indicators, which evaluate each charter school's compliance with state law, state rules or regulations with governance requirements, including those outlined in TEC, Chapter 12, and this chapter.

§100.1035. Charter Amendment.

(a) Subject to the requirements of this section, the terms of an open-enrollment charter may be revised with the consent of the charter holder by expansion or non-expansion amendment as approved by the commissioner of education.

(b) Information relevant to all amendment requests.

(1) Filing of amendment request. Prior to implementation, the charter holder shall file a request, in the form prescribed, with the Texas Education Agency (TEA) division responsible for charter schools.

(2) Board resolution. The request must be attached to a written resolution adopted by the governing body of the charter holder and signed by a majority of the members indicating approval of the requested amendment.

(3) Relevant information considered. As directed by the commissioner, a charter holder requesting an amendment shall submit current information required by the prescribed amendment form, as well as any other information requested by the commissioner. In considering the amendment request, the commissioner may consider any relevant information concerning the charter holder, including its performance on the Charter School Performance Frameworks (CSPF) adopted by rule in §100.1031 of this title (relating to Performance Frameworks for Subchapters D and E Charter Schools); student and other performance; compliance, staff, financial, and organizational data; and other information.

(4) Best interest of students. The commissioner may approve an amendment only if the charter holder meets all applicable requirements, and only if the commissioner determines that the amendment is in the best interest of students. The commissioner may consider the performance of all charters operated by the same charter holder in the decision to finally grant or deny an amendment.

(5) Conditional approval. The commissioner may grant the amendment without condition or may require compliance with such conditions and/or requirements as may be in the best interest of students.

(6) Required forms and formats. The TEA division responsible for charter schools may develop and promulgate, from time to time, forms or formats for requesting charter amendments under this section. If a form or format is promulgated for a particular type of amendment, it must be used to request an amendment of that type.

(7) Ineligibility. The commissioner will not consider any amendment that is submitted by a charter holder that has been notified by the commissioner of the commissioner's intent to allow the expiration of the charter or intent to revoke the charter. This subsection does not limit the commissioner's authority to accept the surrender of a charter.

(c) Expansion amendments.

(1) Timeline for submission. A charter holder may submit a request for approval for an expansion amendment:

(A) up to 36 months before the date on which the expansion will be effective; and

(B) no later than the first day of March before the school year for which the expansion will be effective.

(2) Notification.

(A) Upon receipt of an expansion amendment request by a charter holder, the TEA division responsible for charter schools will notify the following:

(i) the superintendent and the board of trustees of each school district from which the proposed open-enrollment charter school or campus is likely to draw students, as defined in §100.1013 of this title (relating to Notification of Charter Application); and

(ii) each member of the legislature that represents the geographic area to be served by the proposed school or campus, as defined in §100.1013 of this title.

(B) To be considered a school district for purposes related to land development standards, licensing, zoning, and various purposes and services, a charter school must meet the notification requirements as outlined in §100.1209 of this title (relating to Municipal Ordinances).

(C) Should a change in the location of a campus be approved after notification but prior to opening, the commissioner of education or the commissioner's designee is required to notify as required by subparagraph (A) of this paragraph based on the zip code of the new location.

(3) Expansion types. A charter holder of an open-enrollment charter may submit, as described by this section, a request for approval for either:

(A) expedited expansion; or

(B) discretionary expansion.

(4) Expedited expansion amendments. An expedited expansion amendment allows for the establishment of a new charter campus under Texas Education Code (TEC), §12.101(b-4).

(A) In order to submit an expedited expansion amendment, the charter school must meet the following requirements:

(i) an accreditation status of Accredited;

(ii) currently has at least 50% of its student population in grades assessed under TEC, Chapter 39, Subchapter B, or has had at least 50% of the students in the grades assessed enrolled in the school for at least three years;

(iii) is currently evaluated under the standard accountability procedures for evaluation under TEC, Chapter 39, and received a district rating in the highest or second highest performance rating category under TEC, Chapter 39, Subchapter C, for three of the last five ratings;

(iv) at least 75% of the campuses rated under the charter school also received a rating in the highest or second highest performance rating category in the most recent ratings; and

(v) no campus received a rating in the lowest performance rating category in the most recent ratings.

(B) Unless the commissioner provides written notice that the charter holder does not meet the requirements outlined in TEC, §12.101(b-4), within 60 days of the date the charter holder submits a completed expedited expansion amendment, the amendment is considered enacted. If the commissioner denies the amendment, the commissioner must identify the legal and factual basis for denial, including the specific criteria under TEC, §12.101(b-4), that was not met.

(5) Discretionary expansion amendments. A discretionary expansion amendment permits commissioner-approved changes to the terms of an open-enrollment charter school related to expansion.

(A) Discretionary expansion amendment types. There are three types of discretionary amendments.

(i) Maximum enrollment. The commissioner may approve an expansion amendment request seeking to increase maximum allowable enrollment.

(ii) Grade span. The commissioner may approve an expansion amendment request seeking to extend the grade levels it serves only if it is accompanied by appropriate educational plans for the additional grade levels in accordance with Chapter 74, Subchapter A, of this title (relating to Required Curriculum), and such plan has been reviewed and approved by the charter governing board.

(iii) Adding a campus or site. The commissioner may approve an expansion amendment request seeking to add a new campus or site under a campus only if it meets the following criteria:

(I) the charter holder has operated at least one charter school campus in Texas for a minimum of three consecutive years; and

(II) a new site under an existing campus will be located within 25 miles of the campus with which it is associated.

(B) Board certification. Before voting to request a discretionary expansion amendment, the charter holder governing board must certify that they have considered a business plan and has determined by majority vote of the board that the growth proposed is financially prudent relative to the financial and operational strength of the charter school and includes such a statement in the board resolution. The commissioner may request submission of the business plan, which must be comprised of the following components:

(i) a statement discussing the need for the expansion;

(ii) a statement discussing the current and projected financial condition of the charter holder and charter school;

(iii) an unaudited statement of financial position for the current fiscal year;

(iv) an unaudited statement of financial activities for the current fiscal year;

(v) an unaudited statement of cash flows for the current fiscal year;

(vi) a pro forma budget that includes the costs of operating the charter school, including the implementation of the expansion amendment;

(vii) a statement or schedule that identifies the assumptions used to calculate the charter school's estimated Foundation School Program revenues;

(viii) a statement discussing the use of debt instruments to finance part or all of the charter school's incremental costs;

(ix) a statement discussing the incremental cost of acquiring additional facilities, furniture, and equipment to accommodate the anticipated increase in student enrollment;

(x) a statement discussing the incremental cost of additional on-site personnel and identifying the additional number of full-time equivalents that will be employed;

(xi) the required statement that the growth proposed is financially prudent relative to the financial and operational strength of the charter school;

(xii) there are no instances of nepotism, conflicts of interest, or revelations in criminal history checks that deemed any board member or employee ineligible to serve as reported in the Governance Reporting Forms submitted to TEA for the previous three years; and

(xiii) the charter holder meets all other requirements applicable to expansion amendment requests and other amendments.

(C) Requirements. The commissioner may approve a discretionary expansion amendment only if:

(i) the expansion will be effective no earlier than the start of the fourth full school year at the affected charter school. This restriction does not apply if the affected charter school has a district rating of an A, B, or C and is operated by a charter holder that operates multiple charter campuses and all of that charter holder's most recent campus ratings of an A, B, or C;

(ii) the charter school has an accreditation status of Accredited;

(iii) the most recent district rating for the charter school is an A, B, or C;

(iv) the most recent district financial accountability rating for the charter school in the Financial Integrity Rating System of Texas for charter schools is "satisfactory" as defined by §100.1001(2) of this title (relating to Definitions);

(v) a charter holder that operates multiple charter campuses meets the criteria in subclause (I) or (II) of this clause. When calculating the percentages described, campuses that receive a 'Not Rated' rating shall not be included in the calculation.

(I) At least 90% of the campuses that receive an accountability rating are rated as an A, B, or C.

(II) If 75-89% of campuses that receive an accountability rating under the charter school are rated as an A, B, or C, the charter holder must provide additional information with the expansion request; and

(vi) the most recent designation for the charter school under the CSPF is "Tier 1" or "Tier 2" as defined by §100.1031 of this title.

(D) Discretionary expansion amendment determination timeline. Notice of the commissioner's decision regarding a discretionary expansion amendment will be made within 60 calendar days of the date the charter holder submits a completed amendment request. The notice of the commissioner's determination may be sent electronically.

(6) High-quality campus designation. A high-quality campus designation is a separate designation and must be paired with an expansion amendment. If approved by the commissioner, this designation permits a charter holder to establish an additional charter school campus under an existing open-enrollment charter school. Charter holders of charter schools that receive high-quality campus designation from the commissioner will be eligible to participate in the charter school program competitive grant process when federal funding for the Texas charter school program is available.

(A) The commissioner may approve a high-quality campus designation for a charter only if:

(i) the charter holder meets all requirements applicable to an expansion amendment set forth in this section and has operated at least one charter school campus in Texas for a minimum of five consecutive years;

(ii) the charter school has been evaluated under the accountability rating system established in §97.1001 of this title (relating to Accountability Rating System), has an accreditation status of Accredited, is currently evaluated under the standard accountability procedures, currently has an "A" or "B" rating at the local education agency level, and has an "A" or "B" rating in the previous two years in which ratings were issued with all of the campuses that received a rating and operated under the charter also receiving an "A" or "B" rating as defined by §100.1001(8) of this title in the most recent state accountability ratings;

(iii) no charter campus has been identified for federal interventions in the most current report;

(iv) the charter school is not under any sanction imposed by TEA authorized under TEC, Chapter 39; Chapter 97, Subchapter EE, of this title (relating to Accreditation Status, Standards, and Sanctions); or federal requirements;

(v) is rated "Tier 1" in the most recent CSPF and meets the requirements of federal law and TEC, §12.111(a)(3) and (4);

(vi) the charter holder completes an application approved by the commissioner;

(vii) the amendment complies with all requirements of this paragraph; and

(viii) the commissioner determines that the designation is in the best interest of students.

(B) In addition to the requirements of subparagraph (A) of this paragraph, the commissioner may approve a high-quality campus designation only if the campus with the proposed designation:

(i) satisfies each element of the definition of a public charter school as set forth in federal law, including:

(I) admits students on the basis of a lottery, consistent with Elementary and Secondary Education Act, §4303(c)(3)(A), if more students apply for admission than can be accommodated; or

(II) in the case of a school that has an affiliated charter school (such as a school that is part of the same network of schools), automatically enrolls students who are enrolled in the immediate prior grade level of the affiliated charter school and, for any additional student openings or student openings created through regular attrition in student enrollment in the affiliated charter school and the enrolling school, admits students on the basis of a lottery as described in subclause (I) of this clause;

(ii) is separate and distinct from the existing charter school campus(es) established under the open-enrollment charter school with a separate facility and county-district-campus number; and

(iii) holds a valid charter contract issued by TEA.

(C) In making the findings required by subparagraph (B)(i) and (iii) of this paragraph, the commissioner shall consider:

(i) the terms of the open-enrollment charter school as a whole, as modified by the high-quality campus designation; and

(ii) whether the campus with the proposed designation shall be established and recognized as a separate school under Texas law.

(D) Failure to meet any standard or requirement for high-quality campus designation or agreed to in a performance agreement shall mean the immediate termination of any federal charter school program grant and/or any waiver exempting a charter from some of the expansion amendment requirements that may have been granted to a charter holder as a result of the high-quality campus designation.

(d) Non-expansion amendment. A non-expansion amendment permits changes to the terms of an open-enrollment charter school not related to expansion.

(1) Timeline for submission. All non-expansion amendments may be filed with the commissioner at any time throughout the year.

(2) Non-expansion amendment types. A non-expansion amendment is either material or non-material.

(A) Material non-expansion amendments include changes to the terms of an open-enrollment charter, including the following: relocation of a campus, campus or charter dormancy, closing or returning an active campus or site, charter holder governance, articles of incorporation, corporate bylaws, management company, admission and enrollment policy, and curriculum programs not already approved by TEA.

(i) Relocation amendment. A material non-expansion amendment to relocate solely permits a charter holder to relocate an existing campus or site to an alternate address while serving the same students and grade levels without a significant disruption to the delivery of the educational services. The alternate address of the relocation shall not be in excess of 25 miles from the existing campus address.

(ii) Material charter language change. Any material non-expansion amendment that requires changes to charter language shall set forth the text and page references in electronic format of the current open-enrollment charter language to be changed, and the text proposed as the new open-enrollment charter language.

(B) Non-material non-expansion amendments include changes to the terms of an open-enrollment charter, including the following: charter holder name, charter school (district) name, charter campus name, grade levels served on a campus, campus start date change, closing or returning a dormant campus or site, and fiscal year change.

(C) Any non-expansion amendment not identified in subparagraph (A) or (B) of this paragraph is subject to commissioner determination as material or non-material.

(D) The following timelines apply to non-expansion amendment requests.

(i) Charter holders that submit material non-expansion requests will receive notice of the commissioner's decision within 60 calendar days of a completed amendment request.

(ii) Charter holders that submit non-material non-expansion requests may proceed with the request 30 calendar days after the date the charter holder submits a completed amendment request unless otherwise notified by the commissioner.

§100.1037. Renewal of an Open-Enrollment Charter.

(a) Petition for renewal.

(1) A charter holder of an open-enrollment charter may submit, as described by this section, a petition for:

(A) expedited renewal; or

(B) discretionary renewal.

(2) A petition for renewal of the charter must be submitted on the date provided by the Texas Education Agency (TEA) annually, prior to the expiration of the charter contract.

(3) A petition for renewal must be in the form provided by TEA and shall include all information and documentation required by the form.

(4) If a charter holder fails to submit a timely and sufficient petition for renewal of an open-enrollment charter, the existing charter may expire at the end of its term.

(b) Expedited renewal. If a charter holder submits the petition for expedited renewal, the commissioner of education will approve or deny the expedited renewal not later than the 30th day after the date of the charter holder submission. A charter holder may submit a petition for expedited renewal if:

(1) the charter holder has been assigned the highest or second highest performance rating under Texas Education Code (TEC), Chapter 39, Subchapter C, for the three preceding school years;

(2) the charter holder has been assigned a financial performance accountability rating under TEC, Chapter 39, Subchapter D, indicating financial performance that is satisfactory or better for the three preceding school years; and

(3) no campus operating under the charter has been assigned an unacceptable performance rating under TEC, Chapter 39, Subchapter C, for the three preceding school years or such a campus has been closed.

(c) Expiration. Notwithstanding any other law and in accordance with TEC, §12.1141(e), a determination by the commissioner of education under this subsection is final and may not be appealed. The commissioner may not renew the charter and must allow the charter to expire if:

(1) the charter holder has been assigned the unacceptable performance rating under TEC, Chapter 39, Subchapter C, for any three of the five preceding school years;

(2) the charter holder has been assigned a financial accountability performance rating under TEC, Chapter 39, Subchapter D, indicating financial performance that is lower than satisfactory for any three of the five preceding school years;

(3) the charter holder has been assigned any combination of the ratings described by paragraph (1) or (2) of this subsection for any three of the five preceding school years. For purposes of determining a combination, a school that earned a financial and academic rating as described in paragraphs (1) and (2) of this subsection in the same year will count once; or

(4) any campus operating under the charter has been assigned an unacceptable performance rating under TEC, Chapter 39, Subchapter C, for the three preceding school years and such a campus, and if applicable, all sites associated with the campus, has not been closed.

(d) Discretionary renewal.

(1) A charter holder may submit a petition for discretionary renewal if it:

(A) does not qualify to submit the petition for expedited renewal; or

(B) is not subject to an expiration under subsection (c) of this section.

(2) In evaluating the petition for discretionary renewal, the commissioner shall consider:

(A) the results of the charter's annual evaluation under the performance framework set forth in the Charter School Performance Framework (CSPF) Manual established under TEC, §12.1181; and

(B) the criteria described under §100.1039 of this title (relating to Standards for Discretionary Renewal).

(e) Special rules for alternative education accountability (AEA) charters. The following provisions apply to the renewal of the charter of an open-enrollment charter school that is registered under the TEA AEA procedures for evaluation under TEC, Chapter 39.

(1) Discretionary renewal of AEA charters. An AEA charter may submit the petition for discretionary renewal and the petition must be considered under the discretionary renewal process. An AEA charter may not submit a petition for expedited renewal.

(2) Academic criteria for discretionary renewal of AEA charters.

(A) In considering a petition for discretionary renewal by an AEA charter such as a dropout recovery school or a school providing education within a residential treatment facility, the commissioner shall use academic criteria as outlined in the CSPF Manual established under TEC, §12.1181, that is appropriate to measure the specific goals of the school.

(B) For purposes of this subsection, the commissioner shall designate as a dropout recovery school an open-enrollment charter school or a campus of an open-enrollment charter school that:

(i) serves students in Grades 9-12 and has an enrollment of which at least 60% of the students are 16 years of age or older as of September 1 of the school year as reported for the fall semester Public Education Information Management System submission or applies for and receives designation as a dropout recovery school in accordance with commissioner rule; and

(ii) meets the eligibility requirements for and is registered under alternative education accountability procedures adopted by the commissioner.

(3) Expiration of AEA charters. The commissioner may not renew and must allow an AEA charter to expire if the charter holder has been assigned a financial accountability performance rating under TEC, Chapter 39, Subchapter D, indicating financial performance that is lower than satisfactory for any three of the five preceding school years.

(f) Notice and content of renewal decision or determination.

(1) Expedited renewal decision. Not later than the 30th day after the submission of a petition for expedited renewal, the commissioner shall provide written notice to the charter holder of the commissioner's decision to grant or deny the petition. If the expedited renewal is denied, the notice shall include an explanation of the factual and legal basis for the decision, a description of the legally relevant factors considered, an explanation of why the result reached is reasonable, and a description of the procedures to seek a review of the decision.

(2) Discretionary renewal decision. Not later than the 90th day after the submission of a petition for discretionary renewal, the commissioner shall provide written notice to the charter holder of the commissioner's decision to grant or deny the petition. If the discretionary renewal is denied, the notice shall include an explanation of the factual and legal basis for the decision, a description of the legally relevant factors considered, an explanation of why the result reached is

reasonable, and a description of the procedures to seek a review of the determination.

(3) Expiration determination. The commissioner shall provide written notice to the charter holder of the commissioner's determination that the charter must expire. In the event a charter holder that meets the criteria for expiration submits a petition for renewal, the commissioner, not later than the 90th day after the submission, shall provide written notice to the charter holder of the commissioner's decision to deny the petition. Determinations made by the commissioner are final and may not be appealed. The notice shall include an explanation of the factual and legal basis for the determination, a description of the legally relevant factors considered, and an explanation of why the result reached is reasonable.

(4) Delivery and effective date of notice. The commissioner shall provide written notice electronically to the charter holder. Notice is effective on the sent date of the electronic notification.

(g) Appeal of renewal decisions and determinations. A decision by the commissioner to deny the petition for an expedited renewal or the petition for a discretionary renewal is subject to review by the State Office of Administrative Hearings under an arbitrary and capricious or clearly erroneous standard as described under Chapter 157, Subchapter EE, Division 4, of this title (relating to State Office of Administrative Hearings Arbitrary and Capricious or Clearly Erroneous Review).

(h) Use of ratings and data. The following provisions apply to the petition for renewal or expiration under this section.

(1) If a rating is not issued during one or more of the preceding school years, then the term "three preceding school years" means the most recent three school years during which a rating was issued, and the term "three of the five preceding school years" means three out of the most recent five school years during which a rating was issued, not to exceed more than the six most recent years.

(2) A rating that does not meet the criteria for "academically acceptable" as defined by §100.1001(8) of this title (relating to Definitions) shall not be considered the highest or second highest academic performance rating for purposes of this section.

(3) For purposes of renewal or expiration under this section, the term "unacceptable performance" means an unacceptable academic performance rating as defined by §100.1001(8) of this title.

(4) For purposes of renewal under this section, the term "financial performance lower than satisfactory" means a financial performance rating as defined by §100.1001(9) of this title.

(i) Conflict of rule. Except as provided by subsection (c) of this section, a contract term that conflicts with any rule in Part 2 of this title (relating to Texas Education Agency) is superseded by the rule to the extent that the rule conflicts with the contract term.

(j) Conditional approval. Notwithstanding any other rule in Part 2 of this title, the commissioner may require, as a condition of renewal, that the charter holder amend a contract under TEC, §12.114(a), to correct any ambiguities, defects, or other infirmities.

§100.1039. Standards for Discretionary Renewal.

Criteria for discretionary renewal. The following criteria shall be considered by the commissioner of education during the discretionary renewal process. The commissioner may non-renew a charter contract based on any of the following.

(1) Academic:

(A) assignment of an "academically unacceptable" rating as defined in §100.1001(8) of this title (relating to Definitions);

(B) failure to meet academic performance standards for students not measured in the accountability system;

(C) unsatisfactory academic performance of subpopulations; and

(D) failure to meet program requirements for special populations, including, but not limited to, special education, bilingual/English as a second language, and career and technical education.

(2) Financial:

(A) failure to use state funds for purposes for which a school district may use local funds under Texas Education Code (TEC), §45.105(e);

(B) failure to hold state funds in trust for the benefit of the students of the charter school;

(C) failure to satisfy generally acceptable accounting standards of fiscal management;

(D) failure to resolve a lien, levy, or other garnishment within 30 days;

(E) existence of a Foundation School Program (FSP) allotment subject to a warrant hold and that warrant has not been removed within 30 days;

(F) failure to timely file annual financial report required under TEC, §44.008;

(G) existence of an annual financial report containing adverse, qualified, or disclaimed opinion(s);

(H) assignment of a lower than satisfactory financial performance rating as defined in §100.1001(9) of this title;

(I) submission of attendance accounting data resulting in an overallocation from the FSP;

(J) existence of the following interested transactions:

(i) failure to comply with Local Government Code, Chapter 171;

(ii) failure to record and report on the governance reporting forms all financial transactions between charter school and non-charter activities of charter holder; and

(iii) failure to timely and accurately record and report on the governance reporting forms all financial transactions required in the governance reporting form;

(K) failure to post all financial information, including the salary of the chief executive officer (CEO), annual financial statement, most current annual financial report, and approved budget, on the charter school's website;

(L) payment of salaries of the CEO and/or other administrative position(s) that exceed reasonable fair market value for the services provided. Fair market value shall be based on size of school, individual's education, prior salary history, job duties actually performed, and what a typical person with similar skills, experience, and job duties would earn;

(M) renting or purchasing property for amounts in excess of fair market value;

(N) loss of eligibility to participate in the child nutrition program for more than 30 days;

(O) charter holder being imminently insolvent as defined by this chapter;

(P) failure to conduct fiscal mismanagement, including, but not limited to, the loss of financial records or a material non-compliance with State Board of Education or commissioner accounting requirements and failure to comply with the Financial Accountability System Resource Guide adopted under §109.41 of this title (relating to Financial Accountability System Resource Guide); and

(Q) failure to comply with applicable purchasing requirements, including Local Government Code, Chapter 271, if applicable.

(3) Operational:

(A) Governance:

(i) failure to timely file accurate and complete governance reporting forms;

(ii) non-compliance with required charter board training;

(iii) failure to timely and accurately report board training in the annual financial report;

(iv) failure to maintain verification of criminal history check/fingerprinting;

(v) failure to maintain verification of compliance with reporting requirements of the Secretary of State, the Texas Family Code, the Texas Open Meetings Act, the Texas Public Information Act, government and local records, applicability of public purchasing and contracting, and conflicts of interest and nepotism;

(vi) allowing a person with a criminal record to be employed or serve as a volunteer, officer, or board member in violation of TEC, Chapters 12 and 22;

(vii) failure of an employee or officer of the charter school to report child abuse or neglect as required by the Texas Family Code, Chapter 261;

(viii) failure to disclose and report all conflict of interest and nepotistic relationships to the Texas Education Agency (TEA) in the applicable minutes of the charter holder's corporate records;

(ix) failure to submit to the Secretary of State a listing of all current members of the charter holder, the articles of incorporation, the by-laws, assumed name, and any other matter of the corporate business required to be reported to the Secretary of State; and

(x) failure to maintain the 501(c)(3) status of the charter holder at all times;

(B) Complaints: failure to timely respond to and correct any complaints as directed by TEA;

(C) Property and campus operations (campuses of charter holders that provide instructional services within residential detention, treatment, or adjudication facilities are not subject to clauses (ii) and (iii) of this subparagraph):

(i) operation of any campus that does not meet the definition of a campus according to §100.1001(6)(B) of this title and that does not serve a minimum of 100 students as reflected in the Public Education Information Management System (PEIMS) fall snapshot;

(ii) failure of the charter holder to serve a minimum of 100 students, as reflected in the PEIMS fall snapshot, unless a lower number is declared and approved in the charter contract or approved by the commissioner;

(iii) failure to document and fully disclose any step transactions in the purchase or sale of property; and

(iv) failure to ensure that all charter holder buildings used for educational purposes have a valid certificate of occupancy for educating children;

(D) Activity fees and volunteer requirements:

(i) requiring any activity fees or any compulsory fees that are not authorized by TEC, §11.158, or other law; and

(ii) requiring any parental involvement, donation, or volunteerism as a condition of enrollment or continued enrollment;

(E) Management contracts:

(i) charter holder board allowing any entity to exercise control or ultimate responsibility for the school, including the academic performance, financial accountability, or operational viability;

(ii) charter holder board not retaining or exercising ultimate responsibility for the management of the charter school without regard to execution of a management contract with a charter management organization (CMO);

(iii) failure to timely file a current copy of the executed management contract, including any and all amendments, with TEA;

(iv) failure of the board of directors of the charter holder to ensure that both the charter holder and CMO are compliant with all the rules applicable to charter schools, including, but not limited to:

(I) financial accounting;

(II) record retention;

(III) health, safety, and welfare of students;

(IV) educational program accountability;

(V) Texas Open Meetings Act;

(VI) Texas Public Information Act; and

(VII) policies, procedures, and legal requirements found in state and federal laws/guidelines and the charter contract; and

(v) failure to comply with requirements in §100.1155 of this title (relating to Substantial Interest in Management Company; Restrictions on Serving) prohibiting a board member from having a substantial interest in the CMO; and

(F) Charter school performance framework: failure to satisfy applicable performance framework measures as prescribed in the Charter School Performance Framework Manual established under TEC, §12.1181.

§100.1041. Accountability Ratings and Sanctions.

(a) Commissioner authority. The commissioner of education may take any action relating to the charter holder or any of its charter campuses authorized by Texas Education Code (TEC), Chapter 39A, and the rules adopted under that chapter. Except as expressly provided by statute, the commissioner may take any accountability action against a charter holder or charter campus that the commissioner is authorized to take against a school district or campus under the subchapters of TEC, Chapter 39A.

(b) Charter holder cooperation. A charter holder and its employees and agents shall fully cooperate with an action under subsection (a) of this section and shall take all actions necessary to secure the

cooperation of a management company. Failure to comply with lawful requests, directives, or other Texas Education Agency (TEA) actions under subsection (a) of this section constitutes a material charter violation.

(c) Management company cooperation. A management company and its employees and agents shall fully cooperate with an action under subsection (a) of this section. Failure to comply with lawful requests, directives, or other TEA actions under subsection (a) of this section constitutes a management company breach.

§100.1043. Agency Audits, Monitoring, and Investigations.

(a) Agency authority. The Texas Education Agency (TEA) may conduct routine audits, monitoring, and other investigations of the charter school or charter holder to determine compliance with the terms of the open-enrollment charter, with the terms of federal or state grants, or as authorized in the Texas Education Code or other law.

(b) Charter holder cooperation. A charter holder and its employees and agents shall fully cooperate with audits, monitoring, and investigations under subsection (a) of this section and shall take all actions necessary to secure the cooperation of a management company. Failure to comply with lawful requests, directives, or other TEA actions under subsection (a) of this section constitutes a material charter violation.

(c) Management company cooperation. A management company and its employees and agents shall fully cooperate with audits, monitoring, and investigations under subsection (a) of this section. Failure to comply with lawful requests, directives, or other TEA actions under subsection (a) of this section constitutes a management company breach.

§100.1045. Intervention Based on Charter Violations.

(a) The commissioner of education shall temporarily withhold state funds, suspend the authority of an open-enrollment charter school to operate, impose any sanction under Texas Education Code, Chapter 39, Subchapter E, and/or take any other reasonable action the commissioner determines necessary, if the commissioner determines that a charter holder:

- (1) committed a material violation of the school's charter;
- (2) failed to satisfy generally accepted accounting standards of fiscal management; or
- (3) failed to comply with this subchapter or another applicable rule or law.

(b) A determination under this section shall be made through a final investigative report issued by the Texas Education Agency.

(c) The commissioner shall notify the open-enrollment charter school in writing of the action taken under this section. The notice must state the legal and factual basis for the action.

§100.1047. Intervention Based on Health, Safety, or Welfare of Students.

(a) The commissioner of education may temporarily withhold state funds, suspend the authority of an open-enrollment charter school to operate in its entirety or at one or more locations, and/or take any other reasonable action the commissioner determines necessary to protect the health, safety, or welfare of students enrolled at the school based on evidence that conditions at the school present a danger to the health, safety, or welfare of the students.

(b) The commissioner must notify the charter holder in writing of the action taken in subsection (a) of this section.

(c) If the commissioner's actions under subsection (a) of this section relate to circumstances that present an imminent danger of ma-

terial harm to the health, safety, or welfare of students, the open-enrollment charter school may not receive state funds and may not resume operating until a determination is made that:

(1) despite initial evidence, the conditions at the school do not present an imminent danger of material harm to the health, safety, or welfare of students; or

(2) the conditions at the school that presented an imminent danger of material harm to the health, safety, or welfare of students have been corrected.

(d) Not later than the third business day after the date the commissioner acts under subsection (a) of this section to address circumstances that present an imminent danger of material harm to the health, safety, or welfare of students, the commissioner shall provide the charter holder an opportunity for a hearing.

(e) The hearing under this section shall be conducted under the procedures governing informal review of a preliminary investigative report specified in Chapter 157, Subchapter EE, Division 1, of this title (relating to Informal Review).

(f) An action under subsection (a) of this section to address circumstances that present an imminent danger of material harm to the health, safety, or welfare of students remains in effect until a determination under subsection (e) of this section becomes final.

(1) If the determination is in favor of the charter holder, the commissioner must cease the action under subsection (a) of this section immediately and restore all funds to which the charter holder would be entitled but for such action.

(2) If the determination is against the charter holder, the commissioner must initiate adverse action against the charter under §100.1049 of this title (relating to Revocation and Modification of Governance of an Open-Enrollment Charter). The action under subsection (a) of this section then remains in effect until the final decision under §100.1049 of this title.

§100.1049. Revocation and Modification of Governance of an Open-Enrollment Charter.

(a) Mandatory revocation or reconstitution. Except as provided by subsection (b) of this section, the commissioner of education shall either revoke the charter of an open-enrollment charter school or reconstitute the governing body of the charter holder if the commissioner determines that the charter holder:

(1) committed a material violation of the charter, including failure to satisfy accountability provisions prescribed by the charter;

(2) failed to satisfy generally accepted accounting standards of fiscal management;

(3) failed to protect the health, safety, or welfare of the students enrolled at the school;

(4) failed to comply with Texas Education Code (TEC), Chapter 12, Subchapter D, or another applicable law or rule;

(5) failed to satisfy the performance framework standards as set forth in the Charter School Performance Framework Manual established under TEC, §12.1181; or

(6) is imminently insolvent as determined by the commissioner in accordance with §100.1051(c) of this title (relating to Standards to Revoke and Modify the Governance of an Open-Enrollment Charter).

(b) Mandatory revocation.

(1) Use of criteria. Notwithstanding §100.1051 of this title, the commissioner shall revoke the charter of an open-enrollment charter school if for the three preceding school years:

(A) the charter holder has been assigned an "academically unacceptable" performance rating under TEC, Chapter 39, Subchapter C;

(B) the charter holder has been assigned a financial accountability performance rating under TEC, Chapter 39, Subchapter D, indicating financial performance lower than satisfactory; or

(C) the charter holder has been assigned any combination of an academic performance rating of "academically unacceptable" under TEC, Chapter 39, Subchapter C, and/or a financial performance rating lower than satisfactory under TEC, Chapter 39, Subchapter D. For purposes of determining a combination, a school that earned a financial and academic rating as described in subparagraphs (A) and (B) of this paragraph in the same year will count once.

(2) Use of determinations and data. The following provisions apply to a mandatory revocation under this section.

(A) If a rating or scaled score is not issued during one or more of the preceding school years, then the term "three preceding school years" means the most recent three school years during which a rating was issued.

(B) For purposes of revocation under paragraph (1)(A) of this subsection, the term "unacceptable performance" means an academic accountability rating that is unacceptable as defined in §100.1001(8) of this title (relating to Definitions).

(C) For purposes of revocation under paragraph (1)(B) of this subsection, the term "financial performance lower than satisfactory" means a financial accountability rating that is lower than satisfactory as defined in §100.1001(9) of this title.

(c) Notice and content of decision to revoke or modify. The commissioner shall provide written notice to the charter holder of the commissioner's decision to revoke or modify the governance of a charter. The notice shall include an explanation of the factual and legal basis for the decision, a description of the legally relevant factors considered, an explanation of why the result reached is reasonable, and a description of the procedures to seek a review of the decision.

(d) State Office of Administrative Hearing (SOAH) review of revocation. A decision by the commissioner to revoke the charter of an open-enrollment charter school under TEC, §12.115, is subject to review by the SOAH under an arbitrary and capricious or clearly erroneous standard as described by Chapter 157, Subchapter EE, Division 4, of this title (relating to State Office of Administrative Hearings Arbitrary and Capricious or Clearly Erroneous Review).

(e) Reconstitution of governing body of charter holder and/or creation of a new 501(c)(3) organization. With the exception of revocation actions taken under subsection (b) of this section, the commissioner may choose to reconstitute the governing board of a charter holder and/or require the creation of a new 501(c)(3) organization if it is determined that the charter holder committed any violation under subsection (a) of this section.

(1) To reconstitute the board, the commissioner shall appoint members to the governing body and shall consider local input from community members and parents as well as appropriate credentials and expertise for membership, including financial expertise, residency, and educator background. The commissioner may reappoint current members of the governing body.

(2) The commissioner may also require the charter holder board to create a new single purpose organization that is exempt from taxation under 26 United States Code, §501(c)(3), if the governing body of a charter holder subject to reconstitution governs enterprises other than the open-enrollment charter school. The commissioner shall appoint the members of the governing body of the newly created organization.

(3) The commissioner may require the charter holder to surrender the charter to the commissioner for transfer to the newly created organization.

(4) A decision by the commissioner to reconstitute the governing body of the charter of an open-enrollment charter school or to create a new 501(c)(3) organization under the Internal Revenue Code of 1986 under TEC, §12.115, is subject to a hearing as described by Chapter 157, Subchapter EE, Division 2, of this title (relating to Hearing Following Investigation).

§100.1051. Standards to Revoke and Modify the Governance of an Open-Enrollment Charter.

(a) Criteria for taking action. The action the commissioner of education takes under §100.1049(a) of this title (relating to Revocation and Modification of Governance of an Open-Enrollment Charter) to either revoke or modify the governance of a charter shall be based on the best interest of the charter school's students as it relates to the violation charged in the notice, the severity of the violation, and any previous violation the school has committed.

(1) These criteria are not listed in order of importance. Rather, the commissioner shall assign weight to each criterion as indicated by the facts of the case presented. For example, serious or persistent charter violations may warrant revocation or non-renewal even if the violations benefited or had neutral effect on the students enrolled in the charter school. The state's interest in legal compliance is sufficient basis for action.

(2) The "best interest of the charter school's students" is not a decisional criterion independent of the violation charged in the notice. Rather, the commissioner shall consider the best interests of students only as this criterion relates to the violation charged in the notice. For example, evidence of serious and persistent violations in one area of performance may not be offset or excused by evidence of benefit to students in an area of performance that is unrelated to the violation charged in the notice.

(b) Minimum academic performance required. Continuation of an open-enrollment charter is contingent on satisfactory academic performance as measured by the academic accountability ratings and accreditation statuses assigned under the Texas Education Code (TEC), Chapter 39, as well as any supplemental accountability requirements in the open-enrollment charter pursuant to TEC, §12.111(a)(3) and (4). Such supplemental requirements are in addition to, and may not supplant, satisfactory academic performance as measured by the ratings assigned under TEC, Chapter 39.

(1) Consideration of campus ratings. The commissioner shall revoke an open-enrollment charter of a charter holder if all of the campuses operated under that charter have been closed under TEC, Chapter 39.

(2) Determination of academic performance. For purposes of this subsection, required minimum academic performance shall be determined as follows.

(A) An "unsatisfactory rating" shall mean an academic accountability rating that is "academically unacceptable" as defined in §100.1001(8) of this title (relating to Definitions). For any school year, if the Texas Education Agency (TEA) assigns no district-level ratings

to open-enrollment charter schools generally, but does assign campus-level ratings in that year, then unsatisfactory ratings for a majority of the campuses operated by the charter holder in such year shall constitute an unsatisfactory rating for the charter holder at the "district" level.

(B) A "satisfactory rating" shall mean an academic accountability rating that is "academically acceptable" as defined in §100.1001(8) of this title.

(C) Ratings are "consecutive" if they are not separated by a rating period in which TEA assigned accountability ratings to charter schools. For example, TEA did not assign academic accountability ratings to charter schools for the 2011-2012 school year. Thus, the ratings for the 2010-2011 and 2012-2013 school years are consecutive both for charter holders registered under the standard accountability system as well as charter holders registered under the alternative education accountability (AEA) system.

(D) If the performance of an applicant for renewal under §100.1037 of this title (relating to Renewal of an Open-Enrollment Charter) cannot be determined because the applicant's charter school has not received accountability ratings and/or accreditation statuses for a sufficient number of years to support a judgment on its student performance:

(i) the commissioner shall make a decision on student performance under the discretionary review process under §100.1037(d) of this title; and

(ii) the commissioner's review under this subparagraph shall include the charter's annual evaluation under the Charter School Performance Framework Manual established under TEC, §12.1181, and the criteria described in §100.1039 of this title (relating to Standards for Discretionary Renewal).

(E) If the performance of a charter holder cannot be determined because the small numbers of students or the grade levels served by the program prevented, limited, or significantly impacted the application of TEA's standard ratings and/or accreditation criteria, then the commissioner may evaluate substitute data chosen by the commissioner in taking action under this section.

(i) Based on evaluation under this subparagraph, the commissioner shall determine whether the applicant has demonstrated a history of unsatisfactory academic performance. Any appeal under §100.1049 of this title of a determination under this clause may include the question whether the campus has had unsatisfactory academic performance.

(ii) Regardless of whether the campus has satisfactory student performance, the commissioner may modify the open-enrollment charter to require the charter holder to serve additional students or grade levels that will cause the campus to receive academic ratings and/or statuses in the future.

(F) If the performance of a charter holder cannot be determined because a high proportion of students served are in prekindergarten-Grade 2 or another grade for which an assessment instrument is not administered under TEC, §39.023, then the commissioner may evaluate the performance of the charter holder.

(3) Finality of ratings.

(A) Any appeal to a specific rating must be brought using the appeals procedures in the relevant accountability manual, which includes AEA, adopted under Chapter 97, Subchapter AA, of this title (relating to Accountability and Performance Monitoring).

(B) Any challenge to a TEA rule, ratings standard, or process must be brought using the procedures outlined in Texas Gov-

ernment Code, Chapter 2001, for requesting agency rulemaking or challenging agency rules.

(c) Minimum financial performance required. Continuation of an open-enrollment charter is contingent on the charter holder satisfying generally accepted accounting standards of fiscal management.

(1) Determination. For purposes of this subsection, generally accepted standards of fiscal management shall be determined as follows.

(A) Any of the following constitutes failure to comply with generally accepted standards of fiscal management.

(i) Payment is made in excess of bonafide compensation agreements. The payment of compensation to an individual in excess of the fair market value of the services provided is a serious unsatisfactory financial performance. For purposes of this subsection, the fair market value of the services rendered shall be based on the individual's education, experience, prior salary history, the job duties actually performed, and what a typical person with similar skills, experience, and job duties would earn.

(ii) Rental or purchase of property is in excess of its fair market value.

(iii) The charter school received a significant over-allocation from the Foundation School Program based on data reported by the charter holder.

(iv) The charter school becomes imminently insolvent as determined in subparagraph (C) of this paragraph.

(v) The charter school's financial auditor issues an adverse opinion regarding the school's financial statements or the school's financial auditor disclaims an opinion on the financial statements, and the issue resulting in the adverse or disclaimed opinion involves a significant amount of financial resources that were not properly documented or a material weakness that led to the misallocation of financial resources.

(vi) The charter holder exhibits other instances of fiscal mismanagement, including, but not limited to, the loss of financial records or a material non-compliance with §109.41 of this title (relating to Financial Accountability System Resource Guide) or related supplement resulting in a significant wasting of financial resources.

(vii) A final investigative report issued by TEA finds material noncompliance with the standards of this subsection.

(viii) The annual audit report required by TEC, §44.008, is more than 180 days delinquent.

(ix) The charter holder's property is subject to a lien, levy, or other garnishment and that lien, levy, or other garnishment is not removed within 30 days.

(x) The charter holder is subject to a warrant hold and that warrant hold is not removed within 30 days.

(xi) The charter holder loses its eligibility to participate in child nutrition programs for a period of more than 30 days.

(xii) The charter holder has received an audit containing an adverse or disclaimed opinion, and based on the opinion is assigned a financial accountability rating that is less than satisfactory.

(B) Charter holder financial performance will be evaluated in accordance with the following standards.

(i) Step transactions. The commissioner may view the transaction as a whole and may disregard any non-substantive intervening transaction taken to achieve the final results.

(ii) Arm's length transaction. A transaction that is described in subparagraph (A) of this paragraph that is the result of an arm's length transaction between completely unrelated parties is only a serious unsatisfactory financial performance if the transaction resulted in a significant wasting of financial resources.

(C) For purposes of this section, "imminently insolvent" means that the charter holder meets one of the following standards:

(i) has incurred liabilities in excess of net assets;

(ii) is unable to pay its debts or financial obligations within 90 days of the date they become due;

(iii) has declared bankruptcy;

(iv) has otherwise sought the protection of bankruptcy laws;

(v) had a lien or warrant hold placed against it by the Internal Revenue Service;

(vi) had a warrant hold placed against it by the Teacher Retirement System; or

(vii) has a judgment lien placed against it.

(2) Finality of audits and reports.

(A) Any review of a specific audited financial statement or investigative report must be brought using the procedures provided in the notice of the statement or report.

(B) Any challenge to a TEA rule, financial standard, or audit procedure must be brought using the procedures outlined in Texas Government Code, Chapter 2001, for requesting agency rulemaking or challenging agency rules.

(d) Minimum compliance performance required. Continuation of an open-enrollment charter is contingent on the charter holder's compliance with TEC, Chapter 12, Subchapter D; federal and state laws and rules; financial accountability standards, including student attendance accounting and grant requirements; and data integrity standards as demonstrated by monitoring reports under TEC, §7.028, final investigative reports issued by TEA, and other evidence.

(1) Standard of required performance. The open-enrollment charter authorizing a charter school that has unsatisfactory compliance performance for three consecutive school years will be revoked.

(2) Determination of performance. For purposes of this subsection, required minimum compliance performance shall be determined as follows. A charter holder's compliance with TEC, Chapter 12, Subchapter D; federal and state laws and rules; financial accountability standards, including student attendance accounting and grant requirements; or data integrity standards may be determined by applying the applicable standards to the facts as found by TEA monitoring reports under TEC, §7.028, or final investigative reports issued by TEA. Such reports establish non-compliance if the facts found therein are not in compliance with the standards set forth in this subsection. Other evidence may be considered.

(3) Finality of compliance reports.

(A) Any review of a specific monitoring report or investigative report must be brought using the procedures described in the notice of the report.

(B) Any challenge to a TEA rule or compliance standard must be brought using the procedures outlined in Texas Government Code, Chapter 2001, for requesting agency rulemaking or challenging agency rules.

(e) Minimum health and safety performance required. Continuation of an open-enrollment charter is contingent on the charter holder protecting the health, safety, and welfare of the students enrolled at the school, as determined by the commissioner under §100.1047 of this title (relating to Intervention Based on Health, Safety, or Welfare of Students) and this subsection or by an official report issued by a federal, state, or local authority with jurisdiction to issue the report.

(1) Standard of required performance. The open-enrollment charter authorizing a charter school that fails to protect the health, safety, or welfare of the students enrolled at its school while on school property, while at school-related events, or at any time while under the supervision of school personnel shall be revoked effective immediately.

(2) Determination of performance. For purposes of this subsection, required minimum health and safety performance shall be determined as follows.

(A) A final investigative report issued by TEA is admissible to prove whether the charter holder failed to protect the health, safety, or welfare of the students enrolled at its school.

(B) An official report issued by a federal, state, or local authority acting within its jurisdiction, as well as hearsay evidence and telephone testimony offered by officials from such authority, are admissible to prove whether the charter holder failed to protect the health, safety, or welfare of the students enrolled at its school.

(C) Documents and testimony considered by the commissioner in making a determination under §100.1047 of this title are admissible to prove whether the charter holder failed to protect the health, safety, or welfare of the students enrolled at its school.

(3) Finality of health and safety reports.

(A) Any appeal to a specific official report issued by a federal, state, or local authority acting within its jurisdiction must be brought using the procedures provided in law for the review of such findings.

(B) Any challenge to a TEA rule or compliance standard must be brought using the procedures outlined in Texas Government Code, Chapter 2001, for requesting agency rulemaking or challenging agency rules.

(f) Minimum charter contract performance required. Continuation of an open-enrollment charter is contingent on the charter holder's implementation of and compliance with the terms of its open-enrollment charter as defined by §100.1001(21) of this title.

(1) Standard of required performance. The open-enrollment charter authorizing a charter school that commits a material violation of its open-enrollment charter shall be revoked.

(2) Determination of performance. For purposes of this subsection, required minimum charter performance shall be determined as follows.

(A) A charter holder's compliance with its open-enrollment charter may be determined by applying the charter terms to the facts as found by TEA monitoring reports under TEC, §7.028, or final investigative reports issued by TEA. Such reports establish non-compliance if the facts found therein are not in compliance with these terms. Other evidence may be considered.

(B) A violation of the contract for charter, request for applications (RFA), or other document approved by the State Board of Education (SBOE) or of a condition, amendment, modification, or revision of a charter approved by the commissioner is material if it directly violates the purpose of the contract, the RFA, or other documents

approved by the SBOE or a condition, amendment, modification, or revision of the contract.

(C) An open-enrollment charter as defined by §100.1001(21) of this title includes all applicable state and federal laws, rules, and regulations. A violation of such laws, rules, or regulations may be considered both under this subsection and under subsections (b)-(e) of this section, as appropriate.

(3) Finality of charter violation reports. Any review of a specific investigative report must be brought using the procedures set forth in the notice of the report.

(g) Performance frameworks. Continuation of an open-enrollment charter is contingent upon the charter holder's satisfaction of standards set forth in the Charter School Performance Framework Manual established under TEC, §12.1181.

§100.1053. Management of Charter Campus(es) Following Revocation, Surrender, or Expiration.

Upon revocation, surrender, or expiration of a charter, the commissioner of education or the commissioner's designee may:

(1) assign one or more campuses to a consenting charter holder that meets the minimum qualifications for a campus expansion amendment approval as designated in §100.1035 of this title (relating to Charter Amendment); or

(2) provide for the management of the day-to-day operations of the campus(es) until alternative arrangements have been made.

§100.1055. Eligible Entity; Change in Status or Revocation.

(a) A charter holder shall take and refrain from all acts necessary to maintain its status as an "eligible entity" within the meaning of Texas Education Code, §12.101(a), and shall notify the commissioner of education immediately in writing of any change in such status.

(b) If a charter holder's exemption from taxation under 26 United States Code, §501(c)(3), is ever revoked by action of the Internal Revenue Service, for any reason, the charter shall be null and void and shall return to the commissioner without any further action on the part of the commissioner.

(c) Failure to act in accordance with subsections (a) and (b) of this section shall not only affect eligibility for state funding as outlined in §100.1061(d)(1) of this title (relating to State Funding), it will also constitute a material violation of the charter contract.

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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Texas Education Agency

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



DIVISION 4. [PROPERTY OF OPEN-ENROLLMENT] CHARTER SCHOOL FUNDING AND FINANCIAL OPERATIONS [SCHOOLS]

19 TAC §§100.1061, 100.1063, 100.1065, 100.1067, 100.1069, 100.1071, 100.1073, 100.1075, 100.1077, 100.1079

STATUTORY AUTHORITY. The new sections are proposed under Texas Education Code (TEC), §12.101, which requires the commissioner to adopt rules regarding the criteria for granting a charter and providing notification for the establishment of new charters or campuses; TEC, §12.1011, which requires the commissioner to adopt rules regarding charter authorization for high-performing entities; TEC, §12.103, which allows the commissioner to adopt rules regarding applicable provisions to open-enrollment charter schools; TEC, §12.104, as amended by House Bill (HB) 189, 87th Texas Legislature, Regular Session, 2021, which allows the commissioner to adopt rules permitting an open-enrollment charter school to voluntarily participate in any state program available to school districts if the school complies with all terms of the program; TEC, §12.1055, which allows the commissioner to adopt rules regarding nepotism under Texas Government Code, Chapter 573; TEC, §12.1058, as amended by HB 1707, 88th Texas Legislature, Regular Session, 2023, which requires a political subdivision to consider an open-enrollment charter school as a school district for the purposes of municipal ordinances if the open-enrollment charter school meets notification requirements; TEC, §12.110, which requires the commissioner to adopt an application form and procedure that must be used to apply for an open-enrollment charter school; TEC, §12.1101, which requires the commissioner to adopt a procedure for providing notice to the outlined persons on receipt by the commissioner of an application for a charter for an open-enrollment charter school or of notice of the establishment of a campus; TEC, §12.114, which allows the commissioner to define expansion amendment requests; TEC, §12.1141, as amended by Senate Bill (SB) 879, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to adopt a procedure for renewal, denial of renewal, or expiration of a charter for an open-enrollment charter school at the end of the term of the charter; TEC, §12.1166, which requires the commissioner to adopt a rule defining "related party;" TEC, §12.1173, as amended by SB 2293, 86th Texas Legislature, 2019, which requires the commissioner to adopt rules to implement charter school waiting lists for admission; TEC, §12.1181, requires the commissioner to adopt performance frameworks that establish standards by which to measure the performance of an open-enrollment charter school; TEC, §12.123, which requires the commissioner to adopt rules prescribing the training for members of the governing body of a charter school and its officers; TEC, §12.153, which allows the commissioner to adopt rules to implement college of university or junior college charter schools; TEC, §12.265, as amended by SB 1615, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to adopt rules necessary to administer adult high school charter school programs; and TEC, §39.0548, which requires the commissioner to authorize and determine designation as a dropout recovery school.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §§12.101; 12.1011; 12.103; 12.104, as amended by House Bill (HB) 189, 87th Texas Legislature, Regular Session, 2021; 12.1055; 12.1058, as amended by HB 1707, 88th Texas Legislature, Regular Session, 2023; 12.110; 12.1101; 12.114; 12.1141, as amended by Senate Bill (SB) 879, 87th Texas Legislature, Regular Session, 2021; 12.1166; 12.1173, as amended by SB 2293, 86th Texas Legislature, 2019; 12.1181; 12.123; 12.153; 12.265, as amended by SB 1615, 87th Texas Legislature, Regular Session, 2021; and 39.0548.

§100.1061. State Funding.

(a) Funding formula elements. A charter school is entitled to funding from both tiers of the Foundation School Program (FSP) in accordance with the funding formulas for school districts pursuant to Texas Education Code (TEC), Chapter 42.

(1) Tier I program allocations are determined by substituting the statewide average adjusted allotment in place of the district's calculated adjusted allotment. The state average adjusted allotment takes into account the cost of education index and the small, mid-size, and sparsity adjustments specified in TEC, §§42.102, 42.103, 42.104, and 42.105. The state average adjusted allotment is computed by averaging the adjusted allotment for each independent school district (ISD) in the state for the relevant school year.

(2) An allocation for the guaranteed yield allotment for Tier II of the FSP is determined by substituting a statewide average enrichment tax rate in place of the district's calculated enrichment tax rate (DTR) pursuant to TEC, §42.302. The state average tax rate is computed by averaging the DTR for each component of Tier II for each ISD in the state for the relevant school year.

(b) Implementation schedule. The formula elements described in subsection (a) of this section will take effect for charter schools that begin operation in the 2001-2002 school year or later. Charter schools that report attendance that occurs prior to September 2, 2001, are considered to be in operation on September 1, 2001, and will be funded as described in House Bill 6, Section 40(b), 77th Texas Legislature, 2001. Charter schools that report no attendance that occurs prior to September 2, 2001, are considered to begin operation in the 2001-2002 school year or later and will be funded according to subsection (a) of this section and TEC, §12.106.

(c) Tuition and fees. The governing board of the charter school shall adopt policies that clearly outline allowable and unallowable fees subject to requirements of TEC, §11.158 (a) and (b). A charter school shall not charge tuition and shall not charge a fee except:

(1) a charter school may charge a fee listed in TEC, §11.158(a), and shall not charge any fee prohibited under TEC, §11.158(b);

(2) if authorized under §100.1201(6) of this title (relating to Voluntary Participation in State Programs), a charter holder may charge tuition for certain prekindergarten classes in compliance with TEC, §29.1531 and §29.1532; and

(3) a charter school shall accept tuition for students holding certain student visas as described in TEC, §25.0031(a).

(d) Eligibility for state funding. A charter holder is not eligible to receive state funds, including grant funds, prior to execution of its contract by the charter holder or charter school board chair and the commissioner of education.

(1) If a charter holder, before or without approval of an amendment under §100.1035 of this title (relating to Charter Amendment), extends the grade levels it serves, adds or changes the address of a campus, facility, or site, or exceeds its maximum allowable enrollment, then the charter holder is not eligible to receive state funds for the activities of the unapproved amendment of its charter school operations.

(2) A former charter holder is not eligible to receive state funds.

(e) Return of overallocated funds.

(1) Within 30 days of receiving notice of an overallocation and a request for refund under TEC, §42.258, a charter holder shall transmit to the Texas Education Agency (TEA) an amount equal to the

requested refund. Failure to comply with a request for refund under this subsection is a material charter violation and a management company breach. Funds allocated for student attendance in a program affected by an unapproved expansion under subsection (d)(1) of this section are overallocated within the meaning of this subsection.

(2) If the charter holder fails to make the requested refund, TEA may recover the overallocation by any means permitted by law, including, but not limited to, the process set forth in TEC, §42.258.

(3) Notwithstanding paragraph (2) of this subsection, TEA may not garnish or otherwise recover funds actually paid to and received by a charter holder under TEC, §12.106, if:

(A) the basis of the garnishment or recovery is that:

(i) the number of students enrolled in the school during a school year exceeded the student enrollment described by the school's charter during that period; and

(ii) the school received the funds under TEC, §12.106, based on an accurate report of the school's actual student enrollment; and

(B) the school used all funds received under TEC, §12.106, to provide education services to students and:

(i) submits to the commissioner a timely request to revise the maximum student enrollment described by the school's charter and the commissioner does not notify the school in writing of an objection to the proposed revision before the 90th day after the date on which the commissioner received the request, provided that the number of students enrolled at the school does not exceed the enrollment described by the school's request; or

(ii) exceeds the maximum student enrollment described by the school's charter only because a court mandated that a specific child enroll in that school.

(4) Nothing in paragraph (3) of this subsection requires the agency to fund activities that are ineligible for state funding under subsection (d)(1) of this section.

§100.1063. Status and Use of State Funds; Depository Contract.

(a) Status and use of state funds.

(1) State funds received by a charter holder are public funds for all purposes under state law and may be used only for a purpose for which a school district may use local funds under Texas Education Code (TEC), §45.105(c). Any other use or application of such funds constitutes misuse and misapplication of public funds and is subject to the civil and criminal laws governing misuse or misapplication of Texas public funds.

(2) State funds received by a charter holder are held by the charter holder in trust for the benefit of the students of the charter school. In their use of public funds, the governing body of a charter holder, and the governing body and officers of a charter school, shall be held to the standard of care and fiduciary duties that a trustee owes a beneficiary under Texas law.

(3) A charter school shall accept tuition for students holding certain student visas as described in TEC, §25.0031(a).

(b) Depository contract. Pending their use, state funds received by a charter holder must be deposited into a bank with which the charter holder has entered into a depository contract. Each year within the period prescribed by §100.1111 of this title (relating to Annual Report on Open-Enrollment Charter Governance) for filing articles of incorporation, the charter holder must file a copy of the depository contract with the Texas Education Agency division responsible for

school financial audits; however, if there has been no change since the last filing, the charter holder may file a statement to this effect in lieu of a copy of the depository contract.

(1) State funds received by a charter holder must be deposited into an account owned and controlled exclusively by the charter holder pending their use. Once properly deposited, the charter holder may immediately use the funds for any purpose described in subsection (a)(1) of this section, subject to the standard of care and fiduciary duties described in subsection (a)(2) of this section.

(2) A "bank" is defined by TEC, §45.201. Although the term excludes a bank the deposits of which are not insured by the Federal Deposit Insurance Corporation (FDIC), deposits exceeding FDIC-insured amounts need not be collateralized for the institution to constitute a "bank" under this subsection.

(3) Notwithstanding this subsection, if required by a contract executed prior to September 1, 2001, state funds may be deposited into an account managed by a bond trustee acting on behalf of a charter holder for the sole purpose of complying with debt service obligations of the charter holder on a bond issued under TEC, Chapter 53.

§100.1065. Investment of State Funds.

(a) This section applies to a charter holder unless alternative requirements for investing state funds have been approved by the commissioner of education under §100.1079 of this title (relating to Optional Open-Enrollment Charter Provisions for Contracting and Purchasing), and the open-enrollment charter has been amended by the commissioner to adopt the approved procedures.

(b) A charter holder shall invest state funds in accordance with Texas Government Code, §§2256.009-2256.016.

(1) A requirement in those sections that applies to a school district or the board of trustees of a school district applies to a charter school, the governing body of a charter holder, or the governing body of a charter school.

(2) State funds invested by a charter holder shall be maintained in a discrete charter investment account, separate and distinct from the operating accounts for the charter school and separate and distinct from any investment accounts related to non-charter activities.

(3) A charter holder shall invest state funds in accordance with any applicable provision or covenant contained in a debt instrument, bond indenture, or similar agreement.

(4) Nothing in this subsection shall authorize the investment of state or federal grant funds, unless investment of such funds is expressly authorized under the terms of the grant.

(c) Investment of state funds shall be made with judgment and care, under prevailing circumstances, that a person of prudence, discretion, and intelligence would exercise in the management of the person's own affairs, not for speculation, but for investment, considering the probable safety of capital and the probable income to be derived.

(1) Investment of state funds shall be governed by the following investment objectives, in order of priority:

- (A) preservation and safety of principal;
- (B) liquidity; and
- (C) yield.

(2) In determining whether a charter holder, or its employee or agent, has exercised prudence with respect to an investment decision respecting state funds, the determination shall be made taking into consideration:

(A) the investment of all funds, or funds under the entity's control, over which the officer had responsibility rather than a consideration as to the prudence of a single investment; and

(B) whether the investment decision was consistent with the written investment policy of the entity.

§100.1067. Accounting for State and Federal Funds.

(a) Fiscal year. A charter holder shall adopt a fiscal year consistent with Texas Education Code (TEC), §44.0011.

(b) Financial accounting. A charter holder shall comply fully with:

(1) Generally Accepted Accounting Principles;

(2) the Financial Accountability System Resource Guide, as adopted by reference in §109.41 of this title (relating to Financial Accountability System Resource Guide);

(3) the federal standards for financial management systems, 34 Code of Federal Regulations, §80.20, Office of Management and Budget Circular A-87, and/or other applicable federal standards; and

(4) the financial accountability rating system (Financial Integrity Rating System of Texas for charter schools) specified in Chapter 109, Subchapter AA, of this title (relating to Commissioner's Rules Concerning Financial Accountability).

(c) Annual audit. A charter holder shall at its own expense have the financial and programmatic operations of the charter school audited annually by a certified public accountant licensed by the Texas State Board of Public Accountancy and registered as a provider of public accounting services.

(1) The charter holder shall file a copy of the annual audit report, approved by a charter holder, with the Texas Education Agency (TEA) division responsible for school financial audits not later than the deadline specified by TEC, §44.008.

(2) The audit must comply with Generally Accepted Auditing Standards and must include an audit of the accuracy of the fiscal information provided by the charter school through the Public Education Information Management System.

(3) Financial statements in the audit must comply with Government Auditing Standards and the Office of Management and Budget Circular A-133 or its successor.

(d) Attendance accounting. A charter holder shall comply with the Student Attendance Accounting Handbook, as adopted by reference in §129.1025 of this title (relating to Adoption by Reference: Student Attendance Accounting Handbook); TEC, §25.002; and Chapter 129 of this title (relating to Student Attendance), except that a charter school shall report its actual student attendance data to TEA at six-week intervals or as directed by TEA.

(e) Non-charter activities. A charter holder shall keep separate and distinct accounting, auditing, budgeting, reporting, and recordkeeping systems for the management and operation of the charter school.

(1) Any business activities of a charter holder not directly related to the management and operation of the program described in the open-enrollment charter shall be kept in separate and distinct accounting, auditing, budgeting, reporting, and recordkeeping systems from those recording the business activities of the charter school.

(2) Any commingling of charter and non-charter business in the accounting, auditing, budgeting, reporting, and recordkeeping systems of the charter school shall be a material charter violation.

(f) Interested transactions. A charter holder shall comply with Local Government Code, Chapter 171, in the manner provided by the conflict of interest provisions described in §§100.1143-100.1151 of this title (relating to Conflicts of Interest and Board Member Compensation; Exception; General Conflict of Interest Provisions; Conflicts Requiring Affidavit and Abstention from Voting; Conflicts Requiring Separate Vote on Budget; and Acting as Surety and Other Conflicts; Criminal Penalties). In addition, the following shall be discretely and clearly recorded in the accounting, auditing, budgeting, reporting, and recordkeeping systems for the management and operation of the charter school:

(1) financial transactions between the charter school and the non-charter activities of the charter holder;

(2) financial transactions between the charter school and an officer or employee of the charter holder or the charter school;

(3) financial transactions between the charter school and a member of the governing body of the charter holder or the charter school;

(4) financial transactions between the charter school and a management company charged with managing the finances of a charter school; and

(5) financial transactions between the charter school and any other person or entity in a position of influence over the charter holder or the charter school.

(g) Position of influence. A person or entity is in a position of influence over the charter holder or the charter school, within the meaning of subsection (f)(5) of this section, if:

(1) the charter holder or charter school is a subsidiary of or shares governing body members, officers, or employees with another organization and:

(A) the person or entity is a shareholder, partner, administrator, official, or employee of the other organization; or

(B) the person or entity by any other means participates in the business decisions of the affiliate or parent organization; or

(2) a relative of the person is in a position of influence over the charter holder or the charter school under this section, within the third degree by consanguinity or affinity, as determined under Texas Government Code, §§573.021-573.025, and §100.1135 of this title (relating to Relationships By Consanguinity or By Affinity).

§100.1069. Disclosure of Related Party Transactions.

(a) Related parties defined. A related party is such a party as defined in §100.1001 of this title (relating to Definitions) or identified as at least one of the following:

(1) a founder or current or former board member, administrator, or officer who meets the criteria in the following subparagraphs. For purposes of this paragraph, a person is a former board member, administrator, or officer if the person served in that capacity within one year of the date on which a financial transaction between the charter holder and a related party occurred:

(A) a board member, administrator, or officer of an open-enrollment charter school; or

(B) related within the third degree of consanguinity or affinity, as determined under Texas Government Code, Chapter 573, to a board member, administrator, or officer of an open-enrollment charter school;

(2) a charter holder's related organizations, joint ventures, and jointly governed organizations, including a management company

or any other charter schools or network in another state operated by the same charter management company or under the same charter school network brand-identity by license, other written agreement or otherwise;

(3) an open-enrollment charter school's board members, administrators, or officers or a person related to a board member, administrator, or officer within the third degree of consanguinity or affinity, as determined under Texas Government Code, Chapter 573; or

(4) any other disqualified person, as that term is defined by 26 United States Code, §4958(f), including:

(A) any person who was, at any time during the 5-year period ending on the date of such transaction, in a position to exercise substantial influence over the affairs of the organization, such as a voting member of the governing body, a person who has ultimate responsibility for implementing the decisions of the governing body or for supervising the management, administration, or operation of the organization, or a person who has ultimate responsibility for managing the finances of the organization;

(B) a member of the family of an individual described in subparagraph (A) of this paragraph; or

(C) a 35% controlled entity.

(b) Related party property transactions. A charter holder shall notify the commissioner of education that it intends to enter into a property transaction with a related party as defined by subsection (a) of this section and §100.1001 of this title.

(1) The charter holder shall provide such notice to the commissioner through the Texas Education Agency division responsible for charter schools no later than 10 days prior to the transaction.

(2) If the amount of the transaction exceeds \$5,000, upon request and by a date specified by the commissioner, the charter holder shall provide an appraisal from a certified appraiser to TEA.

(c) Other related party transactions. All other related party transactions shall be reported in the annual audit as required by §100.1067(f) of this title (related to Accounting for State and Federal Funds).

§100.1071. Disclosure of Campaign Contributions.

(a) The governing body of a charter holder shall adopt policies implementing the disclosure requirements of State Board of Education Operating Rule, §4.3 (Disclosure of Campaign Contributions and Gifts), or its successor, and shall insure compliance by:

(1) the members of the governing body of the charter holder and charter school;

(2) the employees and agents of the charter holder and charter school; and

(3) any management company under contract with the charter holder or charter school.

(b) The governing body of a charter holder shall insure that no state funds are expended by the charter holder, the charter school, or its management company for any political advertising within the meaning of Texas Election Code, §251.001(16), as interpreted by the advisory opinions of the Texas Ethics Commission.

§100.1073. Disclosure of Financial Information.

The governing board of an open-enrollment charter school shall continuously post on the school's internet website the following information:

(1) the salary of the school's superintendent or, as applicable, the administrator serving as the educational leader and chief executive officer; and

(2) the school's annual financial statement.

§100.1075. Audit by Commissioner; Records in the Possession of a Management Company.

(a) Commissioner authority. To the extent consistent with subsection (b) of this section, the commissioner of education may audit the records of:

(1) a charter school;

(2) a charter holder; or

(3) a management company that has provided management services to a charter school or a charter holder.

(b) Scope of audit.

(1) An audit under subsection (a) of this section must be limited to matters directly related to the management or operation of a charter school, including the allocation of costs shared between the charter school and any non-charter business activity. The audit may examine any financial or administrative records related to the charter school that are in the possession of a management company or a former management company, including records related to the allocation of shared costs.

(2) Unless the commissioner has specific cause to conduct an additional audit, the commissioner may not conduct more than one on-site audit under this section during any fiscal year, including any financial and administrative records. For purposes of this subsection, an audit of a charter holder or management company associated with a charter school is not considered an audit of the school.

(c) Charter holder cooperation. A charter holder and its employees and agents shall fully cooperate with an audit under subsection (a) of this section and shall take all actions necessary to secure the cooperation of a management company. Failure to comply timely with a request for access to records or other cooperation from the charter holder constitutes a material charter violation.

(d) Management company cooperation. A management company and its employees and agents shall fully cooperate with an audit under subsection (a) of this section. Failure to timely comply with a request for access to records or other cooperation from the management company constitutes a management company breach, which may result in the commissioner taking action to prohibit, deny renewal of, suspend, or revoke the management contract as provided in Texas Education Code, §12.126.

§100.1077. Final Audit Upon Revocation, Surrender, or Closure of an Open-Enrollment Charter.

(a) Upon closure of a charter, the charter holder governing board must at their expense conduct a final audit.

(b) The commissioner of education will assign a conservator to oversee the winding down of charter operations, protection of school assets, and recovery of any overallocation of state funds.

(c) Revocation, surrender, or closure of a charter does not terminate the authority of the commissioner over the charter holder to ensure compliance of this section or applicable laws.

§100.1079. Optional Open-Enrollment Charter Provisions for Contracting and Purchasing.

Improvements to real property. Section 100.1101 of this title (relating to Improvements to Real Property) applies to a charter holder unless the charter holder amends its open-enrollment charter to include a

statement expressly adopting the provisions of Texas Education Code (TEC), Chapter 44, Subchapter B, as the charter holder's process for awarding a contract for the construction, repair, or renovation of a structure, road, highway, or other improvement or addition to real property. If such a statement is included in the open-enrollment charter, then the provisions of TEC, Chapter 44, Subchapter B, control in lieu of §100.1101 of this title. Nothing in this section shall require a charter holder to comply with TEC, Chapter 44, Subchapter B, except when awarding a contract for the construction, repair, or renovation of a structure, road, highway, or other improvement or addition to real property.

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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Texas Education Agency

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



DIVISION 5. PROPERTY OF OPEN-ENROLLMENT CHARTER SCHOOLS [SCHOOL GOVERNANCE]

19 TAC §§100.1091, 100.1093, 100.1095, 100.1097, 100.1099, 100.1101

STATUTORY AUTHORITY. The new sections are proposed under Texas Education Code (TEC), §12.101, which requires the commissioner to adopt rules regarding the criteria for granting a charter and providing notification for the establishment of new charters or campuses; TEC, §12.1011, which requires the commissioner to adopt rules regarding charter authorization for high-performing entities; TEC, §12.103, which allows the commissioner to adopt rules regarding applicable provisions to open-enrollment charter schools; TEC, §12.104, as amended by House Bill (HB) 189, 87th Texas Legislature, Regular Session, 2021, which allows the commissioner to adopt rules permitting an open-enrollment charter school to voluntarily participate in any state program available to school districts if the school complies with all terms of the program; TEC, §12.1055, which allows the commissioner to adopt rules regarding nepotism under Texas Government Code, Chapter 573; TEC, §12.1058, as amended by HB 1707, 88th Texas Legislature, Regular Session, 2023, which requires a political subdivision to consider an open-enrollment charter school as a school district for the purposes of municipal ordinances if the open-enrollment charter school meets notification requirements; TEC, §12.110, which requires the commissioner to adopt an application form and procedure that must be used to apply for an open-enrollment charter school; TEC, §12.1101, which requires the commissioner to adopt a procedure for providing notice to the outlined persons on receipt by the commissioner of an application for a charter for an open-enrollment charter school or of notice of the establishment of a campus; TEC, §12.114, which allows the commissioner to define expansion amendment requests; TEC, §12.1141, as amended by Senate Bill (SB) 879, 87th Texas Legislature, Regular Session, 2021, which requires the

commissioner to adopt a procedure for renewal, denial of renewal, or expiration of a charter for an open-enrollment charter school at the end of the term of the charter; TEC, §12.1166, which requires the commissioner to adopt a rule defining "related party;" TEC, §12.1173, as amended by SB 2293, 86th Texas Legislature, 2019, which requires the commissioner to adopt rules to implement charter school waiting lists for admission; TEC, §12.1181, requires the commissioner to adopt performance frameworks that establish standards by which to measure the performance of an open-enrollment charter school; TEC, §12.123, which requires the commissioner to adopt rules prescribing the training for members of the governing body of a charter school and its officers; TEC, §12.153, which allows the commissioner to adopt rules to implement college of university or junior college charter schools; TEC, §12.265, as amended by SB 1615, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to adopt rules necessary to administer adult high school charter school programs; and TEC, §39.0548, which requires the commissioner to authorize and determine designation as a dropout recovery school.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §§12.101; 12.1011; 12.103; 12.104, as amended by House Bill (HB) 189, 87th Texas Legislature, Regular Session, 2021; 12.1055; 12.1058, as amended by HB 1707, 88th Texas Legislature, Regular Session, 2023; 12.110; 12.1101; 12.114; 12.1141, as amended by Senate Bill (SB) 879, 87th Texas Legislature, Regular Session, 2021; 12.1166; 12.1173, as amended by SB 2293, 86th Texas Legislature, 2019; 12.1181; 12.123; 12.153; 12.265, as amended by SB 1615, 87th Texas Legislature, Regular Session, 2021; and 39.0548.

§100.1091. Use of Public Property by a Charter Holder.

(a) Public property. An interest in real estate or personal property acquired, improved, or maintained using state funds that were received by the charter holder on or after September 1, 2001, is public property for all purposes under state law. The date on which the property was acquired, improved, or maintained is not determinative. An interest in real estate acquired, improved, or maintained using state funds that were received by the charter holder before September 1, 2001, is public property only to the extent specified by §100.1093 of this title (relating to Property Acquired with State Funds Received Before September 1, 2001--Special Rules). Where the property is acquired with federal funds, federal law may preempt this section in whole or part.

(b) Fiduciary duty respecting public property. Public property is held by the charter holder in trust for the benefit of the students of the charter school. With respect to the public property they manage, the members of the governing body of a charter holder, and the members of the governing body and officers of a charter school, are trustees under Texas law; and the students enrolled in the school are beneficiaries of a trust. Each trustee shall be held to the standard of care and fiduciary duties that a trustee owes the beneficiary of a trust under Texas law.

(c) Use of public property. Public property may be used only for a purpose for which a school district may use school district property and only to implement a program that is described in the open-enrollment charter and is consistent with Texas Education Code (TEC), §12.107.

(1) Any use or application of public property for a purpose other than implementing a program that is described in the open-enrollment charter and is consistent with TEC, §12.107, constitutes misuse and misapplication of such property, and is subject to Texas law governing misuse or misapplication of public property.

(2) The governing body of a charter holder shall adopt and enforce local policies governing the use and application of public property by its employees, agents, contractors, and management companies. The policies shall prohibit the use or application of public property for any purpose, but a program described in the open-enrollment charter, except that the policies may authorize charter holder employees to use local telephone service, cellular phones, electronic mail, Internet connections, and similar public property for incidental personal use, if the policies:

(A) do not result in any direct cost paid with state funds, or the charter holder is reimbursed for any direct cost incurred;

(B) do not impede charter school functions;

(C) do not authorize incidental personal use of public property for private commercial purposes; and

(D) authorize only incidental amounts of employee time--time periods comparable to reasonable coffee breaks during the day--for personal matters.

(3) The governing body of a charter holder shall by separate vote approve any joint use of real property for charter and non-charter activities. In the minutes of the vote approving the joint use, the governing body of a charter holder shall set forth the methodology used to allocate shared costs and the percentage allocation basis between charter and non-charter activities.

(4) The members of the governing body of a charter holder, and the members of the governing body and officers of a charter school, shall authorize all uses and applications of the public property under their control, and shall not authorize any use or application that is inconsistent with the policy required by paragraph (2) of this subsection.

(5) If, pursuant to TEC, §12.111(9), the daily management of public property is delegated to any person, including a management company, the members of the governing body of the charter holder, and the members of the governing body and officers of the charter school, shall remain fully responsible to authorize all uses and applications of public property and enforce the policy required by paragraph (2) of this subsection.

(6) Nothing in this section prevents a charter holder from authorizing the use of its public property by a contractor for the purpose of providing goods or services under the contract, if such use is an express contract term, factored into the price of the contract, and the contract is duly authorized by the governing body of the charter holder under this section.

(d) Ownership of public property. Public property is owned by the charter holder, regardless of the funds used to acquire it. Subject to the requirements of §100.1095 of this title (relating to Possession and Control of the Public Property of a Former Charter Holder) and this section, a charter holder retains all title to the property, exercises complete control over the property, and is entitled to all use and benefit from the property.

(e) Public property mixed with private property. Property acquired, improved, or maintained partly using state funds and partly using other funds is mixed public and private property, and is subject to all requirements of this section.

(f) Accounting for public property. Each charter holder shall include in its annual audit report an exhibit identifying the fixed assets of the charter holder and the ownership interest of all parties for all real estate and capitalized personal property presently held by the charter holder or acquired, improved, or maintained by the charter holder during the term of the open-enrollment charter.

(1) Pursuant to the requirements in §109.41 of this title (relating to Financial Accountability System Resource Guide), the annual audit report must separately disclose the cost basis and accumulated depreciation of all public property as determined by this division, and all other property held, acquired, improved, or maintained by the charter holder.

(2) Alternatively, the charter holder may omit the exhibit required by paragraph (1) of this subsection and substitute a statement, in accordance with the requirements in §109.41 of this title, that all property acquired, improved, or maintained during the term of the open-enrollment charter, and all property presently held by the charter holder, is public property under this division.

(3) All property held, acquired, improved, or maintained by the charter holder is subject to this subsection regardless of whether it is public or private property.

§100.1093. Property Acquired with State Funds Received Before September 1, 2001--Special Rules.

(a) Non-public property.

(1) An interest in personal property acquired, improved, and maintained solely using state funds that were received by the charter holder before September 1, 2001, is non-public property. If any part of the state funds used were received on or after September 1, 2001, then subsection (b) of this section applies to that property.

(2) An interest in real estate acquired, improved, and maintained using less than 50% state funds is non-public property if all state funds used were received before September 1, 2001. If any part of the state funds used were received on or after September 1, 2001, then subsection (b) of this section applies to that property.

(3) Non-public property under this section is exempt from §100.1091 and §100.1095 of this title (relating to Use of Public Property by a Charter Holder and Possession and Control of the Public Property of a Former Charter Holder). However, non-public property under this section must be included in the exhibit required by §100.1091(f) of this title.

(b) Public property.

(1) An interest in real estate acquired, improved, or maintained using 50% or more state funds is public property, even if all the state funds used were received by the charter holder before September 1, 2001.

(2) An interest in real estate acquired, improved, or maintained partly using state funds received on or after September 1, 2001, and partly using state funds received before September 1, 2001, is public property.

(3) An interest in personal property acquired, improved, or maintained partly using state funds received on or after September 1, 2001, and partly using state funds received before September 1, 2001, is public property.

(4) Public property under this section is subject to §100.1091 of this title.

(5) Public property under this section is subject to §100.1095 of this title only to the extent it was acquired, improved, or maintained using state funds received on or after September 1, 2001.

§100.1095. Possession and Control of the Public Property of a Former Charter Holder.

(a) Disposition of audited property. The commissioner of education shall take possession, assume control, and supervise the disposition of the public property disclosed by the annual audit report as

filed with the Texas Education Agency (TEA) or as revised pursuant to subsection (b) of this section. At any time, the commissioner may appoint a board of managers to transfer the property or may direct the governing board of the charter holder to transfer the property. The commissioner may transfer or direct the transfer of property to any public school if the commissioner determines that the transfer is in the best interest of students. For purposes of this section, references to a charter holder refers to both an organization that currently holds a charter contract and an organization that formerly held a charter contract.

(b) Disposition of property--defective audit. If the annual audit reports filed by a former charter holder are not in substantial compliance with §100.1091(f) of this title (relating to Use of Public Property by a Charter Holder), the commissioner shall use such legal process as may be available under Texas law to take possession and assume control of all property of the former charter holder and, using such legal process, supervise the disposition of such property in accordance with law. The commissioner may transfer or direct the transfer of property to any public school if the commissioner determines that the transfer is in the best interest of students.

(1) At any time, the commissioner may determine whether the exhibits to the annual audit reports filed by a former charter holder substantially comply with §100.1091(f) of this title.

(2) At the commissioner's sole discretion, the commissioner may cure any defects in the annual audit reports by reviewing the audit reports and reclassifying the transactions and restating the financial statements or by securing, at the former charter holder's expense, such professional services as may be required to create and/or audit the necessary exhibits to the annual audit reports.

(3) The commissioner may, at the commissioner's sole discretion, take possession, assume control, and supervise the disposition of the public property disclosed by those exhibits as provided by subsection (c) of this section.

(c) Method of disposition of property. The commissioner may take possession, assume control, and supervise the disposition of property by taking one or more of the following actions.

(1) For real property purchased with funds received under the Texas Education Code (TEC), §12.106, the commissioner shall direct the charter holder to dispose of the property through one of the following methods.

(A) The charter holder may retain or sell the property and provide reimbursement to the state. The following provisions apply to a charter holder that retains or sells the property.

(i) The charter holder must notify the commissioner more than 30 calendar days prior to the last day of instruction that the charter holder intends to reimburse the state for its interest in the property and specify whether the charter holder intends to retain or sell the real property.

(ii) The charter holder must provide the commissioner a written assurance that the charter holder will comply with the requirements of TEC, §12.1284.

(iii) The charter holder must obtain the written consent of the commissioner.

(iv) The charter holder must file an affidavit in the real property records of the county in which the real property is located disclosing the state interest in the property at least 30 calendar days prior to the last day of instruction.

(v) Not later than 30 calendar days after the charter school's last day of operation, the charter holder must deposit with the

Texas Comptroller of Public Accounts an amount equal to 110% of the estimated state reimbursement for the property as directed by the commissioner, which TEA will calculate by taking the fair-market value of the property as determined by an appraisal approved by the commissioner, subtracting the principal amount of any debt described by TEC, §12.128(e), and multiplying that result by a fraction for which the numerator is the funds received under TEC, §12.106, used to purchase the property and the denominator is the funds received under TEC, §12.106, plus any non-state funds used to purchase the property. If an appraisal cannot be obtained in 30 calendar days, the charter holder may request that the commissioner grant an extension.

(vi) The charter holder must prepare and submit a final audit under TEC, §44.008. This audit must be filed by the deadline specified in TEC, §44.008, and must disclose:

(I) the total amount of funds received under TEC, §12.106, that were used to purchase each separate item of real property to be retained or sold by the charter holder;

(II) the total amount of federal funds that were used to purchase each separate item of real property to be retained or sold by the former charter holder; and

(III) the total amount of state, federal, or any other private funds that were used to purchase the property to be retained or sold by the former charter holder.

(vii) The charter holder shall timely make all required payments relating to the property, including note payments; shall maintain the premises; and shall maintain full insurance coverage as determined by the commissioner until the state has received its full reimbursement and released its claim to the property.

(viii) The following provisions apply if the charter holder elects to retain the property.

(I) After the final annual audit report is filed, TEA will calculate the final state reimbursement amount, which is calculated by taking the fair-market value of the property as determined by the commissioner less the final principal amount of any debt described by TEC, §12.128(e), that was incurred prior to the charter school's cessation of operations and multiplying that amount by a fraction for which the numerator is the funds received under TEC, §12.106, used to purchase the property and the denominator is the funds received under TEC, §12.106, plus any non-state funds used to purchase the property.

(II) If the final state reimbursement amount is greater than the deposit made with the comptroller under this section, the former charter holder must make the additional deposit to the comptroller within 30 calendar days of TEA's determination of the final state reimbursement amount or as otherwise ordered by the commissioner.

(III) Once the charter holder has filed its final audit report under TEC, §44.008, and sufficient funds are on deposit with the comptroller to pay the final reimbursement amount, the commissioner may request the comptroller to distribute the deposit as directed by TEA and release any state claim on the property. Any remaining funds on deposit with the comptroller may be returned to the former charter holder once the state has received the full final reimbursement amount.

(IV) If the charter holder fails to complete its final financial audit under TEC, §44.008, or fails to make an additional payment to the comptroller as required, the charter holder shall forfeit the amount deposited with the comptroller and shall dispose of the

property as ordered by the commissioner. The commissioner may extend this deadline upon request of the charter holder.

(ix) The following provisions apply if the charter holder sells the property.

(I) The property must be sold for at least fair-market value, as determined under this section.

(II) The property must be sold and fully closed no later than one year after the last day of instruction.

(III) If the property is sold prior to the completion of the final audit report under TEC, §44.008, for an amount greater than the fair-market value used to determine the estimated state reimbursement amount, the charter holder shall deposit with the comptroller an amount equal to the difference between the estimated fair-market value and the sales price multiplied by the percentage of state funds used to purchase the property based on the most recent audit pursuant to TEC, §44.008.

(IV) After the property has been sold and the final audit report, pursuant to TEC, §44.008, has been filed, TEA shall calculate the final state reimbursement amount.

(V) The final state reimbursement amount is calculated by taking the final gross sales price of the property less the remaining principal amount of any debt described by TEC, §12.128(e), that was incurred prior to the charter school's cessation of operations and multiplying that amount by a fraction for which the numerator is the funds received under TEC, §12.106, used to purchase the property and the denominator is the funds received under TEC, §12.106, plus any non-state funds used to purchase the property.

(VI) If the final state reimbursement amount is greater than the total deposit made with the comptroller, the former charter holder must make the additional deposit to the comptroller within 30 calendar days or as otherwise ordered by the commissioner.

(VII) Once the former charter holder has filed its final audit report under TEC, §44.008, and sold the property, and once sufficient funds are on deposit with the state comptroller's office to pay the final reimbursement amount, the commissioner may request the comptroller to distribute the deposit and release any state claim on the property. Any funds on deposit with the comptroller may be returned to the former charter holder once the state has received the full final reimbursement amount.

(VIII) The release of claims may be made in a closing where an independent third party is responsible for distributing the funds necessary to supplement the escrow account with the comptroller's office. If the property is sold before the final audit has been submitted to TEA, TEA may elect to release its claim on the property based on the most recent audit report.

(IX) If the charter holder fails to complete its final financial audit under TEC, §44.008, fails to sell the property within one year after the last day of instruction, or fails to make an additional payment to the comptroller as required, the charter holder shall forfeit the amount deposited with the state comptroller and shall dispose of the property as ordered by the commissioner.

(x) For purposes of determining the fair-market value of the real property, the charter holder shall provide an appraisal from a certified appraiser approved by the commissioner not less than 60 calendar days after the final order of revocation, non-renewal, surrender, or return of the charter, or as otherwise directed by the commissioner. If the charter holder cannot provide an appraisal within 60 calendar days, the charter holder may request that the commissioner grant an extension.

(xi) The commissioner may direct the charter holder to contract with a specified, certified appraiser or require the charter holder to obtain additional appraisals and may then choose which appraisal will be used to calculate fair-market value.

(xii) Subject to the satisfaction of any security interest or lien described by TEC, §12.128(e), if the commissioner determines a former charter holder failed to comply with this section or TEC, §12.1282, on request of TEA, the attorney general shall take any appropriate legal action to compel the former charter holder to convey title to TEA or other governmental entity authorized by TEA to maintain or dispose of the property.

(xiii) All payments made by the charter holder to retain real property must be made with non-state funds. Lease payments received for state property are state property.

(xiv) A decision by the commissioner under this section is final and may not be appealed.

(B) The charter holder may transfer the property using one of the following methods.

(i) Transfer to TEA.

(I) Subject to the satisfaction of any security interest or lien, the former charter holder shall transfer the property, including a conveyance of title, to TEA no later than two weeks after the last day of instruction.

(II) The following provisions apply to the sale of public real property by TEA.

(-a-) After TEA receives title to real property described by TEC, §12.128, TEA may sell the property at any price acceptable to TEA.

(-b-) On request of TEA, the General Land Office shall enter into a memorandum of understanding to sell real property for TEA as required by TEC, §12.1283. The memorandum of understanding may allow the General Land Office to recover from the sale proceeds any cost incurred by the office or commission in the sale of the property.

(-c-) Subject to the satisfaction of any security interest or lien described by TEC, §12.128(e), proceeds from the sale of property under this section shall be deposited in the charter school liquidation fund.

(ii) Transfer to a school district or open-enrollment charter school under TEC, §12.1282.

(I) The following order of priority shall be used when transferring to a school district or open-enrollment charter school under this clause. No property may be transferred to a school district or charter school if it has a financial accountability rating of lower than satisfactory.

(-a-) A charter school with the highest or second-highest academic accountability rating with no campus rated at the lowest or second-lowest accountability rating.

(-b-) A school district that has the highest or second-highest academic accountability rating with no campus rated at the lowest or second-lowest accountability rating.

(-c-) A charter school with the third-highest academic accountability rating with no campus rated at the lowest or second-lowest accountability rating.

(-d-) A school district with the third-highest academic accountability rating with no campus rated at the lowest or second-lowest accountability rating.

(II) A school district or an open-enrollment charter school may receive property under this clause only if:

(-a-) the open-enrollment charter school or school district receiving the property:

(-1-) has not received notice of the expiration or revocation of the contract for charter, notice of reconstitution of its governing body, or the assignment of an accreditation rating of Not Accredited-Revoked;

(-2-) agrees to the transfer;

(-3-) agrees to identify the property as purchased wholly using state funds on the school's annual financial report filed under TEC, §44.008; and

(-4-) agrees that if the property is sold within three years, the charter holder or school district will remit the sales proceeds back to TEA to be deposited in the charter school liquidation fund;

(-b-) any creditor with a security interest in or lien on the property described by TEC, §12.128(e), agrees to the transfer; and

(-c-) the transfer of the property does not make the open-enrollment charter school or school district receiving the property insolvent.

(III) Property received by an open-enrollment charter school or school district under this clause is considered state property. TEA may require a set amount of remuneration in exchange for the property, may accept bids, or may accept bids with a minimum bid amount established. If TEA takes bids, TEA shall transfer the property to the highest qualified bidder from the highest priority category established in subclause (I) of this clause, except as provided by subsection (g) of this section.

(2) For personal property purchased with state funds, the commissioner shall direct the charter holder to dispose of the property through one of the following methods.

(A) If TEA determines that the cost of disposing of personal property described by TEC, §12.128, transferred to TEA by an open-enrollment charter school that ceases to operate exceeds the return of value from the sale of the property, TEA may distribute the personal property to open-enrollment charter schools and school districts in a manner determined by the commissioner.

(B) On request of TEA, the Texas Facilities Commission shall enter into a memorandum of understanding to sell personal property for TEA as required by TEC, §12.1283.

(i) A memorandum of understanding entered into as provided by this subparagraph may allow the Texas Facilities Commission to recover from the sale proceeds any cost incurred by the office or commission in the sale of the property.

(ii) Subject to the satisfaction of any security interest or lien described by TEC, §12.128(e), proceeds from the sale of personal property under this section shall be deposited in the charter school liquidation fund.

(3) For property leased with state funds, the commissioner may direct the charter holder to assign the charter holder's interest in the lease to TEA or may direct the charter holder to cancel the lease.

(d) Maintenance of property. TEA may approve an expenditure of remaining funds by a former charter holder for insurance or utilities for or maintenance, repairs, or improvements to property described by this section, and TEA may lease the property in its possession if TEA determines that the action is reasonably necessary to dispose of the property or preserve the property's value.

(e) Funds and assets following termination of operations. After extinguishing all payable obligations owed by the charter school that ceases to operate, and after disposing of all real and personal property owned by the charter school that ceases to operate, the former charter holder shall:

(1) remit to TEA any remaining funds as described by TEC, §12.106(h), and any state reimbursement amounts as described by TEC, §12.128, to be deposited in the charter school liquidation fund;

(2) transfer all or a portion of the remaining funds to another charter school that has all or part of the operations of the former charter school assigned to it under TEC, §12.116(d)(2), if ordered by the commissioner, only if the charter school:

(A) has not received notice of possible adverse action or sanction by the commissioner;

(B) has an academic accountability rating at the district level of A or B and no campus with a rating of D or F;

(C) has a rating under the Financial Integrity Rating System of Texas for charter schools of Meets Standard Achievement or above;

(D) has an accreditation rating of Accredited;

(E) does not have any warrant holds by which state payments issued to payees indebted to the state, or payees with a tax delinquency, are held by the comptroller until the debt is satisfied in accordance with Texas Government Code, §403.055; and

(F) agrees to classify the property as state property; or

(3) take any combination of the actions described by paragraphs (1) and (2) of this subsection.

(f) Use of legal process. Notwithstanding subsection (c) of this section, the commissioner may use such legal process as may be available under Texas law to take possession and assume control over the public property disclosed by the annual audit reports and, using such legal process, supervise the disposition of such property in accordance with law.

(g) Commissioner authority. The commissioner has discretion to direct disposition of the property in the best interest of Texas students.

§100.1097. Rights and Duties Not Affected.

Nothing in this subchapter, and nothing in Texas Education Code, §12.128:

(1) affects a security interest in or lien on property established by a creditor in compliance with law if the security interest or lien arose in connection with the sale or lease of the property to the charter holder;

(2) obligates the state of Texas or any agency of the state of Texas to fulfill any lease agreement or any other contractual or legal obligation entered into by a charter holder on behalf of an open-enrollment charter school; or

(3) affects the right or the duty of the attorney general to bring suit under the Texas Miscellaneous Corporations Act, the Texas Deceptive Trade Practices Act, or other law respecting Texas non-profit corporations.

§100.1099. Real Property Held in Trust.

(a) This section applies to a charter holder unless alternative procedures for purchasing and selling real property held in trust have

been approved by the commissioner of education under §100.1079 of this title (relating to Optional Open-Enrollment Charter Provisions for Contracting and Purchasing), and the open-enrollment charter has been amended by the commissioner to adopt the approved procedures.

(b) A requirement in Texas Government Code, Chapter 2252, Subchapter D, which applies to a school district or the board of trustees of a school district applies to a charter school, the governing body of a charter holder, or the governing body of a charter school.

(1) A charter holder may not purchase real property held in trust until the trustee submits to the governing body of the charter holder a copy of the trust agreement identifying the true owner of the property. The trustee shall identify the true owner of the property to the charter holder.

(2) A charter holder may not sell real property to a trustee until the charter holder receives from the trustee a copy of the trust agreement identifying the person who will be the true owner of the property. The trustee shall identify the person who will be the true owner of the property to the charter holder.

(3) A conveyance of property subject to this section is void if a charter holder fails to comply with this section.

(4) A trust agreement submitted to the governing body of the charter holder is confidential information excepted from the requirements of Texas Government Code, §552.021, but must be disclosed to the Texas Education Agency under §100.1043 (relating to Agency Audits, Monitoring, and Investigations).

§100.1101. Improvements to Real Property.

(a) This section applies to a charter holder unless alternative procedures for awarding a contract for the construction, repair, or renovation of a structure, road, highway, or other improvement or addition to real property have been approved by the commissioner of education under §100.1079 of this title (relating to Optional Open-Enrollment Charter Provisions for Contracting and Purchasing) and the open-enrollment charter has been amended by the commissioner of education to adopt the approved procedures.

(b) A charter holder shall comply with Local Government Code, Chapter 271, Subchapter B, in awarding any contract for the construction, repair, or renovation of a structure, road, highway, or other improvement or addition to real property if the contract requires the expenditure of public funds in the amount specified by Local Government Code, §271.024. A requirement in that subchapter applies to a school district or the board of trustees of a school district applies to a charter school, the governing body of a charter holder, or the governing body of a charter school.

(c) Local Government Code, Chapter 271, Subchapter B, does not apply to a contract executed prior to September 1, 2001.

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 March 4, 2024.

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Director, Rulemaking

Texas Education Agency

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



DIVISION 6. CHARTER SCHOOL GOVERNANCE [OPERATIONS]

19 TAC §§100.1111, 100.1113, 100.1115, 100.1117, 100.1119, 100.1121, 100.1123, 100.1125, 100.1127, 100.1131, 100.1133, 100.1135, 100.1137, 100.1139, 100.1141, 100.1143, 100.1145, 100.1147, 100.1149, 100.1151, 100.1153, 100.1155, 100.1157, 100.1159, 100.1161, 100.1163

STATUTORY AUTHORITY. The new sections are proposed under Texas Education Code (TEC), §12.101, which requires the commissioner to adopt rules regarding the criteria for granting a charter and providing notification for the establishment of new charters or campuses; TEC, §12.1011, which requires the commissioner to adopt rules regarding charter authorization for high-performing entities; TEC, §12.103, which allows the commissioner to adopt rules regarding applicable provisions to open-enrollment charter schools; TEC, §12.104, as amended by House Bill (HB) 189, 87th Texas Legislature, Regular Session, 2021, which allows the commissioner to adopt rules permitting an open-enrollment charter school to voluntarily participate in any state program available to school districts if the school complies with all terms of the program; TEC, §12.1055, which allows the commissioner to adopt rules regarding nepotism under Texas Government Code, Chapter 573; TEC, §12.1058, as amended by HB 1707, 88th Texas Legislature, Regular Session, 2023, which requires a political subdivision to consider an open-enrollment charter school as a school district for the purposes of municipal ordinances if the open-enrollment charter school meets notification requirements; TEC, §12.110, which requires the commissioner to adopt an application form and procedure that must be used to apply for an open-enrollment charter school; TEC, §12.1101, which requires the commissioner to adopt a procedure for providing notice to the outlined persons on receipt by the commissioner of an application for a charter for an open-enrollment charter school or of notice of the establishment of a campus; TEC, §12.114, which allows the commissioner to define expansion amendment requests; TEC, §12.1141, as amended by Senate Bill (SB) 879, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to adopt a procedure for renewal, denial of renewal, or expiration of a charter for an open-enrollment charter school at the end of the term of the charter; TEC, §12.1166, which requires the commissioner to adopt a rule defining "related party;" TEC, §12.1173, as amended by SB 2293, 86th Texas Legislature, 2019, which requires the commissioner to adopt rules to implement charter school waiting lists for admission; TEC, §12.1181, requires the commissioner to adopt performance frameworks that establish standards by which to measure the performance of an open-enrollment charter school; TEC, §12.123, which requires the commissioner to adopt rules prescribing the training for members of the governing body of a charter school and its officers; TEC, §12.153, which allows the commissioner to adopt rules to implement college of university or junior college charter schools; TEC, §12.265, as amended by SB 1615, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to adopt rules necessary to administer adult high school charter school programs; and TEC, §39.0548, which requires the commissioner to authorize and determine designation as a dropout recovery school.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §§12.101; 12.1011; 12.103; 12.104, as amended by House Bill (HB) 189, 87th Texas Legislature, Regular Session, 2021; 12.1055; 12.1058, as amended

by HB 1707, 88th Texas Legislature, Regular Session, 2023; 12.110; 12.1101; 12.114; 12.1141, as amended by Senate Bill (SB) 879, 87th Texas Legislature, Regular Session, 2021; 12.1166; 12.1173, as amended by SB 2293, 86th Texas Legislature, 2019; 12.1181; 12.123; 12.153; 12.265, as amended by SB 1615, 87th Texas Legislature, Regular Session, 2021; and 39.0548.

§100.1111. Annual Report on Open-Enrollment Charter Governance.

(a) Using a format and timeline as approved by the commissioner of education, each open-enrollment charter holder shall file under §100.1003 of this title (relating to Filing of Documents), the following information on an annual basis:

(1) identifying information for and compensation of each officer and member of the governing body of the open-enrollment charter holder;

(2) identifying information for and compensation of each officer of the charter school;

(3) identifying information for and compensation of each member of the governing body of the charter school, if the charter holder has established a governing body for the charter school;

(4) identifying information for and compensation of all family members, within the third degree of consanguinity or third degree of affinity of each board member, chief executive officer/superintendent, and chief financial officer for purposes of conflict of interest; and

(5) identifying information for and compensation of all family members, within the third degree of consanguinity or second degree of affinity of each board member and chief executive officer/superintendent for purposes of nepotism.

(b) The identifying information required for each member of the governing body of the open-enrollment charter holder, each member of the governing body of the charter school, and each chief executive officer/superintendent shall include:

(1) the title of each position held, or function performed, by the individual;

(2) the specific powers and duties that the governing body of the charter holder or charter school have delegated to the individual, as described by the powers and duties listed in the charter;

(3) the legal name of the individual;

(4) any aliases or names formerly used by the individual, including maiden name;

(5) a mailing address unique for the individual;

(6) a telephone number and electronic mail address unique for the individual;

(7) the county and state in which the individual is registered to vote, if a governing body member of the charter holder or charter school; and

(8) assurance that criminal records history check has been made and reported to the Texas Education Agency pursuant to §100.1153 of this title (relating to Criminal History; Restrictions on Serving).

(c) The compensation information required for an individual under subsection (a) of this section shall include all compensation, remuneration, and benefits received by the individual in any capacity from the charter holder or the charter school, or from any contractor or

management company doing business with the charter holder or charter school. The compensation reported shall include without limitation:

(1) all salary, bonuses, benefits, or other compensation received pursuant to an employment relationship;

(2) all compensation received for goods or services under contract, agreement, informal arrangement, or otherwise;

(3) all payment of or reimbursement for personal expenses;

(4) all credit extended to the individual by the charter holder or charter school;

(5) the fair market value of all personal use of property paid for by the charter holder or charter school;

(6) the fair market value of all in-kind transfers of property;

(7) all compensation for goods or services provided to the charter holder through transactions unrelated to the charter school;

(8) all other forms of compensation or remuneration received by the individual from the charter holder or charter school;

(9) all forms of compensation received from a business in which a person under subsection (a) of this section has a significant interest in, pursuant to Texas Government Code, Chapter 171; and

(10) any payment or form of compensation to an individual under subsection (a) of this section by any and all family members, within the third degree of consanguinity or third degree of affinity.

§100.1113. Delegation of Powers and Duties.

(a) Primary responsibility. The governing body of a charter holder has the primary responsibility for implementing the public school program authorized by the open-enrollment charter and ensuring the performance of the students enrolled in its charter schools in accordance with the Texas Education Code (TEC).

(1) Governing board non-delegable duties. The following powers and duties must generally be exercised by the governing body of the charter holder itself, acting as a body corporate in meetings posted in compliance with Texas Government Code, Chapter 551. Absent a specific written exception of this paragraph, setting forth good cause why a specific function listed in subparagraphs (A)-(F) of this paragraph cannot reasonably be carried out by the charter holder governing body, the commissioner of education may not grant an amendment delegating such functions to any person or entity through a contract for management services or otherwise. An amendment that is not authorized by such a specific written exception is not effective for any purpose. Absent such exception, the governing body of the charter holder shall not delegate:

(A) final authority to hear or decide employee grievances, citizen complaints, or parental concerns;

(B) final authority to adopt or amend the budget of the charter holder or the charter school or to authorize the expenditure or obligation of state funds or the use of public property;

(C) final authority to direct the disposition or safekeeping of public records, except that the governing body may delegate this function to any person, subject to the governing body's superior right of immediate access to, control over, and possession of such records;

(D) final authority to adopt policies governing charter school operations;

(E) final authority to approve audit reports under TEC, §44.008(d); or

(F) final authority to select, employ, direct, evaluate, renew, non-renew, terminate, or set compensation for the superintendent or, as applicable, the administrator serving as the educational leader and chief executive officer.

(2) Superintendent non-delegable duties. The following powers and duties must be exercised by the superintendent or, as applicable, the administrator serving as the educational leader and chief executive officer of the charter school. Absent a specific written exception of this paragraph, setting forth good cause why a specific function listed in subparagraphs (A)-(C) of this paragraph cannot reasonably be carried out by the superintendent or, as applicable, the administrator serving as the educational leader and chief executive officer of the charter school, the commissioner may not grant an amendment permitting the superintendent/chief executive officer to delegate such function through a contract for management services or otherwise. An amendment that is not authorized by such a specific written exception is not effective for any purpose. Absent such exception, the superintendent/chief executive officer of the charter school shall not delegate final authority:

(A) to organize the charter school's central administration;

(B) to approve reports or data submissions required by law; or

(C) to select and terminate charter school employees or officers.

(b) Alienation of open-enrollment charter. An open-enrollment charter grants to the governing body of a charter holder the authority to operate a charter school.

(1) The governing body of the charter holder shall, acting as a body corporate in meetings posted in compliance with Texas Government Code, Chapter 551, oversee the management of the charter school.

(2) Except as provided by this section, the governing body's powers and duties to operate the charter school shall not be delegated, transferred, assigned, encumbered, pledged, subcontracted, or in any way alienated by the governing body of the charter holder. Any attempt to do so shall be null and void and of no force or effect and shall constitute abandonment of the contract for charter.

(3) A charter holder shall notify the Texas Education Agency (TEA) in writing prior to initiating any type of bankruptcy proceeding respecting the charter holder. Filing for any form of bankruptcy relief prior to such notice shall constitute abandonment of the contract for charter.

(c) Exclusive method for delegating charter powers and duties. An open-enrollment charter must specify the powers or duties of the governing body of the charter holder that the governing body may delegate to an officer, employee, contractor, management company, creditor, or any other person. The exclusive method for making such a delegation shall be to file a request for a delegation amendment with the TEA division responsible for charter schools under §100.1035 of this title (relating to Charter Amendment), specifying the power or duty delegated and the particular person or entity to which it is delegated. The commissioner may approve a delegation amendment only if the conditions in the following paragraphs are met. The commissioner may grant the amendment without condition or may require compliance with such conditions and/or requirements as may be in the best interest of students:

(1) the charter holder meets all requirements applicable to delegation amendments and amendments generally;

(2) the amendment complies with all requirements of this division; and

(3) the commissioner determines that the amendment is in the best interest of students.

(d) Accountability for delegated powers and duties retained. The governing body of a charter holder remains responsible for the management, operation, and accountability of the charter school operated by the charter holder, regardless of whether the governing body delegates any of its powers or duties.

(e) Standards for delegated persons or entities. The person or entity to which any power or duty is delegated shall be held to the same standards as the governing body with respect to use of property, funds or resources, and including as fiduciaries to the students enrolled in the charter school and must act in the best interest of the students, and may be held liable under TEC, §12.122, for breach of fiduciary duty, including misapplication of public funds. The commissioner may rescind any delegation amendment for any reason in the commissioner's sole discretion.

§100.1115. Training Requirements for Governing Board Members and Officers.

(a) Training required. All governing board members or officers of a charter school must complete all applicable training requirements under §§100.1117, 100.1119, and 100.1121 of this title (relating to Core Training for New Governing Board Members and Officers; Additional Training for New Governing Board Members and Officers; and Continuing Training for Governing Board Members and Officers), unless otherwise exempted by subsection (e) of this section.

(b) Instructional hours. All training requirements in this division are expressed as instructional hours, meaning they exclude time spent for breaks, administrative tasks, and other non-instructional tasks.

(c) Training providers. All training must be delivered by a training provider registered under §100.1125 of this title (relating to Training Providers).

(d) Training delivery. Unless otherwise specified by curriculum outlines disseminated by the commissioner of education under §100.1117 or §100.1119 of this title, training may be provided through online instruction by an authorized training provider, provided that the training offers an opportunity for interaction with the instructor in real time.

(e) Exemptions.

(1) A member of the governing body of a charter holder who serves on the governing body of a governmental entity or an institution of higher education as defined under Texas Education Code, §61.003, is exempt from the training required by this section if, by virtue of such service, the member is subject to other mandatory training and the members of the governing body of the charter school operated by the charter holder comply with this section.

(2) A central administrative officer is exempt from the training required by this section if the person is the holder in good standing of a standard superintendent certificate, or its lifetime equivalent, issued by the State Board for Educator Certification and all other officers of the charter school comply with this division.

(3) A campus administrative officer is exempt from the training required by this section if the person is the holder in good standing of a standard principal certificate, or its lifetime equivalent, issued by the State Board for Educator Certification, and all other officers of the charter school comply with this division.

(4) A business manager is exempt from:

(A) the training required by this section if the person is the holder in good standing of one or more of the following credentials issued by the Texas Association of School Business Officials, and if all other officers of the charter school comply with this division:

(i) Registered Texas School Business Administrator;

(ii) Certified Texas School Business Official;

(iii) Certified Texas School Business Specialist;

(iv) Certified Texas School Business Administrator;

or

(v) Charter School Business Officer Certification;

and

(B) any single part of required training, if:

(i) the business manager is a certified public accountant (CPA) registered in good standing with the Texas State Board of Public Accountancy; and

(ii) the subject matter of the module of required training is covered by the Uniform CPA Examination administered by the Texas State Board of Public Accountancy.

§100.1117. Core Training for New Governing Board Members and Officers.

(a) Training required. A new governing board member or officer, defined as any board member or officer who has not served in their position or similar position requiring the core program training with a Texas charter school in the last three years, must complete core training that consists of 10 instructional hours outlined in this section.

(b) Timeline for completing training. The core training must be completed within one calendar year of appointment or election to such governing body or employment by the charter, as applicable, unless otherwise indicated in subsection (d) of this section or as required by Texas law.

(c) Required curriculum outline. The commissioner of education shall approve and disseminate a curriculum outline that specifies all core training content, time, and delivery requirements. Training that does not conform to the core curriculum outline does not satisfy the requirements of this section.

(d) Core training content. The core training shall cover, at minimum, the following topics:

(1) Charter Law, including:

(A) history and purpose of charter schools;

(B) charter holder contractual obligations to the Texas Education Agency (TEA);

(C) charter holder bylaws, charter board governance policy, and charter district policies and procedures;

(D) charter School Performance Framework;

(E) charter contract renewal with TEA;

(F) charter amendments;

(G) contract revocation;

(H) student enrollment and lotteries;

(I) roles and responsibilities by officer type;

(J) ensuring services to special populations;

(K) student code of conduct, student discipline, and parental rights; and

(L) other laws and rules that apply to charter holders;

(2) Accountability to the Public, including:

(A) Texas Open Meetings Act, open meetings requirements under Texas Government Code, Chapter 551, with special emphasis on posting the agenda, executive sessions, accessibility of the meeting location to the public, employee board members, and civil and criminal sanctions, which must be completed by new governing board members within the first 90 days after joining the board;

(B) Texas Public Information Act requirements under Texas Government Code, Chapter 552, which must be completed by new governing board members within the first 90 days after joining the board;

(C) nepotism and conflicts of interest;

(D) audits, investigations, and sanctions, with an emphasis on mandatory revocation for three consecutive unacceptable performance ratings required by Texas Education Code (TEC), §12.115(c), and mandatory expiration for three out of five unacceptable performance ratings required by TEC, §12.1141(d);

(E) student records and privacy; and

(F) other accountability or transparency requirements that apply to charter holders;

(3) Evaluating and Improving Student Outcomes, including:

(A) Texas Essential Knowledge and Skills;

(B) State of Texas Assessments of Academic Readiness;

(C) Texas A-F Accountability System;

(D) setting school board required specific, quantifiable student outcome goals for all students and disaggregated student groups;

(E) adopting plans to improve early literacy and numeracy and college, career, and military readiness;

(F) Results Driven Accountability;

(G) progress monitoring practices to improve student outcomes; and

(H) other best practices for improving student outcomes;

(4) Accountability for Public Funds, including:

(A) school finance in Texas, with an emphasis on charter finance;

(B) Financial Integrity Rating System of Texas;

(C) Annual Financial and Compliance Report;

(D) Financial Accountability System Resource Guide;

(E) financial controls and monitoring financial health;

(F) annual budgets; and

(G) other items related to school finance, risk management, related party transactions, or financial oversight; and

(5) School Safety, including:

(A) school safety plans and audits;

(B) school emergency and safety drills;

(C) behavioral threat assessment;

(D) school safety and security committee;

(E) school security guard;

(F) traumatic injury response;

(G) identifying child abuse and human trafficking;

(H) school safety facility standards; and

(I) other items related to school safety or student health.

§100.1119. Additional Training for New Governing Board Members and Officers.

(a) Training required. A new governing board member or officer who has completed the core training under §100.1117 of this title (relating to Core Training for New Governing Board Members and Officers) next must complete additional training as outlined in this section.

(b) Timeline for completing training. The additional training requirements must be completed after the core training is completed and within one calendar year of appointment or election to such governing body or employment by the charter, as applicable.

(c) Optional curriculum outline. The commissioner of education may approve and disseminate a curriculum outline that specifies all additional training content for this subsection. Training that does not conform to any curriculum outline released by the commissioner does not satisfy the requirements of this section.

(d) Governing board member requirements. A new governing board member must complete two additional instructional hours on board governance requirements and best practices, including:

(1) hiring and evaluating a superintendent;

(2) required training and governance requirements;

(3) non-delegable board governance duties;

(4) board meeting protocols; and

(5) other practices for effective governance and continuous improvement.

(e) Officer requirements. A new officer must complete additional training hours specific to their role as follows.

(1) Chief executive and central administrative officers must complete 20 additional instructional hours that further explore the core training topics outlined in §100.1117(d) of this title, including:

(A) two hours on Charter Law;

(B) two hours on Accountability to the Public;

(C) six hours on Evaluating and Improving Student Outcomes (EISO);

(D) three hours on Accountability for Public Funds;

(E) three hours on School Safety; and

(F) four hours on any other core training topic outlined in §100.1117(d) of this title.

(2) Campus administrative officers are not required to complete additional instructional hours.

(3) Business managers must complete 20 additional instructional hours that further explore the core training topics outlined in §100.1117(d) of this title, including:

- (A) two hours on Charter Law;
- (B) two hours on Accountability to the Public;
- (C) three hours on EISO;
- (D) nine hours on Accountability for Public Funds; and
- (E) four hours on any other core training topic outlined in §100.1117(d) of this title.

(f) Excess hours earned. Twenty-five percent of instructional hours earned in excess of the requirements set forth in this section by a new governing board member or officer may be carried over to meet the following year's requirement under §100.1121 of this title (relating to Continuing Training for Governing Board Members and Officers).

§100.1121. Continuing Training for Governing Board Members and Officers.

(a) Training required. Any governing board member or officer who has completed the training requirements under §100.1117 and §100.1119 of this title (relating to Core Training for New Governing Board Members and Officers Additional Training for New Governing Board Members and Officers) must annually thereafter complete additional training as outlined in this section.

(b) Training content. Continuing training under this subsection shall:

(1) fulfill training needs determined by the charter based on charter needs;

(2) address updated items identified in the core training topics outlined in §100.1117(d) of this title or cover in greater depth than the curriculum outline indicates for initial training on those topics; or

(3) address applicable topics if a charter holder has lower than a C in the Texas A-F Accountability System, lower than a C in the Financial Integrity Rating System of Texas for charter schools, or is rated in TIER 3 on the Charter School Performance Framework, or is being sanctioned, investigated, or is required by the Texas Education Agency to take corrective action the training.

(c) Governing board member requirements. Governing board members must annually receive six instructional hours of training.

(d) Officer requirements. An officer must complete additional training hours specific to their role as follows.

(1) Campus administrative officers must annually receive five instructional hours of training.

(2) Business managers must annually receive 15 instructional hours of training.

(3) Chief executive and central administrative officers must annually receive 15 instructional hours of training.

(e) Excess hours earned. Twenty-five percent of instructional hours earned in excess of the requirements set forth in this section by a governing board member or officer may be carried over to meet the following year's requirement under this section.

§100.1123. Exemption for Participation in a Shared Services Cooperative.

(a) Shared service cooperative exemption. An officer of a charter school is exempt from a module of required training on a specific duty or responsibility if:

(1) the charter holder is a member of a shared services cooperative;

(2) the written contract establishing the cooperative assigns to the cooperative the specific duty or responsibility, and assigns to the cooperative the requirement to complete that module of training, by:

(A) ensuring that all relevant employees attend that module of required training and receive a certificate of course completion for that module from a regional education service center or training provider registered under §100.1125 of this title (relating to Training Providers); or

(B) if the cooperative is a registered training provider, ensuring that all relevant employees attend that module of training and receive a certificate of course completion for that module from the cooperative; and

(3) all relevant employees of the cooperative actually attend that module of training and receive a certificate of completion for that module.

(b) Nothing in this section affects an exemption available by virtue of another section in this division.

§100.1125. Training Providers.

(a) Authorized training providers. Training under this section may be provided only by a Texas Education Agency (TEA)-authorized training provider approved by the commissioner of education. Training that is not provided by an authorized TEA training provider at the time of training does not satisfy training requirements specified in this division. The fee for a course or module of training shall be determined by the registered training provider.

(b) Application to become an authorized training provider. An education service center (ESC), entity, or individual may apply to be an authorized training provider. An applicant must file with the commissioner documents and information demonstrating a history of training experience and subject-matter expertise in each area covered by a training required by this division. If the applicant is an ESC or entity, the ESC or entity must designate one or more individuals as their lead provider. TEA may request qualification information about the lead provider and how the lead provider will supervise any instructors. The lead provider or individual may be required to complete a charter training program prior to serving as a training provider in an area or subject matter.

(1) The training provider may apply to be authorized to provide training in one or more areas or subjects. If the training provider is an ESC or entity, the ESC or entity may assign training to one or more instructors, so long as the instructors are supervised by the ESC or entity for quality instruction that is aligned to the authorized areas or subject matters.

(2) The training provider is not authorized under this section until it receives written notice of authorization under this section.

(c) Compliance with training rules. An authorized training provider that fails to comply with §§100.1115-100.1125 of this title (relating to Training Requirements for Governing Board Members and Officers; Core Training for New Governing Board Members and Officers; Additional Training for New Governing Board Members and Officers; Continuing Training for Governing Board Members and Officers; Exemption for Participation in a Shared Services Cooperative; and Training Providers) will not be authorized in any subsequent year. An ESC, entity, or individual who completes a training that does not comply with §§100.1115-100.1121 of this title has not satisfied the requirements for continued service.

(d) Authorization timeline. Initial authorization under this section is effective for 24 months. Thereafter, re-registration may be for a period of up to three years. Re-registration is by original

application under this section, except that the process for re-registration of a registered training provider may include an opportunity for stakeholder comment on that provider's performance. A successful application for authorization in a prior authorization period confers no right or expectation that the commissioner will grant an application for authorization in a subsequent year.

(e) Post-training requirements. Training providers shall provide training certificates upon request to any individual who attends training and shall keep accurate training records. The training provider is required to periodically survey individuals after a training to determine their satisfaction. TEA may request training records from any authorized training provider at any time.

§100.1127. Record of Compliance and Disclosure of Non-compliance.

Record of compliance; non-compliance.

(1) Record of compliance. It is the obligation of the charter holder to comply with this section, including compliance with §§100.1115-100.1121 of this title (relating to Training Requirements for Governing Board Members and Officers; Core Training for New Governing Board Members and Officers; Additional Training for New Governing Board Members and Officers; and Continuing Training for Governing Board Members and Officers) by each a member of the governing body of the charter holder, each member of any governing body of a charter school operated by the charter holder, and each chief executive officer, central administrative officer, campus administrative officer, and business manager of any charter school operated by the charter holder. The charter holder shall document its compliance with §§100.1115-100.1121 of this title and this section.

(2) Continued service. A person may not continue to serve as a member of the governing body of a charter holder, as a member of the governing body of a charter school, or as an officer of a charter school, unless the person is in compliance with §§100.1115-100.1121 of this title and this section.

(3) Audit disclosure. A charter holder shall separately disclose, in its annual audit report required by §100.1067(c) of this title (relating to Accounting for State and Federal Funds), any member of the governing body of the charter holder or a charter school, and any officer of a charter school, who fails to comply with §§100.1115-100.1121 of this title and this section and who continues to serve in such capacity as of the date of the audit report.

(4) Material charter violation. Failure to comply with §§100.1115-100.1121 of this title and this section is a material charter violation that may be considered by the commissioner of education in any action or intervention under Division 3 of this subchapter (relating to Commissioner Action, Performance Monitoring, and Intervention).

§100.1131. Applicability of Nepotism Provisions; Exception for Acceptable Performance.

(a) Nepotism laws generally apply. Except as provided by this section, a member of the governing body of a charter holder, a member of the governing body of a charter school, and an officer of a charter school who retain final authority to select and terminate charter school employees shall comply with Texas Government Code, Chapter 573, in the manner provided by the nepotism provisions, prohibitions, and exceptions described in this section and §§100.1133-100.1141 of this title (relating to General Nepotism Provisions; Relationships By Consanguinity or By Affinity; Nepotism Prohibitions; Nepotism Exceptions; and Enforcement of Nepotism Prohibitions).

(b) Existing charter holders partly grandfathered. A person who was not restricted or prohibited under Texas Education Code, §12.1055, before September 1, 2013, from being employed by an

open-enrollment charter school and who was lawfully employed by an open-enrollment charter school before September 1, 2013, is considered to have been in continuous employment as provided by Texas Government Code, §573.062(a), and is not prohibited from continuing employment with the school. Any break in service, however, shall render the eligibility under this subsection null and void. Continuous employment for the purposes of this subsection applies only to relationships that existed on September 1, 2013, and does not exempt relationships created after September 1, 2013.

(c) Employment status. This section only applies to the employment of those charter employees reported to the Texas Workforce Commission (TWC) as being employees of the charter on September 1, 2013. The charter holder must supply to the Texas Education Agency (TEA) the TWC list that includes each employee's name, position held, and relationship, if any, to officer and/or board member(s). This list will serve as a baseline for determination of those individuals grandfathered under this section.

(d) Submission requirement. The list referenced in subsection (c) of this section shall be received by the TEA division of charter schools no later than December 1, 2014. Failure to comply with this subsection constitutes a material charter violation.

(e) No quorum of relatives. Notwithstanding any other provision of this section, persons related to one another within the third degree by consanguinity or within the second degree by affinity, as determined under §100.1135 of this title, shall not constitute a quorum of the governing body or any committee of the governing body of the charter holder or charter school.

§100.1133. General Nepotism Provisions.

(a) Definitions. The following words and terms, when used in this division, shall have the following meaning, unless the context clearly indicates otherwise.

(1) Public official--A member of the governing body of a charter holder, a member of the governing body of a charter school, or an officer of a charter school who retains final authority to select and terminate charter school employees.

(2) Candidate--A person who applies for, seeks, is nominated for, or is considered for selection, appointment, employment or in any other manner to be made a member of the governing body of a charter holder, a member of the governing body of a charter school, or an officer of an open-enrollment charter school.

(3) Charter position:

(A) an office, employment, function, or duty that is to be directly or indirectly compensated from state funds received by a charter holder after September 1, 2001; or

(B) a member of the governing body of a charter holder that receives state funds after September 1, 2001, or a member of the governing body or an officer of a charter school operated by such charter holder.

(b) Degrees of relationship. Except as specifically provided by this subchapter, §§100.1131 and 100.1135-100.1141 of this title (relating to Applicability of Nepotism Provisions; Exception for Acceptable Performance; General Nepotism Provisions; Relationships By Consanguinity or By Affinity; Nepotism Prohibitions; Nepotism Exceptions; and Enforcement of Nepotism Prohibitions) and this section apply to relationships within the third degree by consanguinity or within the second degree by affinity.

§100.1135. Relationships By Consanguinity or By Affinity.

(a) Method of computing degree of relationship. The degree of a relationship is computed by the civil law method.

(b) Determination of consanguinity. Two individuals are related to each other by consanguinity if one is a descendant of the other, or if they share a common ancestor. An adopted child is considered to be a child of the adoptive parent for this purpose.

(c) Computation of degree of consanguinity. The degree of relationship by consanguinity between an individual and the individual's descendant is determined by the number of generations that separate them.

(1) A parent and child are related in the first degree, a grandparent and grandchild in the second degree, a great-grandparent and great-grandchild in the third degree, and so on.

(2) If an individual and the individual's relative are related by consanguinity, but neither is descended from the other, the degree of relationship is determined by adding:

(A) the number of generations between the individual and the nearest common ancestor of the individual and the individual's relative; and

(B) the number of generations between the relative and the nearest common ancestor.

(3) An individual's relatives within the third degree by consanguinity are the individual's:

(A) parent or child (relatives in the first degree);

(B) brother, sister, grandparent, or grandchild (relatives in the second degree); and

(C) great-grandparent, great-grandchild, aunt who is a sister of a parent of the individual, uncle who is a brother of a parent of the individual, nephew who is a child of a brother or sister of the individual, or niece who is a child of a brother or sister of the individual (relatives in the third degree).

(d) Determination of affinity. Two individuals are related to each other by affinity if they are married to each other, or the spouse of one of the individuals is related by consanguinity to the other individual.

(1) The ending of a marriage by divorce or the death of a spouse ends relationships by affinity created by that marriage unless a child of that marriage is living, in which case the marriage is considered to continue as long as a child of that marriage lives.

(2) Paragraph (1) of this subsection applies only until the youngest child of the marriage reaches the age of 21 years.

(e) Computation of degree of affinity. A husband and wife are related to each other in the first degree by affinity. For other relationships by affinity, the degree of relationship is the same as the degree of the underlying relationship by consanguinity.

(1) If two individuals are related to each other in the second degree by consanguinity, the spouse of one of the individuals is related to the other individual in the second degree by affinity.

(2) An individual's relatives within the third degree by affinity are:

(A) anyone related by consanguinity to the individual's spouse in one of the ways named in this section; and

(B) the spouse of anyone related to the individual by consanguinity in one of the ways named in this section.

§100.1137. Nepotism Prohibitions.

(a) Prohibition applicable to public official. A public official may not hire, select, appoint, confirm the appointment of, or vote for

the hiring, selection, appointment, or confirmation of an individual to a charter position if, within a degree described by Texas Government Code, §§573.021-573.025, and §100.1135 of this title (relating to Relationships By Consanguinity or By Affinity):

(1) the individual is related to the public official; or

(2) the public official holds the authority to hire, select, appoint, confirm the appointment of, or vote for the hiring, selection, appointment, or confirmation as a member of a governing body, and the individual is related to another member of that governing body.

(b) Prohibition applicable to candidate. Except for a candidate's actions taken regarding a bona fide class or category of employees or prospective employees, a candidate may not take an affirmative action to influence the following individuals regarding the appointment, reappointment, confirmation of the appointment or reappointment, employment, reemployment, change in status, compensation, or dismissal of another individual related to the candidate within a degree described by Texas Government Code, §§573.021-573.025, and §100.1135 of this title:

(1) an employee of the office that the candidate seeks, applies for, is nominated for, or is considered for; or

(2) an employee or officer under the direction or control of a governing body, if the candidate seeks, applies for, is nominated for, or is considered for membership on that governmental body.

(c) Prohibition applicable to trading. A public official may not hire, select, appoint, confirm the appointment of, or vote for the hiring, selection, appointment, or confirmation of an individual to a charter position in which the individual's services are under the public official's direction or control if, within a degree described by Texas Government Code, §§573.021-573.025, and §100.1135 of this title:

(1) the individual is related to another public official; or

(2) the hiring, selection, appointment, confirmation, or vote would be carried out in whole or partial consideration for the other public official hiring, selecting, appointing, confirming, or voting for an individual who is related to the first public official.

§100.1139. Nepotism Exceptions.

(a) General. Section 100.1137(a) of this title (relating to Nepotism Prohibitions) does not apply to:

(1) an appointment or employment of a bus driver by a charter school if:

(A) the charter school is located wholly in a county with a population of less than 35,000; or

(B) the charter school is located in more than one county and the county in which the largest part of the charter school is located has a population of less than 35,000;

(2) an appointment or employment of a personal attendant by a public official for attendance on the public official who, because of physical infirmities, is required to have a personal attendant; or

(3) an appointment or employment of a substitute teacher.

(b) Continuous employment. A nepotism prohibition prescribed by §100.1137(a) of this title does not apply to the hiring, selection, appointment, confirmation, or vote for the hiring, selection, appointment, or confirmation of an individual to a charter position if:

(1) the individual was employed in the position immediately before the public official to whom the individual is related in a prohibited degree became a public official, by whatever means; and

(2) that prior employment of the individual was continuous for at least:

(A) 30 days, if the public official is an officer of a charter school;

(B) six months, if the public official is a member of the governing body of a charter school; or

(C) one year, if the public official is a member of the governing body of a charter holder.

(c) Prohibition against deliberation or voting on continued relative. If an individual continues in a position under subsection (b) of this section, the public official to whom the individual is related in a prohibited degree may not participate in any deliberation or voting on the appointment, reappointment, confirmation of the appointment or reappointment, employment, reemployment, change in status, compensation, or dismissal of the individual if that action applies only to the individual and is not taken regarding a bona fide class or category of employees.

§100.1141. Enforcement of Nepotism Prohibitions.

(a) Removal by charter holder. An individual who violates §100.1137 or §100.1139(c) of this title (relating to Nepotism Prohibitions and Nepotism Exceptions) shall be removed from the individual's position by the charter holder. Failure to comply with this subsection is a material charter violation.

(1) The removal must be made in accordance with the removal provisions in the articles of incorporation and bylaws of the corporation, if applicable, the terms of the open-enrollment charter, any applicable local policies, and state and federal law.

(2) A public official may not approve an account or draw or authorize the drawing of a warrant or order to pay the compensation of an ineligible individual if the official knows the individual is ineligible.

(b) Removal by attorney general. An individual who violates §100.1137 or §100.1139(c) of this title may be removed from the individual's position by suit brought by the Texas attorney general under Texas Government Code, §573.082.

(c) Criminal penalties. An individual who violates Texas Government Code, Chapter 573, Subchapter C, or §573.062(b) or §573.083, as applied by this subchapter, may be subject to criminal penalties under Texas Government Code, §573.084.

(1) On final conviction of an offense under Texas Government Code, §573.084, an individual shall immediately and summarily be removed from the individual's position by the charter holder.

(2) If the removal under paragraph (1) of this subsection is not made within 30 days after the date the conviction becomes final, the individual holding the position may be removed by the commissioner of education or by suit brought by the Texas attorney general under Texas Government Code, §573.082.

§100.1143. Conflicts of Interest and Board Member Compensation: Exception.

(a) Process governing conflicts of interest. A member of the governing body of a charter holder, a member of the governing body of a charter school, and an officer of a charter school shall comply with Local Government Code, Chapter 171, in the manner provided by the conflict of interest provisions described in this section and §§100.1145-100.1151 of this title (relating to General Conflict of Interest Provisions; Conflicts Requiring Affidavit and Abstention from Voting; Conflicts Requiring Separate Vote on Budget; and Acting as Surety and Other Conflicts; Criminal Penalties).

(b) Compensated board members generally prohibited. Except as provided by this section, a person who receives compensation or remuneration from a nonprofit corporation holding an open-enrollment charter may not serve on the governing body of the charter holder. As used in this subsection, compensation or remuneration includes, without limitation:

(1) salary, bonuses, benefits, or other compensation received by the local public official pursuant to an employment relationship;

(2) payment of or reimbursement for personal expenses of the local public official, excluding reimbursement for allowable travel expenses;

(3) credit extended to the local public official by the charter holder or charter school;

(4) the local public official's personal use of property paid for by the charter holder or charter school;

(5) in-kind transfers of property to the local public official; and

(6) all other forms of compensation or remuneration to the local public official.

(c) Satisfactory student performance. If each charter school operated by a charter holder has received a satisfactory rating, as defined by §100.1051(b)(2)(B) of this title (relating to Standards to Revoke and Modify the Governance of an Open-Enrollment Charter), for at least two of the preceding three school years, then charter school employees may serve on the governing body of the charter holder in accordance with subsection (f) of this section.

(d) Existing charter holders partly grandfathered. If a charter holder has operated at least one charter school which reported attendance that occurred prior to September 2, 2001, but no charter school operated by the charter holder has received a sufficient number of academic or financial ratings to determine whether it has received a satisfactory rating for at least two of the preceding three school years, then charter school employees may serve on the governing body of the charter holder in accordance with subsection (f) of this section.

(1) For purposes of this subsection, a charter school has a sufficient number of substantive ratings to determine whether it has received a satisfactory rating for at least two of the preceding three school years if:

(A) the charter school has received two consecutive academic ratings, and neither rating meets the criteria set forth in subsection (c) of this section; or

(B) the charter school has received three academic ratings.

(2) If a charter holder operates charter schools that have received a sufficient number of academic ratings to determine whether it has received a satisfactory rating for at least two of the preceding three school years, but also operates charter schools that have not received a sufficient number of academic ratings, then its eligibility to comply with subsection (f) of this section is determined by applying the criteria in subsection (c) of this section only to those schools with a sufficient number of substantive ratings.

(e) No annual ratings assigned. For purposes of this section, two academic accountability ratings are "consecutive" as determined by §100.1051(b)(2)(C) of this title.

(f) Exception to prohibition on compensated board members. Notwithstanding subsection (b) of this section, an employee of a charter

school subject to this subsection may serve as a member of the governing body of the charter holder if:

(1) only employees of the charter school, and not employees of the charter holder, serve on the governing body of the charter holder;

(2) the only compensation or remuneration received by the board member is salary, bonuses, benefits, or other compensation received pursuant to the employment relationship with the charter school;

(3) charter school employees do not constitute a quorum of the governing body or any committee of the governing body; and

(4) all charter school employees serving on the governing body comply with all conflict of interest provisions referenced in subsection (a) of this section.

(g) Accounting for interested transactions. Notwithstanding compliance with this section, a charter holder shall comply fully with the requirements of §100.1067(f) of this title (relating to Accounting for State and Federal Funds).

(h) Compliance following ratings change. Notwithstanding this section, a charter holder must comply with the prohibition on compensated board members described in subsection (b) of this section within 30 days after it is assigned a rating that causes it to become ineligible for the exception provided by subsection (f) of this section.

(1) Subject to paragraph (2) of this subsection, if a ratings appeal is provided in the applicable Accountability Manual, and if a timely and sufficient appeal is filed by the charter holder, then the time for compliance provided by this subsection is extended until 30 days after the date on which the appeal is finally determined.

(2) Notwithstanding any other deadline, an appeal is "timely" for purposes of the extension of time provided in paragraph (1) of this subsection if it is received by the appeals deadline specified in the relevant Accountability Manual, or under the alternative education accountability ratings procedures, if applicable.

§100.1145. General Conflict of Interest Provisions.

(a) Definitions. The following words and terms, when used in this division, shall have the following meaning, unless the context clearly indicates otherwise.

(1) Local public official--A member of the governing body of a charter holder, a member of the governing body of a charter school, or an officer of a charter school.

(2) Business entity--A sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, agency, political subdivision, or any other entity recognized by law.

(b) Substantial interest in business entity. For purposes of this chapter, a person has a substantial interest in a business entity if:

(1) the person owns 10% or more of the voting stock or shares of the business entity or owns either 10% or more or \$15,000 or more of the fair market value of the business entity; or

(2) funds received by the person from the business entity exceed 10% of the person's gross income for the previous year.

(c) Substantial interest in real estate. A person has a substantial interest in real estate if the interest is an equitable or legal ownership with a fair market value of \$2,500 or more.

(d) Substantial interest through a relative. A local public official is considered to have a substantial interest under this section if a person related to the official in the third degree by consanguinity

or affinity, as determined under Texas Government Code, §§573.021-573.025, and §100.1135 of this title (relating to Relationships By Consanguinity or By Affinity), has a substantial interest under this section.

§100.1147. Conflicts Requiring Affidavit and Abstention from Voting.

(a) Affidavit and abstention required. If a local public official has a substantial interest in a business entity or in real property, the official must file, before a vote, decision, or other action on any matter involving the business entity or the real property, an affidavit stating the nature and extent of the interest and must abstain from further participation in the matter if:

(1) in the case of a substantial interest in a business entity, the vote, decision, or other action on the matter will have a special economic effect on the business entity that is distinguishable from the effect on the public; or

(2) in the case of a substantial interest in real property, it is reasonably foreseeable that a vote, decision, or other action on the matter will have a special economic effect on the value of the property, distinguishable from its effect on the public.

(b) Affidavit filed. The affidavit described in subsection (a) of this section must be filed with the official recordkeeper of the charter holder.

(c) Abstention excused. If a local public official is required to file and does file an affidavit under subsection (a) of this section, the local public official is not required to abstain from further participation in the matter requiring the affidavit if:

(1) the local public official is a member of the governing body of the charter holder or the charter school; and

(2) a majority of the members of the governing body of which the local public official is a member is composed of persons who are likewise required to file and who do file affidavits of similar interests on the same official action.

(d) Local public official. A member of a governing body of a charter holder, a member of the governing body of an open-enrollment charter school, or an officer of an open-enrollment charter school is considered to be a local public official for purposes of this section.

(e) Minutes. The minutes of a meeting during which a matter subject to this section is discussed or decided must clearly identify each person participating, each person abstaining, each person voting, and the vote of each person.

(f) Resolution. A matter subject to this section must be approved through a written resolution adopted by the governing board of the charter holder and signed by the members voting in favor of it.

(g) Violation. A violation of this section or Local Government Code, Chapter 171, constitutes a material violation of charter contract.

§100.1149. Conflicts Requiring Separate Vote on Budget.

(a) Separate vote required. The governing body of a charter holder shall take a separate vote on any budget item specifically dedicated to a contract with a business entity in which a member of the governing body of the charter holder has a substantial interest.

(b) Abstention required. Except as provided by §100.1147(c) of this title (relating to Conflicts Requiring Affidavit and Abstention from Voting), the affected member may not participate in that separate vote. The member may vote on a final budget if:

(1) the member has complied with this chapter; and

(2) the matter in which the member is concerned has been resolved.

§100.1151. Acting as Surety and Other Conflicts; Criminal Penalties.

(a) Acting as surety. A local public official commits a criminal offense if the official knowingly:

(1) acts as surety for a business entity that has work, business, or a contract with the charter holder; or

(2) acts as surety on any official bond required of a member of the governing body or charter school, or of an officer of the charter school.

(b) Knowing violation of requirements. A local public official commits a criminal offense if the official knowingly violates Local Government Code, §171.004, as applied by this subchapter.

§100.1153. Criminal History; Restrictions on Serving.

(a) Restrictions on serving. A person may not serve as a member of the governing body of a charter holder, as a member of the governing body of a charter school, or as an officer or employee of a charter school if the person has been convicted of:

(1) a misdemeanor involving moral turpitude or any felony;

(2) an offense listed in Texas Education Code (TEC), §37.007(a); or

(3) an offense listed in Code of Criminal Procedure, Article 62.001(5).

(b) Exception. Notwithstanding subsection (a) of this section, a person may be employed in any position by an open-enrollment charter school if a school district could employ the person in that position and the Texas Education Agency (TEA) approves of the employment pursuant to TEC, §12.1059.

(c) Required criminal history checks--general. Before the person begins service, and every third year thereafter, a charter holder shall obtain from the Texas Department of Public Safety (DPS) all criminal history record information that relates to:

(1) an employee or a person whom the charter school intends to employ in any capacity, or whom the charter holder intends to employ in any capacity relating to its charter school activities;

(2) a member of the governing body of the charter holder or charter school or a person who has agreed to serve as a member of the governing body of the charter holder or charter school; and

(3) a person who files, in writing, an intention to serve as a volunteer at the charter school, if the duties are or will be performed on school property or at another location where students are regularly present.

(d) Required criminal history checks--transportation. Except as provided by paragraphs (3) and (4) of this subsection, a charter holder that contracts with a person for transportation services shall obtain from DPS all criminal history record information that relates to a person employed by the person as a bus driver or a person the person intends to employ as a bus driver.

(1) Except as provided by paragraphs (3) and (4) of this subsection, a person or management company that contracts with a charter holder to provide transportation services shall submit to the charter holder the name and other identification data required to obtain criminal history record information of each person described by this section.

(2) If the charter holder obtains information that a person described by this section has been convicted of a felony or a misdemeanor involving moral turpitude, the charter holder shall inform the chief personnel officer of the person or management company with

whom the charter holder has contracted, and the person or management company may not employ that person to drive a bus on which students are transported without the permission of the governing body of the charter holder.

(3) A commercial transportation company that contracts with a charter holder to provide transportation services may obtain from any law enforcement or criminal justice agency all criminal history record information that relates to a person employed by the commercial transportation company, or to a person it intends to employ, as a bus driver, bus monitor, or bus aide.

(4) If the commercial transportation company obtains information that a person employed or to be employed by the company has been convicted of a felony or a misdemeanor involving moral turpitude, the company may not employ that person to drive or to serve as a bus monitor or bus aide on a bus on which students are transported without the permission of the governing body of the charter holder. Paragraphs (1) and (2) of this subsection do not apply if information is obtained as provided by paragraph (3) of this subsection.

(e) Permissive criminal history checks. A charter holder may obtain from any law enforcement or criminal justice agency, including DPS, all criminal history record information that relates to:

(1) a volunteer, employee, or member of a governing body under subsection (c) of this section;

(2) an employee of or an applicant for employment with a public or commercial transportation company that contracts with the charter holder to provide transportation services if the employee drives or the applicant will drive a bus in which students are transported or is employed or is seeking employment as a bus monitor or bus aide on a bus in which students are transported, under subsection (d) of this section; and

(3) an employee of or applicant for employment by a management company or other person that contracts with the charter school to provide management services or other services, if:

(A) the employee or applicant has or will have continuing duties related to the contracted services; and

(B) the duties are or will be performed on school property or at another location where students are regularly present.

(f) Entitlement to criminal history checks. A charter holder is entitled to obtain from DPS, no more than twice each year, all criminal history record information maintained by DPS that the charter holder is required or authorized to obtain under this section.

(g) Reduced fees for criminal history checks. In accordance with Texas Government Code, §411.097, if a regional education service center or commercial transportation company that receives criminal history record information from DPS under this section requests the information by providing to DPS a list, including the name, date of birth, and any other personal descriptive information required by DPS for each person, through electronic means, magnetic tape, or disk, as specified by DPS, DPS may not charge the service center or commercial transportation company more than the lesser of:

(1) DPS's cost for providing the information; or

(2) the amount prescribed by another law.

(h) Disclosure prohibited. Criminal history record information obtained by a charter holder under this section may not be released or disclosed to any person, other than the individual who is the subject of the information, TEA, the State Board for Educator Certification (SBEC), or the chief personnel officer of the transportation company, if the information is obtained under subsection (d) of this section.

(i) Removal by charter holder. If a person is prohibited by this section from serving as a member of the governing body of a charter holder, as a member of the governing body of a charter school, or as an officer or employee of a charter school, the charter holder shall remove the individual from such position immediately.

(1) The removal must be made in accordance with the removal provisions in the articles of incorporation and bylaws of the corporation, if applicable, the terms of the open-enrollment charter, any applicable local policies, and state and federal law.

(2) The governing body of the charter holder may not approve an account or draw or authorize the drawing of a warrant or order to pay the compensation of a person if the person is prohibited by this section from serving in the capacity for which compensation is due.

(j) Teaching certificate applicant or holder. A charter holder shall promptly notify the SBEC in writing if it obtains or has knowledge of information showing that an applicant for or holder of a certificate issued under TEC, Chapter 21, Subchapter B, has a reported criminal history.

(k) Implementation schedule and transition. Notwithstanding this section:

(1) beginning September 1, 2001, a charter holder shall obtain, in compliance with this section, criminal history record information relating to each person identified in subsections (c) and (d) of this section; and

(2) if a person is prohibited by this section from serving as a member of the governing body of a charter holder, as a member of the governing body of a charter school, or as an officer or employee of a charter school, and if removing such person would violate an employment or other written contract that was executed prior to September 1, 2001, then the employment or other contract may continue in effect past September 1, 2001, if each of the following conditions is met:

(A) no state funds are used to pay any amounts due the person under the employment or other contract, and all such amounts are paid from a clearly identified source of non-state funds;

(B) the terms of the employment or other contract have not been renewed, modified, or otherwise altered since September 1, 2001; and

(C) the person does not perform, and is not charged with performing, any charter school functions.

§100.1155. Substantial Interest in Management Company; Restrictions on Serving.

(a) Restriction on serving. A person may not serve as a member of the governing body of a charter holder as a member of the governing body of a charter school, or as an officer or employee of a charter school, if the person has a substantial interest in a management company that has a contract for management services with the charter holder or a charter school. A person has a substantial interest in a management company if the person:

(1) has a controlling interest in the company;

(2) owns more than 10% of the voting interest in the company;

(3) owns more than \$25,000 of the fair market value of the company;

(4) has a direct or indirect participating interest by shares, stock, or otherwise, regardless of whether voting rights are included, in more than 10% of the profits, proceeds, or capital gains of the company;

(5) is a member of the board of directors or other governing body of the company;

(6) serves as an elected officer of the company; or

(7) is an employee of the company.

(b) Management company as officer. Notwithstanding subsection (a) of this section, a person who has a substantial interest in a management company may provide management services that include the functions of a central administration officer, campus administration officer, or business manager, if:

(1) the person provides all management services under a contract for management services;

(2) the person provides all management services as an agent of the management company;

(3) the person does not serve as an employee or volunteer of the charter holder or charter school, and does not otherwise serve as a contractor of the charter holder or charter school;

(4) the person does not serve as a member of the governing body of the charter school or charter holder; and

(5) the management services provided by the person do not include powers or duties that are non-delegable under §100.1113 of this title (relating to Delegation of Powers and Duties).

(c) Audit disclosure. A charter holder shall separately disclose, in its annual audit report required by §100.1067(c) of this title (relating to Accounting for State and Federal Funds), all persons listed in subsection (a) of this section with a substantial interest in a management company as defined by subsection (a) of this section.

(d) Removal by charter holder. If a person is prohibited by this section from serving as a member of the governing body of a charter holder, as a member of the governing body of a charter school, or as an officer or employee of a charter school, the charter holder shall remove the individual from such position immediately.

(1) The removal must be made in accordance with the removal provisions in the articles of incorporation and bylaws of the corporation, if applicable, the terms of the open-enrollment charter, any applicable local policies, and state and federal law.

(2) The governing body of the charter holder may not approve an account or draw or authorize the drawing of a warrant or order to pay the compensation of a person if the person is prohibited by this section from serving in the capacity for which compensation is due.

(e) Implementation schedule and transition. Notwithstanding this section:

(1) beginning with the fiscal year in which September 1, 2001, falls, a charter holder shall separately disclose, in its annual audit report required by §100.1067(c) of this title, all persons listed in subsection (a) of this section with a substantial interest in a management company as defined by subsection (a); and

(2) if a person is prohibited by this section from serving as a member of the governing body of a charter holder, as a member of the governing body of a charter school, or as an officer or employee of a charter school, and if removing such person would violate an employment or other written contract that was executed prior to September 1, 2001, then the employment or other contract may continue in effect past September 1, 2001, if each of the following conditions is met:

(A) no state funds are used to pay any amounts due the person under the employment or other contract, and all such amounts are paid from a clearly identified source of non-state funds;

(B) the terms of the employment or other contract have not been renewed, modified, or otherwise altered since September 1, 2001; and

(C) the person does not perform, and is not charged with performing, any charter school functions.

§100.1157. Procedures for Prohibiting a Management Contract.

(a) Action prohibiting management contract. The commissioner of education may prohibit, deny renewal of, suspend, or revoke a contract between an open-enrollment charter school and a management company providing management services to the school if the commissioner determines that the management company has:

(1) failed to provide educational or related services in compliance with the company's contractual or other legal obligation to any open-enrollment charter school in Texas or to any other similar school in another state;

(2) failed to protect the health, safety, or welfare of the students enrolled at an open-enrollment charter school served by the company;

(3) violated this subchapter or a rule adopted under this subchapter; or

(4) otherwise failed to comply with any contractual or other legal obligation to provide services to the school.

(b) Procedures for making determination. A determination under subsection (a) of this section shall be made through a final investigative report issued by the Texas Education Agency. In making this determination:

(1) the commissioner may rely on one or more of the following:

(A) any finding or determination made by a court or other tribunal of competent jurisdiction, whether in Texas or in any other state, or by the United States, if the order or judgment is final under the rules governing such proceedings;

(B) any finding or determination made by the commissioner under §§100.1049, 100.1045, 100.1047, 100.1041, or 100.1037 of this title (relating to Revocation and Modification of Governance of an Open-Enrollment Charter; Intervention Based on Charter Violations; Intervention Based on Health, Safety, or Welfare of Students; Accountability Ratings and Sanctions; and Renewal of an Open-Enrollment Charter), if the finding or determination is final under the rules governing such proceedings; or

(C) any finding or determination made by a court in an action for declaratory judgment or other action pertaining to the commissioner's determination under this section, if the order or judgment is final under the rules governing such proceedings; and

(2) to the extent that a finding or determination under paragraph (1) of this subsection pertains to a charter holder or charter school served by a management company, but does not directly pertain to the management company, the focus shall be on the question of whether the relevant contract for management services creates a legal duty for the management company to provide services to the charter school in areas of performance that are the subject of the finding or determination against the charter holder or charter school.

(c) Review of proposed management contract. A proposed management contract shall be submitted for commissioner approval through the non-expansion amendment process.

(1) A contract for management services is unenforceable, void, and of no force or effect until the non-expansion amendment con-

taining the management contract is approved by the commissioner. In addition, performance under the contract prior to approval by the commissioner is a material charter violation.

(2) Notwithstanding this section, if an affected contract for management services was executed prior to September 1, 2001, then the management contract may continue in effect past September 1, 2001, if each of the following conditions is met:

(A) no state funds are used to pay any amounts due the management company under the management contract, and all such amounts are paid from a clearly identified source of non-state funds; and

(B) the terms of the management contract have not been renewed, modified, or otherwise altered since September 1, 2001.

§100.1159. Loan from Management Company Prohibited.

(a) Loan prohibited. Neither a charter holder or a charter school may accept any loan or credit from, or incur any debt to, a management company that has a contract to provide management services to:

(1) that charter school; or

(2) another charter school that operates under a charter granted to the charter holder.

(b) Management contract prohibited. A charter holder or charter school that accepts a loan or credit from, or incurs a debt to, a management company, may not enter into a contract with that management company to provide management services to the school.

(c) Audit disclosure. A charter holder shall separately disclose, in its annual audit report required by §100.1067(c) of this title (relating to Accounting for State and Federal Funds), all loans or credit received or indebtedness incurred by the charter holder or the charter school to any person or entity providing management services to the charter school or another charter school that operates under a charter granted to the charter holder.

(d) Agency review. Compliance with this section shall be reviewed in conjunction with the review required by §100.1157(c) of this title (relating to Procedures for Prohibiting a Management Contract).

(e) Implementation schedule and transition. Notwithstanding this subsection, if the affected management contract was executed prior to September 1, 2001, and the affected promissory note or other debt instrument was also executed prior to September 1, 2001, then:

(1) both the management contract and the indebtedness may continue in effect past September 1, 2001, if each of the following conditions is met:

(A) no state funds are used to pay any amounts due the management company under the management contract, and all such amounts are paid from a clearly identified source of non-state funds;

(B) no state funds are used to pay any amounts due the management company under the promissory note or other debt instrument, and all such amounts are paid from a clearly identified source of non-state funds; and

(C) the terms of the management contract and the promissory note or other debt instrument have not been renewed, modified, or otherwise altered since September 1, 2001; or

(2) the indebtedness may be refinanced after September 1, 2001, and the management contract may be renegotiated after September 1, 2001, if each of the following conditions is met:

(A) on or before September 1, 2002, the charter holder and the management company shall file with the Texas Education Agency (TEA) division responsible for legal services the following:

(i) a copy of each and every contract, promissory note, debt instrument, agreement or document executed, or in effect, at any time on or after September 1, 2001, between or among: the charter holder or any of its charter schools or management companies; the management company or any of its subsidiaries, parents, affiliates, or related companies; and the lender or any of its subsidiaries, parents, affiliates, or related companies; and

(ii) additional documents as requested by the TEA division responsible for legal services during its review under this subsection;

(B) the documents filed under subparagraph (A) of this paragraph shall establish that, upon approval by the TEA division responsible for legal services, the management company will not be the lender of any funds, but will merely act as the guarantor or co-signer on loans totaling an amount equal to or less than the indebtedness owed by the charter holder to the management company prior to September 1, 2001;

(C) the documents filed under subparagraph (A) of this paragraph shall establish that the management company may not take any action in its capacity as guarantor or co-signer to prevent, deter, or discourage the charter holder from taking any action respecting the management company under its contract for management services;

(D) the documents filed under subparagraph (A) of this paragraph shall establish that the term of the contract for management services between the management company and the charter holder may not extend beyond the term of the current contract for charter between the charter holder and the State Board of Education, and that the contract for management services is renewable beyond the current term of the open-enrollment charter only through negotiation and execution of a new contract for management services;

(E) the documents filed under subparagraph (A) of this paragraph shall establish that the management company may not take any action in its capacity as guarantor or co-signer to coerce, influence, or encourage the charter holder to negotiate or execute another contract for management services under subparagraph (D) of this paragraph; and

(F) the TEA division responsible for legal services finds, in writing, that the documents filed under subparagraph (A) of this paragraph meet the criteria specified in this paragraph and finds that any compliance problems concerning the governance and the financial or other management of the charter holder do not prevent the approval of the arrangements reflected in the documents.

§100.1161. Public Records Maintained by Management Company; Contract Provision.

(a) Maintenance of records. A management company that provides, or did provide, any management services to a charter holder or charter school shall maintain, as required by §100.1203 of this title (relating to Records Management), all records related to its management services separately from any other records of the management company.

(b) Contract provision. Any contract, including a contract renewal, between a charter holder or charter school and a management company for management services to the charter school must contain a contract provision expressly requiring the management company to comply with subsection (a) of this section.

§100.1163. Compliance Records on Nepotism, Conflicts of Interest, and Restrictions on Serving.

(a) A charter holder shall collect, maintain, and make available on request for inspection under this division, the following information on a form or in a format approved by the commissioner of education:

(1) information identifying each member of the governing body of the charter holder and related compliance information as required by subsection (b) of this section;

(2) information identifying each chief executive officer and chief financial officer of the charter school and related compliance information as required by subsection (b) of this section;

(3) information identifying each member of the governing body of the charter school, if the charter holder has established a governing body for the charter school, and related compliance information as required by subsection (b) of this section; and

(4) information identifying each employee of the charter school and related compliance information as required by subsection (b) of this section.

(b) The compliance information recorded for each individual identified under subsection (a) of this section shall include:

(1) the title of each position held, or function performed, by the individual;

(2) the specific powers and duties that the governing body of the charter holder or charter school have delegated to the individual, if any, as described by the powers and duties listed in the charter pursuant to §100.1113 of this title (relating to Delegation of Powers and Duties);

(3) the legal name of the individual;

(4) any aliases or names formerly used by the individual, including maiden name;

(5) a complete criminal history record of convictions for the individual, issued by the Texas Department of Public Safety within three years of the date of the compliance record;

(6) a list of all relatives of the individual, within the third degree of consanguinity or affinity, under Texas Government Code, Chapter 573, that:

(A) are employed by the charter holder or the charter school;

(B) conduct business transactions with the charter holder or the charter school;

(C) serve on the governing body of the charter holder or the charter school; or

(D) have a substantial interest in a management company under Texas Education Code, §12.120; and

(7) a full and complete list of the individual's business interests in, or transactions with, any charter holder, charter school, or management company.

(c) Not later than 30 days following any change in the information recorded under this section, a charter holder shall make corrections to its most recent charter school compliance record.

(d) A charter holder shall file the information with the Texas Education Agency (TEA) division responsible for charter schools within 10 business days of receiving a written request from TEA.

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 March 4, 2024.

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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



DIVISION 7. CHARTER SCHOOL OPERATIONS

19 TAC §§100.1203, 100.1205, 100.1207, 100.1209, 100.1211 - 100.1213

STATUTORY AUTHORITY. The amendments are proposed under Texas Education Code (TEC), §12.101, which requires the commissioner to adopt rules regarding the criteria for granting a charter and providing notification for the establishment of new charters or campuses; TEC, §12.1011, which requires the commissioner to adopt rules regarding charter authorization for high-performing entities; TEC, §12.103, which allows the commissioner to adopt rules regarding applicable provisions to open-enrollment charter schools; TEC, §12.104, as amended by House Bill (HB) 189, 87th Texas Legislature, Regular Session, 2021, which allows the commissioner to adopt rules permitting an open-enrollment charter school to voluntarily participate in any state program available to school districts if the school complies with all terms of the program; TEC, §12.1055, which allows the commissioner to adopt rules regarding nepotism under Texas Government Code, Chapter 573; TEC, §12.1058, as amended by HB 1707, 88th Texas Legislature, Regular Session, 2023, which requires a political subdivision to consider an open-enrollment charter school as a school district for the purposes of municipal ordinances if the open-enrollment charter school meets notification requirements; TEC, §12.110, which requires the commissioner to adopt an application form and procedure that must be used to apply for an open-enrollment charter school; TEC, §12.1101, which requires the commissioner to adopt a procedure for providing notice to the outlined persons on receipt by the commissioner of an application for a charter for an open-enrollment charter school or of notice of the establishment of a campus; TEC, §12.114, which allows the commissioner to define expansion amendment requests; TEC, §12.1141, as amended by Senate Bill (SB) 879, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to adopt a procedure for renewal, denial of renewal, or expiration of a charter for an open-enrollment charter school at the end of the term of the charter; TEC, §12.1166, which requires the commissioner to adopt a rule defining "related party;" TEC, §12.1173, as amended by SB 2293, 86th Texas Legislature, 2019, which requires the commissioner to adopt rules to implement charter school waiting lists for admission; TEC, §12.1181, requires the commissioner to adopt performance frameworks that establish standards by which to measure the performance of an open-enrollment charter school; TEC, §12.123, which requires the commissioner to adopt rules prescribing the training for members of the governing body of a charter school and its officers; TEC, §12.153, which allows the

commissioner to adopt rules to implement college of university or junior college charter schools; TEC, §12.265, as amended by SB 1615, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to adopt rules necessary to administer adult high school charter school programs; and TEC, §39.0548, which requires the commissioner to authorize and determine designation as a dropout recovery school.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code, §§12.101; 12.1011; 12.103; 12.104, as amended by House Bill (HB) 189, 87th Texas Legislature, Regular Session, 2021; 12.1055; 12.1058, as amended by HB 1707, 88th Texas Legislature, Regular Session, 2023; 12.110; 12.1101; 12.114; 12.1141, as amended by Senate Bill (SB) 879, 87th Texas Legislature, Regular Session, 2021; 12.1166; 12.1173, as amended by SB 2293, 86th Texas Legislature, 2019; 12.1181; 12.123; 12.153; 12.265, as amended by SB 1615, 87th Texas Legislature, Regular Session, 2021; and 39.0548.

§100.1203. *Records Management.*

(a) Retention of government records. With respect to its operation of a charter school, a charter holder is considered to be a local government for purposes of Local Government Code, Title 6, Subtitle C, [~~Local Government Code,~~] and Texas Government Code, Chapter 441, Subchapter J.

(1) Government records. Records of a charter school and records of a charter holder that relate to a charter school are government records for all purposes under state law.

(2) Retention and destruction of records. Any requirement in Local Government Code, Title 6, Subtitle C, [~~Local Government Code,~~] or Texas Government Code, Chapter 441, Subchapter J, that applies to a school district, the board of trustees of a school district, or an officer or employee of a school district applies to a charter school, the governing body of its charter holder, the governing body of the charter school, and each officer and employee of the charter school.

(3) Maintained within this state. Records of a charter school shall be maintained physically within the state [State] of Texas at all times, except those records stored electronically in accordance with the requirements of Local Government Code, Chapter 205, may be maintained outside the state [State] of Texas if such records remain accessible from within the state [State] of Texas during normal business hours. For purposes of this paragraph, the records of a charter school shall mean the records indicated by the Financial Accountability System Resource Guide, adopted by reference in §109.41 of this title (relating to Financial Accountability System Resource Guide), or its successor, or by the laws and rules summarized therein. The records of a management company related to the charter school may be audited under §100.1075(b) of this title (relating to Audit by Commissioner; Records in the Possession of a Management Company), but are not subject to this paragraph.

(4) Records of former charter holder. Notwithstanding paragraph (2) [2] of this subsection, and notwithstanding Local Government Code, §201.007, the records of a charter holder that ceases to operate a charter school shall be transferred in the manner prescribed by the commissioner of education under subsection (b) of this section.

(b) Transfer of former charter holder records. The records of a charter holder that ceases to operate a charter school shall be transferred as directed by the commissioner to a custodian or custodians designated by the commissioner. The commissioner may designate any appropriate entity to serve as custodian, including the Texas Education Agency, a regional education service center, or a school district. In designating a custodian, the commissioner shall ensure that the transferred records,

including student and personnel records, are transferred to a custodian capable of maintaining the records; making the records readily accessible to students, parents, former school employees, and other persons entitled to access; and complying with applicable state or federal law restricting access to the records.

(c) Enforcement. If a charter holder, a charter school, or an officer or employee of a charter school refuses to transfer school records as directed by the commissioner under subsection (b) of this section, the commissioner may ask the attorney general [Attorney General] to petition a court for recovery of the records. If the court grants the petition, the court shall award attorney's fees and court costs to the state.

§100.1205. Procurement of Professional Services.

(a) Applicability of section. This section applies to a charter holder unless alternative procedures for selecting a provider of professional services or a group or association of providers, or awarding a contract for professional services, have been approved by the commissioner of education under §100.1079 [§100.1006] of this title (relating to Optional Open-Enrollment Charter Provisions for Contracting and Purchasing) and the open-enrollment charter has been amended by the commissioner to adopt the approved procedures.

(b) Selecting professional services. A charter holder shall select a provider of professional services or a group or association of providers, and award a contract for professional services, in accordance with Texas Government Code, Chapter 2254, Subchapter A. A requirement in that subchapter that applies to a school district or the board of trustees of a school district applies to a charter school, the governing body of a charter holder, or the governing body of a charter school.

(c) Definition. For purposes of this section, professional services are services:

(1) within the scope of the practice, as defined by state law, of accounting; architecture; landscape architecture; land surveying; medicine; optometry; professional engineering; real estate appraising; or professional nursing; or

(2) provided in connection with the professional employment or practice of a person who is licensed or registered as a certified public accountant; an architect; a landscape architect; a land surveyor; a physician, including a surgeon; an optometrist; a professional engineer; a state certified, or state licensed real estate appraiser; or a registered nurse.

(d) Implementation schedule and transition. Texas Government Code, Chapter 2254, Subchapter A, does not apply to a contract executed prior to September 1, 2001.

§100.1207. Student Admission.

(a) Application deadline. For admission to a charter school, a charter holder shall:

(1) require the applicant to complete and submit a common application form prescribed by the commissioner of education, referred to as the Texas Charter School Admission Application, beginning in the 2020-2021 school year. The application must be submitted not later than a reasonable deadline the charter holder establishes.

(A) The common application form shall be posted on the Texas Education Agency (TEA) website, and the form and all associated fields shall be posted on each open-enrollment charter school's website to be used by an applicant for admission to an open-enrollment charter school campus.

(B) The common application form and the student admission and enrollment policy under subsection (d) or (e) of this section, including the policies and procedures for admission, lotteries, enrollment, student waitlists, withdrawals, reenrollment, and transfers,

shall be publicly accessible and easily available on the charter school's website. A charter school must make available the common application form and may not require the use of an account, email, password, or other condition as the sole means to access the information or the common application form. A charter school may also print copies of the common application form and make them available for use during the admission process.

(C) An open-enrollment charter school may not alter the form, unless to signify specific criteria that may not apply to their campus as permitted by TEA, or add any additional criteria, questions, statements, advertisements, or solicitations or require any conditions for a person to access the form. An open-enrollment charter school may not sell, provide, or ask an applicant to agree to share or have the charter school share any student information provided in the application to any person or entity other than TEA;

~~[(1) require the applicant to complete and submit an application not later than a reasonable deadline the charter holder establishes; and]~~

(2) on receipt of more acceptable applications for admission under this section than available positions in the school:

(A) except as permitted by subsection (b) of this section, fill the available positions by lottery; or

(B) subject to subsection (d) [(e)] of this section, fill the available positions in accordance with the open-enrollment charter school's approved student admission and enrollment policy; and [the order in which all timely applications were received.]

(3) create and manage a waitlist, as described in subsection (e) of this section, for applicants who are not admitted after all available positions in the charter school have been filled.

(b) Lottery exemption. The charter holder may exempt students from the lottery required by subsection (d) [(a)] of this section to the extent this is consistent with the definition of a "public charter school" under the Elementary and Secondary Education Act (ESEA) as reauthorized under the Every Student Succeeds Act (ESSA), as interpreted by the United States Department of Education (USDE), including but not limited to, siblings of students already admitted to or attending the same charter school; children of a charter school's founders, teachers and staff, and children of employees in a work-site charter school (so long as the total number of students allowed under this exemption does not exceed 10% of the school's total enrollment) [No Child Left Behind Act of 2001, P.L. 107-110, §5210 (NCLB), as interpreted by the United States Department of Education (USDE)].

(c) Newspaper publication. To the extent this is consistent with the definition of a "public charter school" under ESEA as reauthorized under ESSA [the NCLB], as interpreted by the USDE, a charter holder may fill applications for admission under subsection (a)(1) [(a)(2)(B)] of this section only if it published a notice of the opportunity to apply for admission to the charter school. At a minimum, a [A] notice published under this subsection must:

(1) state the application deadline; and

(2) be published in a newspaper of general circulation in the community in which the school is located not later than the seventh day before the application deadline. For purposes of this chapter, a newspaper of general circulation is defined as one that has more than a minimum number of subscribers among a particular geographic region, which [that] has a diverse subscribership, and that publishes some news items of general interest to the community.

(d) Student admission and enrollment. Except as provided by this section, the governing body of the charter holder must adopt a student admission and enrollment policy that:

(1) unless as provided in subsection (f) of this section, prohibits discrimination on the basis of sex; national origin; ethnicity; religion; disability; academic, artistic, or athletic ability; or the district the child would otherwise attend under state law; [and]

(2) specifies any type of non-discriminatory enrollment criteria to be used at each charter school operated by the charter holder. Such non-discriminatory enrollment criteria may make the student ineligible for enrollment based on a history of a criminal offense, a juvenile court adjudication, or discipline problems under Texas Education Code (TEC), Chapter 37, Subchapter A, documented as provided by local policy; and [.]

(3) specifies whether students will be admitted to the charter school campus by lottery or on a first come, first served basis if the application is published in a newspaper of general circulation in the community in which the school is located not later than the seventh day before the application deadline, as described in TEC, §12.117.

(e) Waitlist. Charter holders required to create and maintain a waitlist as a result of receiving more acceptable applications for admission than available positions at the school shall manage and update the student waitlist.

(1) Each school year, the following information must be maintained at the campus level for reporting to TEA no later than the last Friday in October of each school year:

(A) the total number of students on the waitlist;

(B) the number of students on the waitlist disaggregated by grade level; and

(C) information necessary to identify each student, as specified in TEC, §12.1174 (Enrollment and Waiting List Report).

(2) The waitlist of each charter school campus shall be managed according to that charter holder's policy, which must include the following criteria.

(A) The names of eligible students with completed applications who apply and are not admitted shall be added to the end of the waitlist in the order in which the applications are received.

(B) As spaces become available at the charter school campus during the school year, the school must consult its campus waitlist and select a new student for enrollment in the order that students appear on the list.

(C) The charter school shall review each campus waitlist no less than every 60 days and eliminate duplicate entries and the names of students who have been admitted to the charter school.

(3) An open-enrollment charter school may not sell, provide, or ask a student to agree to share any student information on the waitlist with any person or entity other than TEA.

(f) [(e)] Student admission and enrollment at charter schools specializing in performing arts. In accordance with [the] TEC, §12.111 and §12.1171, a charter school specializing in performing arts, as defined in this subsection, may adopt a student admission and enrollment policy that complies with this subsection in lieu of compliance with subsections (a)-(d) of this section.

(1) A charter school specializing in performing arts as used in this subsection means a school whose open-enrollment charter includes an educational program that, in addition to the required academic curriculum, has an emphasis in one or more of the performing

arts, which include music, theatre, and dance. A program with an emphasis in the performing arts may include the following components:

(A) a core academic curriculum that is integrated with performing arts instruction;

(B) a wider array of performing arts courses than are typically offered at public schools;

(C) frequent opportunities for students to demonstrate their artistic talents;

(D) cooperative programs with other organizations or individuals in the performing arts community; or

(E) other innovative methods for offering performing arts learning opportunities.

(2) To the extent this is consistent with the definition of a "public charter school" as defined in ESEA as reauthorized under ESSA [under the NCLB], as interpreted by the USDE, the governing body of a charter holder that operates a charter school specializing in performing arts must require the applicant to complete and submit a common admission application form as described in subsection (a)(1) of this section and may adopt an admission policy that requires a student to demonstrate an interest or ability in the performing arts or to audition for admission to the school.

(3) The governing body of a charter holder that operates a charter school specializing in performing arts must adopt a student admission and enrollment policy that prohibits discrimination on the basis of sex, national origin, ethnicity, religion, disability, academic or athletic ability, or the district the child would otherwise attend under state law.

(4) The governing body of a charter holder that operates a charter school specializing in performing arts must adopt a student admission and enrollment policy that specifies any type of non-discriminatory enrollment criteria to be used at the charter school. Such non-discriminatory enrollment criteria may make the student ineligible for enrollment based on a history of a criminal offense, a juvenile court adjudication, or discipline problems under TEC, Chapter 37, Subchapter A, documented as provided by local policy.

(g) [(f)] Maximum enrollment. Total enrollment shall not exceed the maximum number of students approved in the open-enrollment charter. A charter school may establish a primary and secondary boundary. Students who reside outside the primary geographic boundary stated in the open-enrollment charter shall not be admitted to the charter school until all eligible applicants that reside within the primary boundary and have submitted a timely application have been enrolled. Then, if the open-enrollment charter so provides for a secondary boundary, the charter holder may admit students who reside within the secondary boundary to the charter school in accordance with the terms of the open-enrollment charter.

§100.1209. *Municipal Ordinances.*

(a) Municipal ordinances apply. A charter holder is subject to federal and state laws and rules governing public schools and to zoning and all other municipal ordinances governing public schools.

(b) When zoning ordinances do not apply. Notwithstanding subsection (a) of this section, a charter school site located in whole or in part in a municipality with a population of 20,000 or less is not subject to a municipal zoning ordinance governing public schools.

(c) Notification to political subdivisions. A political subdivision shall consider an open-enrollment charter school a school district for purposes related to land development standards, licensing, zoning, and various purposes and services pursuant to the following.

(1) The governing body of an open-enrollment charter school must certify in writing to the political subdivision that no employee, board member or charter holder of the charter school received any personal financial benefits from a real estate transaction with the charter school.

(2) The open-enrollment charter school files notice of the new property location within 10 business days of the completing the purchase or lease of real property for that location to the Texas Education Agency division responsible for charter schools and the division will notify the following within 10 business days:

(A) the superintendent and the board of trustees of each school district from which the proposed location is likely to draw students, as defined in §100.1013 of this title (relating to Notification of Charter Application); and

(B) each member of the legislature that represents the geographic area to be served by the location, as defined in §100.1013 of this title.

(d) Charter school related purposes. An agreement between a municipality and an open-enrollment charter school may require that any revised land development standards can only apply while the property is used for charter school related purposes and that any property in use subject to open-enrollment charter school land development standards must become compliant with all applicable non-school commercial development regulations after the closure or relocation of the charter school.

§100.1211. Students.

(a) Student performance. Notwithstanding any provision in an open-enrollment charter, acceptable student performance under Texas Education Code, §12.111(a)(3), shall at a minimum require overall student performance meeting the standards for an "academically acceptable" rating as defined by §100.1001(8) [§100.1001(28)] of this title (relating to Definitions).

(b) Reporting child abuse or neglect. A charter holder shall adopt and disseminate to all charter school staff and volunteers a policy governing child abuse reports required by Texas Family Code, Chapter 261. The policy shall require that employees, volunteers, or agents of the charter holder and the charter school report child abuse or neglect directly to an appropriate entity listed in Texas Family Code, Chapter 261.

(c) Admission and enrollment. A charter holder for an open-enrollment charter school shall have an admission and enrollment policy as outlined in §100.1207 of this title (relating to Student Admission), including prohibiting discrimination on the basis of sex; national origin; ethnicity; religion; disability; academic, artistic, or athletic ability; or the district the child would otherwise attend under state law.

(d) Notice of expulsion or withdrawal. A charter school shall notify the school district in which the student resides within three business days of any action expelling or withdrawing a student from the charter school.

(e) Data reporting. A charter holder and its charter school shall report timely and accurate information required by the commissioner of education to the Texas Education Agency (TEA), except as expressly waived by the commissioner.

(f) Student records. Student records shall be secure and maintained physically within the state of Texas at all times. Charter school personnel shall respond to requests for records in a timely and appropriate manner. Charter schools shall participate in the Texas Records Exchange (TREx) system and shall follow TREx data standards.

(g) Scholastic year. A charter holder shall adopt a school year for the charter school, with fixed beginning and ending dates. The charter school shall submit a copy of the charter school's campus calendars to the TEA division responsible for charter school administration prior to the first day of August of each year.

§100.1212. Personnel.

(a) Minimum qualifications. Except as provided by subsection (b) of this section, all persons employed as a principal or teacher by an open-enrollment charter school must hold a baccalaureate degree.

(b) Exception. In an open-enrollment charter school that serves youth referred to or placed in a residential trade center by a local or state agency, a person may be employed as a teacher for a noncore vocational course without holding a baccalaureate degree if the person has:

(1) demonstrated subject matter expertise related to the subject taught, such as professional work experience; formal training and education; holding a relevant active professional industry license, certification, or registration; or any combination of work experience, training and education, and industry license, certification, or registration; and

(2) received at least 20 hours of classroom management training, as determined by the governing body of the open-enrollment charter school. Documentation of the training is to be maintained locally and provided to the Texas Education Agency within 10 business days upon request.

(c) Certification. Special education teachers, bilingual teachers, and teachers of English as a second language must be certified in the fields in which they are assigned to teach as required by state and/or federal law.

(d) Paraprofessionals. All persons employed as paraprofessionals must be certified as required to meet state and/or federal law.

(e) Criminal history. A charter school shall obtain from the Department of Public Safety (DPS), prior to the hiring of personnel and at least every third year thereafter, all criminal history record information maintained by ~~the~~ DPS that the charter school is authorized to obtain.

(f) Do not hire registry. A charter school is prohibited from hiring personnel who are not eligible for hire in a Texas public school if they are listed on the Registry of Persons Not Eligible for Employment in Public Schools.

§100.1213. Failure to Operate.

(a) Continuous operation. Except as provided in this section, a charter holder shall operate the program as described in the open-enrollment charter for the full school term described in the open-enrollment charter during each year that the open-enrollment charter is in effect.

(b) Delayed opening [Dormant open-enrollment charter]. A charter holder may not delay opening the charter school (district) or any charter campus [or suspend operation] for longer than 21 days without an amendment to its open-enrollment charter, approved by the commissioner of education, stating that the charter school district or campus is dormant and setting forth the date on which operations shall resume and any applicable conditions for resuming operation that may be imposed by the commissioner. The period of dormancy shall last no longer than 12 months and will expire no later than June 30 in the school year in which the dormancy occurs. At the end of a period of dormancy the charter holder may request an additional period of dormancy of no more than 12 months through an amendment to its open-enrollment charter.

~~[(c) Written notice. A charter holder may not suspend operation of the charter school, or any campus or site of the charter school, for a period of more than three days without mailing written notice to the parent or guardian of each student and filing such notice with the Texas Education Agency (TEA) division responsible for charter schools at least 14 days in advance of the suspension, except that in an emergency the charter holder shall notify the TEA division responsible for charter schools by telephone or other means within 24 hours of suspending operations.]~~

~~(c) [(d)] Abandonment. Delay of opening or suspension of operations in violation of this section constitutes abandonment of the open-enrollment charter and constitutes a material violation of the charter contract.~~

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



PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

CHAPTER 227. PROVISIONS FOR EDUCATOR PREPARATION CANDIDATES

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 19 TAC §227.10(a)(4)(C) is not included in the print version of the Texas Register. The figure is available in the on-line version of the March 15, 2024, issue of the Texas Register.)

The State Board for Educator Certification (SBEC) proposes amendments to 19 Texas Administrative Code (TAC) §§227.1, 227.5, 227.10, and 227.103, concerning provisions for educator preparation candidates. The proposed amendments would make conforming changes to the Chapter 227 rules given proposed updates to Chapter 228, Requirements for Educator Preparation Programs, and Chapter 230, Professional Educator Preparation and Certification. The proposed changes would also update the Pre-Admission Content Test (PACT) figure to include the proposed new certificates and aligned PACT exams as well as proposed cut scores.

BACKGROUND INFORMATION AND JUSTIFICATION: The SBEC rules in 19 TAC Chapter 227 are organized as follows: Subchapter A, Admission to Educator Preparation Programs, and Subchapter B, Preliminary Evaluation of Certification Eligibility. These subchapters establish requirements for admission into an educator preparation program (EPP) and preliminary evaluation of certification eligibility.

These requirements ensure that EPPs attract and admit applicants who demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of Texas.

The following is a description of the proposed amendments to 19 TAC Chapter 227. The proposed amendments would update rule references based on the proposed revisions to 19 TAC Chapter 228 and would update the PACT figure to include the new certificate names and aligned PACT names and associated passing standards based on the proposed revisions to 19 TAC Chapter 230.

Subchapter A. Admission to Educator Preparation Programs

Proposed Amendment to 19 TAC §227.1. General Provisions

The proposed amendment to 19 TAC §227.1(c)(3) would update the statutory reference from Texas Education Code (TEC), §21.044(e)(3), to TEC, §21.044(g), to conform with updates to statute.

Proposed Amendment to 19 TAC §227.5. Definitions

The proposed amendment to the definition for alternative certification program in 19 TAC §227.5(2) would update the reference from 19 TAC §228.20(a) to proposed new 19 TAC §228.25, Governance of Educator Preparation Programs. The proposed amendment to the definition for clinical teaching in 19 TAC §227.5(7) would update the reference from 19 TAC §228.35 to proposed new 19 TAC §228.67, Clinical Teaching. The proposed amendment to the definition for content pedagogy examinations in 19 TAC §227.5(9) would change "examinations" to "examination" to mirror use of the singular term in the definition for content certification examination in 19 TAC §227.5(8).

Proposed Amendment to 19 TAC §227.10. Admission Criteria

The proposed amendment to 19 TAC §227.10(a)(1) would update the language from "an undergraduate university program" to "a university undergraduate or post-baccalaureate program" to align with the exit policy in proposed new 19 TAC §228.31(b), Minimum Educator Preparation Program Obligations to All Candidates.

The proposed amendment to 19 TAC §227.10(g) would update the reference from 19 TAC §228.35(i)(2) to proposed new 19 TAC §228.45(b), Coursework and Training Requirements for Early Childhood-Grade 3. The proposed amendment would also expand the list of certificates, from 17 to 22, that a certified educator may hold to enroll in an EPP and complete the course of instruction that qualifies him or her to pursue the early childhood certification, including five proposed new Core: Early Childhood-Grade 6 certificates, which are proposed updates to 19 TAC Chapter 233, Categories of Classroom Teaching Certificates.

Proposed Amendment to 19 TAC §227.10(a)(4)(C)

Update to Figure for Pre-Admission Content Test Requirements

The proposed amendment to Figure: 19 TAC §227.10(a)(4)(C) would provide two technical edits, including moving the certificate Early Childhood: Prekindergarten-Grade 3 from Core Subjects to Early Childhood and removing the section header language for "Certification category (continued)" throughout to align with proposed updates to Figure: 19 TAC §230.21(e).

The proposed amendment to Figure: 19 TAC §227.10(a)(4)(C) would remove the certificates Core Subjects Early Childhood-Grade 6, Core Subjects Grades 4-8, English Language Arts and Reading Grades 4-8, and English Language Arts and Reading/Social Studies Grades 4-8 to align with proposed updates to Figure: 19 TAC §230.21(e).

The proposed amendment to Figure: 19 TAC §227.10(a)(4)(C) would adjust the passing standard for 790 Texas PACT Core Subjects 4-8 from 94 out of 160 selected response items to 82 out of 128 selected response items, based on updated standard setting committee recommendations.

The proposed amendment to Figure: 19 TAC §227.10(a)(4)(C) would also add the certificates for Core/Fine Arts/Physical Education/Health with the Science of Teaching Reading: Early Childhood-Grade 6, Core/Special Education with the Science of Teaching Reading: Early Childhood-Grade 6, Core/Bilingual Education Spanish with the Science of Teaching Reading: Early Childhood-Grade 6, Core/English as a Second Language with the Science of Teaching Reading: Early Childhood-Grade 6, and Special Education Specialist: Early Childhood-Grade 12 to align with proposed updates to Figure: 19 TAC §230.21(e), including the proposed PACT and associated passing standard.

Finally, the proposed amendment to Figure: 19 TAC §227.10(a)(4)(C) would add a new certification category and PACT for Tamil: Early Childhood-Grade 12, in alignment with proposed updates to Figure: 19 TAC §230.21(e). The proposed amendment would also clarify that a passing standard for Tamil: Early Childhood-Grade 12 would be established in the future, in alignment with the launch of the certificate and associated exam in September 2025, which would be codified in future rulemaking.

Subchapter B. Preliminary Evaluation of Certification Eligibility

Proposed Amendment to 19 TAC §227.103. Application

The proposed amendment to 19 TAC §227.103(a) would update the section to mirror language used in 19 TAC §227.107(a) to reference the schedule of fees for certification services.

FISCAL IMPACT: Emily Garcia, associate commissioner for educator preparation, certification, and enforcement has determined that for the first five years the proposal is in effect, there is no additional fiscal impact on state and local governments and that there are no additional costs to entities required to comply with the proposal.

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

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

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

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

GOVERNMENT GROWTH IMPACT: Texas Education Agency (TEA) staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require

an increase or decrease in fees paid to the agency; would not create a new regulation; would not expand, limit, or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Ms. Garcia has determined that for the first five years that the rule will be in effect that the public benefit anticipated as a result of the proposal would be supporting EPPs in ensuring that educator candidates have the appropriate content knowledge in the subject they intend to teach upon admission to the program. TEA staff has determined there is no anticipated cost to persons required to comply with the proposal.

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

ENVIRONMENTAL IMPACT STATEMENT: The proposal does not require an environmental impact analysis because the proposal does not include major environmental rules under TGC, §2001.0225.

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

PUBLIC COMMENTS: The public comment period on the proposal begins March 15, 2024, and ends April 15, 2024. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/SBEC_Rules_\(TAC\)/Proposed_State_Board_for_Educator_Certification_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/SBEC_Rules_(TAC)/Proposed_State_Board_for_Educator_Certification_Rules/). The SBEC will take registered oral and written comments on the proposal during the April 26, 2024, meeting's public comment period in accordance with the SBEC board operating policies and procedures.

SUBCHAPTER A. ADMISSION TO EDUCATOR PREPARATION PROGRAMS

19 TAC §§227.1, 227.5, 227.10

STATUTORY AUTHORITY. The amendments are proposed under Texas Education Code (TEC), §21.031, which authorizes the State Board for Educator Certification (SBEC) to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators and states that in proposing rules under TEC, Chapter 21, Subchapter B, the SBEC shall ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of TEC, Chapter 21, Subchapter B, in a manner consistent with TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(4), which specifies the requirements for the issuance and renewal of an educator certificate; TEC, §21.044(a), which requires SBEC to propose rules establishing training requirements a person must accomplish to obtain a certificate, enter an internship, or enter an induction-year program; TEC, §21.044(g)(2) and (3), which requires each educator preparation program (EPP) to provide certain information related to the effect of supply and demand forces on the educator workforce of the state and the performance over time of the EPP; TEC, §21.0441, which requires SBEC to adopt rules setting certain admission requirements for EPPs; TEC, §21.0489(c), which requires

SBEC to adopt rules establishing eligibility requirements for an Early Childhood: Prekindergarten-Grade 3 certificate; TEC, §21.049(a), which authorizes SBEC to propose rules providing for educator certification programs as an alternative to traditional EPPs; and TEC, §21.050(a), which requires a person who applies for a teaching certificate for which SBEC rules require a bachelor's degree must possess a bachelor's degree received with an academic major or interdisciplinary academic major, including reading, other than education, that is related to the curriculum as prescribed under TEC, Chapter 28, Subchapter A; and Texas Occupations Code (TOC), §53.151, which sets the definitions of "licensing authority" and "occupational license" to have the meanings assigned to those terms by TOC, §58.001; TOC, §53.152, which requires EPPs to provide applicants and enrollees certain notice regarding potential ineligibility for a certificate based on convicted offenses, the SBEC rules regarding the certificate eligibility of an individual with a criminal history, and the right of the individual to request a criminal history evaluation letter; and TOC, §53.153, which requires an EPP to refund tuition, application fees, and examination fees paid by an individual if the EPP failed to provide the required notice under the TOC, §53.152, to an individual who was denied a certificate because the individual was convicted of an offense.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code, §§21.031; 21.041(b)(1) and (4); 21.044(a) and (g)(2) and (3); 21.0441; 21.0489(c); 21.049(a); and 21.050(a); and Texas Occupations Code, §§53.151, 53.152, and 53.153.

§227.1. *General Provisions.*

(a) It is the responsibility of the education profession as a whole to attract applicants and to retain educators who demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state.

(b) Educator preparation programs (EPPs) shall inform all applicants that:

(1) pursuant to the Texas Education Code (TEC), §22.083, candidates must undergo a criminal history background check prior to employment as an educator; and

(2) pursuant to the TEC, §22.0835, candidates must undergo a criminal history background check prior to clinical teaching.

(c) EPPs shall inform all applicants, in writing, of the following:

(1) the admission requirements as specified in this chapter;

(2) the requirements for program completion as specified in Chapter 228 of this title (relating to Requirements for Educator Preparation Programs); and

(3) in accordance with TEC, §21.044(g): [~~§21.044(e)(3):~~]

(A) the effect of supply and demand forces on the educator workforce in this state; and

(B) the performance over time of the EPP for the past five years.

(d) EPPs shall notify, in writing by mail, personal delivery, facsimile, email, or an electronic notification, each applicant to and enrollee in the EPP of the following regardless of whether the applicant or enrollee has been convicted of an offense:

(1) the potential ineligibility of an individual who has been convicted of an offense for issuance of a certificate on completion of the EPP;

(2) the current State Board for Educator Certification (SBEC) rules prescribed in §249.16 of this title (relating to Eligibility of Persons with Criminal History for a Certificate under Texas Occupations Code, Chapter 53, and Texas Education Code, Chapter 21); and

(3) the right to request a criminal history evaluation letter as provided in Chapter 227, Subchapter B, of this title (relating to Preliminary Evaluation of Certification Eligibility).

(e) If the SBEC determines that an EPP has failed to provide the notice required by subsection (d) of this section to an individual entitled to receive the notice and that the individual's application for a certificate for which the EPP prepares the individual was denied because the individual has been convicted of an offense prior to the EPP providing notice, the SBEC shall order the EPP to:

(1) refund the amount of any tuition paid by the individual to the EPP; and

(2) pay to the individual an amount equal to the total of the following, as applicable:

(A) the amount of any application fees paid by the individual to the SBEC; and

(B) the amount of any examination fees paid by the individual to the SBEC and/or to a provider of examinations required for certification. An EPP is not liable for examination fees if the examination was not required to be passed to meet the admission requirements of the EPP and/or the EPP did not provide test approval for the examination.

(f) If the governor of Texas declares a state of disaster consistent with the Texas Government Code, §418.014, Texas Education Agency staff may extend deadlines in this chapter for up to 90 days as necessary to accommodate persons in the affected disaster areas.

§227.5. *Definitions.*

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

(1) Accredited institution of higher education--An institution of higher education that, at the time it conferred the degree, was accredited or otherwise approved by an accrediting organization recognized by the Texas Higher Education Coordinating Board.

(2) Alternative certification program--An approved educator preparation program, delivered by entities described in §228.25 of this title (relating to Governance of Educator Preparation Programs), [~~§228.20(a) of this title (relating to Governance of Educator Preparation Programs);~~] specifically designed as an alternative to a traditional undergraduate certification program, for individuals already holding at least a bachelor's degree from an accredited institution of higher education.

(3) Applicant--An individual seeking admission to an educator preparation program for any class of certificate.

(4) Candidate--An individual who has been formally or contingently admitted to an educator preparation program; also referred to as an enrollee or participant.

(5) Certification category--A certificate type within a certification class, as described in Chapter 233 of this title (relating to Categories of Classroom Teaching Certificates).

(6) Certification class--A certificate, as described in §230.33 of this title (relating to Classes of Certificates), that has defined characteristics; may contain one or more certification categories.

(7) Clinical teaching--An assignment, as described in §228.67 of this title (relating to Clinical Teaching). [~~§228.35 of this title (relating to Preparation Program Coursework and/or Training).~~]

(8) Content certification examination--A standardized test or assessment required by statute or State Board for Educator Certification rule that governs an individual's admission to an educator preparation program.

(9) Content pedagogy examination [~~examinations~~]-A standardized test or assessment required by statute or State Board for Educator Certification rule that governs an individual's certification as an educator.

(10) Contingency admission--Conditional admission to an educator preparation program when an applicant meets all admission requirements specified in §227.10 of this title (relating to Admission Criteria) except graduation and degree conferred from an accredited institution of higher education.

(11) Educator preparation program--An entity that must be approved by the State Board for Educator Certification to recommend candidates in one or more classes of certificates.

(12) Formal admission--Admission to an educator preparation program when an applicant meets all admission requirements specified in §227.10 of this title (relating to Admission Criteria).

(13) Incoming class--Individuals contingently or formally admitted between September 1 and August 31 of each year by an educator preparation program.

(14) Post-baccalaureate program--An educator preparation program, delivered by an accredited institution of higher education and approved by the State Board for Educator Certification to recommend candidates for certification, that is designed for individuals who already hold at least a bachelor's degree from an accredited institution of higher education and are seeking an additional degree.

(15) Semester credit hour--One semester credit hour is equal to 15 clock-hours at an accredited institution of higher education.

(16) Undergraduate degree--A bachelor's degree earned from and conferred by an accredited institution of higher education.

§227.10. Admission Criteria.

(a) The educator preparation program (EPP) delivering educator preparation shall require the following minimum criteria of all applicants seeking initial certification in any class of certificate, unless specified otherwise, prior to admission to the program.

(1) For a university undergraduate or post-baccalaureate program, [~~an undergraduate university program,~~] an applicant shall be enrolled in an accredited institution of higher education (IHE).

(2) For an alternative certification program or post-baccalaureate program, an applicant shall have, at a minimum, a bachelor's degree earned from and conferred by an accredited IHE.

(3) For an undergraduate university program, alternative certification program, or post-baccalaureate program, to be eligible for admission into an EPP, an applicant shall have a grade point average (GPA) of at least 2.5 before admission.

(A) The GPA shall be calculated from an official transcript as follows:

(i) 2.5 on all coursework previously attempted by the person at an accredited IHE:

(I) at which the applicant is currently enrolled (undergraduate university program formal admission, alternative cer-

tification program contingency admission, or post-baccalaureate program contingency admission); or

(II) from which the most recent bachelor's degree or higher from an accredited IHE was conferred (alternative certification program formal admission or post-baccalaureate program formal admission); or

(ii) 2.5 in the last 60 semester credit hours on all coursework previously attempted by the person at an accredited IHE:

(I) at which the applicant is currently enrolled (undergraduate university program formal admission, alternative certification program contingency admission, or post-baccalaureate program contingency admission). If an applicant has less than 60 semester credit hours on the official transcript from the accredited IHE at which the applicant is currently enrolled, the EPP shall use grades from all coursework previously attempted by a person at the most recent accredited institution(s) of higher education, starting with the most recent coursework from the official transcript(s), to calculate a GPA for the last 60 semester credit hours; or

(II) from which the most recent bachelor's degree or higher from an accredited IHE was conferred. If an applicant has hours beyond the most recent degree, an EPP may use grades from the most recent 60 hours of coursework from an accredited IHE (alternative certification program formal admission or post-baccalaureate program formal admission).

(B) In accordance with the Texas Education Code, (TEC), §21.0441(b), an exception to the minimum GPA requirement may be granted by the program director only in extraordinary circumstances and may not be used by a program to admit more than 10% of any incoming class of candidates. An applicant is eligible for this exception if:

(i) documentation and certification from the program director that an applicant's work, business, or career experience demonstrates achievement equivalent to the academic achievement represented by the GPA requirement; and

(ii) in accordance with the TEC, §21.0441(a)(2)(B), an applicant must pass an appropriate content certification examination as specified in paragraph (4)(C) of this subsection for each subject in which the applicant seeks certification prior to admission. In accordance with the TEC, §21.0441(b), applicants who do not meet the minimum GPA requirement and have previously been admitted into an EPP may request permission to register for an appropriate content certification examination if the applicant is not seeking admission to the same EPP that previously granted test approval for a certification examination in the same certification class.

(C) An applicant who is seeking a career and technical education (CTE) certificate that does not require a degree from an accredited IHE is exempt from the minimum GPA requirement.

(D) An applicant who does not meet the minimum GPA requirement and is seeking certification in a class other than classroom teacher must perform at or above a score equivalent to a 2.5 GPA on the Verbal Reasoning, Quantitative Reasoning, and Analytic Writing sections of the GRE® (Graduate Record Examinations) revised General Test. The State Board for Educator Certification will use equivalency scores established by the Educational Testing Service, and the Texas Education Agency (TEA) will publish those equivalency scores annually on the TEA website.

(4) For an applicant who will be seeking an initial certificate in the classroom teacher class of certificate, the applicant shall have successfully completed, prior to admission, at least:

(A) a minimum of 12 semester credit hours in the subject-specific content area for the certification sought, unless certification sought is for mathematics or science at or above Grade 7; or

(B) 15 semester credit hours in the subject-specific content area for the certification sought if the certification sought is for mathematics or science at or above Grade 7; or

(C) a passing score on the appropriate content certification examination as specified in the figure provided in this subparagraph.

Figure: 19 TAC §227.10(a)(4)(C)

[Figure: 19 TAC §227.10(a)(4)(C)]

(5) For an applicant who will be seeking an initial certificate in a class other than classroom teacher, the applicant shall meet the minimum requirements for admission described in Chapter 239 of this title (relating to Student Services Certificates); Chapter 241 of this title (relating to Certification as Principal); and Chapter 242 of this title (relating to Superintendent Certificate). If an applicant has not met the minimum certification, degree, and/or experience requirement(s) for issuance of a standard certificate prior to admission, the EPP shall inform the applicant in writing of any deficiency prior to admission.

(6) An applicant must demonstrate basic skills in reading, written communication, and mathematics by meeting the requirements of the Texas Success Initiative under the rules established by the Texas Higher Education Coordinating Board (THECB) in Part 1, Chapter 4, Subchapter C, of this title (relating to Texas Success Initiative), including one of the requirements established by §4.54 of this title (relating to Exemptions, Exceptions, and Waivers).

(7) An applicant must demonstrate the English language proficiency skills as specified in §230.11 of this title (relating to General Requirements).

(A) An applicant for CTE certification that does not require a bachelor's degree from an accredited IHE may satisfy the English language proficiency requirement with an associate's degree or high school diploma or the equivalent that was earned at an accredited IHE or an accredited high school in the United States.

(B) An applicant to a university undergraduate program that leads to a bachelor's degree may satisfy the English language proficiency requirement by meeting the English language proficiency requirement of the accredited IHE at which the applicant is enrolled.

(8) An applicant must submit an application and participate in either an interview or other screening instrument to determine if the EPP applicant's knowledge, experience, skills, and aptitude are appropriate for the certification sought.

(9) An applicant must fulfill any other academic criteria for admission that are published and applied consistently to all EPP applicants.

(b) An EPP may adopt admission requirements in addition to and not in conflict with those required in this section.

(c) An EPP may not admit an applicant who:

(1) has been reported as completing all EPP requirements by another EPP in the same certification category or class, unless the applicant only needs certification examination approval; or

(2) has been employed for three years in a public school under a permit, intern, or probationary certificate as specified in Chapter 230, Subchapter D, of this title (relating to Types and Classes of Certificates Issued), unless the applicant is seeking clinical teaching that may lead to the issuance of an initial standard certificate.

(d) An EPP may admit an applicant for CTE certification who has met the experience and preparation requirements specified in Chapter 230 of this title (relating to Professional Educator Preparation and Certification) and Chapter 233 of this title (relating to Categories of Classroom Teaching Certificates).

(e) An EPP may admit an applicant for the Trade and Industrial Workforce Training: Grades 6-12 certification who has met the following requirements:

(1) has been issued a high school diploma or a postsecondary credential, certificate, or degree;

(2) has seven years of full-time wage-earning experience within the preceding 10 years in an approved occupation for which instruction is offered;

(3) holds with respect to that occupation a current license, certificate, or registration, as applicable, issued by a nationally recognized accrediting agency based on a recognized test or measurement; and

(4) within the period described by paragraph (2) of this subsection, has not been the subject of a complaint filed with a licensing entity or other agency that regulates the occupation of the person, other than a complaint that was determined baseless or unfounded by that entity or agency.

(f) An EPP may admit an applicant who has met the minimum academic criteria through credentials from outside the United States that are determined to be equivalent to those required by this section using the procedures and standards specified in Chapter 245 of this title (relating to Certification of Educators from Other Countries). An EPP at an entity that is accredited by an accrediting organization recognized by the THECB may use its own foreign credential evaluation service to meet the requirement described in §245.10(a)(2) of this title (relating to Application Procedures), if the entity is in good standing with its accrediting organization.

(g) An applicant is eligible to enroll in an EPP for the purpose of completing the course of instruction, defined in §228.45(b) [§228.35(i)(2)] of this title (relating to Coursework and Training Requirements for Early Childhood: Prekindergarten-Grade 3 Certification [Preparation Program Coursework and/or Training]), that is required for the issuance of an Early Childhood: Prekindergarten-Grade 3 certificate if the individual holds a valid standard, provisional, or one-year certificate specified in §230.31 of this title (relating to Types of Certificates) in one of the following certificate categories:

(1) Bilingual Generalist: Early Childhood-Grade 4;

(2) Bilingual Generalist: Early Childhood-Grade 6;

(3) Core Subjects: Early Childhood-Grade 6;

(4) Core/Fine Arts/Physical Education/Health with the Science of Teaching Reading: Early Childhood-Grade 6;

(5) Core/Special Education with the Science of Teaching Reading: Early Childhood-Grade 6;

(6) Core/Bilingual Education Spanish with the Science of Teaching Reading: Early Childhood-Grade 6;

(7) Core/English as a Second Language Supplemental with the Science of Teaching Reading: Early Childhood-Grade 6;

(8) Core with the Science of Teaching Reading: Early Childhood-Grade 6;

(9) [(4)] Early Childhood Education;

(10) [(5)] Elementary--General;

- (11) [(6)] Elementary--General (Grades 1-6);
- (12) [(7)] Elementary--General (Grades 1-8);
- (13) [(8)] Elementary Early Childhood Education (Prekindergarten-Grade 6);
- (14) [(9)] Elementary Self-Contained (Grades 1-8);
- (15) [(10)] English as a Second Language Generalist: Early Childhood-Grade 4;
- (16) [(11)] English as a Second Language Generalist: Early Childhood-Grade 6;
- (17) [(12)] Generalist: Early Childhood-Grade 4;
- (18) [(13)] Generalist: Early Childhood-Grade 6;
- (19) [(14)] Kindergarten;
- (20) [(15)] Prekindergarten-Grade 5--General;
- (21) [(16)] Prekindergarten-Grade 6--General; or
- (22) [(17)] Teacher of Young Children--General.

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 March 4, 2024.
 TRD-202400935
 Cristina De La Fuente-Valadez
 Director, Rulemaking
 State Board of Educator Certification
 Earliest possible date of adoption: April 14, 2024
 For further information, please call: (512) 475-1497



SUBCHAPTER B. PRELIMINARY EVALUATION OF CERTIFICATION ELIGIBILITY

19 TAC §227.103

STATUTORY AUTHORITY. The amendment is proposed under Texas Occupations Code (TOC), §53.105, which specifies that a licensing authority may charge a person requesting an evaluation under TOC, Chapter 53, Subchapter D, a fee adopted by the authority. Fees adopted by a licensing authority under TOC, Chapter 53, Subchapter D, must be in an amount sufficient to cover the cost of administering this subchapter.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Occupations Code, §53.105.

§227.103. Application.

(a) A request for preliminary criminal history evaluation must be preceded by payment of the required criminal history evaluation fee specified in §230.101 of this title (relating to Schedule of Fees for Certification Services). [~~§230.101(a)(19) of this title (relating to Schedule of Fees for Certification Services).~~]

(b) A request for preliminary criminal history evaluation must include the following:

(1) a signed and dated application, in the form provided on the Texas Education Agency (TEA) website, containing contact information and the date and description of each offense requested to be evaluated;

(2) an attached statement of the circumstances upon which the arrest is based and the disposition relating to each offense to be evaluated;

(3) court documentation relating to each offense, including, at a minimum, the formal disposition of the offense(s) and related charge(s) (e.g., Judgment, Order of Probation, Sentence, Deferred Adjudication Order, etc.); and

(4) a copy of the receipt for the request for preliminary criminal history evaluation fee.

(c) All required documents and information specified in subsection (b) of this section must be provided with the request for preliminary criminal history evaluation. Any documents or information not provided in the original request will not be considered reasonably available.

(d) The preliminary criminal history evaluation will be based solely on the application and court or law enforcement documents provided. Any information not provided by the requestor shall be considered not reasonably available at the time of the request and may be considered at the time the requestor subsequently applies for a certificate issued by the State Board for Educator Certification. Additional documentation that should be provided, if possible, includes the following:

(1) the formal charge(s) (e.g., indictment, information, or complaint);

(2) evidence that the condition(s) of the court have been met (e.g., completion of probation, receipt for restitution, etc.); and

(3) any available law enforcement report(s) describing the offense or the investigation of the offense.

(e) The application, the statement of circumstances, the required court documentation, and a copy of the receipt for the request for preliminary criminal history evaluation fee must be submitted to the TEA division responsible for educator investigations by United States certified mail, return receipt requested, to the address provided on the application or by facsimile to the facsimile number provided on the application.

(f) A request for preliminary criminal history evaluation is incomplete unless it includes a copy of the receipt for the request for preliminary criminal history evaluation fee, a completed application, a statement of circumstances, and the required court documentation. The TEA staff will take no action on a request that is incomplete.

(g) All documents submitted in connection with a request for preliminary criminal history evaluation, whether complete or incomplete, will not be returned to the requestor. All documents will be retained or destroyed by the TEA in accordance with the TEA records retention schedule.

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

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TITLE 22. EXAMINING BOARDS

PART 16. TEXAS BOARD OF PHYSICAL THERAPY EXAMINERS

CHAPTER 329. LICENSING PROCEDURE

22 TAC §329.5

The Texas Board of Physical Therapy Examiners proposes amending 22 TAC §329.5. Licensing Procedures for Foreign-Trained Applicants to remove unnecessary barriers to the licensing of foreign-educated applicants.

The amendment for the requirement of an evaluation of professional education and training in paragraph (1)(A) differentiates between applicants by exam and applicants by endorsement. Applicants by exam will require the most current version of the Coursework Tool (CWT) in accordance with immigration requirements. Applicants by endorsement will have a range of acceptable versions of the CWT appropriate to the year they graduated from the foreign physical therapy program or a more current version. This will prevent an applicant who has already been evaluated by a version of the CWT for immigration purposes or for licensure in another jurisdiction from being evaluated by a different version of the CWT for Texas licensure. The amendment also authorizes acceptance of a copy of an evaluation that has been used as a licensure requirement by another jurisdiction for extenuating circumstances beyond the applicant's control if the evaluation is sent directly to the board by the jurisdiction.

The amendments in paragraph (1)(B)-(D) update current procedure for deficiencies noted on an evaluation as well as grammatical clean up.

The amendments in paragraph (2) eliminate the requirement for an applicant by endorsement to demonstrate English language proficiency by taking the Test of English as a Foreign Language (TOEFL) and provides exceptions to the TOEFL requirement for an applicant by exam if certain conditions are met.

Fiscal Note

Ralph A. Harper, Executive Director of the Executive Council of Physical Therapy & Occupational Therapy Examiners, has determined that for the first five-year period the amendment is in effect there would be no loss of revenue, and there would be no fiscal implication to units of local government as a result of enforcing or administering the rules.

Public Benefits and Costs

Mr. Harper has also determined that for the first five-year period the amendment is in effect the public benefit will be to increase public access to qualified physical therapists by eliminating barriers to licensure of foreign-educated physical therapists. There will be no economic cost to licensees.

Local Employment Economic Impact Statement

The amendment is not anticipated to impact a local economy, so a local employment economic impact statement is not required.

Small and Micro-Businesses and Rural Communities Impact

Mr. Harper has determined that there will be no costs or adverse economic effects to small or micro-businesses or rural communities; therefore, an economic impact statement or regulatory flexibility analysis is not required.

Government Growth Impact Statement

During the first five-year period this amendment is in effect, the impact on government growth is as follows:

- (1) The proposed rule amendment will neither create nor eliminate a government program.
- (2) The proposed rule amendment will neither create new employee positions nor eliminate existing employee positions.
- (3) The proposed rule amendment will neither increase nor decrease future legislative appropriations to the agency.
- (4) The proposed rule amendment will neither require an increase nor a decrease in fees paid to the agency.
- (5) The proposed amendment will revise an existing rule by removing barriers to licensure for foreign-educated applicants.
- (6) The proposed rule amendment will neither repeal nor limit an existing regulation.
- (7) The proposed rule amendment will neither increase nor decrease the number of individuals subject to the rule's applicability.
- (8) The proposed rule amendment will neither positively nor adversely affect this state's economy.

Takings Impact Assessment The proposed rule amendment will not impact private real property as defined by Tex. Gov't Code §2007.003, so a takings impact assessment under Tex. Gov't Code §2001.043 is not required.

Requirement for Rule Increasing Costs to Regulated Persons

Tex. Gov't Code §2001.0045, Requirement for Rule Increasing Costs to Regulated Persons, does not apply to this proposed rule because the amendments will not increase costs to regulated persons.

Public Comment

Comments on the proposed amendments may be submitted to Karen Gordon, PT Coordinator, Texas Board of Physical Therapy Examiners, 1801 Congress Ave, Suite 10.900, Austin, Texas 78701; email: karen@ptot.texas.gov. Comments must be received no later than 30 days from the date this proposed amendment is published in the *Texas Register*.

Statutory Authority

The amendment is proposed under Texas Occupation Code §453.102, which authorizes the board to adopt rules necessary to implement chapter 453.

Cross-reference to Statute

The proposed amendment implements provisions in Sec. 453.204, Occupations Code that pertains to foreign-trained applicants.

§329.5. *Licensing Procedures for Foreign-Trained Applicants.*

A foreign-trained applicant must complete the license application process as set out in §329.1 of this title (relating to General Licensure Requirements and Procedures). In addition, the applicant must submit the following:

(1) An evaluation of professional education and training prepared by a board approved credentialing entity. The board will maintain a list of approved credentialing entities on the agency website.

- (A) The evaluation must:

(i) be based on a [the] Course Work Tool (CWT) adopted by the Federation of State Boards of Physical Therapy. [~~specifically the version of the tool appropriate to the year the applicant graduated from the foreign physical therapy program; and]~~

(I) Applicants by examination must be evaluated using the most current version of the CWT.

(II) Applicants by endorsement must be evaluated using the version of the CWT appropriate to the year the applicant graduated from the foreign physical therapy program or a more current version.

(ii) provide evidence and documentation that the applicant's education is substantially equivalent to the education of a physical therapist who graduated from a physical therapy education program accredited by the Commission on Accreditation in Physical Therapy Education (CAPTE); and

(iii) establish that the institution at which the applicant received his physical therapy education is recognized by the Ministry of Education or the equivalent agency in that country.

(iv) a copy of an evaluation used as a requirement for licensure by another jurisdiction that has the authority to issue a license within that jurisdiction and sent directly to the board by the jurisdiction will be accepted for an applicant by endorsement if:

(I) documents required for credentialing are no longer available from the institution at which the applicant received their physical therapy education, or

(II) there is an undue delay in receiving an evaluation from the credentialer beyond the applicant's control.

(B) If the credentialing entity determines that the physical therapy education is not substantially equivalent, [~~but no evidence is found of specific required courses or content areas;~~] the applicant is responsible for remedying those deficiencies. The applicant may use college credit obtained through applicable College Level Examination Placement (CLEP) or other college advanced placement exams to remedy any deficiencies in general education.

(C) An evaluation prepared by a board-approved credentialer reflects only the findings and conclusions of the credentialer, and shall not be binding on the board. [~~In the event that the board determines that the applicant's education is not substantially equivalent to an entry-level physical therapy program accredited by CAPTE, the board will notify the applicant in writing stating the reasons why the applicant's education is not substantially equivalent.]~~

(D) If the applicant received an entry-level physical therapy degree from a CAPTE-accredited program located outside the U.S., the program is considered equivalent to a domestic CAPTE-accredited physical therapy program, and the applicant is exempt from meeting the requirements of a [the] CWT.

(2) Proof of English language proficiency. A foreign-trained applicant by examination must demonstrate the ability to communicate in English by making the minimum score accepted by the board on the Test of English as a Foreign Language (TOEFL) administered by the Educational Testing Service (ETS).

(A) - (B) (No change.)

(C) The board may grant an exception to the English language proficiency requirements under the following conditions:

(i) the applicant holds a current license in physical therapy in a country listed in subparagraph (A) of this paragraph [~~another state~~] and has been licensed and practicing in that country

[~~another state in the U.S.~~] for at least 5 [~~10~~] years prior to application; or

(ii) the applicant submits satisfactory proof that he/she is a citizen or lawful permanent resident of the U.S. or a current U.S. H-1B visa holder, and

(I) has attended four or more years of secondary or post-secondary education in the U.S. or

(II) has completed a post-professional physical therapy degree in English from a country listed in subparagraph (A) of this paragraph.

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 February 29, 2024.

TRD-202400908

Ralph Harper

Executive Director

Texas Board of Physical Therapy Examiners

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For further information, please call: (512) 305-6900



CHAPTER 346. PRACTICE SETTINGS FOR PHYSICAL THERAPY

22 TAC §346.1

The Texas Board of Physical Therapy Examiners proposes amending 22 TAC §346.1, Educational Settings to clarify the role of physical therapists and physical therapist assistants in the educational setting.

The amendments update the references to federal law that pertain to physical therapy services provided to students with disabilities in the education setting, eliminates the requirement for a reexamination to be performed onsite to allow for the reexamination to be performed via telehealth, and updates the section to reflect contemporary practice within the setting.

Fiscal Note

Ralph A. Harper, Executive Director of the Executive Council of Physical Therapy & Occupational Therapy Examiners, has determined that for the first five-year period the amendment is in effect there would be no loss of revenue, and there would be no fiscal implication to units of local government as a result of enforcing or administering the rules.

Public Benefits and Costs

Mr. Harper has also determined that for the first five-year period the amendment is in effect the public benefit will be to increase public access to qualified physical therapists and physical therapist assistants by students in educational settings. There will be no economic cost to licensees.

Local Employment Economic Impact Statement

The amendment is not anticipated to impact a local economy, so a local employment economic impact statement is not required.

Small and Micro-Businesses and Rural Communities Impact

Mr. Harper has determined that there will be no costs or adverse economic effects to small or micro-businesses or rural communities; therefore, an economic impact statement or regulatory flexibility analysis is not required.

Government Growth Impact Statement

During the first five-year period this amendment is in effect, the impact on government growth is as follows:

- (1) The proposed rule amendment will neither create nor eliminate a government program.
- (2) The proposed rule amendment will neither create new employee positions nor eliminate existing employee positions.
- (3) The proposed rule amendment will neither increase nor decrease future legislative appropriations to the agency.
- (4) The proposed rule amendment will neither require an increase nor a decrease in fees paid to the agency.
- (5) The proposed amendment will revise an existing rule by clarifying the role of physical therapists and physical therapist assistants in the educational setting.
- (6) The proposed rule amendment will neither repeal nor limit an existing regulation.
- (7) The proposed rule amendment will neither increase nor decrease the number of individuals subject to the rule's applicability.
- (8) The proposed rule amendment will neither positively nor adversely affect this state's economy.

Takings Impact Assessment The proposed rule amendment will not impact private real property as defined by Tex. Gov't Code §2007.003, so a takings impact assessment under Tex. Gov't Code §2001.043 is not required.

Requirement for Rule Increasing Costs to Regulated Persons

Tex. Gov't Code §2001.0045, Requirement for Rule Increasing Costs to Regulated Persons, does not apply to this proposed rule because the amendments will not increase costs to regulated persons.

Public Comment

Comments on the proposed amendments may be submitted to Karen Gordon, PT Coordinator, Texas Board of Physical Therapy Examiners, 1801 Congress Ave, Suite 10.900, Austin, Texas 78701; email: karen@ptot.texas.gov. Comments must be received no later than 30 days from the date this proposed amendment is published in the *Texas Register*.

Statutory Authority

The amendment is proposed under Texas Occupation Code §453.102, which authorizes the board to adopt rules necessary to implement chapter 453.

Cross-reference to Statute

The proposed amendment implements provisions in Sec. 453.005, Occupations Code that pertains to the practice of physical therapy.

§346.1. Educational Settings.

(a) In the educational setting, the physical therapist conducts appropriate screenings, evaluations, and assessments to determine needed services to fulfill educational goals. When a student is determined by the physical therapist to be eligible for physical therapy

as a related service under Part B of the Individuals with Disabilities Education Act (IDEA), 20 USC §1414, or Section 504 of the Americans with Disabilities Act, as Amended [defined by Special Education Law], the physical therapist provides written recommendations to the Admissions Review and Dismissal Committee or the Section 504 Committee as to the amount of specific services needed by the student (i.e., [consultation or] direct and/or indirect services, as well as [and] the frequency, [and] duration, and location of services).

(b) The physical therapist implements physical therapy services in accordance with the decisions of [recommendations accepted by] the school committee members and as reflected in the student's Admission Review and Dismissal Committee or Section 504 Committee reports. The physical therapist may implement services by delegating treatment to a PTA under their supervision.

(c) The physical therapist may provide general consultation, coaching, professional development, or other physical therapy program services for school administrators, educators, assistants, parents and others to address district, campus, classroom or student-centered issues. For the student who is eligible to receive physical therapy as a related service [in accordance with the student's Admission Review and Dismissal Committee reports], the physical therapist will also provide the [consultation and] direct and/or indirect types of specific services needed to implement specially designed goals and objectives included in the student's Individualized Education Program or the 504 Plan.

(d) The types of services which may require a physician's referral in the educational setting include [the provision of individualized specially designed instructions and the] direct physical modeling or hands-on demonstration of activities with a student who has been determined eligible to receive physical therapy as a related service under the IDEA or under Section 504. Additionally, they may include the direct provision of activities which are of such a nature that they are only conducted with the eligible student by a physical therapist or physical therapist assistant. The physical therapist should refer to §322.1 of this title (relating to Provision of Services).

(e) Evaluation and reevaluation in the educational setting will be conducted in accordance with federal mandates under Part B of the Individuals with Disabilities Education Act (IDEA), 20 USC §1414, or under Section 504 when warranted by a change in the child's condition, and include [onsite] reexamination of the child. The Plan of Care (Individual Education Program or Section 504 Plan) must be reviewed by the PT at least every 60 school days, or concurrent with every visit if the student is seen at intervals greater than 60 school days, to determine if revisions are necessary.

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 February 29, 2024.

TRD-202400909

Ralph Harper

Executive Director

Texas Board of Physical Therapy Examiners

Earliest possible date of adoption: April 14, 2024

For further information, please call: (512) 305-6900

TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 554. NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §554.101, concerning Definitions; §554.405, concerning Additional Requirements for Trust Funds in Medicaid-certified Facilities; §554.601, concerning Freedom from Abuse, Neglect, and Exploitation; and §554.1920, concerning Operating Policies and Procedures.

BACKGROUND AND PURPOSE

The purpose of the proposal is to implement two bills from the 88th Legislature, Regular Session, 2023. House Bill (H.B.) 1009 relates to employment suspension for nursing facility employees accused of committing reportable conduct, such as abuse, neglect, or exploitation. Senate Bill (S.B.) 240 relates to health facility employee workplace violence prevention in facilities, including nursing facilities. This rule project proposes revisions related to trust fund monitoring and audits, with the purpose of decreasing the amount of time nursing facilities are allowed to complete corrective action plans to return to compliance prior to the imposition of a hold on payments due to the facility. This proposal also makes non-substantive edits to update references within the rules.

SECTION-BY-SECTION SUMMARY

Proposed amendments to §§554.101, 554.405, 554.601, and 554.1920 update references in the rules and make non-substantive edits to improve readability, in addition to the proposed amendments listed below.

The proposed amendment to §554.101 revises definitions to nursing facility rules. Paragraph (123) adds a definition for "reportable conduct" in response to H.B. 1009.

The proposed amendment to §554.405 decreases the amount of time nursing facilities are allowed to complete corrective action plans to return to compliance prior to the imposition of a hold on payments due to the facility.

The proposed amendment to §554.601 implements H.B. 1009 related to reportable conduct and employment suspension.

The proposed amendment to §554.1920 implements S.B. 240 related to workplace violence and prevention policies and procedures.

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 not create new regulations;

(6) the proposed rules will expand existing rules;

(7) the proposed regulations 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 could be an adverse economic effect on small businesses, micro-businesses, or rural communities.

Required compliance related to H.B. 1009 may increase costs for nursing facilities and have an adverse economic effect on rural communities. Facilities may incur increased cost related to suspension of employees during the due process period while the employee exhausts appeals. This is because facilities may have to hire additional staff to cover for the absence of the suspended employee so they can meet nursing facility residents' needs.

Implementing the requirements related to S.B. 240 and the workplace violence prevention committee may increase cost and have an adverse economic affect in rural communities secondary to the cost and resources to implement the bill. There is a possibility that nursing facilities may have to hire additional staff to meet the workforce violence prevention committee member requirements of registered nurses who provide direct care to facility residents and facility employees who provide security services. Nursing facilities may incur additional cost related to establishing, implementing, and enforcing written workplace violence prevention policy and training for the prevention policy if the facility must hire additional staff or contract with consultative services for compliance with S.B. 240.

HHSC is unable to estimate the number of small businesses, micro-businesses, or rural communities subject to the proposed rules. The projected economic impact for a small business, micro-business, or rural community is the cost to comply.

HHSC determined that alternative methods to achieve the purpose of the proposed rules for small businesses, micro-businesses, or rural communities would not be consistent with ensuring the health and safety of nursing facility residents.

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 are necessary to protect the health, safety, and welfare of the residents of Texas and are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

Michelle Dionne-Vahalik, Associate Commissioner for Long-Term Care Regulation, has determined that for each year of the first five years the rules are in effect, the public

benefit will be protecting nursing facility residents from the potential exposure to employees who may have committed abuse, neglect, or exploitation of a resident, or misappropriation of resident property and helping prevent workplace violence. Implementation of rule changes related to trust fund monitoring and audits will benefit the public by decreasing the amount of time nursing facilities are allowed to complete corrective action plans to return to compliance prior to the imposition of a hold on payments due to the facility.

Trey Wood has also determined that for the first five years the rules are in effect, persons who are required to comply with the proposed rules may incur economic costs due to the cost to comply with H.B. 1009.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to his or her 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 Rachael Holden and Sandra Wiegand, Program Specialists, by email to HHSCLTCRRules@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 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 emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 23R071" in the subject line.

SUBCHAPTER B. DEFINITIONS

26 TAC §554.101

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; Texas Government Code §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Human Resources Code §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program; and Texas Health and Safety Code §242.001, which states that the goal of Chapter 242 is to ensure that nursing facilities in Texas deliver the highest possible quality of care and establish the minimum acceptable levels of care for individuals who are living in a nursing facility.

The amendment implements Texas Government Code §531.0055 and §531.021; Texas Human Resources Code §32.021; and Texas Health and Safety Code §§242.001, 253.0025, and 331.001 - 331.006.

§554.101. Definitions.

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

(1) Abuse--Negligent or willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical or emotional harm or pain to a resident; or sexual abuse, including

involuntary or nonconsensual sexual conduct that would constitute an offense under Texas Penal Code §21.08 (relating to Indecent Exposure [indecent exposure]) or Texas Penal Code, Chapter 22 (relating to Assaultive Offenses [assaultive offenses]), sexual harassment, sexual coercion, or sexual assault.

(2) Act--Chapter 242 of the Texas Health and Safety Code.

(3) Activities assessment--See Comprehensive Assessment and Comprehensive Care Plan.

(4) Activity director--The qualified individual appointed by the facility to direct the activities program as described in §554.702 of this chapter (relating to Activities).

(5) Addition--The addition of floor space to an institution.

(6) Administrator--A person currently licensed in accordance with [26 TAC] Chapter 555 of this title (relating to Nursing Facility Administrators).

(7) Admission MDS assessment--An MDS assessment that determines a recipient's initial determination of eligibility for medical necessity for admission into the Texas Medicaid Nursing Facility Program.

(8) Advanced practice registered nurse--A person licensed as a registered nurse and approved to practice as an advanced practice registered nurse by the Texas Board of Nursing.

(9) Adverse event--An untoward, undesirable, and usually unanticipated event that causes death or serious injury, or the risk of death or serious injury.

(10) Alzheimer's Disclosure Statement for Nursing Facilities--The HHSC-prescribed form a facility uses to describe the nature of care or treatment of residents with Alzheimer's disease and related disorders.

(11) Alzheimer's disease and related disorders--Alzheimer's disease and any other irreversible dementia described by the Centers for Disease Control and Prevention or the most current edition of the Diagnostic and Statistical Manual of Mental Disorders.

(12) Applicant--A person or governmental unit, as those terms are defined in the Texas Health and Safety Code, Chapter 242, applying for a license under that chapter.

(13) Attending physician--A physician, currently licensed by the Texas Medical Board, who is designated by the resident or resident representative as having primary responsibility for the treatment and care of the resident.

(14) Authorized electronic monitoring--The placement of an electronic monitoring device in a resident's room and using the device to make tapes or recordings after making a request to the facility to allow electronic monitoring.

(15) Barrier precautions--Precautions including the use of gloves, masks, gowns, resuscitation equipment, eye protectors, aprons, face shields, and protective clothing for purposes of infection control.

(16) Care and treatment--Services required to maximize resident independence, personal choice, participation, health, self-care, psychosocial functioning, and reasonable safety, all consistent with the preferences of the resident.

(17) Certification--The determination by HHSC that a nursing facility meets all the requirements of the Medicaid or Medicare programs.

(18) Certified facility--A facility that meets the requirements of the Medicare program, the Medicaid program, or both.

(19) Certified Ombudsman--Has the meaning given in §88.2 of this title (relating to Definitions).

(20) CFR--Code of Federal Regulations.

(21) Change of ownership-- An event that results in a change to the federal taxpayer identification number of the license holder of a facility. The substitution of a personal representative for a deceased license holder is not a change of ownership.

(22) Chemical restraints--Any drug administered for the purpose of discipline or convenience, and not required to treat the resident's medical symptoms.

(23) CMS--Centers for Medicare & Medicaid Services.

(24) Complaint--Any allegation received by HHSC other than an incident reported by the facility. Such allegations include, but are not limited to, abuse, neglect, exploitation, or violation of state or federal standards.

(25) Completion date--The date an RN assessment coordinator signs an MDS assessment as complete.

(26) Comprehensive assessment--An interdisciplinary description of a resident's needs and capabilities including daily life functions and significant impairments of functional capacity, as described in §554.801(2) of this chapter (relating to Resident Assessment).

(27) Comprehensive care plan--A plan of care prepared by an interdisciplinary team that includes measurable short-term and long-term objectives and timetables to meet the resident's needs developed for each resident after admission. The plan addresses at least the following needs: medical, nursing, rehabilitative, psychosocial, dietary, activity, and resident's rights. The plan includes strategies developed by the team, as described in §554.802(c)(2) of this chapter (relating to Comprehensive Person-Centered Care Planning), consistent with the physician's prescribed plan of care, to assist the resident in eliminating, managing, or alleviating health or psychosocial problems identified through assessment. Planning includes:

(A) goal setting;

(B) establishing priorities for management of care;

(C) making decisions about specific measures to be used to resolve the resident's problems; and

(D) assisting in the development of appropriate coping mechanisms.

(28) Controlling person--A person with the ability, acting alone or in concert with others, to directly or indirectly, influence, direct, or cause the direction of the management, expenditure of money, or policies of a nursing facility or other person. A controlling person does not include a person, such as an employee, lender, secured creditor, or landlord, who does not exercise any influence or control, whether formal or actual, over the operation of a facility. A controlling person includes:

(A) a management company, landlord, or other business entity that operates or contracts with others for the operation of a nursing facility;

(B) any person who is a controlling person of a management company or other business entity that operates a nursing facility or that contracts with another person for the operation of a nursing facility;

(C) an officer or director of a publicly traded corporation that is, or that controls, a facility, management company, or other business entity described in subparagraph (A) of this paragraph but

does not include a shareholder or lender of the publicly traded corporation; and

(D) any other individual who, because of a personal, familial, or other relationship with the owner, manager, landlord, tenant, or provider of a nursing facility, is in a position of actual control or authority with respect to the nursing facility, without regard to whether the individual is formally named as an owner, manager, director, officer, provider, consultant, contractor, or employee of the facility.

(29) Covert electronic monitoring--The placement and use of an electronic monitoring device that is not open and obvious, and the facility and HHSC have not been informed about the device by the resident, by a person who placed the device in the room, or by a person who uses the device.

(30) DADS--The term referred to the Department of Aging and Disability Services; it now refers to HHSC.

(31) Dentist--A practitioner licensed to practice dentistry by the Texas State Board of Dental Examiners.

(32) DHS--This term referred to the Texas Department of Human Services; it now refers to HHSC.

(33) Dietitian--A qualified dietitian is one who is qualified based upon either:

(A) registration by the Commission on Dietetic Registration of the Academy of Nutrition and Dietetics; or

(B) licensure, or provisional licensure, as a dietitian under Texas Occupations Code, Chapter 701 and one year of supervisory experience in dietetic service of a health care facility.

(34) Direct ownership interest--Ownership of equity in the capital, stock, or profits of, or a membership interest in, an applicant or license holder.

(35) Disclosable interest--Five percent or more direct or indirect ownership interest in an applicant or license holder.

(36) Distinct part--That portion of a facility certified to participate in the Medicaid Nursing Facility program or as a SNF in the Medicare program.

(37) Drug (also referred to as medication)--Any of the following:

(A) any substance recognized as a drug in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them;

(B) any substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans;

(C) any substance (other than food) intended to affect the structure or any function of the body of a human; and

(D) any substance intended for use as a component of any substance specified in subparagraphs (A) - (C) of this paragraph. It does not include devices or their components, parts, or accessories.

(38) Electronic monitoring device--Video surveillance cameras and audio devices installed in a resident's room, designed to acquire communications or other sounds that occur in the room. An electronic, mechanical, or other device used specifically for the nonconsensual interception of wire or electronic communication is excluded from this definition.

(39) Emergency--A sudden change in a resident's condition requiring immediate medical intervention.

(40) Essential Caregiver--A family member, friend, guardian, volunteer, or other person designated for in-person visits by an individual, resident, or client or the individual's, resident's, or client's guardian or legally authorized representative (LAR) during a public health emergency or disaster. In case of conflict between an individual's, resident's, or client's selection and a guardian's selection on behalf of the individual, resident, or client, the guardian's selection prevails, in accordance with the terms of the guardianship. If an individual, resident, or client has no guardian and is unable to select an essential caregiver, the individual's, resident's, or client's LAR may select the essential caregiver.

(41) Executive Commissioner--The executive commissioner of the Texas Health and Human Services Commission.

(42) Exploitation--The illegal or improper act or process of a caregiver, family member, or other individual who has an ongoing relationship with a resident using the resources of the resident for monetary or personal benefit, profit, or gain without the informed consent of the resident.

(43) Facility--Unless otherwise indicated, a facility is an institution that provides organized and structured nursing care and service and is subject to licensure under Texas Health and Safety Code, Chapter 242.

(A) For Medicaid, a facility is a nursing facility that which meets the requirements of §1919(a) - (d) of the Social Security Act (42 United States Code [U.S.C.] §1396r(a) - (d)). A facility may not include any institution that is for the care and treatment of mental diseases except for services furnished to individuals age 65 and over and who are eligible as defined in Chapter 303 of this title (relating to Preadmission Screening and Resident Review (PASRR)).

(B) For Medicare and Medicaid purposes (including eligibility, coverage, certification, and payment), the "facility" is always the entity which participates in the program, whether that entity is comprised of all [øf], or a distinct part of, a larger institution.

(C) "Facility" is also referred to as a nursing home or nursing facility. Depending on context, these terms are used to represent the management, administrator, or other persons or groups involved in the provision of care of the resident; or to represent the physical building, which may consist of one or more floors or one or more units, or which may be a distinct part of a licensed hospital.

(44) Family council--A group of family members, friends, or legal guardians of residents, who organize and meet privately or openly.

(45) Family representative--An individual appointed by the resident to represent the resident and other family members, by formal or informal arrangement.

(46) Fiduciary agent--An individual who holds in trust another's monies.

(47) Goals--Long-term: general statements of desired outcomes. Short-term: measurable, time-limited, expected results that provide the means to evaluate the resident's progress toward achieving long-term goals.

(48) Governmental unit--A state or a political subdivision of the state, including a county or municipality.

(49) Health care provider--An individual, including a physician, or facility licensed, certified, or otherwise authorized to administer health care, in the ordinary course of business or professional practice.

(50) Hearing--A contested case hearing held in accordance with the Administrative Procedure Act, Texas Government Code, Chapter 2001, and the formal hearing procedures in 1 Texas Administrative Code [TAC] Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act) and 40 TAC Chapter 91 (relating to Hearings Under the Administrative Procedure Act).

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

(52) HIV--Human Immunodeficiency Virus.

(53) Incident--An abnormal event, including accidents or injury to staff or residents, which is documented in facility reports. An occurrence in which a resident may have been subject to abuse, neglect, or exploitation must also be reported to HHSC.

(54) Indirect ownership interest--Any ownership or membership interest in a person that has a direct ownership interest in an applicant or license holder.

(55) Infection control--A program designed to prevent the transmission of disease and infection in order to provide a safe and sanitary environment.

(56) Inspection--Any on-site visit to or survey of an institution by HHSC for the purpose of licensing, monitoring, complaint investigation, architectural review, or similar purpose.

(57) Involuntary seclusion--Separation of a resident from others or from the resident's room or confinement to the resident's room, against the resident's will or the will of a person who is legally authorized to act on behalf of the resident. Monitored separation from other residents is not involuntary seclusion if the separation is a therapeutic intervention that uses the least restrictive approach for the minimum amount of time, not to exceed 24 hours, until professional staff can develop a care plan to meet the resident's needs.

(58) IV--Intravenous.

(59) Legend drug or prescription drug--Any drug that requires a written or telephonic order of a practitioner before it may be dispensed by a pharmacist, or that may be delivered to a particular resident by a practitioner in the course of the practitioner's practice.

(60) License holder--A person that holds a license to operate a facility.

(61) Licensed health professional--A physician; physician assistant; advanced practice registered nurse; physical, speech, or occupational therapist; pharmacist; physical therapist assistant occupational therapy assistant; registered professional nurse; licensed vocational nurse; licensed dietitian; licensed social worker; or certified respiratory care practitioner.

(62) Licensed vocational nurse (LVN)--A nurse who is currently licensed by the Texas Board of Nursing as a licensed vocational nurse.

(63) Life Safety Code--NFPA 101.

(64) Life safety features--Fire safety components required by NFPA 101, including building construction, fire alarm systems, smoke detection systems, interior finishes, sizes and thicknesses of doors, exits, emergency electrical systems, and sprinkler systems.

(65) Life support--Use of any technique, therapy, or device to assist in sustaining life. (See §554.419 of this chapter (relating to Advance Directives)).

(66) Local authorities--Persons, including, but not limited to, local health authority, fire marshal, and building inspector, who may

be authorized by state law, county order, or municipal ordinance to perform certain inspections or certifications.

(67) Local health authority--The physician appointed by the governing body of a municipality or the commissioner's court of the county to administer state and local laws relating to public health in the municipality's or county's jurisdiction as defined in Texas Health and Safety Code [5] §121.021.

(68) Long-term care-regulatory--HHSC Regulatory Services Division, which is responsible for surveying nursing facilities to determine compliance with regulations for licensure and certification for Medicaid participation.

(69) Major injury--An injury that qualifies as a major injury under NFPA 99.

(70) Management services--Services provided under contract between the owner of a facility and a person to provide for the operation of a facility, including administration, staffing, maintenance, or delivery of resident services. Management services do not include contracts solely for maintenance, laundry, or food service.

(71) Manager--A person, other than a licensed nursing home administrator, having a contractual relationship to provide management services to a facility.

(72) Managing local ombudsman--Has the meaning given in §88.2 of this title.

(73) MDS--Minimum data set. See RAI.

(74) MDS nurse reviewer--A registered nurse employed by HHSC to monitor the accuracy of the MDS assessment submitted by a Medicaid-certified nursing facility.

(75) Medicaid applicant--A person who requests the determination of eligibility to become a Medicaid recipient.

(76) Medicaid nursing facility vendor payment system--Electronic billing and payment system for reimbursement to nursing facilities for services provided to eligible Medicaid recipients.

(77) Medicaid recipient--A person who meets the eligibility requirements of the Title XIX Medicaid program, is eligible for nursing facility services, and resides in a Medicaid-participating facility.

(78) Medical director--A physician licensed by the Texas Medical Board, who is engaged by the nursing home to assist in and advise regarding the provision of nursing and health care.

(79) Medical power of attorney--The legal document that designates an agent to make treatment decisions if the individual designator becomes incapable.

(80) Medication aide--A person who holds a current permit issued under the Medication Aide Training Program as described in Chapter 557 of this title (relating to Medication Aides--Program Requirements) and acts under the authority of a person who holds a current license under state law which authorizes the licensee to administer medication.

(81) Memory Care Disclosure Statement for Nursing Facilities--The HHSC-prescribed form a facility uses when the facility advertises, markets, or otherwise promotes that it provides services to residents with Alzheimer's disease and related disorders.

(82) Memory care services--Services provided by a nursing facility that meet the needs of residents with a diagnosis of Alzheimer's disease or related disorders or a diagnosis of dementia.

(83) Misappropriation--The taking, secretion, misapplication, deprivation, transfer, or attempted transfer to any person not entitled to receive any property, real or personal, or anything of value belonging to or under the legal control of a resident without the effective consent of the resident or other appropriate legal authority, or the taking of any action contrary to any duty imposed by federal or state law prescribing conduct relating to the custody or disposition of property of a resident.

(84) MN--Medical necessity. A determination, made by physicians and registered nurses who are employed by or contract with the state Medicaid claims administrator, that a recipient requires the services of a licensed nurse in an institutional setting to carry out a physician's planned regimen for total care. A recipient's need for custodial care in a 24-hour institutional setting does not constitute medical necessity.

(85) Neglect--The failure to provide goods or services, including medical services, that are necessary to avoid physical or emotional harm, pain, or mental illness.

(86) NFPA--National Fire Protection Association.

(87) NFPA 99--NFPA 99, Health Care Facilities Code, 2012 Edition.

(88) NFPA 101--NFPA 101, Life Safety Code, 2012 Edition.

(89) Nurse aide--An individual who provides nursing or nursing-related services to residents in a facility under the supervision of a licensed nurse. This term may include an individual who provides these services through an agency or under a contract with the facility. This definition does not include an individual who is a licensed health professional, a registered dietitian, or someone who volunteers such services without pay. A nurse aide is not authorized to provide nursing or nursing-related services for which a license or registration is required under state law. Nurse aides do not include those individuals who furnish services to residents only as paid feeding assistants.

(90) Nurse practitioner--An advanced practice registered nurse licensed by the Texas Board of Nursing in the role of Nurse Practitioner.

(91) Nurses' station--A nurses' station is an area designated as the focal point on all shifts for the administration and supervision of resident-care activities for a designated number of resident bedrooms.

(92) Nursing care--Services provided by nursing personnel which include, but are not limited to, observation; promotion and maintenance of health; prevention of illness and disability; management of health care during acute and chronic phases of illness; guidance and counseling of individuals and families; and referral to physicians, other health care providers, and community resources when appropriate.

(93) Nursing facility or nursing home--See definition of "facility."

(94) Nursing personnel--Persons assigned to give direct personal and nursing services to residents, including registered nurses, licensed vocational nurses, nurse aides, and medication aides. Unlicensed personnel function under the authority of licensed personnel.

(95) Objectives--See definition of "goals."

(96) OBRA--Omnibus Budget Reconciliation Act of 1987, which includes provisions relating to nursing home reform.

(97) Ombudsman intern--Has the meaning given in §88.2 of this title.

(98) Ombudsman Program--Has the meaning given in §88.2 of this title.

(99) Paid feeding assistant--An individual who meets the requirements of §54.1113 of this chapter (relating to Paid Feeding Assistants) and who is paid to feed residents by a facility or who is used under an arrangement with another agency or organization.

(100) Palliative Plan of Care--Appropriate medical and nursing care for residents with advanced and progressive diseases for whom the focus of care is controlling pain and symptoms while maintaining optimum quality of life.

(101) PASARR or PASRR--Preadmission Screening and Resident Review.

(102) Patient care-related electrical appliance--An electrical appliance that is intended to be used for diagnostic, therapeutic, or monitoring purposes in a patient care area, as defined in Standard 99 of the National Fire Protection Association.

(103) Person--An individual, firm, partnership, corporation, association, joint stock company, limited partnership, limited liability company, or any other legal entity, including a legal successor of those entities.

(104) Person-centered care--To focus on the resident as the locus of control, and to support the resident in making choices and having control over the resident's daily life.

(105) Pharmacist--An individual, licensed by the Texas State Board of Pharmacy to practice pharmacy, who prepares and dispenses medications prescribed by a practitioner.

(106) Physical restraint--Any manual method, or physical or mechanical device, material or equipment attached, or adjacent to the resident's body, that the individual cannot remove easily which restricts freedom of movement or normal access to one's body. The term includes a restraint hold.

(107) Physician--A doctor of medicine or osteopathy currently licensed by the Texas Medical Board to practice medicine.

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

(109) Podiatrist--A practitioner whose profession encompasses the care and treatment of feet who is licensed to practice podiatry by the Texas State Board of Podiatric Medical Examiners.

(110) Poison--Any substance that federal or state regulations require the manufacturer to label as a poison and is to be used externally by the consumer from the original manufacturer's container. Drugs to be taken internally that contain the manufacturer's poison label, but are dispensed by a pharmacist only by or on the prescription order of a practitioner, are not considered a poison, unless regulations specifically require poison labeling by the pharmacist.

(111) Practitioner--A physician, podiatrist, dentist, or an advanced practice registered nurse or physician assistant to whom a physician has delegated authority to sign a prescription order, when relating to pharmacy services.

(112) Private and unimpeded access--Access to enter a facility, or communicate with a resident outside of the hearing or view of others, without interference or obstruction from facility employees, volunteers, or contractors.

(113) PRN (pro re nata)--As needed.

(114) Provider--The individual or legal business entity that is contractually responsible for providing Medicaid services under an agreement with HHSC.

(115) Qualified mental health professional - community services--Has the meaning given in §301.303 of this title (relating to Definitions).

(116) Qualified surveyor--An employee of HHSC who has completed state and federal training on the survey process and passed a federal standardized exam.

(117) Quality assessment and assurance committee--A group of health care professionals in a facility who develop and implement appropriate action to identify and rectify substandard care and deficient facility practice.

(118) Quality measure report--A report that provides information derived from an MDS that provides a numeric value to quality indicators. This data is available to the public as part of the Nursing Home Quality Initiative (NHQI), and is intended to provide objective measures for consumers to make informed decisions about the quality of care in a nursing facility.

(119) Quality-of-care monitor--A registered nurse, pharmacist, or dietitian employed by HHSC who is trained and experienced in long-term care facility regulation, standards of practice in long-term care, and evaluation of resident care, and functions independently of HHSC Regulatory Services Division.

(120) RAI--Resident Assessment Instrument. An assessment tool used to conduct comprehensive, accurate, standardized, and reproducible assessments of each resident's functional capacity as specified by the Secretary of the U. S. Department of Health and Human Services. At a minimum, this instrument must consist of the MDS core elements as specified by CMS; utilization guidelines; and Care Area Assessment process.

(121) Recipient--Any individual residing in a Medicaid certified facility or a Medicaid certified distinct part of a facility whose daily vendor rate is paid by Medicaid.

(122) Rehabilitative services--Rehabilitative therapies and devices provided to help a person regain, maintain, or prevent deterioration of a skill or function that has been acquired but then lost or impaired due to illness, injury, or disabling condition. The term includes physical and occupational therapy, speech-language pathology, and psychiatric rehabilitation services.

(123) Reportable conduct--Conduct subject to reporting to the Employee Misconduct Registry (EMR) established under Texas Health and Safety Code, Chapter 253, including:

(A) abuse or neglect that causes or may cause death or harm to a resident;

(B) sexual abuse of a resident;

(C) financial exploitation of a resident in an amount of \$25 or more; and

(D) emotional, verbal, or psychological abuse that causes harm to a resident.

(124) [(+23)] Representative payee--A person designated by the Social Security Administration to receive and disburse benefits, act in the best interest of the beneficiary, and ensure that benefits will be used according to the beneficiary's needs.

(125) [(+24)] Resident--Any individual residing in a nursing facility.

(126) [(125)] Resident group--A group or council of residents who meet regularly.

(127) [(126)] Resident representative--

(A) Any of the following:

(i) an individual chosen by the resident to act on behalf of the resident in order to support the resident in decision-making; access medical, social, or other personal information of the resident; manage financial matters; or receive notifications;

(ii) a person authorized by state or federal law (including agents under power of attorney, representative payees, and other fiduciaries) to act on behalf of the resident in order to support the resident in decision-making; access medical, social, or other personal information of the resident; manage financial matters; or receive notifications;

(iii) legal representative, as used in Section 712 of the Older Americans Act (40 U.S.C. §3058g); or

(iv) the court-appointed guardian of a resident.

(B) This definition is not intended to expand the scope of authority of any resident representative beyond that authority specifically authorized by the resident, state or federal law, or a court of competent jurisdiction.

(128) [(127)] Responsible party--An individual authorized by the resident to act for him as an official delegate or agent. Responsible party is usually a family member or relative, but may be a legal guardian or other individual. Authorization may be in writing or may be given orally.

(129) [(128)] Restraint--A chemical or physical restraint.

(130) [(129)] Restraint hold--

(A) A manual method, except for physical guidance or prompting of brief duration, used to restrict:

(i) free movement or normal functioning of all or a portion of a resident's body; or

(ii) normal access by a resident to a portion of the resident's body.

(B) Physical guidance or prompting of brief duration becomes a restraint if the resident resists the guidance or prompting.

(131) [(130)] RN--Registered nurse. An individual currently licensed by the Texas Board of Nursing as a registered nurse.

(132) [(131)] RN assessment coordinator--A registered nurse who signs and certifies a comprehensive assessment of a resident's needs, using the RAI, including the MDS, as specified by HHSC.

(133) [(132)] RUG--Resource Utilization Group. A categorization method, consisting of 34 categories based on the MDS, that is used to determine a recipient's service and care requirements and to determine the daily rate HHSC pays a nursing facility for services provided to the recipient.

(134) [(133)] Secretary--Secretary of the U.S. Department of Health and Human Services.

(135) [(134)] Services required on a regular basis--Services which are provided at fixed or recurring intervals and are needed so frequently that it would be impractical to provide the services in a home or family setting. Services required on a regular basis include continuous or periodic nursing observation, assessment, and intervention in all areas of resident care.

(136) [(135)] SNF--A skilled nursing facility or distinct part of a facility that participates in the Medicare program. SNF requirements apply when a certified facility is billing Medicare for a resident's per diem rate.

(137) [(136)] Social Security Administration--Federal agency for administration of social security benefits. Local social security administration offices take applications for Medicare, assist beneficiaries file claims, and provide information about the Medicare program.

(138) [(137)] Social worker--A qualified social worker is an individual who is licensed, or provisionally licensed, by the Texas State Board of Social Work Examiners as prescribed by the Texas Occupations Code, Chapter 505, and who has at least:

(A) a bachelor's degree in social work; or

(B) similar professional qualifications, which include a minimum educational requirement of a bachelor's degree and one year experience met by supervised employment providing social services in a health care setting.

(139) [(138)] Standards--The minimum conditions, requirements, and criteria established in this chapter with which an institution must comply to be licensed under this chapter.

(140) [(139)] State Medicaid claims administrator--The entity under contract with HHSC to process Medicaid claims in Texas.

(141) [(140)] State Ombudsman--Has the meaning given in §88.2 of this title.

(142) [(141)] State plan--A formal plan for the medical assistance program, submitted to CMS, in which the State of Texas agrees to administer the program in accordance with the provisions of the State Plan, the requirements of Titles XVIII and XIX, and all applicable federal regulations and other official issuances of the U.S. Department of Health and Human Services.

(143) [(142)] Stay agreement--An agreement between a license holder and the executive commissioner that sets forth all requirements necessary to lift a stay and rescind a license revocation proposed under §554.2107 of this chapter (relating to Revocation of a License by the HHSC Executive Commissioner).

(144) [(143)] Standard quality of care violation--A violation of §554.401(a) or (b) of this chapter (relating to Introduction); §554.402(b) or (c) of this chapter (relating to Exercise of Rights) [§554.402(b), (c), or (d)]; §554.406(d) - (h) of this chapter (relating to Free Choice); §554.417 of this chapter (relating to Married Couples) [§554.417(a), (b), or (c)]; §554.425(b)(1); §554.504(a) of this chapter (relating to Equal Access to Quality Care in Medicaid-certified Facilities); §554.601 of this chapter (relating to Freedom from Abuse, Neglect and Exploitation); §554.602 of this chapter (relating to Incidents of Abuse, Neglect, and Exploitation Reportable to the Texas Health and Human Services Commission and Law Enforcement Agencies by Facilities); §554.701 of this chapter (relating to Quality of Life); §554.703 of this chapter (relating to Social Services General Requirements); §554.706(a), (c), (d)(1) - (5), or (e)(7) of this chapter (relating to Resident Group and Family Council); §554.801 of this chapter (relating to Resident Assessment); §554.901 of this chapter (relating to Quality of Care); §554.904(2) or (4) of this chapter (relating to Behavioral Health Services); §554.1501(5), (6), or (7) of this chapter (relating to Pharmacy Services); or §554.1601(e)(2) of this chapter (relating to Infection Control [Resident Rights]) that constitutes:

(A) an immediate threat to resident health or safety;

(B) a pattern of or actual harm that is not an immediate threat; or

(C) a widespread potential for more than minimal harm, but less than an immediate threat, with no actual harm.

(145) [(144)] Supervision--General supervision, unless otherwise identified.

(146) [(145)] Supervision (direct)--Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity within the qualified person's sphere of competence. If the person being supervised does not meet assistant-level qualifications specified in this chapter and in federal regulations, the supervisor must be on the premises and directly supervising.

(147) [(146)] Supervision (general)--Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity within the qualified person's sphere of competence. The person being supervised must have access to the qualified person providing the supervision.

(148) [(147)] Survey agency--HHSC is the agency that, through contractual agreement with CMS, is responsible for Title XIX (Medicaid) survey and certification of nursing facilities.

(149) [(148)] *Texas Register*--A publication of the Texas Register Publications Section of the Office of the Secretary of State that contains emergency, proposed, withdrawn, and adopted rules issued by Texas state agencies.

(150) [(149)] Therapeutic diet--A diet ordered by a physician as part of treatment for a disease or clinical condition, in order to eliminate, decrease, or increase certain substances in the diet or to provide food which has been altered to make it easier for the resident to eat.

(151) [(150)] Threatened violation--A situation that, unless immediate steps are taken to correct, may cause injury or harm to a resident's health and safety.

(152) [(151)] Title II--Federal Old-Age, Survivors, and Disability Insurance Benefits of the Social Security Act (42 U.S.C. §§401 - 434).

(153) [(152)] Title XVI--Supplemental Security Income (SSI) of the Social Security Act (42 U.S.C. §§1381 - 1385).

(154) [(153)] Title XVIII--Medicare provisions of the Social Security Act (42 U.S.C. §§1390 - 1395lll).

(155) [(154)] Title XIX--Medicaid provisions of the Social Security Act (42 U.S.C. §§1396 - 1396w-5).

(156) [(155)] Total health status--Includes functional status, medical care, nursing care, nutritional status, rehabilitation and restorative potential, activities potential, cognitive status, oral health status, psychosocial status, and sensory and physical impairments.

(157) [(156)] Universal precautions--The use of barrier precautions and other precautions to prevent the spread of blood-borne diseases.

(158) [(157)] Unreasonable confinement--Involuntary seclusion.

(159) [(158)] Vaccine preventable diseases--The diseases included in the most current recommendations of the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention.

(160) [(159)] Vendor payment--Payment made by HHSC on a daily-rate basis for services delivered to recipients in Medicaid-

certified nursing facilities. Vendor payment is based on the nursing facility's approved-to-pay claim processed by the state Medicaid claims administrator. The Nursing Facility Billing Statement, subject to adjustments and corrections, is prepared from information submitted by the nursing facility, which is currently on file in the computer system as of the billing date. Vendor payment is made at periodic intervals, but not less than once per month for services rendered during the previous billing cycle.

(161) [(160)] Widespread--When the problem causing a violation is pervasive in a facility or represents systemic failure that affected or has the potential to affect a large portion or all facility [of a facility's] residents.

(162) [(161)] Willfully interfere--To act or not act to intentionally prevent, interfere with, or impede or to attempt to intentionally prevent, interfere with, or impede.

(163) [(162)] Working day--Any 24-hour period, Monday through Friday, excluding state and federal holidays.

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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For further information, please call: (512) 438-3161



SUBCHAPTER E. RESIDENT RIGHTS

26 TAC §554.405

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; Texas Government Code §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Human Resources Code §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program; and Texas Health and Safety Code §242.001, which states that the goal of Chapter 242 is to ensure that nursing facilities in Texas deliver the highest possible quality of care and establish the minimum acceptable levels of care for individuals who are living in a nursing facility.

The amendment implements Texas Government Code §531.0055 and §531.021; Texas Human Resources Code §32.021; and Texas Health and Safety Code §§242.001, 253.0025, and 331.001 - 331.006.

§554.405. *Additional Requirements for Trust Funds in Medicaid-certified Facilities.*

(a) Deposit of funds. The facility must keep funds received from a resident for holding, safeguarding, and accounting, separate from the facility's funds.

(1) This separate account must be identified "(Name of Facility), Resident's Trust Fund Account," or by a similar designation [title] that shows a fiduciary relationship exists between a resident and the facility.

(2) A facility may commingle the trust funds of Medicaid residents and private-pay residents.

(3) If the funds are commingled, the facility must provide, upon request, the following records to HHSC, the Texas Office of the Attorney General Medicaid Fraud Control Unit, and the U.S. Department of Health and Human Services:

(A) copies of release forms signed and dated by each private-pay resident or resident representative whose funds are commingled; and

(B) legible copies of the trust fund records of private-pay residents whose funds are commingled.

(4) The facility must maintain the forms and records described in paragraph (3) of this subsection in the same manner as the financial records of Medicaid residents as specified in this section.

(5) A facility must ensure that a release form described in paragraph (3)(A) of this subsection:

(A) includes permission for the facility to maintain trust fund records of private-pay residents in the same manner as those of Medicaid residents;

(B) is obtained from a private-pay resident upon admission or at the time of request for trust fund services; and

(C) includes a provision allowing inspection of the private-pay resident's trust fund records by the agencies described in paragraph (3) of this subsection.

(b) Funds in excess of \$50. The facility must deposit any residents' personal funds in excess of \$50 in an interest-bearing account (or accounts) that is separate from any of the facility's operating accounts[,] and that credits all interest earned on the residents' funds to that account. In pooled accounts, there must be a separate accounting for each resident's share.

(c) Funds less than \$50. The facility may maintain a resident's personal funds that do not exceed \$50 in a noninterest-bearing account, interest-bearing account, or petty cash fund.

(d) Accounting and records.

(1) The facility must:

(A) establish and maintain current, written, individual records of all financial transactions involving a resident's personal funds that the facility is holding, safeguarding, and accounting;

(B) keep these records in accordance with:

(i) the American Institute of Certified Public Accountants' Generally Accepted Accounting Principles; and

(ii) the requirements of law for a fiduciary relationship; and

(C) include at least the following in these records:

(i) resident's name;

(ii) identification of the resident's representative payee and resident representative, and payor source;

(iii) valid letter of guardianship, if any;

(iv) valid power of attorney, if any;

(v) resident's admission and discharge dates;

(vi) resident's trust fund ledger containing the following:

(I) description of each transaction;

(II) the date and amount of each deposit and withdrawal;

(III) the name of the person who accepted any withdrawn funds;

(IV) the balance after each transaction; and

(V) amount of interest earned, posted at least quarterly;

(vii) receipts for purchases and payments, including cash-register tapes or sales statements from a seller;

(viii) written requests for personal funds from the trust fund account; and

(ix) written requests for specific brands, items, or services.

(2) The facility must maintain the following as general trust fund records:

(A) valid trust fund trial balance;

(B) petty cash logs;

(C) bank statements for trust fund and operating accounts;

(D) trust fund checkbook and register;

(E) trust fund account monthly reconciliations;

(F) trust fund bank account agreement form;

(G) applied income ledgers;

(H) applied income payment plans from HHSC;

(I) proof of surety bond;

(J) written agreements (e.g., bed hold, private room); and

(K) facility census, admission, discharge, and leave records.

(3) A resident must approve a withdrawal from the resident's personal funds by signing a document that shows the resident's approval and the date of the approval.

(4) Except as provided in subparagraph (B) of this paragraph, a facility must obtain a receipt for the purchase of an item or service.

(A) The receipt must contain:

(i) the resident's name;

(ii) the date the receipt was written or created;

(iii) the amount of funds spent;

(iv) the specific item or service purchased;

(v) the name of the business from which the purchase was made; and

(vi) the signature of the resident.

(B) A receipt is not required if:

(i) a purchase is made with funds withdrawn in accordance with paragraph (3) of this subsection;

(ii) a purchase is made by the resident, a resident representative, or an individual, other than facility personnel, authorized in writing by the resident; or

(iii) the item purchased costs one dollar or less.

(5) If a facility cannot obtain the signature of a resident as required by paragraph (3) or (4)(A)(vi) of this subsection, the facility must obtain the signature of a witness. The witness may not be the person responsible for accounting for the resident's trust funds, that person's supervisor, or the person who accepts the withdrawn funds or who sells the item being purchased. The facility and HHSC staff must be able to identify the witness's name, address, and relationship to the resident or facility.

(e) Notice of certain balances. The facility must notify each resident that receives Medicaid benefits:

(1) if the amount in the resident's account reaches \$200 less than Supplemental Security Income (SSI) [SSI] resource limit for one person, specified in §1611(a)(3)(B) of the Social Security Act; and

(2) that, if the amount in the account, in addition to the value of the resident's other nonexempt resources, reaches the SSI resource limit for one person, the resident may lose eligibility for Medicaid or SSI.

(f) Conveyance upon death.

(1) Upon the death of a resident with a personal fund deposited with the facility, the facility must convey, within 30 days after the date of the death, the resident's funds and a final accounting of those funds to the individual or probate jurisdiction administering the resident's estate, or make a bona fide effort to locate the resident representative or heir to the estate.

(2) If a facility is not able to convey funds in accordance with paragraph (1) of this subsection, the facility must, within 30 days after the resident's death;

(A) hold the funds by depositing them in a separate account or maintaining them in an existing account, designating on the account records that the resident is deceased; or

(B) submit funds to HHSC in accordance with paragraph (4) of this subsection.

(3) If the facility holds funds in accordance with paragraph (2)(A) of this subsection:

(A) the facility must provide HHSC with a notarized affidavit that contains:

(i) the resident's name;

(ii) the amount of funds being held;

(iii) a description of the facility's efforts to locate a resident representative or heir;

(iv) a statement acknowledging that the funds are not the property of the facility, but the property of the deceased resident's estate; and

(v) a statement that the facility will hold the funds until they are conveyed to a resident representative or heir or submitted to HHSC in accordance with paragraph (4) of this subsection;

(B) the facility must submit the funds to HHSC in accordance with paragraph (4) of this subsection within 180 days after the resident's death; and

(C) funds held by a facility in accordance with this paragraph may be monitored or reviewed by HHSC or the Office of Inspector General.

(4) A facility must submit unclaimed funds to HHSC, Accounts Receivable.

(A) The funds must be identified as money that will escheat to the state.

(B) If the facility held the funds in accordance with paragraph (3) of this subsection, the facility must include the notarized affidavit described in paragraph (3)(A) of this subsection.

(g) Assurance of financial security. The facility must purchase a surety bond, or otherwise provide assurance satisfactory to the Secretary of Health and Human Services to ensure the security of all personal funds of residents deposited with the facility.

(1) The amount of a surety bond must equal the average monthly balance of all the facility's resident trust fund accounts for the 12-month period preceding the bond issuance or renewal date.

(2) Resident trust fund accounts are specific only to the single facility purchasing a resident trust fund surety bond.

(3) If a facility employee is responsible for the loss of funds in a resident's trust fund account, the resident, the resident's family, and the resident representative are not obligated to make any payments to the facility that would have been made out of the trust fund had the loss not occurred.

(h) Items and services that may not be charged to a resident's personal funds.

(1) The facility may not impose a charge against the personal funds of a resident for any item or service for which payment is made under Medicaid or Medicare.

(2) Items or services included in Medicare or Medicaid payment that may not be billed to the resident's personal funds by the facility include:

(A) nursing services as required in §554.1001 [~~§19-1001~~] of this chapter (relating to Nursing Services);

(B) dietary services as required in §554.1101 [~~§19-1101~~] of this chapter (relating to Food and Nutrition Services);

(C) an activities program as required in §554.702 [~~§19-702~~] of this chapter (relating to Activities);

(D) room and bed maintenance services;

(E) routine personal hygiene items and services as required to meet the needs of the resident, including:

(i) hair hygiene supplies, including shampoo, comb, and brush;

(ii) bath soaps, disinfecting soaps, or specialized cleansing agents when indicated to treat special skin problems or to fight infection;

(iii) razor and shaving cream;

(iv) toothbrush, toothpaste, and dental floss;

(v) denture adhesive and denture cleanser;

(vi) moisturizing lotion;

(vii) tissues, cotton balls, and cotton swabs;

(viii) deodorant;

(ix) incontinent care and supplies, to include, cloth or disposable incontinent briefs;

(x) sanitary napkins and related supplies;

(xi) towels and washcloths;

(xii) hospital gowns;

(xiii) over-the-counter drugs;

(xiv) hair and nail hygiene services; and

(xv) personal laundry; and

(F) medically-related social services as required in §554.703 [~~§19.703~~] of this chapter (relating to Social Services General Requirements).

(3) A facility must base necessity for and type of incontinent brief described in paragraph (2)(E)(ix) of this subsection on an assessment of the resident's medical and psychosocial condition and resulting determination.

(i) Items and services that may be charged to a resident's personal funds. The facility may charge a resident for requested services that are more expensive than or in excess of covered services in accordance with §554.2601 [~~§19.2601~~] of this chapter (relating to Vendor Payment (Items and Services Included)). The following list contains general categories and examples of items and services that the facility may charge to a resident's personal funds if they are requested by a resident, if the facility informs the resident that there will be a charge, and if payment is not made by Medicare or Medicaid:

(1) telephone;

(2) television or radio for personal use;

(3) personal comfort items, including smoking materials, notions and novelties, and confections;

(4) cosmetics and grooming items and services in excess of those for which payment is made under Medicare or Medicaid;

(5) personal clothing;

(6) personal reading material;

(7) gifts purchased on behalf of a resident;

(8) flowers and plants;

(9) social events and entertainment offered outside the scope of the activities program, provided under §554.702 [~~§19.702~~] of this chapter;

(10) noncovered special care services, such as privately hired nurses and aides;

(11) private room, except when therapeutically required, such as isolation for infection control;

(12) specially-prepared or alternative food requested instead of the food generally prepared by the facility, as required in §554.1101 [~~§19.1101~~] of this chapter; and

(13) incontinent briefs if the resident representative submits a written request to the facility and the attending physician and director of nurses (DON) determine and document in the clinical record that there is no medical or psychosocial need for supplies.

(j) Request for items or services that may be charged to a resident's personal funds.

(1) The facility can only charge a resident for an item or service not included under §554.2601 [~~§19.2601~~] of this chapter if the

resident or the resident representative specifically requests the item or service.

(2) The facility must not require a resident or resident representative to request any item or service as a condition of admission or continued stay.

(3) The facility must inform, orally and in writing, the resident or resident representative, when the resident or resident representative requests an item or service for which a charge will be made, that there will be a charge for the item or service and the amount of the charge.

(k) Access to financial record. The individual financial record must be available on request to the resident, resident representative, and representative.

(l) Quarterly statement.

(1) The individual financial record must be available, through quarterly statements and on request, to the resident, representative payee, and resident representative.

(2) The statement must reflect any resident's funds that the facility has deposited in an account as well as any resident's funds held by the facility in a petty cash account.

(3) The statement must include at least the following:

(A) balance at the beginning of the statement period;

(B) total deposits and withdrawals;

(C) interest earned, if any;

(D) bank name and location of any account in which the resident's personal funds have been deposited; and

(E) ending balance.

(m) Banking charges.

(1) Charges for checks, deposit slips, and services for pooled checking accounts are the responsibility of the facility and may not be charged to the resident or resident representative.

(2) Bank service charges and charges for checks and deposit slips may be deducted from the individual checking accounts if it is the resident's written, individual choice to have this type of account.

(3) Bank fees on individual accounts established solely for the convenience of the facility are the responsibility of the facility and may not be charged to the resident or resident representative.

(4) The facility may not charge the resident or resident for the administrative handling of either type of account.

(5) If the facility places any part of the resident's funds in savings accounts, certificates of deposit, or any other plan whereby interest or other benefits are accrued, the facility must distribute the interest or benefit to participating residents on an equitable basis. If pooled accounts are used, interest must be prorated on the basis of actual earnings or end-of-quarter balances.

(n) Access to funds.

(1) Disbursements from the trust fund.

(A) A request for funds from the trust fund or trust fund petty cash box may be made, either orally or in writing, by the resident, or resident representative to cover a resident's expenses.

(B) The facility must respond to a request received during normal business hours at the time of the request.

(C) The facility must respond to a request received during hours other than normal business hours immediately at the beginning of the next normal business hours.

(2) Discontinuing trust fund participation.

(A) If a resident or resident representative requests that the facility discontinue managing the resident's personal funds, the facility must return to the resident or resident representative all [of] the resident's personal funds held by the facility, including any interest accrued.

(B) If the request is made during normal business hours, the facility must immediately return the funds.

(C) If the request is made during hours other than normal business hours, the facility must return the funds immediately during the next normal business hours.

(3) Transfer or discharge. If a resident is transferred or discharged from a facility, the facility must, within five working days after the transfer or discharge, return to the resident or resident representative all [of] the resident's personal funds held by the facility, including any interest accrued.

(4) For purposes of this subsection, normal business hours are 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding national holidays.

(o) Handling of monthly benefits. If the Social Security Administration has determined that a Title II and Title XVI SSI [Supplemental Security Income (SSI)] benefit to which the resident is entitled should be paid through a representative payee, the provisions in 20 CFR §§404.2001- 404.2065, for Old Age, Survivors, and Disability Insurance benefits and 20 CFR §§416.601 - 416.665, for SSI benefits apply.

(p) Change of ownership. If the ownership of a facility changes, the former owner must transfer the bank balances or trust funds to the new owner with a list of the residents and their balances. The former owner must get a receipt from the new owner for the transfer of these funds. The former owner must keep this receipt for monitoring or audit purposes.

(q) Alternate forms of documentation. Without HHSC's prior written approval, a facility may not submit alternate forms of documentation, including affidavits, to verify a resident's personal fund expenditures or as proof of compliance with any requirements specified in these requirements for the resident's personal funds.

(r) Limitation on certain charges. A nursing facility may not impose charges for certain Medicaid-eligible individuals, for nursing facility services that exceed the per diem amount established by HHSC for such services. "Certain Medicaid-eligible individuals" means an individual who is entitled to medical assistance for nursing facility services, but for whom such benefits are not being paid because, in determining the individual's income to be applied monthly to the payment for the costs of nursing facility services, the amount of such income exceeds the payment amounts established by HHSC.

(s) Trust fund monitoring and audits.

(1) HHSC may periodically monitor all trust fund accounts to ensure [assure] compliance with this section. HHSC notifies a facility of monitoring plans and gives a report of the findings to the facility.

(2) HHSC may, as a result of monitoring, refer a facility to the Office of Inspector General (OIG) for an audit.

(3) The facility must provide all records and other documents required by subsection (d) of this section to HHSC upon request.

(4) HHSC provides the facility with a report of the findings, which may include corrective actions that the facility must take and internal control recommendations that the facility may follow.

(5) The facility may request an informal review in accordance with subsection (t) of this section or a formal hearing in accordance with subsection (u) of this section to dispute the report of findings.

(6) If the facility does not request an informal review or a formal hearing and the report of findings requires corrective actions, the facility must complete corrective actions within 30 [60] days after receiving the report of findings.

(7) If the facility does not complete corrective actions required by HHSC within 30 [60] days after receiving the report of findings, HHSC may impose a vendor hold on payments due to the facility under the provider agreement until the facility completes corrective actions.

(8) If HHSC imposes a vendor hold in accordance with paragraph (7) of this subsection, the facility may request a formal hearing in accordance with subsection (u)(5) of this section. If the failure to correct is upheld, HHSC continues the vendor hold until the facility completes the corrective actions.

(t) Informal review.

(1) A facility that disputes the report of findings described in subsection (s)(4) of this section may request an informal review under this section. The purpose of an informal review is to provide for the informal and efficient resolution of the matters in dispute and is conducted according to the following procedures.

(A) HHSC must receive a written request for an informal review by United States mail, hand delivery, special mail delivery, or fax no later than 15 days after the date on the written notification of the report of findings described in subsection (s)(4) of this section. If the 15th day is a Saturday, Sunday, national holiday, or state holiday, then the first day following the 15th day is the final day the written request will be accepted. A request for an informal review that is not received by the stated deadline is not granted.

(B) A facility must submit a written request for an informal review to the HHSC Trust Fund Monitoring Unit.

(C) A facility must, with its request for an informal review:

(i) submit a concise statement of the specific findings it disputes;

(ii) specify the procedures or rules that were not followed;

(iii) identify the affected cases;

(iv) describe the reason the findings are being disputed; and

(v) include supporting information and documentation that directly demonstrates that each disputed finding is not correct.

(D) HHSC does not grant a request for an informal review that does not meet the requirements of this subsection.

(2) Informal review process. Upon receipt of a request for an informal review, the Trust Fund Monitoring Unit Manager coordinates the review of the information submitted.

(A) Additional information may be requested by HHSC[,] and must be received in writing no later than 15 days after the date the facility receives the written request for additional information.

If the 15th day is a Saturday, Sunday, national holiday, or state holiday, then the first day following the 15th day is the final day the additional information will be accepted.

(B) HHSC sends its written decision to the facility by certified mail, return receipt requested.

(i) If the original findings are upheld, HHSC continues the schedule of deficiencies and requirement for corrective action.

(ii) If the original findings are reversed, HHSC issues a corrected schedule of deficiencies with the written decision.

(iii) If the original findings are revised, HHSC issues a revised schedule of deficiencies including any revised corrective action.

(iv) If the original findings are upheld or revised, the facility may request a formal hearing in accordance with subsection (u) of this section.

(v) If the original findings are upheld or revised and the facility does not request a formal hearing, the facility has 60 days from the date of receipt of the written decision to complete the corrective actions. If the facility does not complete the corrective actions by that date, HHSC may impose a vendor hold. If HHSC imposes a vendor hold, the facility may request a formal hearing in accordance with subsection (u)(5) of this section. If the failure to correct is upheld, HHSC continues the vendor hold until the facility completes the corrective action.

(u) Formal hearing.

(1) The facility must submit a written request for a formal hearing under this section to the HHSC Appeals Division.

(2) The written request for a formal hearing must be received within 15 days after:

(A) the date on the written notification of the report of findings described in subsection (s)(4) of this section; or

(B) the facility receives the written decision sent as described in subsection (t)(2)(B) of this section.

(3) A formal hearing is conducted in accordance with Texas Administrative Code, Title 1, Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act).

(4) No later than 60 days after a final determination is issued as a result of a formal hearing requested by a facility under subsection (s)(8) or (t)(2)(B)(iv) of this section, the facility must complete any corrective action required by HHSC or be subject to a vendor hold on payments due to the facility under the provider agreement until the facility completes corrective action. If HHSC imposes a vendor hold, the facility may request a formal hearing in accordance with paragraph (5) of this subsection. If the failure to correct is upheld, HHSC continues the vendor hold until the facility completes the corrective action.

(5) If HHSC imposes a vendor hold under subsections (s)(7), (t)(2)(B)(v), or (u)(4) of this section, the facility may request a formal hearing within 15 days after receiving notice of the correction failure and the vendor hold. The formal hearing is limited to the issue of whether the facility completed the corrective action.

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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For further information, please call: (512) 438-3161



SUBCHAPTER G. FREEDOM FROM ABUSE, NEGLECT, AND EXPLOITATION

26 TAC §554.601

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; Texas Government Code §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Human Resources Code §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program; and Texas Health and Safety Code §242.001, which states that the goal of Chapter 242 is to ensure that nursing facilities in Texas deliver the highest possible quality of care and establish the minimum acceptable levels of care for individuals who are living in a nursing facility.

The amendment implements Texas Government Code §531.0055 and §531.021; Texas Human Resources Code §32.021; and Texas Health and Safety Code §§242.001, 253.0025, and 331.001 - 331.006.

§554.601. *Freedom from Abuse, Neglect, and Exploitation.*

(a) General. The resident has the right to be free from abuse, neglect, misappropriation of resident property, and exploitation as defined in §554.101 [~~§19.101~~] of this chapter (relating to Definitions). This includes freedom from any physical or chemical restraint not required to treat the resident's medical symptoms.

(b) Abuse. The resident has the right to be free from verbal, sexual, physical, and mental abuse, corporal punishment, and involuntary seclusion.

(c) Policies and procedures. The facility must develop and implement written policies and procedures that prohibit and prevent mistreatment, abuse, neglect, and exploitation of a resident, and misappropriation of a resident's property.

(1) The facility must:

(A) not use verbal, mental, sexual, or physical abuse, corporal punishment, or involuntary seclusion;

(B) not employ or otherwise engage an individual who has:

(i) been found guilty of abuse, neglect, exploitation, misappropriation of property, or mistreatment of a resident by a court of law;

(ii) had a finding entered into the state nurse aide registry concerning abuse, neglect, exploitation or mistreatment of a resident, or misappropriation of a resident's property;

(iii) been convicted of any crime contained in §250.006, Texas Health and Safety Code; or

(iv) a disciplinary action in effect against the individual's professional license by a state licensure body as a result of a finding of abuse, neglect, exploitation, mistreatment of a resident or misappropriation of a resident's property;[-]

(C) report any knowledge it has of actions by a court of law against an employee that [; which] would indicate unfitness for service as a nurse aide or other staff to the state nurse aide registry or licensing authority; and[-]

(D) suspend the employment of an employee who HHSC finds has engaged in reportable conduct, as defined in section §554.101 of this chapter, while the employee exhausts any applicable appeals process, including informal and formal appeals and any hearing or judicial review, pending a final decision by an administrative law judge. A facility must not reinstate the employee's employment or contract during any applicable appeals process.

(2) The written policies and procedures must:

(A) establish protocols to investigate any such allegations; and

(B) include training as required by §554.1929 [~~§19.1929~~] of this chapter (relating to Staff Development).

(d) Restraints. The facility must ensure that the resident is free from physical or chemical restraints imposed for purposes of discipline or convenience and that are not required to treat the resident's medical symptoms. If the use of restraints is indicated, the facility must use the least restrictive alternative for the least amount of time and document ongoing re-evaluation of the need for restraints.

(1) If physical restraints are used because they are required to treat the resident's medical condition, the restraints must be released and the resident repositioned as needed to prevent deterioration in the resident's condition. Residents must be monitored hourly and, at a minimum, restraints must be released every two hours for a minimum of ten minutes, and the resident repositioned.

(2) A facility must not administer to a resident a restraint that:

(A) obstructs the resident's airway, including a procedure that places anything in, on, or over the resident's mouth or nose;

(B) impairs the resident's breathing by putting pressure on the resident's torso;

(C) interferes with the resident's ability to communicate; or

(D) places the resident in a prone or supine hold.

(3) A behavioral emergency is a situation in which severely aggressive, destructive, violent, or self-injurious behavior exhibited by a resident:

(A) poses a substantial risk of imminent probable death of, or substantial bodily harm to, the resident or others;

(B) has not abated in response to attempted preventive de-escalatory or redirection techniques;

(C) could not reasonably have been anticipated; and

(D) is not addressed in the resident's comprehensive care plan.

(4) If restraint is used in a behavioral emergency, the facility must use only an acceptable restraint hold. An acceptable restraint

hold is a hold in which the resident's limbs are held close to the body to limit or prevent movement and that does not violate the provisions of paragraph (2) of this subsection.

(5) A staff person may use a restraint hold only for the shortest period of time necessary to ensure the protection of the resident or others in a behavioral emergency.

(6) A facility may adopt policies that allow less use of restraint than allowed by the rules of this chapter.

(7) Use of restraints and their release must be documented in the clinical record.

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

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Health and Human Services Commission

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SUBCHAPTER T. ADMINISTRATION

26 TAC §554.1920

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; Texas Government Code §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Human Resources Code §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program; and Texas Health and Safety Code §242.001, which states that the goal of Chapter 242 is to ensure that nursing facilities in Texas deliver the highest possible quality of care and establish the minimum acceptable levels of care for individuals who are living in a nursing facility.

The amendment implements Texas Government Code §531.0055 and §531.021; Texas Human Resources Code §32.021; and Texas Health and Safety Code §§242.001, 253.0025, and 331.001 - 331.006.

§554.1920. Operating Policies and Procedures.

(a) The facility must have an administrative policy and procedure manual that outlines the general operating policies and procedures of the facility. The manual must include policies and procedures related to admission and admission agreements, resident care services, refunds, transfers and discharges, termination from Medicaid or Medicare participation in accordance with §554.2121 [~~§19.2121~~] of this chapter (relating to General Provisions), receiving and responding to complaints and recommendations, and protection of a resident's personal property and civil rights. A copy of this manual must be made available for review upon request to each physician, staff member, resident, and resident's next of kin or guardian and to the public.

(b) The facility must have written personnel policies and procedures that are explained to employees during initial orientation and are readily available to them after that time.

(c) The facility must ensure that personnel records are correct and contain sufficient information to support placement in the assigned position (including a resume of training and experience). When appropriate, a current copy of the person's license or permit must be in the file.

(d) Upon request of HHSC, the facility must make available financial records to demonstrate the facility's compliance with applicable state laws and standards relating to licensing.

(e) A facility must develop, implement, and enforce a written policy that:

(1) requires a facility employee who provides direct care to a resident with Alzheimer's disease or a related disorder to successfully complete training in the provision of care to residents with Alzheimer's disease and related disorders; and

(2) ensures the care and services provided by a facility employee to a resident with Alzheimer's disease or a related disorder meet the specific identified needs of the resident relating to the diagnosis of Alzheimer's disease or a related disorder.

(f) The training required for facility employees under subsection (e)(1) of this section must include information about:

- (1) symptoms and treatment of dementia;
- (2) stages of Alzheimer's disease;
- (3) person-centered behavioral interventions; and
- (4) communication with a resident with Alzheimer's disease or a related disorder.

(g) A facility must have a workplace violence prevention committee and develop workplace violence prevention policies and procedures in accordance with Texas Health and Safety Code, Chapter 331.

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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CHAPTER 555. NURSING FACILITY ADMINISTRATORS

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §§555.2, 555.3, 555.11 - 555.16, 555.18, 555.31 - 555.36, 555.38 - 555.42, and 555.51, 555.53 - 555.57.

BACKGROUND AND PURPOSE

The purpose of the proposal is to implement two bills from the 88th Texas Legislature, Regular Session, 2023. House Bill

(H.B.) 4123 relates to HHSC obtaining criminal history information from the Federal Bureau of Investigation (FBI) and Texas Department of Public Safety for nursing facility administrator (NFA) applicants. Senate Bill (S.B.) 681 relates to Texas Occupation Code, Chapter 53, exemption for HHSC Long-Term Care Regulation (LTCR)-regulated Nursing Facility Administrators. This rule project also included revisions related to the Texas Unified Licensure Information Portal (TULIP), with the purpose of changing from a paper process to a digital process. This proposal also makes non-substantive edits to references in the rules.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §555.2 revises definitions to NFA rules. Paragraph (22) defines the "National Association of Long Term Care Administrator Boards (NAB)" and paragraph (29) defines "online portal." HHSC also made non-substantive changes to improve readability and updated a reference.

The proposed amendment to §555.3 removes the cost of a duplicate license.

The proposed amendment to §555.11 implements H.B. 4123 related to FBI criminal history and adds language clarifying the use of the online portal TULIP.

The proposed amendment to §555.12 makes non-substantive grammar edits.

The proposed amendment to §555.13 updates the rule to reflect the current automated process using TULIP.

The proposed amendment to §555.14 updates the rule to reflect the current automated process using TULIP.

The proposed amendment to §555.15 updates the rule to reflect the current automated process using TULIP.

The proposed amendment to §555.16 updates the rule to reflect the current automated process using TULIP.

The proposed amendment to §555.18 makes a non-substantive rule clarifying edit.

The proposed amendment to §555.31 updates the rule to reflect the current automated process using TULIP.

The proposed amendment to §555.32 updates the rule to reflect the current automated process using TULIP.

The proposed amendment to §555.33 adds language clarifying that NFAs can print duplicate licenses through the online portal.

The proposed amendment to §555.34 implements H.B. 4123 related to FBI criminal history and updates the rule to reflect the current automated process using TULIP.

The proposed amendment to §555.35 makes non-substantive grammar edits.

The proposed amendment to §555.36 updates the rule to reflect the current automated process using TULIP.

The proposed amendment to §555.38 updates the rule to reflect the current automated process using TULIP and corrects a reference in the rule.

The proposed amendment to §555.39 updates the rule to reflect the current automated process using TULIP.

The proposed amendment to §555.40 updates the rule to reflect the current automated process using TULIP.

The proposed amendment to §555.41 updates references in the rule and implements H.B. 4123 relating to criminal convictions.

The proposed amendment to §555.42 implements H.B. 4123 relating to FBI criminal history, updates rule to reflect the current automated process using TULIP, makes non-substantive grammar and reference updates, and clarifies that a military spouse with an active license can print duplicate licenses and make name changes through the online portal.

The proposed amendment to §555.51 makes non-substantive grammar edits.

The proposed amendment to §555.53 updates a reference in the rule.

The proposed amendment to §555.54 implements H.B. 4123 relating to criminal convictions and updates a reference.

The proposed amendment to §555.55 makes non-substantive grammar edits.

The proposed amendment to §555.56 removes language requiring a person with an expired license to return the license certificate to HHSC.

The proposed amendment to §555.57 makes a non-substantive grammar edit.

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 not create new regulations;
- (6) the proposed rules will expand existing rules;
- (7) the proposed regulations 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 not be an adverse economic effect on small businesses, micro-businesses, or rural communities.

Criminal background history (specifically, fingerprinting requirements) proposed secondary to S.B. 4123 will not increase the cost for NFAs. While S.B. 4123 applies to NFAs, Chapter 555 already requires NFA applicant fingerprinting (in Texas Health and Safety Code §242.302); therefore, there will be no additional cost for NFA applicants.

HHSC is unable to estimate the number of small businesses, micro-businesses, or rural communities subject to the proposed rules. The projected economic impact for a small business, micro-business, or rural community is the cost to comply.

HHSC determined that alternative methods to achieve the purpose of the proposed rules for small businesses, micro-businesses, or rural communities would not be consistent with ensuring the health and safety of nursing facility residents.

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 are necessary to protect the health, safety, and welfare of the residents of Texas and are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

Michelle Dionne-Vahalik, Associate Commissioner for Long-Term Care Regulation, has determined that for each year of the first five years the rules are in effect, the public benefit will be protecting nursing facility residents through HHSC's ability to obtain criminal history information from the FBI and Texas Department of Public Safety for NFA applicants. This will improve the screening process to prohibit the employment of certain individuals with a criminal conviction that is a bar to employment but may have occurred in another state and align the criminal convictions used to determine bars to licensure, certification, or permitting with the convictions used to determine nursing facility employability for a LTCR-regulated NFA.

Trey Wood has also determined that for the first five years the rules are in effect, persons who are required to comply with the proposed rules will not incur any additional costs related to fingerprinting fees because NFAs are currently required to pay for and complete fingerprinting.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to his or her 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 Rachael Holden and Sandra Wiegand, Program Specialists, by email to HHSCLTCCRrules@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 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 emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 23R071" in the subject line.

SUBCHAPTER A. GENERAL INFORMATION

26 TAC §555.2, §555.3

STATUTORY AUTHORITY

The proposed amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Com-

missioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Human Resources Code §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program; Texas Health and Safety Code §242.302, which grants HHSC the general authority to establish rules consistent with that subchapter and directs HHSC to establish qualifications of applicants for licenses and renewal of licenses issued under that subchapter, as well as set reasonable and necessary administration and implementation fees and continuing education hours required to renew a license under that subchapter.

The amendments implement Texas Government Code §§411.1161, 531.0055, and 531.021; Texas Human Resources Code §32.021; and Texas Health and Safety Code §§242.302, 242.3061, and 242.3115.

§555.2. Definitions.

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

(1) Abuse--Negligent or willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical or emotional harm or pain to a resident; or sexual abuse, including involuntary or nonconsensual sexual conduct that would constitute an offense under Texas Penal Code §21.08 (relating to Indecent Exposure) or Texas Penal Code Chapter 22 (relating to Assaultive Offenses), sexual harassment, sexual coercion, or sexual assault.

(2) Active duty--Current full-time military service in the armed forces of the United States or as a member of the Texas military forces, as defined in Texas Government Code §437.001, or similar military service of another state.

(3) Administrator-in-training (AIT)--A person undergoing an internship under a HHSC-approved certified preceptor.

(4) Administrator of Record--The individual who is listed as the facility's licensed nursing facility administrator with the HHSC Licensing and Credentialing Section.

(5) Applicant--A person applying for a Texas nursing facility administrator (NFA) license.

(6) Armed forces of the United States--The Army, Navy, Air Force, Coast Guard, Space Force, or Marine Corps of the United States, including reserve units of those military branches.

(7) Complaint--An allegation that an NFA violated one or more of the licensure rules or statutory requirements.

(8) Domains of the NAB [National Association of Long Term Care Administrator Boards (NAB)]--The four categories for education and continuing education of the NAB, which are care, services, and supports; operations; environment and quality; and leadership and strategy.

(9) Formal hearing--A hearing held by the State Office of Administrative Hearings to adjudicate a sanction taken by HHSC against an NFA.

(10) Good standing--In Texas an NFA is in good standing if the NFA is in compliance with the rules in this chapter and, if applicable, the terms of any sanction imposed by HHSC. An NFA licensed

or registered in another state is in good standing if the NFA is in compliance with the NFA licensing or registration rules in the other state and, if applicable, the terms of any sanction imposed by the other state.

(11) Health services executive (HSE)--An individual who has entry-level competencies in a nursing facility, assisted living community, or home and community-based service provider in this state or another state. The HSE has met NAB's minimum standards for qualification as an HSE.

(12) HHSC--The Texas Health and Human Services Commission. HHSC is responsible for NFA licensure in Texas.

(13) Internship--The training period in a nursing facility for an AIT. When HHSC accepts internship hours completed in another state, the hours must be completed in a facility that qualifies as a nursing facility or nursing home under the laws of the other state.

(14) License--An NFA license or provisional license.

(15) Licensee--A person licensed by HHSC as an NFA.

(16) Long-term Care Regulation--The department of HHSC responsible for long-term care regulation, including determining nursing facility compliance with licensure and certification requirements and the regulation of NFAs.

(17) Management experience--Full-time employment as a department head, assistant nursing facility administrator, or licensed professional supervising two or more employees in a nursing facility, including a nursing facility outside of Texas, or skilled nursing hospital unit.

(18) Military service member--A person who is on active duty.

(19) Military spouse--A person who is married to a military service member.

(20) Military veteran--A person who has served on active duty and who was discharged or released from active duty.

(21) Misappropriation of resident property--Taking, secretion, misapplication, deprivation, transfer, or attempted transfer to any person not entitled to receive any property, real or personal, or anything of value belonging to or under the legal control of a resident without the effective consent of the resident or other appropriate legal authority, or the taking of any action contrary to any duty imposed by federal or state law prescribing conduct relating to the custody or disposition of property of a resident.

(22) NAB--National Association of Long Term Care Administrator Boards. A national organization composed of the state boards or agencies responsible for licensure of NFAs.

(23) [(22)] NAB examination--The national examination developed by NAB that applicants must pass in combination with the state licensure examination to be issued a license to practice nursing facility administration in Texas. The NAB examination consists of two modules: Core of Knowledge and Line of Service.

[(23) National Association of Long Term Care Administrator Boards (NAB)--The national authority on licensing, credentialing, and regulating administration of organizations along the continuum of long-term care. NAB sets the national standards and evaluation requirements for NFAs.]

(24) National Continuing Education Review Service (NCERS)--The part of NAB that approves and monitors continuing education activities for NFAs.

(25) Neglect--Failure to provide goods or services, including medical services, that are necessary to avoid physical or emotional harm, pain, or mental illness.

(26) Nursing facility--A facility licensed in accordance with THSC Chapter 242.

(27) Nursing Facility Administrator (NFA)--An individual licensed by HHSC to engage in the practice of nursing facility administration, regardless of whether the individual has an ownership interest in the facility.

(28) Nursing Facility Administrators Advisory Committee (NFAAC)--The advisory committee established by THSC §242.303.

(29) Online portal--The Texas Unified Licensure Information Portal (TULIP), through which licensing application activities are completed.

(30) [(29)] Preceptor--An NFA certified by HHSC to provide supervision to an AIT.

(31) [(30)] Referral--A recommendation made by Long-term Care Regulation staff to investigate an NFA's compliance with licensure requirements when deficiencies or substandard quality of care deficiencies are found in a nursing facility, as required by [Title] 42 Code of Federal Regulations (CFR) §488.325.

(32) [(31)] Sanctions--An adverse licensure action against an NFA. In Texas, a sanction is one of the actions listed in §555.57 of this chapter (relating to Schedule of Sanctions).

(33) [(32)] Self-study course--A NAB-approved education course that an individual pursues independently to meet continuing education requirements for license renewal.

(34) [(33)] State examination--The state licensure examination that applicants must pass, in combination with the NAB examination, to be issued a license to practice nursing facility administration in Texas.

(35) [(34)] Substandard quality of care--For a Medicare- or Medicaid-certified facility, this term has the meaning given in [Title] 42 CFR [Code of Federal Regulations] §488.301. For a licensed-only facility, this term has the meaning given in §554.101 of this title (relating to Definitions).

(36) [(35)] THSC--Texas Health and Safety Code.

(37) [(36)] Traditional business hours--Monday through Friday from 8:00 a.m. until 5:00 p.m.

§555.3. Schedule of Fees.

(a) HHSC charges the following administrative and licensure fees:

- (1) application--\$100;
- (2) initial license--\$250;
- (3) provisional license--\$250;
- (4) renewal--\$250 every two years when the license is renewed on or before the date the license expires;
- (5) late renewal fees for license renewals made after the license expires:
 - (A) \$375 for an expired license renewed during the first 90 days after the license expires; and
 - (B) \$500 for an expired license renewed between 91 and 365 days after the license expires;
- (6) formal inactive status--\$250;

(7) reinstatement of licensure--\$500.[]; and]

[(8) duplicate license--\$25.]

(b) Other administrative fees collected by the National Association of Long Term Care Administrator Boards (NAB) designee or contractor:

(1) NAB [National Association of Long Term Care Administrator Boards (NAB)] examination--\$425;

(2) NAB reexamination, including both NAB Core of Knowledge examination and Line of Service examination, in nursing home administration--\$425;

(3) NAB Core of Knowledge examination only--\$300;

(4) Line of Service examination in nursing home administration only--\$175; and

(5) state examination--\$190.

(c) All application and licensure fees are nonrefundable, except as provided by Texas Government Code, Chapter 2005.

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

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SUBCHAPTER B. REQUIREMENTS FOR LICENSURE

26 TAC §§555.11 - 555.16, 555.18

STATUTORY AUTHORITY

The proposed 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; Texas Government Code §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Human Resources Code §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program; Texas Health and Safety Code §242.302, which grants HHSC the general authority to establish rules consistent with that subchapter and directs HHSC to establish qualifications of applicants for licenses and renewal of licenses issued under that subchapter, as well as set reasonable and necessary administration and implementation fees and continuing education hours required to renew a license under that subchapter.

The proposed amendments implement Texas Government Code §§411.1161, 531.0055, and 531.021; Texas Human Resources Code §32.021; and Texas Health and Safety Code §§242.302, 242.3061, and 242.3115.

§555.11. *Application Requirements.*

(a) Except as provided in subsections (b) and (c) of this section, an applicant seeking licensure must submit to the Texas Health and Human Services Commission (HHSC) through the online portal:

(1) a complete Nursing Facility Administrator's Application for Licensure form;

(2) the application fee;

(3) fingerprints for a Federal Bureau of Investigation (FBI)-based criminal background check through the Texas Department of Public Safety; [~~eriminal background check~~];

(4) an official transcript reflecting a baccalaureate degree from a college or university accredited by an agency recognized by the Texas Higher Education Coordinating Board;

(5) if not a part of the transcript reflecting a baccalaureate degree, another transcript reflecting 12 semester credit hours in long-term care administration, or its equivalent, that include the four domains of the National Association of Long Term Care Administrator Boards; and

(6) proof of completing the minimum applicable internship that meets the internship requirements in §555.13 of this subchapter (relating to Internship Requirements).

(b) If an applicant has a health services executive (HSE) qualification and is applying for a license under §555.12(a)(5) of this subchapter (relating to Licensure Requirements), the applicant must submit through the online portal:

(1) a complete Nursing Facility Administrator's Application for Licensure form;

(2) the application fee;

(3) proof of the HSE qualification;

(4) fingerprints for an FBI-based criminal background check through the [a] Texas Department of Public Safety [~~eriminal background check~~]; and

(5) certification that the applicant has not had a license revoked in any state.

(c) If an applicant has an NFA license issued by another state and is applying for a license under §555.12(a)(6) of this subchapter, the applicant must submit through the online portal:

(1) a complete Reciprocity Licensure Questionnaire;

(2) the application fee;

(3) fingerprints for an FBI-based criminal background check through the [a] Texas Department of Public Safety [~~eriminal background check~~]; and

(4) proof of a license in good standing in another state.

(d) An application is valid for one year from the date the application fee is received through the online portal.

(e) An applicant who does not meet the requirements for licensure within one year after HHSC receives the application through the online portal must reapply for licensure as provided in this section.

(f) HHSC is not responsible for applications, forms, notices, and correspondence unless they are received by HHSC through the online portal.

(g) HHSC is not responsible for mail it sends to a licensee or applicant if the licensee's or applicant's current address was not reported [~~in writing~~] to HHSC through the online portal.

§555.12. *Licensure Requirements.*

(a) An applicant must meet one of the following groups of requirements to obtain a license as a nursing facility administrator (NFA).

(1) An applicant has a baccalaureate degree in any subject from a college or university accredited by an agency recognized by the Texas Higher Education Coordinating Board[;] and has:

(A) a minimum of 12 semester credit hours in long-term care administration, or its equivalent, that includes courses in the four domains of the National Association of Long Term Care Administrator Boards (NAB);

(B) completed a 1,000-hour internship that meets the requirements in §555.13 of this subchapter (relating to Internship Requirements); and

(C) passed the state and NAB examinations described in §555.18 of this subchapter (relating to Examinations and Requirements to Take the Examinations).

(2) An applicant has a baccalaureate degree in health administration, health services administration, health care administration, or nursing that includes coursework encompassing the four domains of the NAB[;] and has:

(A) three years of management experience;

(B) completed a 500-hour internship that meets the requirements in §555.13 of this subchapter; and

(C) passed the state and NAB examinations described in §555.18 of this subchapter.

(3) An applicant has a baccalaureate degree with coursework in the four domains of NAB and one year of experience as assistant administrator of record or administrator of record in another state[;] and has:

(A) completed a 500-hour internship that meets the requirements in §555.13 of this subchapter; and

(B) passed the state and NAB examinations described in §555.18 of this subchapter.

(4) An applicant has a master's degree in health administration, health services administration, health care administration, or nursing that includes coursework encompassing the four domains of the NAB[;] and has:

(A) one year of management experience;

(B) completed a 500-hour internship that meets the requirements in §555.13 of this subchapter; and

(C) passed the state and NAB examinations described in §555.18 of this subchapter.

(5) An applicant has a health services executive qualification[;] and has:

(A) [~~has~~] not had a license revoked in any state; and

(B) passed the state examination described in §555.18 of this subchapter.

(6) An applicant has a license issued by a state other than Texas and meets the requirements for licensure in paragraphs (1), (2), (3), or (4) of this subsection.

(b) HHSC accepts foreign university degrees and coursework that is counted as transfer credit by accredited universities recognized by the American Association of Collegiate Registrars and Admissions officers.

§555.13. *Internship Requirements.*

(a) Except as provided in subsection (b) or (c) of this section, an applicant must complete an internship that meets the following requirements.

(1) Before an applicant starts the internship, the applicant and the applicant's preceptor must complete a Texas Health and Human Services (HHSC) internship application through the online portal.

(2) The internship must be in a nursing facility.

(3) A minimum of half of the internship hours must be during traditional business hours.

(4) The administrator-in-training (AIT) can train no more than 40 hours a week.

(5) If the internship is completed with a nursing facility administrator (NFA) not associated with a university as the preceptor, the AIT must complete a preceptor performance report. Additionally, the preceptor must complete an AIT final report through the online portal.

(6) An AIT must complete an HHSC course in Infection Control and Personal Protective Equipment.

(7) If the internship is completed with an NFA associated with a university accredited by an agency recognized by the Texas Higher Education Coordinating Board as the preceptor, the AIT must submit an official transcript to HHSC through the online portal.

(8) The internship must be completed at the same facility at which the AIT's preceptor serves as NFA.

(b) HHSC may accept an internship completed in another state if:

(1) the internship is part of a National Association of Long Term Care Administrator Boards-accredited program; or

(2) the internship is approved by the other state and requires a minimum of 1,000 hours or a minimum of 500 hours if the requirements listed in §555.12(a)(2), (3), or (4) of this subchapter (relating to Licensure Requirements) are met. An applicant who has completed fewer than 1,000 hours of internship in another state that does not qualify for a 500-hour internship must complete the remaining hours under a preceptor.

(c) As a substitute to meeting the internship requirements described in subsection (a) or (b) of this section, an applicant may submit to HHSC proof of a health services executive (HSE) qualification and certify that the applicant has not had a license or HSE qualification revoked in any state.

(d) The AIT must submit proof of completion of the internship or completion of HSE through the online portal. HHSC will review the proof of completion and notify the applicant of the status of the applicant's request.

§555.14. *Preceptor Requirements.*

(a) A licensee seeking to sponsor an administrator-in-training (AIT) must:

(1) have a preceptor certification as provided in §555.15 of this subchapter (relating to Preceptor Certification); and

(2) obtain approval through the online portal from the Texas Health and Human Services Commission (HHSC) to sponsor an AIT.

(b) A preceptor must submit a complete AIT Performance Report to HHSC through the online portal at the end of the internship, unless the preceptor is a nursing facility administrator associated with

a university recognized by the Texas Higher Education Coordinating Board.

(c) A preceptor must obtain approval from HHSC before sponsoring more than one AIT at the same time.

(d) HHSC may consider any imposed sanction as specified[.] in §555.57 of this chapter (relating to Schedule of Sanctions)[.] against a preceptor as grounds for refusing to allow the preceptor to sponsor an AIT.

(e) HHSC may refuse to allow a preceptor to sponsor an AIT if the preceptor did not provide adequate training to previous AITs.

(f) HHSC waives 20 of the 40 hours of continuing education required for license renewal for a preceptor who sponsors an AIT.

(g) A licensee is qualified to act as a preceptor for two years from the date HHSC certifies the preceptor.

(h) A licensee must remain in good standing to act as a preceptor.

(i) A preceptor may be allowed to provide direct supervision or guidance of a licensee with a probated sanction as specified in §555.57 of this chapter.

§555.15. *Preceptor Certification.*

HHSC may issue a preceptor certification to a nursing facility administrator (NFA) who submits through the online portal:

(1) proof of license or registration in good standing as an NFA for a minimum of five years, with the two most recent years in Texas;

(2) proof of completed Texas Health and Human Services approved preceptor training; and

(3) a completed preceptor application.

§555.16. *Preceptor Certification Renewal.*

(a) To continue acting as a preceptor, a licensee must renew a preceptor certification every two years through the online portal.

(b) A licensee seeking to renew a preceptor certification must submit to HHSC through the online portal:

(1) proof of license or registration as a nursing facility administrator for a minimum of five years, with the two most recent years in Texas;

(2) proof of completed Texas Health and Human Services approved preceptor training; and

(3) a completed preceptor application.

§555.18. *Examinations and Requirements to Take the Examinations.*

(a) Except as provided in subsection (b) of this section, an applicant seeking a license as a nursing facility administrator (NFA) from the Texas Health and Human Services Commission (HHSC) must pass the following examinations:

(1) the state examination on nursing facility requirements in Texas; and

(2) the NAB examinations.

(b) An applicant who meets the academic and internship requirements by presenting evidence of a health services executive (HSE) qualification must pass the state examination.

(c) An applicant registers for examination at the designated NAB website by:

(1) submitting an application for approval to take the examination; and

(2) paying the applicable state examination and NAB examination fees online.

(d) HHSC sends an e-mail notifying an applicant of the applicant's eligibility to take the examinations.

(e) An applicant must not take any examination without HHSC approval.

(f) An applicant with a disability, including an applicant with dyslexia as defined in Texas Education Code §51.970 (relating to Instructional Material for Blind and Visually Impaired Students and Students with Dyslexia), may request a reasonable accommodation for the examination under the Americans with Disabilities Act.

(g) An applicant completes the online state and NAB examinations.

(h) HHSC notifies an applicant of examination scores after receiving examination results.

(i) An applicant who fails an examination and wants to retake the examination [¶] must pay the appropriate state or NAB examination fee for each exam.

(j) An applicant who fails the state or NAB examination three consecutive times must complete an additional 1,000-hour administrator-in-training internship before retaking the examination.

(k) An applicant previously licensed as an NFA and whose license expired 365 or more days before the applicant reapplies for a license or who voluntarily surrendered the license must retake the state examination to obtain a new license.

(l) An applicant previously licensed as an NFA and whose license expired 365 or more days before the applicant reapplies for a license, or who voluntarily surrendered the license, must retake the NAB examination to obtain a new license if more than five years have passed since the applicant passed the NAB examination.

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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For further information, please call: (512) 438-3161



SUBCHAPTER C. LICENSES

26 TAC §§555.31 - 555.36, 555.38 - 555.42

STATUTORY AUTHORITY

The proposed 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; Texas Government Code §531.021, which provides HHSC with

the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Human Resources Code §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program; Texas Health and Safety Code §242.302, which grants HHSC the general authority to establish rules consistent with that subchapter and directs HHSC to establish qualifications of applicants for licenses and renewal of licenses issued under that subchapter, as well as set reasonable and necessary administration and implementation fees and continuing education hours required to renew a license under that subchapter.

The proposed amendments implement Texas Government Code §§411.1161, 531.0055, and 531.021; Texas Human Resources Code §32.021; and Texas Health and Safety Code §§242.302, 242.3061, and 242.3115.

§555.31. Initial License.

(a) The Texas Health and Human Services Commission (HHSC) issues a license [eertiffeate] to an applicant who:

(1) receives a passing score on the state and NAB examination [National Association of Long Term Care Administrator Boards examinations];

(2) submits the initial license fee to HHSC through the online portal; and

(3) does not have a criminal history that HHSC determines is a basis for denying the license under §555.41 of this subchapter (relating to Licensure of Persons with Criminal Backgrounds).

(b) HHSC may determine that a criminal conviction or a sanction taken against an applicant in Texas or another state is a basis for pending or denying an initial license.

(c) A license expires two years from the date issued.

(d) A licensee must keep HHSC informed of the licensee's current home address and employment address. If employed by a nursing facility, a licensee must change his or her employment information through the online portal [submit a Data Change Request form to HHSC] within 30 days after a change of employment.

(e) A licensee who does not notify HHSC through the online portal of a change in address or employment within the required 30 days may be subject to an administrative penalty as provided in §555.57 of this chapter (relating to Schedule of Sanctions).

(f) A licensee must notify HHSC of a change of name through the online portal by submitting a name change application.

§555.32. Provisional License.

(a) The Texas Health and Human Services Commission (HHSC) issues a provisional license to an applicant currently licensed or registered as a nursing facility administrator (NFA) in another state who submits the following to HHSC through the online portal:

(1) complete [and notarized] Provisional Licensure Questionnaire and Nursing Facility Administrator License Application forms;

(2) the application fee;

(3) the provisional license fee; and

(4) proof of the following:

(A) a license and good standing status in another state;

(B) employment for at least one year as an administrator of record of a nursing facility in applicant's state;

(C) a passing score on the National Association of Long Term Care Administrator Boards examination and the state examination; and

(D) sponsorship by an NFA licensed by and in good standing with HHSC [and who is in good standing], unless HHSC waives sponsorship based on a demonstrated hardship.

(b) A provisional license expires 180 days from the date of issue.

(c) HHSC issues an initial license [certificate] to a provisional license holder who satisfies the requirements for a license in §555.12 of this chapter (relating to Licensure Requirements) and §555.31 of this subchapter (relating to Initial License [License]).

(d) HHSC may determine that a criminal conviction or sanction taken in another state is a basis for pending or denying a provisional license.

(e) If the internship hours completed in another state do not meet the requirements in §555.13 of this chapter (relating to Internship Requirements), then a provisional licensee must complete the required internship hours under the supervision of an HHSC-certified preceptor as described in §555.12 of this chapter.

§555.33. Duplicate License.

The Texas Health and Human Services Commission (HHSC) replaces lost, damaged, or destroyed license certificates for a licensee. Licensees can print a duplicate license through the online portal [who submits a notarized Data Change/Duplicate License Request form and duplicate license fee to HHSC].

§555.34. License Renewal.

(a) The Texas Health and Human Services Commission (HHSC) notifies a licensee of the license expiration date and renewal requirements through the online portal at least 31 days before the license expires.

(b) A licensee who does not receive a renewal notice must renew the license before the license expires.

(c) A licensee seeking renewal must submit the following to HHSC through the online portal[s] on or before the date the license expires:

(1) a complete License Renewal form;

(2) the renewal fee;

(3) proof of completion of 40 hours of continuing education, as required by §555.35 of this subchapter (relating to Continuing Education Requirements for License Renewal); and

(4) fingerprints for a Federal Bureau of Investigation-based criminal background check through the Texas Department of Public Safety [criminal conviction report and fingerprint card].

(d) HHSC uses the date the completed renewal application is submitted online to determine if a renewal application is submitted on time.

(e) HHSC issues a two-year license renewal card to eligible licensees who meet the requirements in subsection (c) of this section.

(f) HHSC may deny a license renewal according to §555.37 of this subchapter (relating to Denial of License Renewal).

§555.35. Continuing Education Requirements for License Renewal.

(a) The 40 hours of continuing education required for license renewal must:

(1) be completed during the previous two-year licensure period;

(2) include one or more of the four domains of the NAB [National Association of Long Term Care Administrator Boards (NAB)];

(3) include a Texas Health and Human Services Commission (HHSC) course in infection control [Infection Control] and personal protective equipment;

(4) include at least six hours of continuing education in ethics; and

(5) be:

(A) approved by the National Continuing Education Review Service;

(B) a HHSC-sponsored event; or

(C) an upper-division semester credit course taken or taught at a post-secondary institution of higher education accredited by an agency recognized by the Texas Higher Education Coordinating Board.

(b) HHSC accepts NAB-approved self-study courses toward the required 40 hours of continuing education.

(c) HHSC waives, at a maximum, 20 of the 40 hours of continuing education required of a licensee who completes one three-semester-hour upper-division course taken at a post-secondary institution of higher education.

(d) HHSC approves continuing education credit hours for the same course, seminar, workshop, or program only once per license renewal period.

(e) HHSC may perform an audit of continuing education courses, seminars, or workshops that the licensee has reported by requesting certificates of attendance.

§555.36. Late Renewals.

(a) A former licensee has up to one year after the expiration date of a license to renew the license by:

(1) completing a license renewal application through the online portal;

(2) completing 40 hours of continuing education as provided in §555.35 of this subchapter (relating to Continuing Education Requirements for License Renewal); and

(3) submitting the following fee through the online portal to the Texas Health and Human Services Commission (HHSC):

(A) a \$375 late renewal fee for a license that has been expired for 90 days or less; or

(B) a \$500 late renewal fee for a license that has been expired for 91 days to 365 days.

(b) A former licensee whose license has been expired for more than 365 days must meet the licensure and examination requirements for an initial license.

(c) A former licensee must retake the NAB [National Association of Long Term Care Administrator Boards (NAB)] examination if the former licensee last took and passed the NAB examination more than five years before the completed application date.

(d) A person who fails to renew a license before the expiration date must not practice in the field of nursing facility administration until the license is renewed.

(e) HHSC imposes one or more sanctions listed in §555.57 of this chapter (relating to Schedule of Sanctions) against a person who practices with an expired license.

§555.38. *Inactive Status.*

(a) A licensee may place a license in a formal inactive status with the Texas Health and Human Services Commission (HHSC) for up to two renewal periods.

(b) To place a license in a formal inactive status, the licensee submits the following to HHSC through the online portal on or before the date the license expires:

- (1) a completed Inactive Status Application form; and
- (2) the formal inactive status fee.

(c) A licensee may renew a license in formal inactive status through the online portal on or before the date that the inactive status expires by submitting to HHSC:

- (1) the renewal fee; and
- (2) proof of completing 40 hours of continuing education, as provided in §555.35 of this chapter (relating to Continuing Education Requirements for License Renewal).

(d) If a license in formal inactive status expires, the licensee must meet the licensure application and examination requirements as listed in §555.11 of this subchapter (relating to Application Requirements) and §555.18 of this chapter (relating to Examinations and Requirements to Take the Examinations) to obtain a new license.

(e) If it has been less than five years since the individual passed the NAB [National Association of Long Term Care Administrator Boards (NAB)] examination, the individual is not required to take the NAB examination but must take the state examination.

(f) A former licensee whose license expires while on formal inactive status may not renew the license by paying a late renewal fee.

§555.39. *Voluntary Surrender of a License.*

(a) A licensee may voluntarily surrender a license as instructed on the HHS website, NF Administrators Licensing and Enforcement page and by returning the license certificate to the Texas Health and Human Services Commission (HHSC).

(b) A licensee who voluntarily surrenders a license while under investigation for a violation of licensure requirements may still receive:

- (1) a written reprimand; or
- (2) an administrative penalty.

(c) A licensee who voluntarily surrenders a license in lieu of a proposed sanction, other than license revocation, may not reapply for licensure until two years after the surrender date.

(d) A licensee who voluntarily surrenders a license in lieu of a proposed license revocation is permanently disqualified from licensure in Texas.

§555.40. *Reinstatement.*

An applicant who previously was licensed and in good standing in Texas may obtain a new license without taking the examination required by §555.18 of this chapter (relating to Examinations and Requirements to Take the Examinations) if the applicant:

(1) is licensed in good standing in another state;

(2) practiced in that state for at least the preceding two years before the date of the current licensure application; and

(3) pays HHSC [the Texas Health and Human Services] a reactivation fee through the online portal.

§555.41. *Licensure of Persons with Criminal Backgrounds.*

(a) Subject to subsection (b) [(f)] of this section, the Texas Health and Human Services Commission (HHSC) may disqualify an applicant or licensee from taking an examination required by §555.18 of this chapter (relating to Examinations and Requirements to Take the Examinations), may deny an initial or renewal application for licensure, or impose a sanction listed in §555.57 of this chapter (relating to Schedule of Sanctions) if the applicant or licensee has been convicted of:

(1) committing an offense listed in Texas Health and Safety Code §250.006(a) or (c); or

(2) committing an offense listed in Texas Health and Safety Code §250.006(b) within the five years before application for licensure.

[(1) an offense that directly relates to the duties and responsibilities of a nursing facility administrator (NFA);]

[(2) an offense listed in Article 42A.054, Code of Criminal Procedure; or]

[(3) a sexually violent offense, as defined by Article 62.001, Code of Criminal Procedure.]

[(b) HHSC considers the following when determining if a criminal conviction directly relates to the duties, responsibilities, and job performance of an NFA:]

[(1) the nature and seriousness of the crime;]

[(2) the extent to which a license may offer an individual an opportunity to engage in the same type of criminal activity; and]

[(3) the relationship of the crime to the ability or fitness required to perform the duties of an NFA.]

[(e) HHSC has determined that a conviction of the following crimes relates to nursing facility administration and reflects an inability to perform or tendency to inadequately perform as an NFA. Accordingly, HHSC proposes to deny an application for licensure from an applicant who has been convicted of any of the following crimes:]

[(1) intentionally acting as an NFA without a license;]

[(2) attempting or conspiring to commit or committing any offense under the following chapters of the Texas Penal Code:]

[(A) Title 5 (offenses against persons), including homicide, kidnapping, unlawful restraint, and sexual and assault offenses;]

[(B) Title 7 (offenses against property), including arson, criminal mischief, robbery, burglary, criminal trespass, theft, fraud, computer crimes, telecommunications crimes, money laundering, and insurance fraud;]

[(C) Title 9 (offenses against public order and decency), including disorderly conduct and public indecency; or]

[(D) Title 10 (offenses against public health, safety, and morals), including weapons, gambling, conduct affecting public health, intoxication, and alcoholic beverage offenses;]

[(3) committing an offense listed in Texas Health and Safety Code (THSC) §250.006(a) or (c); or]

~~[(4) committing an offense listed in THSC §250.006(b) within the last five years.]~~

~~[(d) If HHSC determines an applicant or licensee has a criminal conviction that directly relates to the duties and responsibilities of an NFA, HHSC considers the following in determining whether to take an action authorized by subsection (a) of this section:]~~

~~[(1) the extent and nature of the person's past criminal activity;]~~

~~[(2) the age of the person when the crime was committed;]~~

~~[(3) the amount of time that has elapsed since the person's last criminal activity;]~~

~~[(4) the conduct and work activity of the person before and after the criminal activity;]~~

~~[(5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release;]~~

~~[(6) evidence of the person's compliance with any conditions of community supervision, parole or mandatory supervision; and]~~

~~[(7) other evidence of the person's fitness, including letters of recommendation.]~~

~~[(e) HHSC may consider other crimes and pertinent information as a potential basis for denying an initial or renewal application.]~~

~~[(b) [(f)] Convictions under federal law or the laws of another state or nation for offenses containing elements similar to offenses listed in subsection (a) [(e)] of this section may be a basis for HHSC denying an initial application or imposing sanctions.~~

~~[(c) [(g)] A notice required under subsection (d) [(a)] of this section must contain a statement that the applicant or licensee is disqualified from receiving the license or being examined for the license because of the applicant's or licensee's prior conviction of an offense specified in the notice, as provided in subsection (a)(1) and (2) of this section. [; as applicable:]~~

~~[(1) a statement that the applicant or licensee is disqualified from receiving the license or being examined for the license because of the applicant's or licensee's prior conviction of an offense specified in the notice, as provided in subsection (a)(2) and (a)(3) of this section; or]~~

~~[(2) a statement that:]~~

~~[(A) the final decision of the licensing authority to deny the applicant or licensee a license, or the opportunity to be examined for the license, will be based on the factors listed in subsection (d) of this section, as provided in subsection (a)(1) of this section; and]~~

~~[(B) the applicant or licensee has the responsibility to obtain and provide to HHSC evidence regarding the factors listed in subsection (d) of this section.]~~

~~[(d) [(h)] If HHSC suspends or revokes a license, or denies an applicant or licensee a license or the opportunity to be examined for a license because of the applicant's or licensee's prior conviction of an offense, HHSC notifies [shall notify] the person in writing of:~~

~~(1) the reason for the suspension, revocation, denial, or disqualification [including any factor considered under subsection (b) and (d) of this section that served as the basis for suspension, revocation, denial, or disqualification];~~

~~(2) the procedure for judicial review; and~~

~~(3) the earliest date the applicant or licensee may appeal HHSC's action.~~

§555.42. Alternate Licensing Requirements for Military Service Personnel.

(a) Fee waiver based on military experience.

(1) The Texas Health and Human Services Commission (HHSC) waives the application fee described in §555.11(a)(2) of this chapter (relating to Application Requirements) and the initial license fee described in §555.31(a)(2) of this chapter (relating to Initial License) for an applicant if HHSC receives and approves a request for a waiver of fees from the applicant in accordance with this subsection.

(2) To request a waiver of fees under this subsection, an applicant must submit a written request for a waiver with the applicant's initial license application submitted to HHSC through the online portal in accordance with §555.11 of this chapter. The applicant must include with the request:

(A) documentation of the applicant's status as a military service member or military veteran that is acceptable to HHSC; and

(B) documentation of the type and dates of the service, training, and education the applicant received[;] and an explanation as to why the applicant's military service, training, or education substantially meets all [of] the requirements for licensure under this chapter.

(3) Documentation of military status that is acceptable to HHSC includes:

(A) for status as a military service member, a copy of a current military service order issued to the applicant by the armed forces of the United States, the State of Texas, or another state; and

(B) for status as a military veteran, a copy of a military service discharge order issued to the applicant by the armed forces of the United States, the State of Texas, or another state.

(4) If HHSC requests additional documentation, the applicant must submit the requested documentation.

(5) HHSC approves a request for a waiver of fees submitted in accordance with this subsection if HHSC determines that the applicant is a military service member or a military veteran and the applicant's military service, training, or education substantially meets all [of] the requirements for licensure under this chapter.

(b) Fee waiver for a military spouse.

(1) HHSC waives the application fee described in §555.11(a)(2) of this chapter and the initial license fee described in §555.31(a)(2) of this chapter for an applicant who is a military spouse if HHSC receives and approves through the online portal a request for a waiver of fees from the applicant and documentation of the applicant's status as a military spouse.

(2) Documentation of military status that is acceptable to HHSC includes:

(A) a copy of a marriage certificate issued to the applicant by a state of the United States or a foreign government; and

(B) a copy of a current military service order issued to the applicant's spouse by the armed forces of the United States, the State of Texas, or another state.

(3) If HHSC requests additional documentation, the applicant must submit the requested documentation.

(c) Fee waiver based on license issued by another jurisdiction.

(1) HHSC waives the application fee described in [§]§555.11(a)(2) of this chapter and the provisional initial license fee described in §555.32(a)(3) of this chapter (relating to Provisional License) for an applicant if HHSC receives and approves through the

online portal a request for a waiver of fees in accordance with this subsection.

(2) To request a waiver of fees under this subsection, an applicant must include a written request for a waiver of fees with the applicant's provisional license application that is submitted to HHSC in accordance with §555.32 of this chapter. The applicant must include with the request documentation of the applicant's status as a military service member, military veteran, or military spouse that is acceptable to HHSC.

(3) Documentation of military status that is acceptable to HHSC includes:

(A) for status as a military service member, a copy of a current military service order issued to the applicant by the armed forces of the United States, the State of Texas, or another state;

(B) for status as a military veteran, a copy of a military service discharge order issued to the applicant by the armed forces of the United States, the State of Texas, or another state; and

(C) for status as a military spouse:

(i) a copy of a marriage certificate issued to the applicant by a state of the United States or a foreign government; and

(ii) a copy of a current military service order issued to the applicant's spouse by the armed forces of the United States, the State of Texas, or another state.

(4) If HHSC requests additional documentation, the applicant must submit the requested documentation.

(5) HHSC approves a request for a waiver of fees submitted in accordance with this subsection if HHSC determines that:

(A) the applicant holds a license in good standing in another jurisdiction with licensing requirements substantially equivalent to the requirements for a license under this chapter; and

(B) the applicant is a military service member, a military veteran, or a military spouse.

(d) Additional time for license renewal.

(1) HHSC gives a nursing facility administrator (NFA) an additional two years to complete the license renewal requirements described in §555.43 of this subchapter (relating to License Renewal) and §555.35 of this subchapter (relating to Continuing Education Requirements for License Renewal), if HHSC receives and approves a request for additional time to complete the licensing renewal requirements from an NFA in accordance with this subsection.

(2) To request additional time to complete license renewal requirements, an NFA must:

(A) submit a written request for additional time to HHSC through the online portal before the expiration date of the NFA's license; and

(B) include with the request, documentation of the NFA's status as a military service member that is acceptable to HHSC, which includes a copy of a current military service order issued to the NFA by the armed forces of the United States, the State of Texas, or another state.

(3) If HHSC requests additional documentation, the NFA must submit the requested documentation.

(4) HHSC approves a request for two additional years to complete license renewal requirements submitted in accordance with this subsection if HHSC determines that the NFA is a military service

member, except HHSC does not approve a request if HHSC granted the NFA a previous extension and the NFA has not completed the license renewal requirements during the two-year extension period.

(5) If an NFA does not submit the written request described by paragraph (2) of this subsection before the expiration date of the NFA's license, HHSC considers [~~will consider~~] a request after the expiration date of the license if the NFA establishes to the satisfaction of HHSC that the request was not submitted before the expiration date of the NFA's license because the NFA was serving as a military service member at the time the request was due.

(e) Credit toward internship requirements.

(1) HHSC gives an applicant credit toward the internship requirements for an administrator-in-training (AIT) described in §555.13 of this chapter (relating to Internship Requirements) based on the applicant's military service, training, or education if HHSC receives and approves a request for credit from an applicant in accordance with this subsection.

(2) To request credit for military service, training, or education, the applicant must submit a written request for credit to HHSC through the online portal with the applicant's initial license application. The applicant must include, with the request, documentation of the type and dates of the service, training, and education the applicant received and an explanation as to how the applicant's military service, training, or education is substantially similar to the training or education requirements described in §555.13 of this chapter.

(3) If HHSC requests additional documentation, the applicant must submit the requested documentation.

(4) HHSC approves a request for credit submitted in accordance with this subsection if HHSC determines that the military service, training, or education that the applicant received is substantially similar to the training or education requirements described in §555.12 of this chapter (relating to Licensure Requirements).

(f) Renewal of expired license.

(1) HHSC renews an expired license if HHSC receives and approves a request for renewal from a former NFA in accordance with this subsection.

(2) To request renewal of an expired license, a former NFA must submit a written request with a license renewal application through the online portal within five years after the former NFA's license expired. The former NFA must include with the request documentation of the former administrator's status as a military service member, military veteran, or military spouse that is acceptable to HHSC.

(3) Documentation of military status that is acceptable to HHSC includes:

(A) for status as a military service member, a copy of a current military service order issued to the former NFA by the armed forces of the United States, the State of Texas, or another state;

(B) for status as a military veteran, a copy of a military service discharge order issued to the former NFA by the armed forces of the United States, the State of Texas, or another state; and

(C) for status as a military spouse:

(i) a copy of a marriage certificate issued to the former NFA by a state of the United States or a foreign government; and

(ii) a copy of a current military service order issued to the former NFA's spouse by the armed forces of the United States, the State of Texas, or another state.

(4) If HHSC requests additional documentation, the former NFA must submit the requested documentation.

(5) HHSC approves a request for renewal of an expired license submitted in accordance with this subsection if HHSC determines that:

(A) the former NFA is a military service member, military veteran, or military spouse;

(B) the former NFA has not committed an offense listed in Texas Health and Safety Code (THSC) §250.006(a) and (c) [~~§250.006(a)~~] and has not committed an offense listed in THSC §250.006(b) during the five years before the date the former NFA submitted the initial license application; and

(C) the former NFA is not listed on the employee misconduct registry described in THSC Chapter 253.

(g) Recognition of Out-of-State License of Military Spouse.

(1) A military spouse may engage in the practice of nursing facility administration in Texas without obtaining a license, as required by §555.31 of this subchapter (relating to Initial License) or §555.32 of this subchapter (relating to Provisional License), if the spouse:

(A) is currently licensed in good standing by another jurisdiction that has licensing requirements substantially equivalent to the requirements for a license in Texas;

(B) notifies HHSC in writing through the online portal of the spouse's intent to practice in Texas;

(C) submits to HHSC proof of the spouse's residence in this state and a copy of the spouse's military identification; and

(D) receives from HHSC:

(i) confirmation that HHSC has verified the spouse's license in the other jurisdiction; and

(ii) a license to practice nursing facility administration in Texas.

(2) HHSC ~~evaluates~~ [~~will review and evaluate~~] the following criteria when determining whether another state's licensing requirements are substantially equivalent to the requirement for a license under the statutes and regulations of this state:

(A) whether the other state requires an applicant to pass an examination that demonstrates competence in the field to obtain the license;

(B) whether the other state requires an applicant to meet any experience qualifications to obtain the license;

(C) whether the other state requires an applicant to meet education qualifications to obtain the license;

(D) whether the other state denies an application for licensure from an applicant who has been convicted of an offense containing elements similar to offenses listed in §555.41(a) [~~§555.41(e)~~] of this subchapter (relating to Licensure of Persons with Criminal Backgrounds); and

(E) the other state's license requirements, including the scope of work authorized to be performed under the license issued by the other state.

(3) The military spouse must submit:

(A) a written request through the online portal to HHSC for recognition of the spouse's license issued by the other state;

(B) any form and additional information regarding the license issued by the other state required by the rules of the specific program or division within HHSC that licenses the business or occupation;

(C) proof of residence in this state, which may include a copy of the permanent change of station order for the military service member to whom the military spouse is married;

(D) a copy of the military spouse's identification card;

(E) proof the military service member is stationed at a military installation in Texas; and

(F) fingerprints for a Federal Bureau of Investigation-based criminal background check through the [a] Texas Department of Public Safety criminal background check to enable HHSC to confirm that the military spouse is in compliance with other laws and regulations applicable to nursing facility administration in Texas.

(4) Upon verification from the licensing jurisdiction of the military spouse's license and if the license is substantially equivalent to a Texas license, HHSC ~~issues~~ [~~shall issue~~] a confirmation that HHSC has verified the spouse's license in the other jurisdiction and a license to practice nursing facility administration in Texas.

(5) The license issued under paragraph (4) of this subchapter ~~expires~~ [~~will expire~~] three years from date of issuance or when the military service member is no longer stationed at a military installation in Texas, whichever comes first. The license issued under paragraph (4) of this subsection may not be renewed.

(6) HHSC replaces a lost, damaged or destroyed license certificate for a military spouse as provided in §555.33 of this subchapter (relating to Duplicate License) A military spouse with an active nursing facility administrator license can print a duplicate license through the online portal. A military spouse can request a change of name through the online portal by submitting a name change application; but the military spouse does not pay the duplicate license fee.

(7) The military spouse must [~~shall~~] comply with all applicable laws, rules and standards of this state, including applicable Texas Health and Safety Code and all relevant Texas Administration Code provision.

(8) HHSC may withdraw or modify the verification letter for reasons including the following:

(A) the military spouse fails to comply with paragraph (1)(D)(i) of this section; or

(B) the military spouse's licensure required under subsection(c)(1) of this section expires or is suspended or revoked in another jurisdiction.

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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For further information, please call: (512) 438-3161



SUBCHAPTER D. REFERRALS, COMPLAINT PROCEDURES, AND SANCTIONS

26 TAC §§555.51, 555.53 - 555.57

STATUTORY AUTHORITY

The proposed 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; Texas Government Code §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Human Resources Code §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program; Texas Health and Safety Code §242.302, which grants HHSC the general authority to establish rules consistent with that subchapter and directs HHSC to establish qualifications of applicants for licenses and renewal of licenses issued under that subchapter, as well as set reasonable and necessary administration and implementation fees and continuing education hours required to renew a license under that subchapter.

The proposed amendments implement Texas Government Code §§411.1161, 531.0055, and 531.021; Texas Human Resources Code §32.021; and Texas Health and Safety Code §§242.302, 242.3061, and 242.3115.

§555.51. *Referral and Complaint Procedures.*

(a) The Texas Health and Human Services Commission (HHSC) receives and investigates referrals and complaints.

(b) Persons wanting to file a complaint against a licensee may contact HHSC by:

- (1) calling HHSC at the telephone numbers on the HHSC website;
- (2) emailing the complaint to HHSC using the email address on the HHSC website;
- (3) faxing the complaint to HHSC using the fax number on the HHSC website; or
- (4) mailing the complaint to HHSC at the mailing address on the HHSC website.

(c) HHSC sends a Nursing Facility Administrator Complaint form to persons wanting to file a complaint. The complainant must complete, sign, and return the form to HHSC.

(d) If a referral or complaint is received, HHSC notifies the licensee and, if applicable, the person filing the complaint of the:

- (1) alleged rule violation;
- (2) assigned case number; and
- (3) investigator contact information.

(e) HHSC investigates referrals and complaints by first determining if a complaint is within HHSC's authority to investigate and, if it is, [then] by engaging in one or more of the following investigative activities:

- (1) reviewing pertinent documentation maintained by the facility, including financial and resident medical records;
- (2) gathering additional evidence, including licensee and witness statements;

(3) determining licensee culpability for survey or investigative findings; and

(4) utilizing the services of a private investigator when special circumstances exist.

(f) HHSC keeps records confidential in accordance with state and federal law.

(g) HHSC prioritizes complaints as follows.[:]

(1) Priority one complaints allege physical abuse, sexual abuse, neglect, serious injury, death, or immediate jeopardy to resident health or safety. Investigations are initiated within 24 hours of receipt or by the next working day.

(2) Priority two complaints allege all other types of misconduct by the licensee. Investigations are initiated within 30 days after [œf] receipt.

(h) After the investigation is complete, a final report with supporting documentation is given to the Nursing Facility Administrators Advisory Committee (NFAAC) for review and a recommendation on the appropriate action.

(i) After evaluating the NFAAC's recommendation, HHSC decides to:

- (1) impose a sanction;
- (2) collect additional information; or
- (3) dismiss the case.

(j) HHSC notifies the licensee and, if applicable, the person filing a complaint of the status and final outcome of a complaint or referral.

§555.53. *Formal Hearings.*

(a) The Texas Health and Human Services Commission (HHSC) gives a licensee a formal hearing notice if:

(1) HHSC proposes a sanction; or

(2) HHSC upholds or modifies a proposed sanction after an informal review, in accordance with §555.52 of this subchapter (relating to Informal Reviews).

(b) The formal hearing notice to the licensee includes:

(1) a description of the alleged rule violations warranting the proposed sanction;

(2) HHSC decision to uphold or modify the sanction if the notice is issued after an informal review; and

(3) the option for the licensee to:

(A) accept the sanction; or

(B) request a formal hearing no later than 20 days after receiving the formal hearing notice from HHSC.

(c) If the licensee does not accept a modified sanction resulting from an informal review, the hearing notice may be for the original sanction HHSC proposed before the informal review.

(d) HHSC imposes a sanction against a licensee if:

(1) the licensee accepts the decision from HHSC to impose the sanction;

(2) the administrative law judge upholds the proposed sanction from HHSC after the formal hearing; or

(3) the licensee does not request a hearing within 20 days after receiving the formal hearing notice from HHSC.

(e) A hearing is governed by Texas Administrative Code, Title 1, Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act) and Chapter 110 of this title [Title 40, Chapter 94] (relating to Hearings[.] Under the Administrative Procedure Act).

§555.54. *Rule or Statutory Violations.*

The Texas Health and Human Services Commission (HHSC) may impose a sanction listed in §555.57 of this subchapter (relating to Schedule of Sanctions) against a licensee on proof of any of the following grounds:

- (1) the licensee willfully or repeatedly violated a provision of Texas Health and Safety Code, Chapter 242, or a rule in this chapter;
- (2) the licensee willfully or repeatedly acted in a manner inconsistent with the health and safety of the residents of a nursing facility of which the licensee is a nursing facility administrator (NFA);
- (3) the licensee obtained or attempted to obtain a license through misrepresentation or deceit or by making a material misstatement of fact on a license application;
- (4) the licensee's use of alcohol or drugs creates a hazard to the residents of a facility;
- (5) a judgment of a court of competent jurisdiction finds that the licensee lacks capacity under the laws of Texas;
- ~~(6) the licensee has been convicted in a court of competent jurisdiction of a misdemeanor or felony involving moral turpitude;~~
- ~~(6) [(7)] the licensee has been convicted in a court of competent jurisdiction of an offense listed in §555.41(a) [§555.41(e)] of this chapter (relating to Licensure of Persons with Criminal Backgrounds);~~
- ~~(7) [(8)] the licensee has been negligent or incompetent in the licensee's duties as an NFA;~~
- ~~(8) [(9)] the licensee had an NFA license revoked in another jurisdiction; or~~
- ~~(9) [(40)] the licensee did not comply with the terms of a sanction or settlement agreement with HHSC.~~

§555.55. *Violations of Standards of Conduct.*

(a) The Texas Health and Human Services Commission (HHSC) may impose a sanction listed in §555.57 of this subchapter (relating to Schedule of Sanctions) against a licensee for violations of the following nursing facility administrator (NFA) Standards of Conduct.[:]

- (1) A licensee must employ sufficient staff to adequately meet the needs of nursing facility residents as determined by care outcomes.
- (2) A licensee must ensure that sufficient resources are present to provide adequate nutrition, medications, and treatments to nursing facility residents in accordance with physician orders as determined by care outcomes.
- (3) A licensee must promote and protect the rights of nursing facility residents and ensure that employees, contractors, and others respect the rights of residents.
- (4) A licensee must ensure that nursing facility residents remain free of chemical and physical restraints unless required by a physician's order to protect a nursing facility resident's health and safety.
- (5) A licensee must report and direct nursing facility staff to report to the appropriate government agency any suspected case of abuse, neglect, or misappropriation of resident property as defined in §555.2 of this chapter (relating to Definitions).

(6) A licensee must ensure that the nursing facility is physically maintained in a manner that protects the health and safety of the residents and the public.

(7) A licensee must notify and direct employees to notify an appropriate government agency of any suspected cases of criminal activity as defined by state and federal laws.

(8) A licensee must post in the nursing facility where the licensee is employed the notice provided by HHSC that gives the address and telephone number for reporting complaints against an NFA. The notice must be posted in a conspicuous place and in clearly legible type.

(9) A licensee must not knowingly or through negligence commit, direct, or allow actions that result or could result in inadequate care, harm, or injury to a nursing facility resident.

(10) A licensee must not knowingly or through negligence allow a nursing facility employee to harm a nursing facility resident by coercion, threat, intimidation, solicitation, harassment, theft of personal property, or cruelty.

(11) A licensee must not knowingly or through negligence allow or direct an employee to contradict or alter in any manner the orders of a physician regarding a nursing facility resident's medical or therapeutic care.

(12) A licensee must not knowingly commit or through negligence allow another individual to commit an act of abuse, neglect, or misappropriation of resident property as defined in §555.2 of this chapter.

(13) A licensee must not permit another individual to use his or her license or allow a nursing facility to falsely post his or her license.

(14) A licensee must not advertise or knowingly participate in the advertisement of nursing facility services in a manner that is fraudulent, false, deceptive, or misleading in form or content.

(15) A licensee must not knowingly allow, aid, or abet a violation by another NFA of the Texas Health and Safety Code, Chapter 242, Subchapter I (text of Subchapter I effective until federal determination of failure to comply with federal regulations), or the agency's rules adopted under that subchapter and must report such violations to HHSC.

(16) A licensee must not make or knowingly allow an employee, contractor, or volunteer to make misrepresentations or fraudulent statements about the operation of a nursing facility.

(17) A licensee must not knowingly allow an employee's, a contractor's, or another person's action or inaction to result in harassment or intimidation of any person for purposes of coercing that person to use the services or equipment of a particular health agency or facility.

(18) A licensee must not falsely bill for goods or services or allow another person to bill for goods or services other than those that have actually been delivered.

(19) A licensee must not make or file a false report or allow an employee, contractor, or volunteer to make or file a report that the licensee knows to be false.

(20) A licensee must not intentionally fail to file a report or record required by state or federal law, impede or obstruct such filings, or induce another person to impede or obstruct such filings.

(21) A licensee must not use or knowingly allow employees or others to use alcohol, narcotics, or other drugs in a manner that

interferes with the performance of the licensee's or other person's duties.

(22) A licensee must not knowingly or through negligence violate any confidentiality provisions prescribed by state or federal law concerning a nursing facility resident.

(23) A licensee must not interfere with or impede an investigation by withholding or misrepresenting facts to HHSC representatives, or by using threats or harassment against any person involved or participating in the investigation.

(24) A licensee must not display a license issued by HHSC that is reproduced, altered, expired, suspended, or revoked.

(25) A licensee must not, knowingly or through negligence, allow an employee or other individual to mismanage a resident's personal funds deposited with the nursing facility.

(26) A licensee must not harass or intimidate an employee or other representative of HHSC, other government agencies, or their representatives [concerning the administration of the nursing facility].

(27) A licensee must not offer or give any gift, loan, or other benefit to a person working for HHSC unless the benefit is offered or given on account of kinship or a personal relationship independent of the official status of the person working for HHSC.

(b) Negligence, as referenced in the Standards of Conduct in subsection (a) of this section, means the failure of a licensee to use such care as a reasonably prudent and careful licensee would use in similar circumstances, or failure to act as a reasonably prudent licensee would in similar circumstances.

§555.56. *Violations by Unlicensed Persons.*

(a) A person with an expired license must not engage in activities that require a license.

(b) A person practicing as a licensed nursing facility administrator after license expiration:

- (1) commits an offense punishable as a Class B misdemeanor;
- (2) is subject to local criminal prosecution; and
- (3) may be referred to the Office of Attorney General for civil penalties not to exceed \$1,000 per violation per day for each day the violation continues.

(c) A licensee whose license expires before an investigation is complete, may still receive:

- (1) a written reprimand; or
- (2) an administrative penalty.

(d) A licensee allowing a license to expire instead of accepting a proposed license revocation may be, at HHSC's discretion, disqualified from licensure in Texas permanently or for five years.

~~[(e) A person with an expired license must return the license certificate to the Texas Health and Human Services Commission within ten (10) days of expiration.]~~

§555.57. *Schedule of Sanctions.*

(a) The Texas Health and Human Services Commission (HHSC) may impose one or more of the following sanctions against a licensee for a violation listed in §555.54 of this subchapter (relating to Rule or Statutory Violations) or §555.55 of this subchapter (relating to Violations of Standards of Conduct):

- (1) license revocation;

- (2) license suspension;
- (3) denial of application for license renewal;
- (4) assessment of an administrative penalty;
- (5) written letter of reprimand;
- (6) participation in continuing education;
- (7) probation;
- (8) denial of preceptor's initial or renewal application; or
- (9) revocation of preceptor status.

(b) If a sanction is probated, HHSC may require the licensee to:

- (1) report regularly to HHSC on matters that are the basis of the probation;
- (2) limit practice to the areas prescribed by HHSC;
- (3) practice under the direct supervision or guidance of a HHSC certified preceptor, as specified in §555.14 of this chapter (relating to Preceptor Requirements); or
- (4) complete prescribed continuing education until the licensee attains a degree of skill satisfactory to HHSC in those areas that are the basis of the probation.

(c) Civil penalties may result from a referral to the Office of Attorney General not to exceed \$1,000 per violation per day for each day the violation continues.

(d) Administrative penalties may not exceed \$1,000 per violation per day for each day the violation continues.

(e) The amount of the administrative penalty is assessed is based on:

- (1) the seriousness of the violation, including:
 - (A) the nature, circumstances, extent, and gravity of prohibited acts; and
 - (B) the hazard or potential hazard created to the health, safety, or economic welfare of the public;
- (2) economic harm to property or environment;
- (3) history of previous violations;
- (4) amount necessary to deter future violations;
- (5) efforts to correct the violations;
- (6) the severity level of the violation:

(A) Level I--\$500 to \$1,000 for violations that have or had an adverse impact on nursing facility resident health or safety that includes serious harm, permanent injury, or death to a nursing facility resident;

(B) Level II--\$250 to \$500 for violations that have or had a potential or adverse impact on the health or safety of a nursing facility resident, but less impact than Level I; or

(C) Level III--\$250 or less for violations having minimal or no significant impact on nursing facility resident health or safety; and

- (7) any other matter that justice may require.

(f) HHSC may deny, suspend, or revoke a license to practice in Texas if the licensee fails to meet and comply with all terms of an HHSC order or settlement agreement, or fails to complete any final

sanction imposed against the licensee's license, including[5] satisfactory and timely completion of any continuing education requirements, suspension, probated suspension under a certified preceptor, or timely payment in full of administrative penalties.

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

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Health and Human Services Commission

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For further information, please call: (512) 438-3161



CHAPTER 557. MEDICATION AIDES-- PROGRAM REQUIREMENTS

26 TAC §§557.101, 557.103, 557.105, 557.107, 557.109, 557.111, 557.113, 557.115, 557.117, 557.119, 557.121, 557.123, 557.125, 557.127 - 557.129

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §557.101, concerning Introduction; §557.103, concerning Requirements for Administering Medications; §557.105, concerning Allowable and Prohibited Practices of a Medication Aide; §557.107, concerning Training Requirements; Nursing Graduates; Reciprocity; §557.109, concerning Application Procedures; §557.111, concerning Examination; §557.113, concerning Determination of Eligibility; §557.115, concerning Permit Renewal; §557.117, concerning Changes; §557.119, concerning Training Program Requirements; §557.121, concerning Permitting of Persons with Criminal Backgrounds; §557.123, concerning Violations, Complaints, and Disciplinary Actions; §557.125, concerning Requirements for Corrections Medication Aides; §557.127, concerning Application Processing; §557.128, concerning Home Health Medication Aides; and §557.129, concerning Alternate Licensing Requirements for Military Service.

BACKGROUND AND PURPOSE

The purpose of the proposal is to implement two bills from the 88th Texas Legislature, Regular Session, 2023. House Bill (H.B.) 4123 relates to HHSC obtaining criminal history information from the Federal Bureau of Investigation (FBI) and Texas Department of Public Safety for medication aide (MA) applicants. Senate Bill (S.B.) 681 relates to the Texas Occupations Code, Chapter 53, exemption for HHSC Long-Term Care Regulation (LTCR)-regulated Medication Aides. This rule project also proposes revisions related to the Texas Unified Licensure Information Portal (TULIP), with the purpose of changing from a paper process to a digital process. This proposal also makes non-substantive edits to update references in the rules.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §557.101 revises definitions for MA rules. Paragraph (1) revises the definition of "abuse" to be consistent with the definition in other rule chapters. Paragraph (26)

adds a definition for "online portal." HHSC also updated a reference in the rule.

The proposed amendment to §557.103 updates references, incorporates requirements for home health medication aides that were previously in other sections, and makes non-substantive edits to improve readability.

The proposed amendment to §557.105 makes non-substantive grammar and sentence structure edits, updates references in the rule, and incorporates requirements for home health medication aides that were previously in other sections.

The proposed amendment to §557.107 updates references in the rule, makes grammar and sentence structure edits, incorporates requirements for home health medication aides that were previously in other sections, and updates the rule to reflect the current automated process using TULIP. Additionally, HHSC removed the word "accredited" to include persons who were home-schooled.

The proposed amendment to §557.109 adds language clarifying the use of the online portal TULIP and updates references in the rule. HHSC also removed the word "accredited" to include persons who were home-schooled.

The proposed amendment to §557.111 updates the rule to reflect the current automated process using TULIP and makes grammar and sentence structure edits to the rule.

The proposed amendment to §557.113 makes grammar and sentence structure edits, updates the rule to reflect the current automated process using TULIP, and updates references in the rule.

The proposed amendment to §557.115 makes grammar and sentence structure edits, updates references in the rule, updates the rule to reflect the current automated process using TULIP, and incorporates permit renewal requirements for medication aides that were previously in other sections.

The proposed amendment to §557.117 updates the rule to reflect the current automated process using TULIP and clarifies that a medication aide can request a name change and print a duplicate license through the online portal.

The proposed amendment to §557.119 implements H.B. 4123 relating to FBI criminal history and S.B. 681 relating to criminal convictions, updates the rule to reflect the current automated process using TULIP, makes grammar and sentence structure edits, and makes non-substantive reference updates.

The proposed amendment to §557.121 implements H.B. 4123 relating to FBI criminal history and updates references in the rule.

The proposed amendment to §557.123 makes grammar and sentence structure edits and updates references in the rule.

The proposed amendment to §557.125 updates the rule to reflect the current automated process using TULIP, makes grammar and sentence structure edits, and updates references in the rule.

The proposed amendment to §557.127 updates the rule to reflect the current automated process using TULIP and updates references in the rule.

The proposed amendment to §557.128 repeals redundant requirements and makes other revisions necessary to clarify that home health medication aides must meet medication aide requirements.

The proposed amendment to §557.129 updates references in the rule, makes grammar and sentence structure edits, updates the rule to reflect the current automated process using TULIP, and adds language clarifying that a military spouse with an active medication aide permit can print duplicate licenses and make name changes through the online portal.

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 not create new regulations;
- (6) the proposed rules will expand existing rules;
- (7) the proposed regulations 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 not be an adverse economic effect on small businesses, micro-businesses, or rural communities.

Criminal background history (specifically, fingerprinting requirements) proposed secondary to H.B. 4123 will not increase the cost for medication aides (MAs). While H.B. 4123 applies to MAs, Chapter 557 already requires MA applicant fingerprinting (in Texas Health and Safety Code §242.608), so there will be no additional cost for MA applicants.

HHSC is unable to estimate the number of small businesses, micro-businesses, or rural communities subject to the proposed rules. The projected economic impact for a small business, micro-business, or rural community is the cost to comply.

HHSC determined that alternative methods to achieve the purpose of the proposed rules for small businesses, micro-businesses, or rural communities would not be consistent with ensuring the health and safety of nursing facility residents.

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 are necessary to protect the health, safety, and welfare of the residents of Texas; and are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

Michelle Dionne-Vahalik, Associate Commissioner for Long-Term Care Regulation, has determined that for each year of the first five years the rules are in effect, the public benefit will be protecting nursing facility residents through HHSC's ability to obtain criminal history information from the FBI and Texas Department of Public Safety for MA applicants. This will improve the screening process to prohibit employing certain individuals with a criminal conviction that is a bar to employment but may have occurred in another state and align the criminal convictions used to determine bars to licensure, certification, or permitting with the convictions used to determine nursing facility employability for a LTCR-regulated MA.

Trey Wood has also determined that for each year of the first five years 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.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to his or her 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 Rachael Holden and Sandra Wiegand, Program Specialists, by email to HHSCLTCCRrules@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 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 emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 23R071" in the subject line.

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; Texas Government Code §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Human Resources Code §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program; and Texas Health and Safety Code §142.023 and §242.608, which provide that the Executive Commissioner of HHSC shall adopt rules to establish standards for the permitting medication aides and for training programs, as well as the acts and practices allowed or prohibited to medication aides.

The amendments implement Texas Government Code §§411.1161, 531.0055, and 531.021; Texas Human Resources Code §32.021; and Texas Health and Safety Code §§142.023, 242.608, and 242.6111.

§557.101. *Introduction.*

(a) Purpose. The purpose of this chapter is to implement the provisions of the:

(1) Texas Health and Safety Code, Chapter 242, Subchapter N, concerning the administration of medications to facility residents;

(2) Texas Health and Safety Code, Chapter 142, Subchapter B, concerning the administration of medication by a home and community support services agency; and

(3) Texas Human Resource Code §161.083, concerning the administration of medication to an inmate in a correctional facility.

(b) Corrections medication aide permit requirements. Section 557.125 of this chapter (relating to Requirements for Corrections Medication Aides) applies to a corrections medication aide or an applicant for a corrections medication aide permit.

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

(1) Abuse--Negligent or willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical or emotional harm or pain to a resident; or sexual abuse, including involuntary or nonconsensual sexual conduct that would constitute an offense under Texas Penal Code §21.08 (relating to Indecent Exposure) or Texas Penal Code, Chapter 22 (relating to Assaultive Offenses), sexual harassment, sexual coercion, or sexual assault [The willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain, or mental anguish].

(2) Active duty--Current full-time military service in the armed forces of the United States or as a member of the Texas military forces, as defined in Texas Government Code §437.001, or similar military service of another state.

(3) Armed forces of the United States--The Army, Navy, Air Force, Coast Guard, Space Force, or Marine Corps of the United States, including reserve units of those military branches.

(4) BON--Texas Board of Nursing.

(5) Classroom instruction and training--Teaching curriculum components through in-person instruction taught in a physical classroom location, which may include skills practice, or through online instruction taught in a virtual classroom location.

(6) Client--An individual receiving home health, hospice, or personal assistance services from a HCSSA.

(7) Clinical experience--Teaching hands-on care of residents in a nursing facility under the required level of supervision of a licensed nurse, which may include skills practice prior to performing the skills through hands-on care of a resident. The clinical experience provides the opportunity for a trainee to learn to apply the classroom instruction and training to the care of residents with the assistance and required level of supervision of the instructor.

(8) Correctional facility--a facility operated by or under contract with the Texas Department of Criminal Justice.

(9) Day--Any day, including a Saturday, a Sunday, and a holiday.

(10) EMR--Employee misconduct registry. The registry maintained by HHSC in accordance with Texas Health and Safety Code, Chapter 253, to record findings of reportable conduct by certain unlicensed employees.

(11) Examination--A written competency evaluation for medication aides administered by HHSC.

(12) Facility--An institution licensed under Texas Health and Safety Code, Chapter 242; a state supported living center as defined in Texas Health and Safety Code §531.002(19); a licensed intermediate care facility for an individual with an intellectual disability or related condition as defined in the Texas Health and Safety Code Chapter 252; an intermediate care facility for an individual with an intellectual disability or related condition operated by a community center as described in Texas Health and Safety Code, Chapter 534; or an assisted living facility licensed under Texas Health and Safety Code, Chapter 247.

(13) HCSSA--A home and community support services agency licensed under Texas Health and Safety Code, Chapter 142 and Chapter 558 of this title (relating to Licensing Standards for Home and Community Support Services Agencies).

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

(15) Licensed nurse--A licensed vocational nurse or an RN.

(16) LVN--Licensed vocational nurse. A person licensed by the BON, or who holds a license from another state recognized by the BON, to practice vocational nursing in Texas.

(17) Medication aide--A person who is issued a permit by HHSC under Texas Health and Safety Code Chapter 242, Subchapter N, Texas Human Resources Code, Chapter 161, Subchapter D, and Texas Health and Safety Code, Chapter 142, Subchapter B to administer medications to facility residents, correctional facility inmates, or to persons served by home and community support services agencies.

(18) Military service member--A person who is on active duty.

(19) Military spouse--A person who is married to a military service member.

(20) Military veteran--A person who has served on active duty and who was discharged or released from active duty.

(21) Misappropriation of resident property--The deliberate misplacement, exploitation, or wrongful temporary or permanent use of a resident's belongings or money without the resident's consent.

(22) NAR--Nurse aide registry. A state listing of nurse aides maintained by HHSC in accordance with Texas Health and Safety Code, Chapter 250 that indicates if a nurse aide has active status, revoked status, or is unemployable based on a finding of having committed an act of abuse, neglect or misappropriation of resident property.

(23) Neglect--The failure to provide goods and services necessary to avoid physical harm, mental anguish, or mental illness.

(24) Non-licensed direct care staff--Employees of facilities other than Medicare-skilled nursing facilities or Medicaid nursing facilities who are primarily involved in the delivery of services to assist with residents' activities of daily living or active treatment programs.

(25) Nurse aide--An individual who has completed a nurse aide training and competency evaluation program (NATCEP) approved by HHSC as meeting the requirements of 42 Code of Federal Regulations (CFR) §§483.150 [§§483-15] - 483.154, or has been determined competent as provided in 42 CFR §483.150(a) and (b), and is listed as certified on the HHSC nurse aide registry.

(26) Online portal--The Texas Unified Licensure Information Portal (TULIP), through which licensing application activities are completed.

(27) [(26)] PRN medication--Pro re nata medication. Medication administered as the occasion arises or as needed.

(28) [(27)] Registered pharmacist--An individual currently licensed by the Texas Board of Pharmacy to practice pharmacy.

(29) [(28)] RN--Registered nurse. A person who is licensed by the BON, or who holds a license from another state recognized by the BON, to practice professional nursing in Texas.

(30) [(29)] TDCJ--Texas Department of Criminal Justice.

(31) [(30)] Training program--A program approved by HHSC to instruct individuals to act as medication aides.

§557.103. *Requirements for Administering Medications.*

(a) General. A person may not administer medication to a resident in a facility, an inmate in a correctional facility, or a client receiving home health services [or a correctional facility] unless the person:

(1) holds a current license under state law which authorizes the licensee to administer medication; or

(2) [if administering medication in a facility,] holds a current permit issued under this chapter [Texas Health and Safety Code, Chapter 242, Subchapter N, or if administering medication in a correctional facility, holds a current permit issued under Texas Human Resources Code §161.083 or Texas Health and Safety Code, Chapter 242, Subchapter N] and acts under the authority of a person who holds a current license under state law which authorizes the licensee to administer medication.

(b) Supervision and applicable law and rules. A medication aide must function under the direct supervision of a licensed nurse on duty or on call by the facility, [or] correctional facility, or home health agency using the medication aide. A medication aide must:

(1) function in accordance with applicable law and rules relating to administration of medication and operation of a facility, [or a] correctional facility, or home health agency; and

(2) comply with HHSC rules applicable to personnel used in a facility or for a home health agency, or TDCJ rules applicable to personnel in a correctional facility.

(c) Governmental employees. Governmental employees may receive a permit to administer medications under this chapter as authorized by Texas Health and Safety Code §242.610(f) or Texas Human Resources Code §161.083:

(1) state [State] supported living center employees and employees of an intermediate care facility for persons with an intellectual disability operated by a community center established under Texas Health and Safety Code, Chapter 534 must comply with subsection (b) of this section and [§]§557.105 of this chapter (relating to Allowable and Prohibited Practices of a Medication Aide); [§] §557.107 of this chapter (relating to Training Requirements; Nursing Graduates; Reciprocity); [§] §557.109 of this chapter (relating to Application Procedures); [§] §557.111 of this chapter (relating to Examination); [§] §557.113 of this chapter (relating to Determination of Eligibility); [§] §557.115 of this chapter (relating to Permit Renewal); [§] §557.117 of this chapter (relating to Changes); [§] §557.119 of this chapter (relating to Training Program Requirements); [§] §557.121 of this chapter (relating to Permitting of Persons with Criminal Backgrounds); [§] and §557.123 of this chapter (relating to [Allowable and Prohibited Practices of a Medication Aide; Training Requirements; Nursing Graduates; Reciprocity; Application Procedures; Examination; Determination of Eligibility; Permit Renewal; Changes; Training Program Requirements; Permitting of Persons with Criminal Backgrounds; and] Violations, Complaints, and Disciplinary Actions).

(2) correctional [Correctional] facility employees and employees of medical services contractors for a correctional facility who

administer medication as medication aides must comply with §557.125 of this chapter (relating to Requirements for Corrections Medication Aides).

(3) home health employees who administer medication as medication aides must comply with §557.128 of this chapter (relating to Home Health Medication Aides).

(d) medication [Medication] aides in nursing facilities. Persons employed as medication aides in a Medicare skilled nursing facility or a Medicaid nursing facility must comply with the requirements relating to nurse aides as set forth in United States Code, Part 42[5] §1396r(b)(5) and Chapter 556 of this title (relating to Nurse Aides).

(e) Exemptions.

(1) A person may administer medication to a resident in a facility without the license or permit as required in subsection (a) of this section, if the person is:

(A) a graduate nurse holding a temporary permit issued by the BON;

(B) a student enrolled in an accredited school of nursing or program for the education of registered nurses who is administering medications as part of the student's clinical experience;

(C) a graduate vocational nurse holding a temporary permit issued by the BON;

(D) a student enrolled in an accredited school of vocational nursing or program for the education of vocational nurses who is administering medications as part of the student's clinical experience; or

(E) a trainee in a medication aide training program approved by HHSC under this chapter who is administering medications as part of the trainee's clinical experience.

(2) A student described in paragraph (1)(B), (D), or (E) of this subsection may administer medication only as part of the student's clinical experience.

(3) A person described in paragraph (1) of this subsection must act under the supervision of an individual as set forth in applicable law and rules.

§557.105. *Allowable and Prohibited Practices of a Medication Aide.*

(a) A medication aide permitted under this chapter [Texas Health and Safety Code, Chapter 242, Subchapter N, may]:

(1) must observe and report to the facility's or home health agency's [charge] licensed nurse on duty or on call any reactions or [and] side effects to medication shown by a resident or client, and document such side effects to the medication in the resident's or client's clinical or equivalent record;

(2) must take and record vital signs before the administration of medication that could affect or change [the] vital signs;

(3) may administer regularly prescribed medication to a resident or client if the medication aide:

(A) is trained to administer the medication;

(B) personally prepares the medication or sets up the medication to be administered [from a unit dose pack]; and

(C) documents the administration of the medication in the resident's or client's clinical or equivalent record;

(4) may administer oxygen per nasal cannula or a non-sealing mask only in an emergency, after which the medication aide must

verbally notify the licensed nurse on duty or on call and appropriately document the action and notification;

(5) may apply specifically ordered ophthalmic, otic, nasal, vaginal, and rectal medication unless prohibited by subsection (b)(10) of this section;

(6) may administer medications only from the manufacturer's original container or the original container in which the medication had been dispensed and labeled by the pharmacy with all information mandated by the Texas State Board of Pharmacy;

(7) [(6)] may administer previously ordered PRN medication, if:

(A) the facility's or home health agency's licensed nurse on duty or on call authorizes the medication;

(B) the medication aide documents in the resident's or client's records the symptoms indicating the need for the medication and the time the symptoms occurred;

(C) the medication aide documents in the resident's or client's records that the facility's or home health agency's licensed nurse on duty or on call was contacted, symptoms were described, and the licensed nurse granted permission to administer the medication, including the time of contact;

(D) the medication aide obtains authorization to administer the medication from the facility's or home health agency's licensed nurse on duty or on call each time the symptoms occur; [and]

(E) except as required by subparagraph (F) of this paragraph, the medication aide ensures that the resident's or client's record is co-signed by the licensed nurse who provided [gave] authorization by the end of the nurse's shift or, if the nurse was on call, by the end of the nurse's next on duty shift; and

(F) must, if a home health medication aide, ensure that the client's clinical record is co-signed by the RN who provided authorization within seven days after the notes are incorporated into the clinical record;

(8) [(7)] may measure a prescribed amount of a liquid medication to be administered to a resident or client;

(9) [(8)] may break a tablet to be administered to a resident or client, if:

(A) the resident's or client's medication card or its equivalent accurately documents how the tablet must be broken before administration; and

(B) the licensed nurse on duty or on call has calculated the dosage;

(10) [(9)] may crush medication, if [the medication aide]:

(A) authorization has been given in the original physician's order or the medication aide obtains authorization to crush the medication from the licensed nurse on duty or on call; and

(B) the medication aide documents the authorization on the resident or client's [resident's] medication card or its equivalent; and

(11) [(10)] may, except as prohibited by subsection (d) of this section, electronically order a refill of medication from a pharmacy, if the refill request is signed by the licensed nurse on duty or on call.

(b) A medication aide permitted under this chapter [Texas Health and Safety Code, Chapter 242, Subchapter N₁] may not:

(1) administer medication by the injection route including the:

(A) intramuscular route;

(B) intravenous route;

(C) subcutaneous route;

(D) intradermal route; and

(E) hypodermoclysis route;

(2) administer medication used for intermittent positive pressure breathing treatments or any form of medication inhalation treatments;

(3) administer previously ordered PRN medication, except in accordance with subsection (a)(7) [(a)(6)] of this section;

(4) administer medication that, according to the resident's or client's clinical records, has not been previously administered to the resident or client;

(5) calculate resident's or client's medication doses for administration;

(6) crush medication, except in accordance with subsection (a)(10) [(a)(9)] of this section;

(7) administer medications or feedings by way of a tube inserted in a cavity of the body, except as specified for home health medication aides in §558.404(h) of this title (relating to Standards Specific to Agencies Licensed to Provide Personal Assistance Services);

(8) receive or assume responsibility for reducing to writing a verbal or telephone order from a healthcare professional including a physician, dentist, podiatrist or advanced practice nurse;

(9) order a resident's or client's [resident's] medications from a pharmacy, except in accordance with subsection (a)(11) [(a)(10)] of this section;

(10) apply topical medications that involve the treatment of skin that is broken or blistered or when a specified aseptic technique is ordered by the attending physician;

(11) steal, divert, or otherwise misuse medication;

(12) violate any provision of the Texas Health and Safety Code, Texas Human Resources Code, or this chapter;

(13) fraudulently procure or attempt to procure a permit;

(14) neglect to administer appropriate medications, as prescribed, in a responsible manner; or

(15) administer medications if the person is unable to do so with reasonable skill and safety to residents or clients by reason of drunkenness or excessive use of drugs, narcotics, chemicals, or any other type of material.

(c) If a practice is not described in subsection (a) of this section the practice is prohibited for a medication aide permitted under this chapter [Texas Health and Safety Code, Chapter 242, Subchapter N₁].

(d) A home health medication aide may not order a client's medication from a pharmacy.

§557.107. *Training Requirements; Nursing Graduates; Reciprocity.*

(a) Each applicant for a permit issued under this chapter [Texas Health and Safety Code, Chapter 242, Subchapter N₁] must complete a training program unless the applicant meets the requirements of subsection (c) or (e) of this section.

(b) Before submitting an application for a permit under this chapter [Texas Health and Safety Code, Chapter 242, Subchapter N₁], an applicant must:

- (1) be able to read, write, speak, and understand English;
- (2) be at least 18 years of age;
- (3) be free of communicable diseases and in suitable physical and emotional health to safely administer medications;
- (4) be a [graduate of an accredited] high school graduate or have proof of successfully passing a general educational development test;

(5) if a home health medication aide, have satisfactorily completed a home health aide training and competency evaluation program or a competency evaluation program under §558.701 of this title (relating to Home Health Aides);

(6) ~~[(5)]~~ be employed in a facility or home health agency, as a nurse aide or nonlicensed direct care staff person on the first official day of ~~the [an]~~ applicant's medication aide training program; ~~[and]~~

~~(7) [(6)] have been employed:~~

(A) as a nurse aide in a Medicare-skilled nursing facility or a Medicaid nursing facility; or

(B) in a facility or by a home health agency, for 90 days as a nonlicensed direct care staff person during the 12-month period before the first official day of the applicant's medication aide training program;

(8) ~~[(7)]~~ not have a criminal history that HHSC determines is a basis for denying the permit under §557.121 of this chapter (relating to Permitting of Persons with Criminal Backgrounds);

(9) ~~[(8)]~~ not be listed as unemployable on the EMR; and

(10) ~~[(9)]~~ not be listed with a revoked or suspended status on the NAR.

(c) A person who is attending or has attended an accredited school of nursing and who does not hold a license to practice professional or vocational nursing meets the training requirement for issuance of a permit under this chapter [Texas Health and Safety Code, Chapter 242, Subchapter N,] if the person:

(1) attended the nursing school no earlier than January 1 of the year immediately preceding the year of application for a permit under this chapter;

(2) successfully completed courses at the nursing school that covered the ~~[cover]~~ HHSC curriculum for a medication aide training program;

(3) submits a statement, with the application for a permit and combined permit application and examination fee as provided in §557.109 of this chapter (relating to Application Procedures), on the form provided by HHSC, signed by the nursing school's administrator or other authorized individual, certifying that the person completed the courses specified in paragraph (2) of this subsection; and

(4) complies with subsection (e)(5) and (6) of this section.

(d) The administrator or other authorized individual referred to in subsection (c)(3) of this section is responsible for determining that the nursing school courses cover HHSC curriculum.

(e) A person who is a graduate of an accredited school of nursing and who does not hold a license to practice professional or vocational nursing meets the training requirement for issuance of a permit under this chapter if [Texas Health and Safety Code, Chapter 242, Subchapter N, provided] the date of graduation from the nursing school was no earlier than January 1 of the year immediately preceding the year of application for a permit under this chapter.

(1) The applicant [graduate] must submit an official application form to HHSC through the online portal. The applicant must meet the requirements of subsection (b)(1) - (4), (8), and (9) [(b)(1) - (4), (7), and (8)] of this section.

(2) The application must be accompanied by the combined permit application and examination fee as set out in §557.109(c) of this chapter.

(3) The applicant must include an official transcript documenting graduation from an accredited school of nursing.

(4) HHSC acknowledges receipt of the application by sending the applicant a copy of this chapter and the HHSC open book examination.

(5) The applicant must complete the open book examination and return it to HHSC via email by the date given in the examination notice.

(6) The applicant must complete the HHSC written examination. HHSC denies the application of an applicant who fails [failing] to schedule and take the written examination by the date given in the examination notice.

(7) The [An] open-book or written examination may not be retaken if the applicant fails the examination.

(8) Upon successful completion of the open-book and written [two] examinations, HHSC evaluates all application documents submitted by the applicant.

(9) HHSC notifies the applicant [in writing] of the examination results through the online portal.

(f) A person who holds a valid license, registration, certificate, or permit as a medication aide issued by another state whose minimum standards or requirements are substantially equivalent to or exceed the requirements of this chapter that is [Texas Health and Safety Code, Chapter 242, Subchapter N,] in effect at the time of application, may request a waiver of the training program requirement as follows:

(1) The applicant must submit an official application form to HHSC through the online portal. The applicant must meet the requirements of subsection (b)(1) - (4), (8), and (9) [(b)(1) - (4), (7), and (8)] of this section.

(2) The application must be accompanied by the combined permit application and examination fee required in §557.109(c) of this chapter.

(3) The application must include a current copy of the rules of the other state governing its licensing and regulation of medication aides, a copy of the legal authority (law, act, code, or other) for the state's licensing program, and a certified copy of the license or certificate for which the reciprocal permit is requested.

(4) HHSC acknowledges receipt of the application by sending the applicant a copy of this chapter and the HHSC open book examination.

(5) HHSC may contact the issuing agency to verify the applicant's status with the agency.

(6) The applicant must complete the HHSC open-book examination and return it to HHSC via email by the date given in the examination notice.

(7) The applicant must complete the HHSC written examination. The site of the examination is determined by HHSC. HHSC denies the application of an applicant failing to schedule and take the examination by the date given in the examination notice.

(8) An open-book or written examination may not be re-taken if the applicant fails the examination.

(9) Upon successful completion of the two examinations, HHSC evaluates all application documents submitted by the applicant.

(10) HHSC notifies the applicant [~~in writing~~] of the examination results through the online portal.

§557.109. Application Procedures.

(a) An applicant for a permit under this chapter [~~Texas Health and Safety Code, Chapter 242, Subchapter N~~], who complies with §557.107(a) of this chapter (relating to Training Requirements; Nursing Graduates; Reciprocity) must, no later than 20 days after enrollment in a training program:

(1) complete an application through the online portal, including submitting the following materials:

(A) the general statement enrollment form, which must contain:

(i) specific information regarding the applicant's personal data, certain misdemeanor and felony convictions, work experience, education, and training;

(ii) a statement that the applicant has met all the requirements in §557.107(b) of this chapter before the start of the program;

(iii) a statement that the applicant understands that application fees submitted in the permit process are nonrefundable;

(iv) a statement that the applicant understands materials submitted in the application process are nonreturnable;

(v) a statement that the applicant understands that it is a misdemeanor to falsify any information submitted to HHSC; and

(vi) the applicant's signature through the online portal [~~which has been dated and notarized~~]; and

(B) upload through the online portal a certified copy or a notarized photocopy of the applicant's unaltered, original, high school diploma or transcript or the written results of a general educational development (GED) test demonstrating that the applicant passed the GED test, unless the applicant is applying under §557.107(e) of this chapter;

(2) submit the application to HHSC through the online portal; and

(3) submit the applicant's fingerprints to the Texas Department of Public Safety for a Federal Bureau of Investigation [~~Investigations~~] criminal background check.

(b) HHSC considers an application under subsection (a) of this section as officially submitted when HHSC receives the permit application and examination fee through the online portal.

(c) An applicant must pay the combined permit and examination fees through the online portal [~~by cashier's check or money order made payable to the Health and Human Services Commission, or by other HHSC-approved payment methods~~]. All fees are nonrefundable, except as provided by Texas Government Code, Chapter 2005.

(1) The fee schedule is as follows:

(A) combined permit application and examination fee--\$25;

(B) renewal fee--\$15;

(C) late renewal fees for permit renewals made after the permit expires:

(i) \$22.50 for an expired permit renewed from one to 90 days after expiration;

(ii) \$30 for an expired permit renewed from 91 days to one year after expiration; and

(iii) \$30 for a former medication aide who meets the criteria in §557.115(c)(5) of this chapter (relating to Permit Renewal), [~~and~~]

~~[(D) permit replacement fee--\$5.]~~

(2) An initial or a renewal application is considered incomplete until the fee has been received and cleared through the appropriate financial institution.

(3) The fee schedule that applies to a [~~the~~] correctional medication aide is in §557.125 of this chapter (relating to Requirements for Corrections Medication Aides), and the fee schedule that applies to a [~~the~~] home health medication aide is in subsection (c) of this section [~~§557.128 of this chapter (relating to Home Health Medication Aides)~~].

(d) HHSC reviews high school diploma or GED documentation submitted by the applicant [~~verifies the accreditation of the high school that issued the diploma or transcript, or the testing service or program that certified the GED test required by subsection (a)(1)(B) of this section~~]. If HHSC determines additional information is required [~~is unable to verify the accreditation status of the school, testing service, or program~~], and HHSC requests additional documentation from the applicant [~~to verify the accreditation status~~], the applicant must provide the documentation to HHSC through the online portal.

(e) HHSC sends a notice through the online portal listing the additional materials required to an applicant who does not submit a complete application. An applicant must submit a complete application by the date of HHSC final exam.

(f) HHSC sends notice of HHSC application approval or deficiency to an applicant through the online portal in accordance with §557.121 of this chapter (relating to Permitting of Persons with Criminal Backgrounds) or §557.127 of this chapter (relating to Application Processing).

§557.111. Examination.

(a) HHSC gives a written examination to each applicant at a site determined by HHSC.

(1) The applicant must meet the requirements of §557.107 of this chapter (relating to Training Requirements; Nursing Graduates; Reciprocity) and §557.109 of this chapter (relating to Application Procedures) before taking the written examination.

(2) The applicant is tested on the subjects taught in the training program curricula and clinical experience. The examination covers an applicant's knowledge of accurate and safe drug therapy that will be administered to a facility's residents or home health agency's clients.

(3) The examination must be given after the applicant has successfully completed the training program or met the requirements of §557.107(c) - (e) of this chapter [~~(relating to Training Requirements; Nursing Graduates; Reciprocity)~~].

(4) An applicant with a disability, including an applicant with dyslexia as defined in Texas Education Code §51.970 (relating to Instructional Material for Blind and Visually Impaired Students and

Students with Dyslexia), may request a reasonable accommodation for the examination under the Americans with Disabilities Act.

~~[(5) Staff of a training program must notify HHSC at least four weeks prior to its requested examination date.]~~

~~(5) [(6)]~~ HHSC determines the passing grade on the examination.

~~(6) [(7)]~~ If HHSC grades or reviews the examination, HHSC notifies the applicant of the results of the examination not later than the 30th day after the date the applicant took the examination through the online portal.

~~(7) [(8)]~~ If a testing service grades or reviews the examination:

(A) HHSC notifies the applicant of the results of the examination through the online portal not later than the 14th day after the date HHSC receives the results from the testing service; and

(B) if notice of the examination results will be delayed for longer than 90 days after the examination date, HHSC notifies the applicant via email of the reasons for the delay before the 90th day.

~~(8) [(9)]~~ HHSC may require a testing service to notify an applicant of the results of the applicant's examination.

~~(9) [(10)]~~ HHSC notifies in writing an applicant who fails the examination through the online portal.

(A) HHSC may give an applicant under §557.107(a) of this chapter one subsequent examination, without additional payment of a fee, upon the applicant's ~~written~~ request to HHSC through the online portal.

(B) ~~The [A]~~ subsequent examination must be completed by the date given in the failure notification. The site of the examination is determined by HHSC.

(C) HHSC gives no further examinations if the student fails the subsequent examination, unless the student enrolls in and successfully completes another training program.

(D) If requested in writing by an applicant who fails the examination, HHSC furnishes the applicant with an analysis of the applicant's performance on the examination.

(b) An applicant who is unable to attend the applicant's scheduled examination due to unforeseen circumstances may be given an examination at another time without payment of an additional fee upon the applicant's written request to HHSC via email. The examination must be completed within 45 days from the date of the originally scheduled examination. The rescheduled examination is [must be] at a site determined by HHSC.

(c) An applicant whose application for a permit is [must be] denied under §557.113 of this chapter (relating to Determination of Eligibility) is ineligible to take the examination.

§557.113. *Determination of Eligibility.*

(a) HHSC approves or denies each application for a permit.

(b) HHSC provides notices ~~[Notices]~~ of application approval, denial, or deficiency [must be] in accordance with §557.127 of this chapter (relating to Application Processing).

(c) HHSC denies an application for a permit if the applicant [person]:

(1) does not meet the requirements in §557.107 of this chapter (relating to Training Requirements; Nursing Graduates;

Reciprocity) or §557.125 of this chapter (relating to Requirements for Corrections Medication Aides);

(2) fails to pass the examination prescribed by HHSC, as referenced in §557.111 of this chapter (relating to Examination), or developed by TDCJ, as referenced in §557.125(h) [§557.125(e)] of this chapter;

(3) fails or refuses to properly complete or submit an application form or fee through the online portal, or deliberately submits false information on any form or document required by HHSC;

(4) violates or conspires to violate ~~[the]~~ Texas Health and Safety Code, Chapter 242, Subchapter N, Texas Human Resources Code §161.083, or any provision of this chapter;

(5) has a criminal history that HHSC determines is a basis for denying the permit under §557.121 of this chapter (relating to Permitting of Persons with Criminal Backgrounds);

(6) is listed with a revoked or suspended status on the HHSC NAR; or

(7) is listed as unemployable on the EMR.

(d) If, after review, HHSC determines that the application should be denied, HHSC gives the applicant written notice of the reason for the proposed decision and of the opportunity for a formal hearing in accordance with §557.123(c)(3) of this chapter (relating to Violations, Complaints, and Disciplinary Actions).

§557.115. *Permit Renewal.*

(a) General.

(1) An [When issued, an] initial permit is valid for 12 months from the date of issue.

(2) A medication aide must renew his or her [the] permit annually.

(3) Each medication aide is responsible for renewing the permit before the expiration date. Failure to receive notification from HHSC before the expiration date of the permit does not excuse a [the] medication aide's failure to file for timely renewal.

(4) ~~[A medication aide must complete a seven hour continuing education program approved by HHSC before expiration of the permit in order to renew the permit.]~~ Continuing education hours are not required for the first renewal. However, after [After] a permit is renewed for the first time, a [the] medication aide must complete a seven-hour continuing education program approved by HHSC annually before expiration of his or her permit to renew the permit for each additional year [must earn approved continuing education hours to have the permit renewed again].

(5) HHSC denies renewal of the permit of a medication aide who:

(A) is in violation of Texas Health and Safety Code, Chapter 242, Subchapter N, Texas Human Resources Code §161.083, or this chapter at the time of application for renewal;

(B) has a conviction of a criminal offense listed in Texas Health and Safety Code §250.006(a) or (c) ~~[§250.006(a)],~~ or a conviction of a criminal offense listed in Texas Health and Safety Code §250.006(b) within five years before the date HHSC receives the renewal application;

(C) is listed as unemployable on the EMR; or

(D) is listed with a revoked or suspended status on the NAR. ~~[; or]~~

~~[(E) is in default on a guaranteed student loan as described in Texas Education Code §57.491.]~~

(6) A person whose permit has expired may not engage in activities that require a permit until the permit has been renewed.

(b) Permit renewal procedures.

(1) After receiving proof of the successful completion of the seven hour continuing education requirement, HHSC sends notice of the ~~[expiration date of the permit, the]~~ amount of the renewal fee due, and a renewal form to the medication aide through the online portal ~~[physical or email address listed in HHSC records].~~

(2) The renewal form located in the online portal, which includes the contact information and preferred mailing address of the medication aide.

(3) Medication aides are ~~[will be]~~ required to submit fingerprints to the Texas Department of Public Safety for a Federal Bureau of Investigation ~~[Investigations]~~ criminal background check, if not submitted previously.

(4) HHSC issues a renewal permit to a medication aide who meets all requirements for renewal, including payment of the renewal fee.

(c) Late renewal procedures.

(1) If a medication aide submits a renewal application to HHSC through the online portal that is late or incomplete, HHSC assesses the appropriate late fee described in §557.109(c)(1)(C) of this chapter (relating to Application Procedures). HHSC uses the submission ~~[postmark]~~ date in the online portal to determine if a renewal application is late. ~~[If there is no postmark or the postmark is not legible, HHSC uses the date the renewal application was received and recorded by the HHSC Medication Aide Program to determine if the renewal application is late.]~~

(2) A person whose permit has been expired for less than one year may renew the permit through the online portal by submitting to HHSC:

(A) the permit renewal form;

(B) all accrued renewal fees;

(C) proof of having earned, during the expired period, seven hours in an approved continuing education program for each year, or part of a year, since the permit expired; and

(D) proof of having earned, before expiration of the permit, seven hours in an approved continuing education program as required by subsection (a)(4) of this section.

(3) A person whose permit has been expired for 90 days or less must pay HHSC the late renewal fee provided ~~[stated]~~ in §557.109(c)(1)(C)(i) of this chapter (relating to Application Procedures) or §557.125(g)(3)(A) ~~[§557.125(f)(3)(A)]~~ of this chapter (relating to Requirements for Corrections Medication Aides).

(4) A person whose permit has been expired for more than 90 days but less than one year must pay HHSC the late renewal fee stated in §557.109(c)(1)(C)(ii) or §557.125(g)(3)(B) ~~[§557.125(f)(3)(B)]~~ of this chapter.

(5) A person who previously held a permit in Texas issued under this chapter ~~[Texas Health and Safety Code, Chapter 242, Subchapter N.]~~ may obtain a new permit without reexamination if the person holds a ~~[facility]~~ medication aide permit from another state, practiced in that state for at least the two years preceding the

application date, and pays to HHSC the late renewal fee stated in §557.109(c)(1)(C)(iii) of this chapter.

(6) HHSC denies late renewal of the permit if a permit holder:

(A) is in violation of Texas Health and Safety Code, Chapter 242, Subchapter N, Texas Human Resources Code §161.083, or this chapter on the date HHSC receives the application for late renewal;

(B) has a conviction of a criminal offense listed in Texas Health and Safety Code §250.006(a) or (c) ~~[§250.006(a)]~~, or a conviction of a criminal offense listed in Texas Health and Safety Code §250.006(b) within five years before the date HHSC receives the application for late renewal;

(C) is listed as unemployable on the EMR; or

(D) is listed with a revoked or suspended status on the NAR. ~~[; or]~~

~~[(E) is in default on a guaranteed student loan as described in Texas Education Code §57.491.]~~

(d) A person whose permit has been expired for one year or more may not renew the permit. To obtain a new permit, the person must apply for a permit in accordance with §557.109 of this chapter (relating to Application Procedures) and in §557.111 of this chapter (relating to Examination).

§557.117. *Changes.*

(a) A medication aide must notify HHSC through the online portal within 30 days after changing the medication aide's required contact information, including name, preferred mailing address, or email address. The medication aide can request a change of name through the online portal by submitting a name change application.

(b) HHSC replaces a lost, damaged, or destroyed permit upon receipt of a completed duplicate permit request form. A medication aide can print a duplicate permit through the online portal ~~[and permit replacement fee as set out in §557.109(e) of this chapter (relating to Application Procedures) and §557.125(f) of this chapter (relating to Requirements for Corrections Medication Aides)].~~

§557.119. *Training Program Requirements.*

(a) Application. An educational institution accredited by the Texas Workforce Commission or Texas Higher Education Coordinating Board that desires to offer a training program must file an application for approval on an HHSC form through the online portal. Programs sponsored by state agencies for the training and preparation of their own employees are exempt from the accreditation requirement. An approved institution may offer the training program and a continuing education program.

~~[(1) All signatures on HHSC forms and supporting documentation must be originals.]~~

(1) ~~[(2)]~~ The application through the online portal must include:

(A) the anticipated dates of the program;

(B) the location ~~[location(s)]~~ of the classroom instruction and training course ~~[course(s)]~~;

(C) the name of the coordinator of the program;

(D) a list that includes the address and telephone number of each instructor and any other persons responsible for the conduct of the program; and

(E) an outline of the program content and curriculum if the curriculum covers more than HHSC established curricula.

(2) ~~[(3)]~~ HHSC may conduct an inspection of the classroom instruction and training site.

(3) ~~[(4)]~~ HHSC sends notice of approval or proposed denial of the application to the program within 30 days after receiving a complete application through the online portal. If HHSC proposes to deny the application due to noncompliance with the requirements of ~~[Texas Health and Safety Code, Chapter 242, Subchapter N, or]~~ this chapter, it provides the reasons for denial ~~[are given]~~ in the notice.

(4) ~~[(5)]~~ An applicant may request in writing a hearing on a proposed denial. The applicant must submit a request within 15 days after the applicant receives notice of the proposed denial. The hearing is governed by 1 Texas Administrative Code [TAC] Chapter 357, Subchapter I (relating to Hearings under the Administrative Procedure Act); Chapter 110 of this title [40 TAC Chapter 94] (relating to Hearings under the Administrative Procedure Act); and Texas Government Code, Chapter 2001. If no request is made, the applicant has waived the opportunity for a hearing, and HHSC takes the proposed action ~~[may be taken]~~.

(b) Basic training program.

(1) A training program must include the following instruction and training:

(A) procedures for preparation and administration of medications;

(B) responsibility, control, accountability, storage, and safeguarding of medications;

(C) use of reference material;

(D) documentation of medications in resident's or client's ~~[resident's]~~ clinical records, including PRN medications;

(E) minimum licensing standards for facilities covering pharmaceutical service, nursing service, and clinical records;

(F) federal and state certification standards for participation under Title XVIII (Medicare) and Title XIX (Medicaid) of the Social Security Act pertaining to pharmaceutical service, nursing service, and clinical records;

(G) lines of authority in the facility, including facility personnel who are immediate supervisors;

(H) responsibilities and liabilities associated with the administration and safeguarding of medications;

(I) allowable and prohibited practices of medication aides in the administration of medication;

(J) drug reactions and side effects of medications commonly administered to ~~[facility]~~ residents or clients; and

(K) rules covering the medication aide program.

(2) The program must consist of 140 hours in the following sequence: 100 hours of classroom instruction and training; 20 hours of return skills demonstration laboratory; 10 hours of clinical experience, including clinical observation and skills demonstration under the direct supervision of a licensed nurse in a facility; and 10 hours of return skills demonstration laboratory. A classroom instruction and training or laboratory hour must include 50 minutes of actual classroom instruction and training or laboratory time.

(A) Class time must not exceed:

(i) four hours in a 24-hour period for a facility training program; or

(ii) eight hours in a 24-hour period for a correctional facility training program.

(B) The completion date of the program must be:

(i) a minimum of 60 days and a maximum of 180 days after the starting date of the facility training program; or

(ii) a minimum of 30 days and a maximum of 180 days after the starting date of a correctional facility training program.

(3) Each program must follow the curricula established by HHSC.

(4) Before a student begins a training program, the program must:

(A) ensure the student meets training requirements in §557.107(b)(1) - (9) of this chapter (relating to Training Requirements; Nursing Graduates; Reciprocity);

(B) check the EMR to verify that the student is not listed as unemployable; and

(C) check the NAR to verify if the student is listed in revoked or suspended status; ~~[; and]~~

~~[(D) document the findings of the criminal history check and employability check in its records.]~~

(5) At least seven days before the beginning of a training program, the coordinator must notify HHSC in writing through the online portal of the dates and daily hours of the program, and the projected number of students.

(6) A change in any information presented by the program in an approved application, including location, instructors, and content must be approved by HHSC through the online portal before the change is implemented.

(7) The program instructors of the classroom instruction and training hours must be a registered nurse and registered pharmacist.

(A) The nurse instructor must have:

(i) a minimum of two years of experience in caring for individuals in a long-term care setting or be an instructor in a school of nursing, for a facility training program; or

(ii) a minimum of two years of experience employed in a correctional setting or be an instructor in a school of nursing, for a correctional facility program.

(B) The pharmacist instructor must have:

(i) a minimum of one year of experience and be currently employed or contracted as a consultant pharmacist in a facility; or

(ii) a minimum of one year of experience employed or contracted as a pharmacist in a correctional setting.

(8) The program coordinator must provide clearly defined and written policies regarding each student's clinical experience to the student, the administrator, and the director of nursing in the facility used for the clinical experience.

(A) The clinical experience must be counted only when the student is performing functions involving medication administration and under the direct supervision of a licensed nurse.

(B) The program coordinator must be responsible for final evaluation of the student's clinical experience.

(9) Each program must issue to each student, upon successful completion of the program, a certificate of completion, which must include the program's name, the student's name, the date of completion, and the signature of the program coordinator or administrative official.

(10) Each program must inform HHSC through the online portal on the HHSC class roster form of the final grade results for each student within 15 days after the student's completion of the course and prior to scheduling the exam.

(11) A student without an HHSC-approved criminal background check will not be allowed to take the exam.

(c) Continuing education training program.

(1) The program must consist of at least seven hours of classroom instruction and training or online instruction.

(2) The instructors must meet the requirements in subsection (b)(7) of this section.

(3) Each program must follow the curricula established by HHSC or the curriculum established by TDCJ for corrections medication aides, as applicable.

(4) Within 10 days after a medication aide's completion of the course, each program must inform HHSC through the online portal using [on] the HHSC class roster form of the name of each medication aide who has completed the course.

(d) In developing a training program for corrections medication aides that complies with Texas Government Code §501.1485, TDCJ may modify, as appropriate, the content of the training program curriculum originally developed under Texas Health and Safety Code, Chapter 242, to produce content suitable for administering medication in a correctional facility. The training program curriculum must be approved by HHSC.

(e) Subsection (c) of this section applies to a training program for medication aides and corrections [correction] medication aides.

§557.121. Permitting of Persons with Criminal Backgrounds.

(a) HHSC may suspend or revoke an existing permit, deny a permit, or deny a person the opportunity to take the examination for a permit if the person has a conviction for an offense listed in Texas Health and Safety Code §250.006 [been convicted of a felony or misdemeanor offense that directly relates to the duties and responsibilities of a medication aide].

(b) HHSC reviews an applicant's or existing medication aide's criminal background based on the Federal Bureau of Investigation fingerprinting submitted through the Texas Department of Public Safety.

~~(b) When considering whether a criminal conviction directly relates to the duties and responsibilities of a medication aide, HHSC considers:]~~

~~[(1) that the following offenses may reflect an actual or potential inability to perform as a medication aide:]~~

~~[(A) the misdemeanor of knowingly or intentionally acting as a medication aide without a permit issued under the Texas Health and Safety Code, Chapter 242;]~~

~~[(B) any conviction for an offense listed in §250.006 of the Texas Health and Safety Code;]~~

~~[(C) any conviction, other than a Class C Misdemeanor, for an offense defined under Texas Penal Code, Chapter 22, as assault; sexual assault; intentional exposure of another to AIDS or HIV; ag-~~

~~gravated assault or sexual assault; injury to a child, elderly person, or person with disabilities; or aiding suicide;]~~

~~[(D) any conviction, except Class C Misdemeanors, with a final disposition within the last ten years, for an offense defined in the Texas Penal Code as burglary under Chapter 30; theft under §31.03; sale or display of harmful material to minors; sexual performance by a child; and possession or promotion of child pornography;]~~

~~[(E) any conviction for an offense defined in the Texas Penal Code as an attempt, solicitation, conspiracy, or organized criminal activity to commit any offense listed in subparagraphs (B) - (D) of this paragraph; and]~~

~~[(F) any conviction under United States statutes or jurisdiction other than Texas for any offense equivalent to those listed in subparagraphs (B) - (E) of this paragraph;]~~

~~[(2) the extent to which a permit might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and]~~

~~[(3) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a medication aide;]~~

~~[(e) If HHSC determines that a conviction directly relates to the duties and responsibilities of a medication aide, HHSC considers the following factors in determining whether to take an action authorized under subsection (a) of this section, as described in Texas Occupations Code §53.023 including:]~~

~~[(1) the extent and nature of the person's past criminal activity;]~~

~~[(2) the age of the person when the crime was committed;]~~

~~[(3) the amount of time that has elapsed since the person's last criminal activity;]~~

~~[(4) the conduct and work activity of the person before and after the criminal activity;]~~

~~[(5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release;]~~

~~[(6) evidence of the person's compliance with any conditions of community supervision, parole or mandatory supervision; and]~~

~~[(7) other evidence of the person's fitness, including letters of recommendation;]~~

(c) [(d)] A person who is denied a permit, or who has a permit suspended or revoked, due to his or her criminal background is given notice in accordance with §557.123(d) and (e) of this chapter (relating to Violations, Complaints, and Disciplinary Actions).

§557.123. Violations, Complaints, and Disciplinary Actions.

(a) Filing of complaints. Any person may file a complaint with [complain to] HHSC alleging that a person or program has violated the Texas Health and Safety Code, Chapter 242, Subchapter N; Texas Human Resources Code §161.083; or this chapter.

(1) Persons wishing [who want] to file a complaint against a medication aide, training program, or other [another] person related to medication aide training or permitting, must notify HHSC by calling 1-800-458-9858 or by writing the Medication Aide Permit Program, Health and Human Services Commission, P.O. Box 149030, Mail Code E-416, Austin, Texas 78714-9030.

(2) Anonymous complaints may be investigated by HHSC if the complainant provides sufficient information.

(b) Investigation of complaints. If HHSC's [HHSC] initial investigation determines:

(1) the complaint is [does] not [eome] within HHSC jurisdiction, HHSC advises the complainant and, if applicable [possible], refers the complainant to the appropriate governmental agency for handling the complaint;

(2) there are insufficient grounds to support the complaint, HHSC dismisses the complaint and gives written notice of the dismissal to the medication aide or person against whom the complaint has been filed and the complainant; or

(3) there are sufficient grounds to support the complaint, HHSC may propose to deny, suspend, emergency suspend, revoke, or not renew a permit or to rescind program approval.

(c) Disciplinary actions. HHSC may revoke, suspend, or refuse to renew a permit, or reprimand a medication aide for a violation of Texas Health and Safety Code, Chapter 242, Subchapter N; Texas Human Resources Code §161.083; or this chapter. HHSC may suspend a permit in an emergency or rescind HHSC approval for an educational institution to offer a training program if the medication aide or educational institution fails to comply with the requirements in this chapter.

(1) HHSC may place on probation a person whose permit is suspended. HHSC may require the person on probation:

(A) to report regularly to HHSC on matters that are the basis of the probation;

(B) to limit practice to the areas prescribed by HHSC;

or
(C) to continue or pursue professional education until the person attains a degree of skill satisfactory to HHSC in those areas that are the basis of the probation.

(2) Before institution of formal proceedings to revoke or suspend a permit or rescind program approval, HHSC gives written notice to the medication aide or program of the facts or conduct alleged to warrant revocation, suspension, or rescission, and the medication aide or program must be given an opportunity, as described in the notice, to show compliance with all requirements of the Texas Health and Safety Code, Chapter 242, Subchapter N; Texas Human Resources Code §161.083; or this chapter. When there is a finding of an alleged act of abuse, neglect, or misappropriation of resident property by a medication aide employed at a Medicaid-certified nursing facility or a Medicare-certified skilled nursing facility, HHSC complies with the hearings process as provided in 42 Code of Federal Regulations §488.335.

(3) If denial, revocation, or suspension of a permit or rescission of program approval is proposed, HHSC gives written notice that the medication aide or program must request, in writing, a hearing within 30 days after receipt of the notice, or the right to a hearing is waived and the permit is denied, revoked, or suspended or the program approval is rescinded.

(4) A hearing is governed by 1 Texas Administrative Code [TAC] Chapter 357, Subchapter I (relating to Hearings under the Administrative Procedure Act); and Chapter 110 of this title [40 TAC Chapter 94] (relating to Hearings under the Administrative Procedure Act).

(5) If HHSC receives an allegation that a medication aide, who has a nurse aide certificate under Chapter 556 of this title (relating to Nurse Aides), committed an act of abuse, neglect, or misappropriation of resident property, HHSC investigates the allegation under this

section regarding the medication aide practice and under Chapter 556 of this title to determine if the allegation violates the nurse aide practice. The investigations run concurrently. If after the investigations, the medication aide requests hearings on the findings under the nurse aide practice and the medication aide practice, only one hearing, conducted in accordance with paragraph (4) of this subsection, is available to the medication aide. [If an alleged act of abuse, neglect, or misappropriation by a medication aide who also is a certified nurse aide under the provisions of Chapter 556 of this title (relating to Nurse Aides) violates the rules in this chapter and Chapter 556, HHSC complies with the hearing process described in paragraph (4) of this subsection. Through the hearing, determinations will be made on both the permit for medication aide practice and the certification for nurse aide practice.]

(d) Denial based on criminal history.

(1) HHSC provides written notice to any person HHSC proposes to deny an application based on the person's criminal history. The written notice must contain a statement that the person is disqualified from receiving a permit or being examined for a permit because of the person's prior conviction for the offense or offenses specified in the notice, as provided in §557.121(a) of this chapter (relating to Permitting of Persons with a Criminal Background). [; as applicable:]

{(A) a statement that the person is disqualified from receiving a permit or being examined for a permit because of the person's prior conviction for the offense or offenses specified in the notice, as provided in §557.121(a) and (b) of this chapter (relating to Permitting of Persons with a Criminal Background); or}

{(B) a statement that:}

{(i) HHSC's decision to deny the person a permit, or the opportunity to be examined for a permit, will be based on the factors listed in §557.121(b) of this chapter, as provided in §557.121(a) of this chapter; and}

{(ii) the person has the responsibility to obtain and provide to HHSC evidence regarding the factors listed in §557.121(e) of this chapter within 30 days of receipt of the notice.}

(2) If, upon reviewing the evidence provided by the person, HHSC upholds its decision to deny the person, HHSC notifies [shall notify] the person in writing of:

(A) the reason for the denial or disqualification [; including any factors considered under §557.121(a) and (b) of this chapter that served as the basis for denial or disqualification]; and

(B) the process for requesting a formal hearing before a State Office of Administrative Hearings administrative law judge.

(3) If HHSC's decision to deny the person is upheld during a formal hearing, HHSC shall notify the person in writing of:

(A) the process for requesting a motion for rehearing to appeal the decision; and

(B) if the decision is upheld upon a motion for rehearing, the process for requesting judicial review.

(e) Suspension or revocation [Revocation] based on criminal history.

(1) HHSC provides written notice to a permit holder that HHSC proposes to suspend or revoke the permit holder's permit. The written notice must contain a statement that the permit holder is no longer eligible to have the permit because of the permit holder's prior conviction for the offense or offenses specified in the notice, as provided in §557.121(a) of this chapter. [; as applicable:]

{(A) a statement that the permit holder is no longer eligible to have the permit because of the permit holder's prior conviction for the offense or offenses specified in the notice, as provided in §557.121(a) and (b) of this chapter; or}

{(B) a statement:}

{(i) that HHSC's decision to suspend or revoke the permit holder's permit will be based on the factors listed in §557.121(e) of this chapter, as provided in §557.121(a) of this chapter; and}

{(ii) describing the process for the permit holder to request an informal reconsideration opportunity by HHSC.}

{(2) If, after conducting the informal reconsideration, HHSC upholds its decision to suspend or revoke the permit holder's permit, HHSC shall notify the permit holder in writing of:}

{(A) the reason for the suspension or revocation including any factors considered under §557.121(a) and (b) of this chapter that served as the basis for suspension or revocation; and}

{(B) the process for requesting a formal hearing before a State Office of Administrative Hearings administrative law judge.}

{(2) [(3)] If HHSC's decision to suspend or revoke the permit holder's permit is upheld during a formal hearing, HHSC notifies [shall notify] the permit holder in writing of:

(A) the process for requesting a motion for rehearing to appeal the decision; and

(B) if the decision is upheld upon a motion for rehearing, the process for requesting judicial review.

(f) Suspension, revocation, or nonrenewal. If HHSC suspends a permit, the suspension remains in effect until HHSC determines that the reason for suspension no longer exists or HHSC revokes or determines not to renew the permit. [HHSC investigates before making a determination and:}

(1) During [during] the time of suspension, the suspended medication aide must return his or her permit to HHSC. [;}

(2) If [if] a suspension overlaps a permit renewal date, the suspended medication aide may comply with the renewal procedures in §557.115 of this chapter (relating to Permit Renewal); however, HHSC does not renew the permit until HHSC determines that the reason for suspension no longer exists. [;}

(3) If [if] HHSC revokes or does not renew a permit, a person may reapply for a permit by complying with the requirements and procedures in this chapter at the time of reapplication. HHSC may refuse to issue a permit if the reason for revocation or nonrenewal continues to exist. [; and}

{(4) if a permit is revoked or not renewed, a medication aide must immediately return the permit to HHSC.}

(g) Complaints of abuse and neglect by medication aides who are issued a permit under this chapter [Texas Health and Safety Code, Chapter 242, Subchapter N,] and employed in a correctional facility, are investigated in accordance with §557.125(l) [as described in §557.125(k)] of this chapter (relating to Requirements for Corrections Medication Aides).

§557.125. *Requirements for Corrections Medication Aides.*

(a) Purpose. The purpose of this section is to provide the qualifications, conduct, and practice activities of a medication aide employed in a correctional facility or employed by a medical services contractor for a correctional facility.

(b) Supervision and applicable law and rules. A medication aide must function under the direct supervision of a licensed nurse on duty or on call by the correctional facility using the medication aide. The [A] medication aide must:

(1) function in accordance with applicable law and rules relating to administration of medication and operation of a correctional facility; and

(2) comply with TDCJ rules applicable to personnel used in a correctional institution.

(c) Allowable [and prohibited] practices of a corrections medication aide. A medication aide:

(1) must observe and report to the correctional facility's charge nurse reactions and side effects to medication shown by an inmate;

{(1) A medication aide may:}

{(A) observe and report to the correctional facility's charge nurse reactions and side effects to medication shown by an inmate;}

{(B) take and record vital signs before the administration of medication which could affect or change the vital signs;}

{(C) administer regularly prescribed medication to an inmate if the medication aide:}

{(i) is trained to administer the medication;

{(ii) personally prepares the medication or sets up the medication to be administered; and

{(iii) documents the administration of the medication in the inmate's clinical record;

{(D) administer oxygen per nasal cannula or a non-sealing mask only in an emergency, after which the medication aide must verbally notify the licensed nurse on duty or on call and appropriately document the action and notification;}

{(E) apply specifically ordered ophthalmic, otic, nasal, vaginal, and rectal medication;}

{(F) administer previously ordered PRN medication. A medication aide must document in the inmate's records, symptoms indicating the need for the medication, and the time the symptoms occurred;}

{(G) administer the initial dose of a medication;}

{(H) order an inmate's medications from the correctional institution's pharmacy;}

{(I) measure a prescribed amount of a liquid medication to be administered;}

{(J) break a tablet for administration to an inmate if:}

{(i) the licensed nurse on duty or on call has calculated the dosage; and}

{(ii) the inmate's medication card or its equivalent accurately documents how the tablet must be altered before administration; and}

{(K) crush medication if:}

{(i) authorization is obtained from the licensed nurse on duty or on call; and}

{(ii) the authorization is documented on the inmate's medication card or its equivalent.}

(2) may take and record vital signs before the administration of medication which could affect or change the vital signs;

~~[(2) A medication aide may not:]~~

~~[(A) administer medication by the injection route including:]~~

~~[(i) intramuscular;]~~

~~[(ii) intravenous;]~~

~~[(iii) subcutaneous;]~~

~~[(iv) intradermal; and]~~

~~[(v) hypodermoclysis;]~~

~~[(B) administer medication used for intermittent positive pressure breathing treatments or any form of medication inhalation treatments;]~~

~~[(C) calculate an inmate's medication dose for administration;]~~

~~[(D) crush medication, except in accordance with paragraph (1)(K) of this subsection;]~~

~~[(E) administer medications or feedings by way of a tube inserted in a cavity of the body;]~~

~~[(F) receive or assume responsibility for reducing to writing a verbal or telephone order from a physician, dentist, or podiatrist;]~~

~~[(G) apply topical medications that involve the treatment of skin that is broken or blistered or when a specified aseptic technique is ordered by the attending licensed practitioner;]~~

~~[(H) steal, divert, or otherwise misuse medications;]~~

~~[(I) violate any provision of Texas Human Resources Code §161.083, or this chapter;]~~

~~[(J) fraudulently procure or attempt to procure a permit;]~~

~~[(K) neglect to administer appropriate medications, as prescribed, in a responsible manner; or]~~

~~[(L) administer medications if the person is unable to do so with reasonable skill and safety to residents by reason of drunkenness or excessive use of drugs, narcotics, chemicals, or any other type of material.]~~

(3) may administer regularly prescribed medication to an inmate if the medication aide:

(A) is trained to administer the medication;

(B) personally prepares the medication or sets up the medication to be administered; and

(C) documents the administration of the medication in the inmate's clinical record;

(4) may administer oxygen per nasal cannula or a non-sealing mask only in an emergency, after which the medication aide must verbally notify the licensed nurse on duty or on call and appropriately document the action and notification;

(5) may apply specifically ordered ophthalmic, otic, nasal, vaginal, and rectal medication;

(6) may administer previously ordered PRN medication but must document in the inmate's records any symptoms indicating the need for the medication, and the time the symptoms occurred;

(7) may administer the initial dose of a medication;

(8) may order an inmate's medications from the correctional institution's pharmacy;

(9) may measure a prescribed amount of a liquid medication to be administered;

(10) may break a tablet for administration to an inmate if:

(A) the licensed nurse on duty or on call has calculated the dosage; and

(B) the inmate's medication card or its equivalent accurately documents how the tablet must be altered before administration; and

(11) may crush medication if:

(A) authorization is obtained from the licensed nurse on duty or on call; and

(B) the authorization is documented on the inmate's medication card or its equivalent.

(d) Prohibited practices of a corrections medication aide. A medication aide may not:

(1) administer medication by the injection route including the:

(A) intramuscular route;

(B) intravenous route;

(C) subcutaneous route;

(D) intradermal route; and

(E) hypodermoclysis route;

(2) administer medication used for intermittent positive pressure breathing treatments or any form of medication inhalation treatments;

(3) calculate an inmate's medication dose for administration;

(4) crush medication, except in accordance with subsection (c)(11) of this section;

(5) administer medications or feedings by way of a tube inserted in a cavity of the body;

(6) receive or assume responsibility for reducing to writing a verbal or telephone order from a physician, dentist, or podiatrist;

(7) apply topical medications that involve the treatment of skin that is broken or blistered or when a specified aseptic technique is ordered by the attending licensed practitioner;

(8) steal, divert, or otherwise misuse medications;

(9) violate any provision of Texas Human Resources Code §161.083, or this chapter;

(10) fraudulently procure or attempt to procure a permit;

(11) neglect to administer appropriate medications, as prescribed, in a responsible manner; or

(12) administer medications if the person is unable to do so with reasonable skill and safety to inmates by reason of drunkenness or excessive use of drugs, narcotics, chemicals, or any other type of material.

(c) [(d)] Background and education requirements. Before applying for a corrections medication aide permit under Texas Human Resources Code §161.083, an applicant must be:

- (1) able to read, write, speak, and understand English;
- (2) at least 18 years of age;
- (3) free of communicable diseases and in suitable physical and emotional health to safely administer medications;
- (4) a graduate of a high school or successfully passed a general educational development test (GED); and
- (5) employed in a correctional facility or by a medical service contractor for a correctional facility on the first day of an applicant's medication aide training program.

(f) [(e)] Application. An applicant for a corrections medication aide permit under this chapter [Texas Human Resources Code §161.083] must submit an official Corrections Medication Aide application form to HHSC through the online portal.

(1) The [An] applicant must submit the general statement enrollment form through the online portal that contains:

(A) specific information regarding personal data, certain misdemeanor and felony convictions, work experience, education, and training;

(B) a statement that all the requirements in subsection (c) [(d)] of this section were met before the start of the program;

(C) a statement that the applicant understands that application fees submitted in the permit process are nonrefundable;

(D) a statement that the applicant understands material submitted in the application process are nonreturnable;

(E) a statement that the applicant understands that it is a misdemeanor to falsify any information submitted to HHSC; and

(F) the applicant's dated [and notarized] signature through the online portal.

(2) An applicant must upload through the online portal [submit] a certified copy or a photocopy that has been notarized as a true and exact copy of an unaltered original of the applicant's high school graduation diploma or transcript, or the written results of a GED [general educational development (GED)] test.

(3) HHSC reviews high school or GED documentation submitted by the applicant [verifies the accreditation of the high school that issued the diploma or transcript, or the testing service or program that certified the GED test required by paragraph (2) of this subsection]. If HHSC determines additional information is required [is unable to verify the accreditation status of the school, testing service, or program], and HHSC requests additional documentation from the applicant [to verify the accreditation status], the applicant must provide the documentation to HHSC.

(4) HHSC considers a corrections medication aide permit application as officially submitted based on the submission date in the online portal [when HHSC receives the permit application].

(5) HHSC sends a notice through the online portal listing the additional materials required to an applicant who does not complete the application. An application not completed by the day of the TDCJ final exam is void.

(6) HHSC sends notice through the online portal of application approval or deficiency in accordance with §557.127 of this chapter (relating to Application Processing).

(g) [(f)] Fees. An applicant must pay application and permit renewal fees for a corrections medication aide permit through the online portal [by cashier's check or money order made payable to the Health and Human Services Commission]. All fees are nonrefundable, except as provided by Texas Government Code, Chapter 2005. The fee schedule is as follows:

(1) permit application fee--\$15;

(2) renewal fee--\$15; and

(3) late renewal fees for permit renewals made after the permit expires:

(A) \$22.50 for an expired permit renewed from one to 90 days after expiration; and

(B) \$30 for an expired permit renewed from 91 days to one year after expiration.]; and]

[(4) permit replacement fee--\$5.]

(h) [(g)] Examination procedures. TDCJ gives a written examination to each applicant at a site determined by TDCJ. An applicant with a disability, including an applicant with dyslexia as defined in Texas Education Code §51.970 (relating to Instructional Material for Blind and Visually Impaired Students and Students with Dyslexia), may request a reasonable accommodation for the examination under the Americans with Disabilities Act.

(1) The applicant must meet the requirements of the TDCJ training program described in §557.119(d) of this chapter (relating to Training Program Requirements) before taking the written examination.

(2) The applicant must be tested on the subjects taught in the TDCJ training program curriculum and correctional facility clinical experience. The examination must test an applicant's knowledge of accurate and safe drug therapy administered to a correctional facility inmate.

(3) TDCJ administers the examination and determines the passing grade.

(4) TDCJ must inform HHSC through the online portal, on the HHSC class roster form, of the final exam results for each applicant within 15 days after completion of the exam.

(5) An applicant who is unable to attend the applicant's scheduled examination due to unforeseen circumstances must contact TDCJ to reschedule.

(6) If an applicant fails the examination, TDCJ notifies HHSC and the applicant in writing of the failure to pass the examination. The applicant may take one subsequent examination without having to re-enroll in the training program described in §557.119 of this chapter.

(7) An applicant whose application for a permit is denied under §557.113 of this chapter (relating to Determination of Eligibility) is ineligible to take the examination.

(i) [(h)] Determination of eligibility. HHSC determines eligibility for a corrections medication aide permit applicant according to §557.113 of this chapter and subsections (e) - (h) [(f) - (g)] of this section.

(j) [(i)] Renewal. A permit must be renewed in accordance with §557.115 of this chapter (relating to Permit Renewal).

(k) [(j)] Changes. Medication aides must report changes in accordance with §557.117 of this chapter (relating to Changes).

(l) ~~[(k)]~~ Violations, complaints, and disciplinary actions.

(1) Complaints. Any person may file a complaint with ~~complain to~~ HHSC alleging that a person or program has violated Texas Human Resources Code §161.083, or this chapter. HHSC handles complaints in the manner set forth in §557.123 of this chapter (relating to Violations, Complaints, and Disciplinary Actions).

(2) Investigations of abuse and neglect complaints. Allegations of abuse and neglect of inmates by corrections medication aides are investigated by the TDCJ Office of Inspector General. After an investigation, the TDCJ Office of Inspector General issues a report to HHSC with findings of abuse or neglect against the corrections medication aide. After reviewing the report and findings, HHSC determines whether to initiate a formal proceeding to revoke, suspend, or refuse to renew a corrections medication aide permit. If HHSC determines a formal proceeding to revoke, suspend, or refuse to renew a corrections medication aide permit should be initiated, §557.123(c) and (d) of this chapter apply. If HHSC determines that no formal proceeding to revoke, suspend, or refuse to renew a corrections medication aide permit should be initiated, HHSC dismisses the complaint against the corrections medication aide and gives written notice of the dismissal to the corrections medication aide.

(m) ~~[(4)]~~ Section 557.121 of this chapter (relating to Permitting of Persons with Criminal Backgrounds) applies to corrections medication aides under this chapter.

§557.127. *Application Processing.*

(a) Time periods. HHSC complies with the following procedures in processing applications for a facility and corrections medication aide permit and renewal.

(1) The following periods of time apply from the date HHSC receives an application through the online portal until the date HHSC issues a written notice through the online portal that the application is complete and accepted for filing or that the application is deficient and additional specific information is required. HHSC may issue a written notice through the online portal stating that the application has been approved instead of a notice that the application is complete. The time periods are as follows:

- (A) letter of acceptance of application for a permit--21 days;
- (B) letter of application deficiency or ineligibility--21 days;
- (C) acceptance of renewal permit--21 days; and
- (D) letter of renewal of permit deficiency--21 days.

(2) The following periods of time apply from the date HHSC receives the last item necessary to complete the application through the online portal until the date HHSC issues written notice through the online portal approving or denying the application. For the purpose of this section, an application is not considered complete until any required examination has been successfully completed by the applicant. The time periods for denial include notification of a proposed decision and an opportunity, if required, for the applicant to show compliance with law, and an opportunity to request a hearing. The time periods are as follows:

- (A) issuance of initial permit--60 days;
- (B) letter of denial for a permit or renewal permit--60 days; and
- (C) issuance of renewal permit after receipt of documentation of the completion of all renewal requirements--20 days.

(b) Reimbursement of fees.

(1) If an application is not processed in the time periods stated in subsection (a) of this section, the applicant has the right to request reimbursement of all fees paid in that particular application process. Application for reimbursement must be made to the program administrator for HHSC Medication Aide Permit Program. If the program administrator does not agree that the time period has been violated or finds that good cause existed for exceeding the time period, the request must be denied.

(2) Good cause for exceeding the time period exists if the number of applications for a permit and permit renewal exceeds by 15 percent or more the number of applications processed in the same calendar quarter the preceding year; another public or private entity relied upon by HHSC in the application process caused the delay; or any other condition exists giving HHSC good cause for exceeding the time period.

(c) Appeal. If a request for reimbursement under subsection (b) of this section is denied by the program administrator, the applicant may appeal in writing to the Texas Health and Human Services Commission's hearings section to request a hearing on the reimbursement denial. A hearing is governed by 1 Texas Administrative Code ~~[TAC]~~ Chapter 357, Subchapter I (relating to Hearings under the Administrative Procedure Act); and Chapter 110 of this title ~~[40 TAC Chapter 91]~~ (relating to Hearings under the Administrative Procedure Act).

§557.128. *Home Health Medication Aides.*

(a) A home health medication aide must be permitted as a medication aide in accordance with this chapter [General].

~~[(1) A person may not administer medication to a client unless the person:]~~

~~[(A) holds a current license under state law that authorizes the licensee to administer medication;]~~

~~[(B) holds a current permit issued under this section and acts under the delegated authority of an RN to administer medication;]~~

~~[(C) administers a medication to a client in accordance with rules of the BON that permit delegation of the administration of medication to a person not holding a permit under this section; or]~~

~~[(D) administers noninjectable medication under circumstances authorized by the memorandum of understanding between the BON and HHSC.]~~

~~[(2) A HCSSA that provides licensed and certified home health services, licensed home health services, hospice services, or personal assistance services may use a home health medication aide. If there is a direct conflict between the requirements of this chapter and federal regulations, the requirements that are more stringent apply to the licensed and certified HCSSA.]~~

~~[(3) Exemptions are as follows:]~~

~~[(A) A person may administer medication to a client without the license or permit as required in paragraph (1) of this subsection if the person is:]~~

~~[(i) a graduate nurse holding a temporary permit issued by the BON;]~~

~~[(ii) a student enrolled in an accredited school of nursing or program for the education of RNs who is administering medications as part of the student's clinical experience;]~~

~~[(iii) a graduate vocational nurse holding a temporary permit issued by the BON;]~~

~~[(iv)] a student enrolled in an accredited school of vocational nursing or program for the education of vocational nurses who is administering medications as part of the student's clinical experience; or~~

~~[(v)] a trainee in a medication aide training program approved by HHSC under this chapter who is administering medications as part of the trainee's clinical experience.~~

~~[(B)] Supervision of an exempt person described in subparagraph (A) of this paragraph is as follows:~~

~~[(i)] A person described in:~~

~~[(i)] subparagraph (A)(i) of this paragraph shall be supervised by an RN;~~

~~[(ii)] subparagraph (A)(ii) or (iv) of this paragraph shall be supervised by the student's instructor; or~~

~~[(iii)] subparagraph (A)(iii) of this paragraph shall be supervised by an RN or LVN.~~

~~[(ii)] Supervision must be on-site.~~

~~[(C)] An exempt person described in this subsection may not be used in a supervisory or charge position.~~

(b) A HCSSA that provides licensed and certified home health services, licensed home health services, hospice services, or personal assistance services may use a home health medication aide. If there is a direct conflict between the requirements of this chapter and federal regulations, the requirements that are more stringent apply to the licensed and certified HCSSA [Required actions].

(c) [(4)] If a HCSSA provides home health medication aide services, the HCSSA must employ a home health medication aide to provide the home health medication aide services. The HCSSA must employ or contract with an RN to perform the initial health assessment, prepare the client care plan, establish the medication list, medication administration record, and medication aide assignment sheet, and supervise the home health medication aide. The RN must be available to supervise the home health medication aide when home health medication aide services are provided.

(d) [(2)] The clinical records of a client using a home health medication aide must include a statement signed by the client or family acknowledging receipt of the list of permitted and prohibited acts of a home health medication aide.

(e) [(3)] The RN must be knowledgeable of HHSC rules governing home health medication aides and must ensure that the home health medication aide complies [is in compliance] with the Texas Health and Safety Code, Chapter 142, Subchapter B and this chapter.

(f) [(4)] A home health medication aide must:

(1) [(A)] function under the supervision of an RN;

(2) [(B)] comply with applicable law and this chapter relating to administration of medication and operation of the HCSSA;

(3) [(C)] comply with HHSC rules applicable to personnel used in a HCSSA; and

(4) [(D)] comply with this section and §558.701 of this title (relating to Home Health Aides) if the person will be used as a home health aide and a home health medication aide.

(g) [(5)] The RN must make a supervisory visit while the medication aide is in the client's residence in accordance with §558.298 of this title (relating to Delegation of Nursing Tasks by Registered Profes-

sional Nurses to Unlicensed Personnel and Tasks Not Requiring Delegation).

~~[(e)] Permitted actions. A home health medication aide is permitted to:~~

~~[(1)] observe and report to the HCSSA RN and document in the clinical record any reactions and side effects to medication shown by a client;~~

~~[(2)] take and record vital signs of a client before administering medication that could affect or change the vital signs;~~

~~[(3)] administer regularly prescribed medication to a client if the medication aide:~~

~~[(A)] is trained to administer the medication;~~

~~[(B)] personally prepares the medication or sets up the medication to be administered; and~~

~~[(C)] documents the administration of the medication in the client's clinical record;~~

~~[(4)] administer oxygen per nasal cannula or a non-sealing face mask only in an emergency, after which the medication aide must verbally notify the supervising RN and appropriately document the action and notification;~~

~~[(5)] apply specifically ordered ophthalmic, otic, nasal, vaginal, topical, and rectal medication unless prohibited by subsection (d)(10) of this section;~~

~~[(6)] administer medications only from the manufacturer's original container or the original container in which the medication had been dispensed and labeled by the pharmacy with all information mandated by the Texas State Board of Pharmacy;~~

~~[(7)] administer previously ordered PRN medication if:~~

~~[(A)] the HCSSA's RN authorizes the medication;~~

~~[(B)] the medication aide documents in the client's clinical notes the symptoms indicating the need for medication and the time the symptoms occurred;~~

~~[(C)] the medication aide documents in the client's clinical notes that the HCSSA's RN was contacted, symptoms were described, and the HCSSA's RN granted permission to administer the medication, including the time of contact;~~

~~[(D)] the medication aide obtains authorization to administer the medication each time the symptoms occur; and~~

~~[(E)] the medication aide ensures that the client's clinical record is co-signed by the RN who gave permission within seven days after the notes are incorporated into the clinical record;~~

~~[(8)] measure a prescribed amount of a liquid medication to be administered;~~

~~[(9)] break a tablet for administration to a client if:~~

~~[(A)] the client's medication administration record accurately documents how the tablet must be altered before administration; and~~

~~[(B)] the licensed nurse on duty or on call has calculated the dosage;~~

~~[(10)] crush medication, if:~~

~~[(A)] authorization has been given in the original physician's order or the medication aide obtains authorization from the HCSSA's RN; and~~

[(B) the medication aide documents the authorization on the client's medication administration record.]

[(d) Prohibited actions. A home health medication aide must not:]

[(1) administer a medication by any injectable route, including:]

[(A) intramuscular route;]

[(B) intravenous route;]

[(C) subcutaneous route;]

[(D) intradermal route; and]

[(E) hypodermoclysis route;]

[(2) administer medication used for intermittent positive pressure breathing treatment or any form of medication inhalation treatments;]

[(3) administer previously ordered PRN medication except in accordance with subsection (c)(7) of this section;]

[(4) administer medication that, according to the client's clinical records, has not been previously administered to the client;]

[(5) calculate a client's medication doses for administration;]

[(6) crush medication, except in accordance with subsection (c)(10) of this section;]

[(7) administer medications or feedings by way of a tube inserted in a cavity of the body except as specified in §558.404(h) of this title (relating to Standards Specific to Agencies Licensed to Provide Personal Assistance Services);]

[(8) receive or assume responsibility for reducing to writing a verbal or telephone order from a physician, dentist, podiatrist or advanced practice nurse;]

[(9) order a client's medication from a pharmacy;]

[(10) apply topical medications that involve the treatment of skin that is broken or blistered when a specified aseptic technique is ordered by the attending physician;]

[(11) administer medications from any container other than the manufacturer's original container or the original container in which the medication had been dispensed and labeled by the pharmacy with all information mandated by the Texas State Board of Pharmacy;]

[(12) steal, divert, or otherwise misuse medications;]

[(13) violate any provision of the statute or of this chapter;]

[(14) fraudulently procure or attempt to procure a permit;]

[(15) neglect to administer appropriate medications, as prescribed, in a responsible manner; or]

[(16) administer medications if the person is unable to do so with reasonable skill and safety to clients by reasons of drunkenness, inappropriate use of drugs, narcotics, chemicals, or any other type of material.]

[(e) Applicant qualifications. Each applicant for a permit issued under Texas Health and Safety Code, Chapter 142, Subchapter B must complete a training program. Before enrolling in a training program and applying for a permit under this section, all applicants:]

[(1) must be able to read, write, speak, and understand English;]

[(2) must be at least 18 years of age;]

[(3) must be free of communicable diseases and in suitable physical and emotional health to safely administer medications;]

[(4) must be a graduate of an accredited high school or have proof of successfully passing a general educational development test;]

[(5) must have satisfactorily completed a home health aide training and competency evaluation program or a competency evaluation program under §558.701 of this title;]

[(6) must not have a criminal history that HHSC determines is a basis for denying the permit under §557.121 of this chapter (relating to Permitting of Persons with Criminal Backgrounds);]

[(7) must not be listed as unemployable on the EMR; and]

[(8) must not be listed with a revoked or suspended status on the NAR.]

[(f) Nursing graduates. A person who is a graduate of an accredited school of nursing and who does not hold a license to practice professional or vocational nursing meets the training requirements for issuance of a permit under this section if the date of graduation from the nursing school was no earlier than January 1 of the year immediately preceding the year of application for a permit under this section.]

[(1) The applicant must submit an HHSC application form to HHSC. The applicant must meet the requirements of subsection (e)(1) - (6) of this section.]

[(2) The application must be accompanied by the combined permit application and examination fee.]

[(3) The applicant must include an official transcript documenting graduation from an accredited school of nursing.]

[(4) HHSC acknowledges receipt of the application by sending the applicant a copy of this chapter and HHSC open book examination.]

[(5) The applicant must complete the open book examination and return it to HHSC by the date given in the examination notice.]

[(6) The applicant must complete HHSC written examination. HHSC determines the site of the examination. HHSC denies the application of an applicant failing to schedule and take the examination by the date given in the examination notice.]

[(7) An open book or written examination may not be retaken if the applicant fails.]

[(8) Upon successful completion of the two examinations, HHSC evaluates all application documents submitted by the applicant.]

[(9) HHSC notifies the applicant in writing of the examination results.]

[(g) Nursing students. A person who is attending or has attended an accredited school of nursing and who does not hold a license to practice professional or vocational nursing meets the training requirements for issuance of a permit under this section if the person:]

[(1) attended the nursing school no earlier than January 1 of the year immediately preceding the year of application for a permit under this section;]

[(2) successfully completed courses at the nursing school that cover HHSC curriculum for a home health medication aide training program;]

[(3) submits a statement with the person's application for a permit under this section, that is signed by the nursing school's adminis-

trator or other authorized individual who is responsible for determining that the courses that he or she certifies cover HHSC curriculum and certifies that the person completed the courses specified under paragraph (2) of this subsection; and]

[(4) complies with subsection (f)(1), (2), and (4) - (9) of this section.]

[(h) Reciprocity. A person who holds a valid license, registration, certificate, or permit as a home health medication aide issued by another state whose minimum standards or requirements are substantially equivalent to or exceed the requirements of this section in effect at the time of application may request a waiver of the training program requirement as follows:]

[(1) The applicant must submit an HHSC application form to HHSC. The applicant must meet the requirements of subsection (e)(1) - (4) of this section.]

[(2) The application must be accompanied by the combined permit application and exam fee.]

[(3) The application must include a current copy of the rules of the other state governing its licensing and regulation of home health medication aides, a copy of the legal authority, including the law, act, code, or section, for the state's licensing program, and a certified copy of the license or certificate by which the reciprocal permit is requested.]

[(4) HHSC acknowledges receipt of the application by sending the applicant a copy of this chapter and of HHSC open book examination.]

[(5) HHSC may contact the issuing agency to verify the applicant's status with the agency.]

[(6) The applicant must complete HHSC open book examination and return it to HHSC by the date given in the examination notice.]

[(7) The applicant must complete HHSC written examination. The site of the examination is determined by HHSC. HHSC denies the application of an applicant failing to schedule and take the examination by the date given in the examination notice.]

[(8) An open book or written examination may not be retaken if the applicant fails.]

[(9) Upon successful completion of the two examinations, HHSC evaluates all application documents submitted by the applicant.]

[(10) HHSC notifies the applicant in writing of the examination results.]

[(i) Application by trainees:]

[(1) An applicant under subsection (e) of this section must, no later than 20 days after enrollment in a training program:]

[(A) complete an application, including the following materials:]

[(i) the general statement enrollment form, which must contain:]

[(f) specific information regarding the applicant's personal data, certain misdemeanor and felony convictions, work experience, education, and training:]

[(H) a statement that the applicant has met all the requirements in §557.107(b) of this chapter (relating to Training Requirements; Nursing Graduates; Reciprocity) before the start of the program:]

[(III) a statement that the applicant understands that application fees submitted in the permit process are nonrefundable:]

[(IV) a statement that the applicant understands materials submitted in the application process are nonreturnable:]

[(V) a statement that the applicant understands that it is a misdemeanor to falsify any information submitted to HHSC; and]

[(VI) the applicant's signature, which has been dated and notarized; and]

[(ii) a certified copy of a notarized photocopy of the applicant's unaltered, original, high school diploma or transcript or the written results of a general educational development (GED) test demonstrating that the applicant passed the GED test, unless the applicant is applying under subsection (f) of this section:]

[(B) submit the application to HHSC; and]

[(C) submit fingerprints to the Texas Department of Public Safety for a Federal Bureau of Investigations criminal background check.]

[(2) HHSC considers an application as officially submitted when HHSC receives the nonrefundable combined permit application and examination fee payable to the Health and Human Services Commission. The fee required by subsection (n) of this section must accompany the application form.]

[(3) HHSC verifies the accreditation of the high school that issued the diploma or transcript, or the testing service or program that certified the GED test required by paragraph (1)(A)(ii) of this subsection. If HHSC is unable to verify the accreditation status of the school, testing service, or program, and HHSC requests additional documentation from the applicant to verify the accreditation status, the applicant must provide the documentation to HHSC.]

[(4) HHSC sends a notice listing the additional materials required to an applicant who does not complete the application. An application not completed within 30 days after the date of the notice will be void.]

[(5) HHSC sends notice of application acceptance, disapproval, or deficiency in accordance with subsection (q) of this section.]

[(j) Examination. HHSC gives a written examination to each applicant at a site HHSC determines.]

[(1) No final examination may be given to an applicant until the applicant has met the requirements of subsections (e) and (i) of this section, and if applicable, subsections (f), (g), or (h) of this section.]

[(2) An applicant with a disability, including an applicant with dyslexia as defined in Texas Education Code §51.970 (relating to Instructional Material for Blind and Visually Impaired Students and Students with Dyslexia), may request a reasonable accommodation for the examination under the Americans with Disabilities Act.]

[(3) The applicant must be tested on the subjects taught in the training program curricula and clinical experience. The examination covers an applicant's knowledge of accurate and safe drug therapy to clients.]

[(4) A training program must notify HHSC at least four weeks before its requested examination date.]

[(5) HHSC determines the passing grade on the examination.]

[(6) HHSC notifies in writing an applicant who fails the examination.]

[(A) HHSC may give an applicant under subsection (e) of this section one subsequent examination, without additional payment of a fee, upon the applicant's written request to HHSC.]

[(B) A subsequent examination must be completed by the date given on the failure notification. HHSC determines the site of the examination.]

[(C) Another examination will not be permitted if the student fails the subsequent examination unless the student enrolls and successfully completes another training program.]

[(7) An applicant who is unable to attend the applicant's scheduled examination due to unforeseen circumstances may be given an examination at another time without payment of an additional fee upon the applicant's written request to HHSC. The examination must be completed within 45 days from the date of the originally scheduled examination. HHSC determines the site for the rescheduled examination.]

[(8) An applicant whose application for a permit will be disapproved under subsection (k) of this section is ineligible to take the examination.]

[(k) Determination of eligibility. HHSC approves or disapproves all applications. HHSC sends notices of application approval, disapproval, or deficiency in accordance with subsection (q) of this section.]

[(1) HHSC denies an application for a permit if the person has:]

[(A) not met the requirements of subsections (e) - (i) of this section, if applicable;]

[(B) failed to pass the examination prescribed by HHSC as set out in subsection (j) of this section;]

[(C) failed to or refused to properly complete or submit any application form, endorsement, or fee, or deliberately presented false information on any form or document required by HHSC;]

[(D) violated or conspired to violate the Texas Health and Safety Code, Chapter 142, Subchapter B, or any provision of this chapter; or]

[(E) has a criminal history that HHSC determines is a basis for denying the permit under §557.121 of this chapter (relating to Permitting of Persons with Criminal Backgrounds).]

[(2) If, after review, HHSC determines that the application should not be approved, HHSC gives the applicant written notice of the reason for the proposed decision and of the opportunity for a formal hearing in accordance with subsection (r) of this section.]

[(1) Medication aide. Home health medication aides must comply with the following permit renewal requirements.]

[(1) When issued, a permit is valid for one year.]

[(2) A medication aide must renew the permit annually.]

[(3) The renewal date of a permit is the last day of the current permit.]

[(4) Each medication aide is responsible for renewing the permit before the expiration date. Failure to receive notification from HHSC before the expiration date of the permit does not excuse the medication aide's failure to file for timely renewal.]

[(5) A medication aide must complete a seven hour continuing education program approved by HHSC before expiration of the permit in order to renew the permit. Continuing education hours are not required for the first renewal. After a permit is renewed for the first time, the medication aide must earn approved continuing education hours to have the permit renewed again.]

[(6) HHSC denies renewal of the permit of a medication aide who is in violation of the Texas Health and Safety Code, Chapter 142, Subchapter B, or this chapter at the time of application for renewal.]

[(7) HHSC denies renewal of the permit of a medication aide who has been convicted of a criminal offense listed in Texas Health and Safety Code §250.006(a), or convicted of a criminal offense listed in Texas Health and Safety Code §250.006(b) within five years before the date HHSC receives the renewal application.]

[(8) HHSC denies renewal of the permit of a medication aide who is listed as unemployable on the EMR.]

[(9) Home health medication aide permit renewal procedures are as follows.]

[(A) At least 30 days before the expiration date of a permit, HHSC sends to the medication aide at the address in HHSC records notice of the expiration date of the permit and the amount of the renewal fee due and a renewal form that the medication aide must complete and return with the required renewal fee.]

[(B) The renewal form must include the preferred mailing address of the medication aide. It must be signed by the medication aide.]

[(C) Medication aides will be required to submit fingerprints for a Federal Bureau of Investigations criminal background check to the Texas Department of Public Safety, if not submitted previously.]

[(D) HHSC issues a renewal permit to a medication aide who has met all requirements for renewal.]

[(E) HHSC does not renew a permit if the medication aide does not complete the required seven-hour continuing education requirement. Successful completion is determined by the student's instructor. An individual who does not meet the continuing education requirement must complete a new program, application, and examination in accordance with the requirements of this section.]

[(F) HHSC does not renew a permit if renewal is prohibited by the Texas Education Code §57.491, concerning defaults on guaranteed student loans.]

[(G) If a medication aide fails to timely renew his or her permit because the medication aide is or was on active duty with the armed forces of the United States of America serving outside the State of Texas, the medication aide may renew the permit pursuant to this subparagraph.]

[(i) Renewal of the permit may be requested by the medication aide, the medication aide's spouse, or an individual having power of attorney from the medication aide. The renewal form must include a current address and telephone number for the individual requesting the renewal.]

[(ii) Renewal may be requested before or after the expiration of the permit.]

[(iii) A copy of the official orders or other official military documentation showing that the medication aide is or was on

active military duty serving outside the State of Texas must be filed with HHSC along with the renewal form.]

{(iv)} A copy of the power of attorney from the medication aide must be filed with HHSC along with the renewal form if the individual having the power of attorney executes any of the documents required in this subparagraph.]

{(v)} A medication aide renewing under this subparagraph must pay the applicable renewal fee.]

{(vi)} A medication aide is not authorized to act as a home health medication aide after the expiration of the permit unless and until the medication aide actually renews the permit.]

{(vii)} A medication aide renewing under this subparagraph is not required to submit any continuing education hours.]

{(10)} A person whose permit has expired for not more than two years may renew the permit by submitting to HHSC:]

{(A)} the permit renewal form;]

{(B)} all accrued renewal fees;]

{(C)} proof of having earned, during the expired period, seven hours in an approved continuing education program for each year or part of a year that the permit has been expired; and]

{(D)} proof of having earned, before expiration of the permit, seven hours in an approved continuing education program as required in paragraph (5) of this subsection.]

{(11)} A permit that is not renewed during the two years after expiration may not be renewed.]

{(12)} HHSC issues notices of permit renewal approval, disapproval, or deficiency must be in accordance with subsection (q) of this section.]

{(m)} Changes:]

{(1)} A medication aide must notify HHSC within 30 days after changing his or her address or name.]

{(2)} HHSC replaces a lost, damaged, or destroyed permit upon receipt of a completed duplicate permit request form and permit replacement fee.]

{(n)} Fees:]

{(1)} The schedule of fees is:]

{(A)} combined permit application and examination fee—\$25;]

{(B)} renewal fee—\$15; and]

{(C)} permit replacement fee—\$5.00.]

{(2)} All fees are nonrefundable.]

{(3)} An applicant or home health medication aide must pay the required fee by cashier's check or money order made payable to the Health and Human Services Commission. All fees are nonrefundable, except as provided by Texas Government Code, Chapter 2005.]

{(o)} Training program requirements:]

{(1)} An educational institution accredited by the Texas Workforce Commission or Texas Higher Education Coordinating Board that desires to offer a training program must file an application for approval on an HHSC form. Programs sponsored by state agencies for the training and preparation of its own employees are exempt from the accreditation requirement. An approved institution may offer the training program and a continuing education program.]

{(A)} All signatures on HHSC forms and supporting documentation must be originals.]

{(B)} The application includes:]

{(i)} the anticipated dates of the program;]

{(ii)} the location(s) of the classroom course(s);]

{(iii)} the name of the coordinator of the program;]

{(iv)} a list that includes the address and telephone number of each instructor and any other person responsible for the conduct of the program; and]

{(v)} an outline of the program content and curriculum if the curriculum covers more than HHSC established curricula.]

{(C)} HHSC may conduct an inspection of the classroom site.]

{(D)} HHSC sends notice of approval or proposed disapproval of the application to the program within 30 days of the receipt of a complete application. If the application is proposed to be disapproved due to noncompliance with the requirements of the Texas Health and Safety Code, Chapter 142, Subchapter B, or of this chapter, the reasons for disapproval are given in the notice.]

{(E)} An applicant may request a hearing on a proposed disapproval in writing within ten days of receipt of the notice of the proposed disapproval. The hearing must be in accordance with subsection (r) of this section and the Administrative Procedure Act, Texas Government Code, Chapter 2001. If no request is made, the applicant is deemed to have waived the opportunity for a hearing, and the proposed action may be taken.]

{(2)} The program includes, but is not limited to, the following instruction and training:]

{(A)} procedures for preparation and administration of medications;]

{(B)} responsibility, control, accountability, storage, and safeguarding of medications;]

{(C)} use of reference material;]

{(D)} documentation of medications in the client's clinical records, including PRN medications;]

{(E)} minimum licensing standards for agencies covering pharmaceutical service, nursing service, and clinical records;]

{(F)} federal and state certification standards for participation under the Social Security Act, Title XVIII (Medicare), pertaining to pharmaceutical service, nursing service, and clinical records;]

{(G)} lines of authority in the agency, including agency personnel who are immediate supervisors;]

{(H)} responsibilities and liabilities associated with the administration and safeguarding of medications;]

{(I)} allowable and prohibited practices of a medication aide in the administration of medication;]

{(J)} drug reactions and side effects of medications commonly administered to home health clients;]

{(K)} instruction on universal precautions; and]

{(L)} the provisions of this chapter.]

{(3)} The program consists of 140 hours in the following order: 100 hours of classroom instruction and training, 20 hours of return skills demonstration laboratory, ten hours of clinical experience includ-

ing clinical observation and skills demonstration under the supervision of an RN in an agency, and ten more hours in the return skills demonstration laboratory. A classroom instruction and training or laboratory hour is 50 minutes of actual classroom instruction or training or laboratory time.]

[(A) Class time will not exceed four hours in a 24-hour period.]

[(B) The completion date of the program must be a minimum of 60 days and a maximum of 180 days from the starting date of the program.]

[(C) Each program must follow the curricula established by HHSC.]

[(4) At least seven days before the commencement of each program, the coordinator must notify HHSC in writing of the starting date, the ending date, the daily hours of the program, and the projected number of students.]

[(5) A change in any information presented by the program in an approved application including, but not limited to, location, instructorship, and content must be approved by HHSC before the program's effective date of the change.]

[(6) The program instructors of the classroom instruction or training hours must be an RN and registered pharmacist.]

[(A) The nurse instructor must have a minimum of two years of full-time experience in caring for the elderly, chronically ill, or pediatric clients or been employed full time for a minimum of two years as an RN with a home and community support services agency. An instructor in a school of nursing may request a waiver of the experience requirement.]

[(B) The pharmacist instructor must have a minimum of one year of experience and be currently employed as a practicing pharmacist.]

[(7) The coordinator must provide clearly defined and written policies regarding each student's clinical experience to the student, the administrator, and the supervising nurse of the agency used for the clinical experience.]

[(A) The clinical experience must be counted only when the student is observing or involved in functions involving medication administration and under the direct, contact supervision of an RN.]

[(B) The coordinator is responsible for final evaluation of the student's clinical experience.]

[(8) Upon successful completion of the program, each program issues to each student a certificate of completion, including the program's name, the student's name, the date of completion, and the signature of the program coordinator.]

[(9) Within 15 days after completion of the course, and prior to scheduling the exam, each program must inform HHSC on the HHSC class roster form of the satisfactory completion for each student.]

[(p) Continuing education. The continuing education training program is as follows.]

[(1) The program must consist of at least seven clock hours of classroom instruction.]

[(2) The instructor must meet the requirements in subsection (o)(6) of this section.]

[(3) Each program must follow the curricula established by HHSC.]

[(4) Within 15 days after completion of the course, each program must inform HHSC on the HHSC class roster form of the name of each medication aide who has completed the course.]

[(q) Processing procedures. HHSC complies with the following procedures in processing applications of home health medication aide permits and renewal of permits.]

[(1) The following periods of time apply from the date of receipt of an application until the date of issuance of a written notice that the application is complete and accepted for filing or that the application is deficient and additional specific information is required. A written notice stating that the application has been approved may be sent in lieu of the notice of acceptance of a complete application. The time periods are:]

[(A) letter of acceptance of an application for a home health medication aide permit—14 days; and]

[(B) letter of application or renewal deficiency—14 days.]

[(2) The following periods of time shall apply from the receipt of the last item necessary to complete the application until the date of issuance of written notice approving or denying the application. The time periods for denial include notification of proposed decision and of the opportunity, if required, to show compliance with the law and of the opportunity for a formal hearing. An application is not considered complete until the required documentation and fee have been submitted by the applicant. The time periods are as follows:]

[(A) the issuance of an initial permit—90 days;]

[(B) the letter of denial for a permit—90 days; and]

[(C) the issuance of a renewal permit—20 days.]

[(3) In the event an application is not processed in the time period stated in paragraphs (1) and (2) of this subsection, the applicant has the right to request reimbursement of all fees paid in that particular application process. Request for reimbursement is made to the Home Health Medication Aide Permit Program. If the director of the Home Health Medication Aide Permit Program does not agree that the time period has been violated or finds that good cause existed for exceeding the time period, the request will be denied.]

[(4) Good cause for exceeding the time period exists if the number of applications for initial home health medication aide permits and renewal permits exceeds by 15 percent or more the number of applications processed in the same calendar quarter of the preceding year; another public or private entity relied upon by HHSC in the application process caused the delay; or any other condition exists giving HHSC good cause for exceeding the time period.]

[(5) If a request for reimbursement under paragraph (3) of this subsection is denied by the director of the Home Health Medication Aide Permit Program, the applicant may appeal to the HHSC commissioner for a timely resolution of any dispute arising from a violation of the time periods. The applicant must give written notice to the HHSC commissioner that the applicant requests full reimbursement of all fees paid because the application was not processed within the applicable time period. The applicant must mail the reimbursement request to Health and Human Services Commission, John H. Winters Human Services Complex, 701 W. 51st St., P.O. Box 149030, Austin, Texas 78714-9030. The director of the Home Health Medication Aide Permit Program must submit a written report of the facts related to the processing of the application and of any good cause for exceeding the

applicable time period to the HHSC commissioner. The HHSC commissioner provides written notice of the commissioner's decision to the applicant and the director of the Home Health Medication Aide Permit Program. An appeal is decided in the applicant's favor if the applicable time period was exceeded and good cause was not established. If the appeal is decided in favor of the applicant, HHSC reimburses, in full, all fees paid in that particular application process.]

[(f) Denial, suspension, or revocation.]

[(1) HHSC may deny, suspend, emergency suspend, or revoke a permit or program approval if the medication aide or program fails to comply with any provision of the Texas Health and Safety Code, Chapter 142, Subchapter B, or this chapter.]

[(2) HHSC may also take action under paragraph (1) of this subsection for fraud, misrepresentation, or concealment of material fact on any documents required to be submitted to HHSC or required to be maintained or complied by the medication aide or program pursuant to this chapter.]

[(3) HHSC may suspend or revoke an existing permit or program approval or disqualify a person from receiving a permit or program approval because of a person's criminal history that HHSC determines is a basis for denying the permit under §557.121 of this chapter (relating to Permitting of Persons with Criminal Backgrounds).]

[(4) If HHSC proposes to deny, suspend, or revoke a home health medication aide permit or to rescind a home health medication aide program approval, HHSC notifies the medication aide or home health medication aide program by certified mail, return receipt requested, of the reasons for the proposed action and offers the medication aide or home health medication aide program an opportunity for a hearing.]

[(A) The medication aide or home health medication aide program must request a hearing within 15 days after receipt of the notice. Receipt of notice is presumed to occur on the tenth day after the notice is mailed to the last address known to HHSC unless another date is reflected on a United States Postal Service return receipt.]

[(B) The request must be in writing and submitted to the Health and Human Services Commission, Medication Aide Program, Mail Code E-416, P.O. Box 149030, Austin, Texas 78714-9030.]

[(C) If the medication aide or home health medication aide program does not request a hearing, in writing, 15 days after receipt of the notice, the medication aide or home health medication aide program is deemed to have waived the opportunity for a hearing and the proposed action is taken.]

[(5) HHSC may suspend a permit to be effective immediately when the health and safety of persons are threatened. HHSC notifies the medication aide of the emergency action by certified mail, return receipt requested, or personal delivery of the notice and of the effective date of the suspension and the opportunity for the medication aide to request a hearing.]

[(6) All hearings are governed by Texas Government Code, Chapter 2001, and 1 TAC §§357.481 - 357.490.]

[(7) If the medication aide or program fails to appear or be represented at the scheduled hearing, the medication aide or program has waived the right to a hearing and the proposed action is taken.]

[(8) If HHSC suspends a home health medication aide permit, the suspension remains in effect until HHSC determines that the reason for suspension no longer exists, revokes the permit, or determines not to renew the permit. HHSC investigates before making a determination.]

[(A) During the time of suspension, the suspended medication aide must return the permit to HHSC.]

[(B) If a suspension overlaps a renewal date, the suspended medication aide may comply with the renewal procedures in this chapter; however, HHSC does not renew the permit until HHSC determines that the reason for suspension no longer exists.]

[(9) If HHSC revokes or does not renew a permit, a person may reapply for a permit by complying with the requirements and procedures in this chapter at the time of reapplication.]

[(A) HHSC may refuse to issue a permit if the reason for revocation or nonrenewal continues to exist.]

[(B) When a permit is revoked or not renewed, a medication aide must immediately return the permit to HHSC.]

§557.129. *Alternate Licensing Requirements for Military Service.*

(a) Fee waiver based on military experience.

(1) HHSC waives the combined permit application and examination fee described in §557.109(c)(1)(A) of this chapter (relating to Application Procedures) [and §557.128(n)(1)(A) of this chapter (relating to Home Health Medication Aides)] and the permit application fee described in §557.125(g)(1) [§557.125(f)(1)] of this chapter (relating to Requirements for Corrections Medication Aides) for an applicant if HHSC receives and approves a request for a waiver of fees through the online portal from the applicant in accordance with this subsection.

(2) To request a waiver of fees under this subsection, an applicant must submit a written request for a waiver with the applicant's application for a permit submitted to HHSC through the online portal in accordance with this section. The applicant must include with the request:

(A) documentation of the applicant's status as a military service member, military veteran, or military spouse that is acceptable to HHSC;

(B) documentation of the type and dates of the service, training, and education the applicant received and an explanation as to why the applicant's military service, training, and [or] education substantially meets all of the requirements for a permit under this chapter; and

(C) for status as a military spouse:

(i) a copy of a marriage certificate issued to the applicant by a state of the United States or a foreign government; and

(ii) a copy of a current military service order issued to the applicant's spouse by the armed forces of the United States, the State of Texas, or another state.

(3) Documentation of military status that is acceptable to HHSC includes:

(A) for status as a military service member, a copy of a current military service order issued to the applicant by the armed forces of the United States, the State of Texas, or another state; and

(B) for status as a military veteran, a copy of a military service discharge order issued to the applicant by the armed forces of the United States, the State of Texas, or another state.

(4) If HHSC requests additional documentation, the applicant must submit the requested documentation.

(5) HHSC approves a request for a waiver of fees submitted in accordance with this subsection if HHSC determines that the applicant is a military service member or a military veteran and the

applicant's military service, training, and [or] education substantially meet [meets] all of the requirements for licensure under this chapter.

(b) Fee waiver based on reciprocity.

(1) HHSC waives the combined permit application and examination fee described in §557.109(c)(1)(A) of this chapter [and §557.128(n)(1)(A) of this chapter] and the permit application fee described in §557.125(g)(1) [§557.125(f)(1)] of this chapter for an applicant if HHSC receives and approves a request through the online portal for a waiver of fees from the applicant in accordance with this subsection.

(2) To request a waiver of the fee under this subsection, an applicant must include a written request for a waiver of the fee with the applicant's application that is submitted to HHSC through the online portal in accordance with §557.107(f) (relating to Training Requirements; Nursing Graduates; Reciprocity) [§557.128(h)] of this chapter. The applicant must include with the request documentation of the applicant's status as a military service member, military veteran, or military spouse that is acceptable to HHSC.

(3) Documentation of military status that is acceptable to HHSC includes:

(A) for status as a military service member, a copy of a current military service order issued to the applicant by the armed forces of the United States, the State of Texas, or another state;

(B) for status as a military veteran, a copy of a military service discharge order issued to the applicant by the armed forces of the United States, the State of Texas, or another state; and

(C) for status as a military spouse:

(i) a copy of a marriage certificate issued to the applicant by a state of the United States or a foreign government; and

(ii) a copy of a current military service order issued to the applicant's spouse by the armed forces of the United States, the State of Texas, or another state.

(4) If HHSC requests additional documentation, the applicant must submit the requested documentation.

(5) HHSC approves a request for a waiver of the fee submitted in accordance with this subsection if HHSC determines that:

(A) the applicant holds a license, registration, certificate, or permit as a medication aide in good standing in another jurisdiction with licensing requirements substantially equivalent to or that exceed the requirements for a permit under this chapter; and

(B) the applicant is a military service member, a military veteran, or a military spouse.

(c) Additional time for permit renewal.

(1) HHSC gives a medication aide an additional two years to complete the permit renewal requirements described in §557.115 of this chapter (relating to Permit Renewal) if HHSC receives and approves through the online portal a request for additional time to complete the permit renewal requirements from a medication aide in accordance with this subsection.

(2) To request additional time to complete permit renewal requirements, a medication aide must:

(A) submit a written request for additional time to HHSC through the online portal before the expiration date of the medication aide's permit; and

(B) include, along with the request, documentation of the medication aide's status as a military service member that is acceptable to HHSC, which includes a copy of a current military service order issued to the medication aide by the armed forces of the United States, the State of Texas, or another state.

(3) If HHSC requests additional documentation, the medication aide must submit the requested documentation.

(4) HHSC approves a request for two additional years to complete permit renewal requirements submitted in accordance with this subsection if HHSC determines that the medication aide is a military service member, except HHSC does not approve a request if HHSC granted the medication aide a previous extension and the medication aide has not completed the permit renewal requirements during the two-year extension period.

(5) If a medication aide does not submit the written request described by paragraph (2) of this subsection before the expiration date of the medication aide's permit, HHSC will consider a request after the expiration date of the permit if the medication aide establishes to the satisfaction of HHSC that the request was not submitted before the expiration date of the medication aide's permit because the medication aide was serving as a military service member at the time the request was due.

(d) Renewal of expired permit.

(1) HHSC renews an expired permit if HHSC receives and approves a request for renewal from a former medication aide through the online portal in accordance with this subsection.

(2) To request renewal of an expired permit, a former medication aide must submit a written request with a permit renewal application through the online portal within five years after the former medication aide's permit expired. The former medication aide must include with the request documentation of the former medication aide's status as a military service member, military veteran, or military spouse that is acceptable to HHSC.

(3) Documentation of military status that is acceptable to HHSC includes:

(A) for status as a military service member, a copy of a current military service order issued to the former medication aide by the armed forces of the United States, the State of Texas, or another state;

(B) for status as a military veteran, a copy of a military service discharge order issued to the former medication aide by the armed forces of the United States, the State of Texas, or another state; and

(C) for status as a military spouse:

(i) a copy of a marriage certificate issued to the former medication aide by a state of the United States or a foreign government; and

(ii) a copy of a current military service order issued to the former medication aide's spouse by the armed forces of the United States, the State of Texas, or another state.

(4) If HHSC requests additional documentation, the former medication aide must submit the requested documentation.

(5) HHSC approves a request for renewal of an expired permit submitted in accordance with this subsection if HHSC determines that:

(A) the former medication aide is a military service member, military veteran, or military spouse;

(B) the former medication aide has not committed an offense listed in Texas Health and Safety Code §250.006(a) or (c) [§250.006(a)] and has not committed an offense listed in Texas Health and Safety Code §250.006(b) during the five years before the date the former medication aide submitted the initial permit application;

(C) the former medication aide is not listed on the EMR; and

(D) the former medication aide is not listed with revoked or suspended status on the NAR.

(e) Recognition of Out-of-State Permit of Military Spouse.

(1) A military spouse may engage in the practice of a medication aide in Texas without obtaining a permit, according to the application requirements of §557.103 of this chapter (relating to Requirements for Administering Medications), §557.125 of this chapter (relating to Requirements for Corrections Medication Aides) or §557.128 of this chapter (relating to Home Health Medication Aides), if the spouse:

(A) is currently licensed in good standing by another jurisdiction that has permitting requirements substantially equivalent to the requirements for a permit in Texas;

(B) notifies HHSC in writing of the spouse's intent to practice in Texas;

(C) submits to HHSC proof of the spouse's residence in this state and a copy of the spouse's military identification; and

(D) receives from HHSC:

(i) confirmation that HHSC has verified the spouse's permit in the other jurisdiction; and

(ii) a permit to practice as a medication aide in Texas.

(2) HHSC will review and evaluate the following criteria when determining whether another state's permitting requirements are substantially equivalent to the requirement for a permit under the statutes and regulations of this state:

(A) whether the other state requires an applicant to pass an examination that demonstrates competence in the field to obtain the permit;

(B) whether the other state requires an applicant to meet any experience qualifications to obtain the permit;

(C) whether the other state requires an applicant to meet education qualifications to obtain the permit; and

~~(D) whether the other state denies an application for permit from an applicant who has been convicted of an offense containing elements similar to offenses listed in §557.121(b) of this chapter; and~~

(D) ~~(E)~~ the other state's permit requirements, including the scope of work authorized to be performed under the permit issued by the other state.

(3) The military spouse must submit:

(A) a written request to HHSC for recognition of the spouse's permit issued by the other state;

(B) any form and additional information regarding the permit issued by the other state required by the rules of the specific program or division within HHSC that licenses the business or occupation;

(C) proof of residence in this state, which may include a copy of the permanent change of station order for the military service member to whom the military spouse is married;

(D) a copy of the military spouse's identification card;

(E) proof the military service member is stationed at a military installation in Texas; and

(F) proof that fingerprints submitted to the Texas Department of Public Safety for a Federal Bureau of Investigation [Investigations] criminal background check enable HHSC to confirm that the military spouse is in compliance with other laws and regulations applicable to medication aides in Texas.

(4) Upon verification from the permitting jurisdiction of the military spouse's permit, and if the permit is substantially equivalent to a Texas permit, HHSC shall issue a confirmation that HHSC has verified the spouse's permit in the other jurisdiction and a permit to practice as a medication aide in Texas.

(5) The permit issued under paragraph (4) of this subsection will expire three years from date of issuance or when the military service member is no longer stationed at a military installation in Texas, whichever comes first. The permit [license] issued under paragraph (4) of this subsection may not be renewed.

(6) HHSC replaces a lost, damaged, or destroyed permit for a military spouse as provided in §557.117 of this chapter (relating to Changes). A military spouse with an active medication aide permit can print a duplicate permit through the online portal. A military spouse can request a change of name through the online portal by submitting a name change application [, but the military spouse does not pay the replacement permit fee].

(7) The military spouse shall comply with all applicable laws, rules, and standards of this state, including applicable Texas Health and Safety Code and Texas Administration Code provisions.

(8) HHSC may withdraw or modify the verification letter for reasons including:

(A) the military spouse fails to comply with subsection (i) of this section; or

(B) the military spouse's licensure required under paragraph (1)(A) of this subsection expires or is suspended or revoked in another jurisdiction.

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 February 26, 2024.

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Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: April 14, 2024

For further information, please call: (512) 438-3161

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CHAPTER 744. MINIMUM STANDARDS
FOR SCHOOL-AGE AND BEFORE OR
AFTER-SCHOOL PROGRAMS

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §744.901, concerning What information must I maintain in my personnel records, and §744.1103, concerning What minimum qualifications must each of my employees meet, in Title 26, Texas Administrative Code, Chapter 744, Minimum Standards for School-Age and Before or After-School Programs, Subchapter C, Record Keeping, and Subchapter D, Personnel.

BACKGROUND AND PURPOSE

The proposal is necessary to amend existing rules in Chapter 744 to implement Senate Bill (S.B.) 1469, 88th Legislature, Regular Session, 2023.

S.B. 1469 added §42.0563 to Texas Human Resources Code (HRC) to require any person applying for a position at a child-care facility to complete and submit an affidavit that discloses whether the person has a charge, adjudication, or conviction related to having an inappropriate relationship with a minor; all relevant facts pertaining to any charge, adjudication, or conviction disclosed; and if the disclosure is related to a charge, whether the charge was determined to be true or false. The bill requires HHSC Child Care Regulation (CCR) to create a form to serve as the affidavit.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §744.901 includes adding a subsection to require an operation to maintain in each personnel record the form required by HRC §42.0563; amending language to further distinguish the affidavit required by HRC §42.059 from the one required by HRC §42.0563; renumbering the subsections because a new subsection is being added; making non-substantive changes for better readability and understanding; and updating a reference.

The proposed amendment to §744.1103 includes adding language to require each prospective employee to complete the form required by HRC §42.0563; amending language to further distinguish the affidavit required by HRC §42.059 from the one required by HRC §42.0563; making non-substantive changes for better readability and understanding; and updating a reference.

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, there will be no additional cost to state government as a result of enforcing or administering the rules as proposed. Enforcing or administering the rules does not have foreseeable implications relating to costs or revenues of state or local government.

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 not create a new regulation;
- (6) the proposed rules will expand 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 do not impose any additional costs on small businesses, micro-businesses, or rural communities required to comply with the rules.

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 are necessary to protect the health, safety, and welfare of the residents of Texas; do not impose a cost on regulated persons; and are necessary to comply with state law.

PUBLIC BENEFIT AND COSTS

Rachel Ashworth-Mazerolle, Associate Commissioner for Child Care Regulation, has determined that for each year of the first five years the rule is in effect the public benefit will be increased compliance with statutory requirements; and enhanced child safety.

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 new requirement easily aligns with the current background check process.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to his or her 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

Questions about the content of this proposal may be directed to Ryan Malsbary by email at Ryan.Malsbary@hhs.texas.gov.

Written comments on the proposal may be submitted to Ryan Malsbary, Rules Writer, Child Care Regulation, Health and Human Services Commission, E-550, P.O. Box 149030, Austin, Texas 78714-9030; or by email to CCRRules@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 postmarked or shipped before the last day of the comment period; hand-delivered before 5:00 p.m. on the last working day of the comment period; or 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 23R076" in the subject line.

SUBCHAPTER C. RECORD KEEPING

DIVISION 4. PERSONNEL RECORDS

26 TAC §744.901

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 §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42.

The amendment affects Texas Government Code §531.0055 and HRC §42.042 and §42.0563.

§744.901. *What information must I maintain in my personnel records?*

You must have the following records at the operation and available for review during your hours of operation for each employee, caregiver, substitute, and volunteer as specified in this chapter:

- (1) Documentation showing the dates of the first and last day on the job;
- (2) Documentation showing how the employee meets the minimum age and education qualifications, if applicable;
- (3) A copy of a health card or health care professional's statement verifying the employee is free of active tuberculosis, if required by the regional Texas Department of State Health Services tuberculosis [TB] program or local health authority;
- (4) A notarized [Licensing] Affidavit for Applicants for Employment with a Licensed Operation or Registered Child-Care Home (Form 2985) [form] as specified in Texas Human Resources Code[§] §42.059;
- (5) A Pre-Employment Affidavit for Applicants for Employment at Certain Child Care Operations (Form 2912) as specified in Texas Human Resources Code §42.0563;
- (6) [(5)] A record of training hours, including documentation required by §744.1331 of this chapter (relating to What documentation must I provide to Licensing to verify that employees have met training requirements?);
- (7) [(6)] A statement signed and dated by the employee showing he has received a copy of the operation's:
 - (A) Operational policies; and
 - (B) Personnel policies;
- (8) [(7)] Proof of request for background checks required by [under 40 TAC] Chapter 745, Subchapter F of this title (relating to Background Checks);
- (9) [(8)] A copy of a photo identification;
- (10) [(9)] A copy of the person's [a] current driver's license if the [for each] person [who] transports a child in care; and
- (11) [(10)] A statement signed and dated by the employee verifying the date the employee attended training during orientation that includes an overview regarding the prevention, recognition, and reporting of child maltreatment, as outlined in §744.1303 of this chapter (relating to What must orientation for employees at my operation include?).

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 February 26, 2024.

TRD-202400850

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: April 14, 2024

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



SUBCHAPTER D. PERSONNEL DIVISION 2. EMPLOYEES AND CAREGIVERS

26 TAC §744.1103

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 §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42.

The amendment affects Texas Government Code §531.0055 and HRC §42.042 and §42.0563.

§744.1103. *What minimum qualifications must each of my employees meet?*

Each employee must:

- (1) Meet the requirements in [40 TAC] Chapter 745, Subchapter F of this title (relating to Background Checks);
- (2) Have a current record of a tuberculosis (TB) examination [(TB)], showing the employee is free of contagious TB, if required by the Texas Department of State Health Services or local health authority; [and]
- (3) Complete a notarized [Licensing] Affidavit for Applicants for Employment with a Licensed Operation or Registered Child-Care Home (Form 2985) before you hire the employee, [form] as specified in Texas Human Resources Code[§] §42.059; and
- (4) Complete a Pre-Employment Affidavit for Applicants for Employment at Certain Child Care Operations (Form 2912) before you hire the employee, as specified in Texas Human Resources Code §42.0563.

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 February 26, 2024.

TRD-202400851

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: April 14, 2024

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

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CHAPTER 745. LICENSING
SUBCHAPTER D. APPLICATION PROCESS
DIVISION 3. SUBMITTING THE
APPLICATION MATERIALS

26 TAC §745.243

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §745.243, concerning What does a completed application for a permit include, in Title 26, Texas Administrative Code (TAC), Chapter 745, Licensing, Subchapter D, Application Process.

BACKGROUND AND PURPOSE

The proposal is necessary to amend an existing rule in Chapter 745 to delete a reference to a "notarized Affidavit for Applicants for Employment with a Licensed Operation or Registered Child-Care Home" in the list of required application materials for a registered child-care home. The deletion aligns the rule with Texas Human Resources Code (HRC) §42.059, which requires the affidavit for prospective employees, but does not require it with the application.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §745.243 includes deleting a paragraph in Figure: 26 TAC §745.243 that references a "notarized Affidavit for Applicants for Employment with a Licensed Operation or Registered Child-Care Home" as part of a completed application for a permit to operate a registered child-care home; renumbering the paragraphs in Figure: 26 TAC §745.243 because a paragraph is being deleted; and updating form names and a reference.

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, there will be no additional cost to state government as a result of enforcing or administering the rules as proposed. Enforcing or administering the rules does not have foreseeable implications relating to costs or revenues of state or local government.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rules 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 a new regulation;
- (6) the proposed rule will not expand existing regulations;
- (7) the proposed rule will not change the number of individuals subject to the rules; and
- (8) the proposed rule 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 do not impose any additional costs on small businesses, micro-businesses, or rural communities required to comply with the rules.

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 this rule because the rule is necessary to protect the health, safety, and welfare of the residents of Texas; does not impose a cost on regulated persons; and is necessary to comply with state law.

PUBLIC BENEFIT AND COSTS

Rachel Ashworth-Mazerolle, Associate Commissioner for Child Care Regulation, has determined that for each year of the first five years the rule is in effect the public benefit will be increased compliance with statutory requirements; and enhanced child safety.

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 rule because the new requirement easily aligns with the current background check process.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to his or her 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

Questions about the content of this proposal may be directed to Ryan Malsbary by email at Ryan.Malsbary@hhs.texas.gov.

Written comments on the proposal may be submitted to Ryan Malsbary, Rules Writer, Child Care Regulation, Health and Human Services Commission, E-550, P.O. Box 149030, Austin, Texas 78714-9030; or by email to CCRRules@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 postmarked or shipped before the last day of the comment period; hand-delivered before 5:00 p.m. on the last working day of the comment period; or 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 23R076" 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 §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42.

The amendment affects Texas Government Code §531.0055 and HRC §42.042 and §42.059.

§745.243. *What does a completed application for a permit include?*

Application forms vary according to the type of permit. We will provide you with the required forms. Contact your local Licensing office for additional information. The following table outlines the requirements for a completed application:

Figure: 26 TAC §745.243

[Figure: 26 TAC §745.243]

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 February 26, 2024.

TRD-202400852

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: April 14, 2024

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



CHAPTER 746. MINIMUM STANDARDS FOR CHILD-CARE CENTERS

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §746.901, concerning What information must I maintain in my personnel records and §746.1105, concerning What minimum qualifications must each of my child-care center employees meet, in Title 26, Texas Administrative Code, Chapter 746, Minimum Standards for Child-Care Centers, Subchapter C, Record Keeping, and Subchapter D, Personnel.

BACKGROUND AND PURPOSE

The proposal is necessary to amend existing rules in Chapter 746 to implement Senate Bill (S.B.) 1469, 88th Legislature, Regular Session, 2023.

S.B. 1469 added §42.0563 to Texas Human Resources Code (HRC) to require any person applying for a position at a child-care facility to complete and submit an affidavit that discloses whether the person has a charge, adjudication, or conviction related to having an inappropriate relationship with a minor; all relevant facts pertaining to any charge, adjudication, or conviction disclosed; and if the disclosure is related to a charge, whether the charge was determined to be true or false. The bill requires HHSC Child Care Regulation (CCR) to create a form to serve as the affidavit.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §746.901 includes adding a subsection to require an operation to maintain in each personnel record the form required by HRC §42.0563; amending language to further distinguish the affidavit required by HRC §42.059 from the one required by HRC §42.0563; renumbering the subsections because a new subsection is being added; making non-substantive changes for better readability and understanding; and updating a reference.

The proposed amendment to §746.1105 includes adding language to require each prospective employee to complete the form required by HRC §42.0563; amending language to further distinguish the affidavit required by HRC §42.059 from the one required by HRC §42.0563; making non-substantive changes for better readability and understanding; and updating a reference.

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, there will be no additional cost to state government as a result of enforcing or administering the rules as proposed. Enforcing or administering the rules does not have foreseeable implications relating to costs or revenues of state or local government.

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 not create a new regulation;
- (6) the proposed rules will expand 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 do not impose any additional costs on small businesses, micro-businesses, or rural communities required to comply with the rules.

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 are necessary to protect the health, safety, and welfare of the residents of Texas; do not impose a cost on regulated persons; and are necessary to comply with state law.

PUBLIC BENEFIT AND COSTS

Rachel Ashworth-Mazerolle, Associate Commissioner for Child Care Regulation, has determined that for each year of the first five years the rule is in effect the public benefit will be increased compliance with statutory requirements; and enhanced child safety.

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 new requirement easily aligns with the current background check process .

TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to his or her 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

Questions about the content of this proposal may be directed to Ryan Malsbary by email at Ryan.Malsbary@hhs.texas.gov.

Written comments on the proposal may be submitted to Ryan Malsbary, Rules Writer, Child Care Regulation, Health and Human Services Commission, E-550, P.O. Box 149030, Austin, Texas 78714-9030; or by email to CCRRules@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 postmarked or shipped before the last day of the comment period; hand-delivered before 5:00 p.m. on the last working day of the comment period; or 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 23R076" in the subject line.

SUBCHAPTER C. RECORD KEEPING

DIVISION 4. PERSONNEL RECORDS

26 TAC §746.901

STATUTORY AUTHORITY

The proposed 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 §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42.

The amendment affects Texas Government Code §531.0055 and HRC §42.042 and §42.0563.

§746.901. What information must I maintain in my personnel records?

You must have the following records at the child-care center and available for review during hours of operation for each employee, caregiver, substitute, and volunteer as specified in this chapter:

- (1) Documentation showing the dates of the first and last day on the job;
- (2) Documentation showing how the employee meets the minimum age and education qualifications, if applicable;
- (3) A copy of a health card or health care professional's statement verifying the employee is free of active tuberculosis, if required by the regional Texas Department of State Health Services TB program or local health authority;
- (4) A notarized Licensing *Affidavit for Applicants for Employment with a Licensed Operation or Registered Child-Care Home (Form 2985)* [form] as specified in Texas Human Resources Code[,] §42.059;

(5) A Pre-Employment Affidavit for Applicants for Employment at Certain Child Care Operations (Form 2912) as specified in Texas Human Resources Code §42.0563;

(6) [(5)] A record of training hours, including documentation required by §746.1329 of this chapter (relating to What documentation must I provide to Licensing to verify that employees have met training requirements?);

(7) [(6)] A statement signed and dated by the employee showing he has received a copy of the child-care center's:

- (A) Operational policies; and
- (B) Personnel policies;

(8) [(7)] Proof of request for background checks required by [under 40 TAC] Chapter 745, Subchapter F of this title (relating to Background Checks);

(9) [(8)] A copy of a photo identification;

(10) [(9)] A copy of the person's [a] current driver's license if the [for each] person [who] transports a child in care; and

(11) [(10)] A statement signed and dated by the employee verifying the date the employee attended training during orientation that includes an overview of your policy on the prevention, recognition, and reporting of child maltreatment outlined in §746.1303 of this chapter (relating to What must orientation for employees at my child-care center include?).

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 February 26, 2024.

TRD-202400853

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: April 14, 2024

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



SUBCHAPTER D. PERSONNEL

DIVISION 2. CHILD-CARE CENTER

EMPLOYEES AND CAREGIVERS

26 TAC §746.1105

STATUTORY AUTHORITY

The proposed 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 §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42.

The amendment affects Texas Government Code §531.0055 and HRC §42.042 and §42.0563.

§746.1105. *What minimum qualifications must each of my child-care center employees meet?*

Each child-care center employee must:

(1) Meet the requirements in [40 TAC] Chapter 745, Subchapter F of this title (relating to Background Checks);

(2) Have a current record of a tuberculosis examination, showing the employee is free of contagious TB, if required by the Texas Department of State Health Services or local health authority; ~~and~~

(3) Complete a notarized [~~Licensing~~] *Affidavit for Applicants for Employment with a Licensed Operation or Registered Child-Care Home (Form 2985)* before you hire the employee, ~~form~~ as specified in Human Resources Code[,] §42.059; and

(4) Complete a *Pre-Employment Affidavit for Applicants for Employment at Certain Child Care Operations (Form 2912)* before you hire the employee, as specified in Texas Human Resources Code §42.0563.

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 February 26, 2024.

TRD-202400854

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: April 14, 2024

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



CHAPTER 747. MINIMUM STANDARDS FOR CHILD-CARE HOMES

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §747.901, concerning What information must I maintain in my personnel records, and §747.1207, concerning What minimum qualifications must an assistant caregiver meet, in Title 26, Texas Administrative Code, Chapter 747, Minimum Standards for Child-Care Homes, Subchapter C, Record Keeping, and Subchapter D, Personnel.

BACKGROUND AND PURPOSE

The proposal is necessary to amend existing rules in Chapter 747 to implement Senate Bill (S.B.) 1469, 88th Legislature, Regular Session, 2023.

S.B. 1469 added §42.0563 to Texas Human Resources Code (HRC) to require any person applying for a position at a child-care facility to complete and submit an affidavit that discloses whether the person has a charge, adjudication, or conviction related to having an inappropriate relationship with a minor; all relevant facts pertaining to any charge, adjudication, or conviction disclosed; and if the disclosure is related to a charge, whether the charge was determined to be true or false. The bill requires HHSC Child Care Regulation (CCR) to create a form to serve as the affidavit.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §747.901 includes adding a subsection to require an operation to maintain in each personnel record the form required by HRC §42.0563; amending language to further distinguish the affidavit required by HRC §42.059 from the one required by HRC §42.0563; renumbering the subsections because a new subsection is being added; making non-substantive changes for better readability and understanding; and updating a reference.

The proposed amendment to §747.1207 includes adding language to require each prospective assistant caregiver to complete the form required by HRC §42.0563; amending language to further distinguish the affidavit required by HRC §42.059 from the one required by HRC §42.0563; making non-substantive changes for better readability and understanding; and updating a reference.

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, there will be no additional cost to state government as a result of enforcing or administering the rules as proposed. 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 not create a new regulation;
- (6) the proposed rules will expand 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 do not impose any additional costs on small businesses, micro-businesses, or rural communities required to comply with the rules.

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 are necessary to protect the health, safety, and welfare of the residents of Texas; do not impose a cost on regulated persons; and are necessary to comply with state law.

PUBLIC BENEFIT AND COSTS

Rachel Ashworth-Mazerolle, Associate Commissioner for Child Care Regulation, has determined that for each year of the first five years the rule is in effect the public benefit will be increased compliance with statutory requirements; and enhanced child safety.

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 new requirement easily aligns with the current background check process .

TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to his or her 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

Questions about the content of this proposal may be directed to Ryan Malsbary by email at Ryan.Malsbary@hhs.texas.gov.

Written comments on the proposal may be submitted to Ryan Malsbary, Rules Writer, Child Care Regulation, Health and Human Services Commission, E-550, P.O. Box 149030, Austin, Texas 78714-9030; or by email to CRRRules@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 postmarked or shipped before the last day of the comment period; hand-delivered before 5:00 p.m. on the last working day of the comment period; or 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 23R076" in the subject line.

SUBCHAPTER C. RECORD KEEPING DIVISION 4. RECORDS ON CAREGIVERS AND HOUSEHOLD MEMBERS

26 TAC §747.901

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 §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42.

The amendment affects HRC §531.0055 and HRC §42.042 and §42.0563.

§747.901. *What information must I maintain in my personnel records?*

You must keep at least the following at the child-care home for each assistant caregiver and substitute caregiver, as specified in this chapter:

- (1) Documentation showing the dates of the first and last day on the job;
- (2) Documentation showing how the caregiver meets the minimum age and education qualifications, if applicable;

(3) A copy of a health card or health care professional's statement verifying the caregiver is free of active tuberculosis, if required by the regional Texas Department of State Health Services tuberculosis [TB] program or local health authority;

(4) A notarized Licensing *Affidavit for Applicants for Employment with a Licensed Operation or Registered Child-Care Home (Form 2985)* [form] as specified in Texas Human Resources Code[;] §42.059;

(5) *A Pre-Employment Affidavit for Applicants for Employment at Certain Child Care Operations* (Form 2912) as specified in Texas Human Resources Code §42.0563;

(6) [(5)] A record of training hours, including documentation required by §747.1327 of this chapter (relating to What documentation must I provide to Licensing to verify that caregivers have met training requirements?);

(7) [(6)] Proof of request for all background checks required by [under 40 TAC] Chapter 745, Subchapter F of this title (relating to Background Checks);

(8) [(7)] A copy of a photo identification;

(9) [(8)] A copy of the person's [a] current driver's license if the [for each] person or caregiver [that] transports a child in care; and

(10) [(9)] A statement signed and dated by the caregiver in a licensed child-care home verifying the date the caregiver attended training during orientation that includes an overview regarding the prevention, recognition, and reporting of child maltreatment, as specified in §747.1301 of this chapter (relating to What must orientation for caregivers at my child-care home include?)

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 February 26, 2024.

TRD-202400855

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: April 14, 2024

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



SUBCHAPTER D. PERSONNEL DIVISION 3. ASSISTANT CAREGIVERS AND SUBSTITUTE CAREGIVERS

26 TAC §747.1207

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 §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42.

The amendment affects HRC §531.0055 and HRC §42.042 and §42.0563.

§747.1207. *What minimum qualifications must an assistant caregiver meet?*

A person must meet the following qualifications [in order] to be an assistant caregiver who is counted in the child/caregiver ratio:

(1) Be 18 years old, except as provided by §747.1211 of this division (relating to When may I employ a person under the age of 18 or a person who does not have a high school diploma or equivalent as a caregiver?);

(2) Except as provided by §747.1211 of this division, have a:

(A) High school diploma;

(B) High school equivalent; or

(C) High school certificate of coursework completion, as defined in Texas Education Code[;] §28.025(d);

(3) Have completed orientation to your child-care home;

(4) Meet the requirements in [40 TAC] Chapter 745, Subchapter F of this title (relating to Background Checks);

(5) Have a current record of a tuberculosis (TB) examination showing the caregiver is free of contagious TB, if required by the Texas Department of State Health Services or local health authority; [and]

(6) Complete a notarized Licensing *Affidavit for Applicants for Employment with a Licensed Operation or Registered Child-Care Home* (Form 2985) before you allow the person to be an assistant caregiver, [form] as specified in Human Resources Code[;] §42.059; and[;]

(7) Complete a *Pre-Employment Affidavit for Applicants for Employment at Certain Child Care Operations* (Form 2912) before you allow the person to be an assistant caregiver, as specified in Texas Human Resources Code §42.0563.

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 February 26, 2024.

TRD-202400856

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: April 14, 2024

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



CHAPTER 748. MINIMUM STANDARDS FOR GENERAL RESIDENTIAL OPERATIONS

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §748.363, concerning What information must the personnel record of an employee include and §748.505, concerning What minimum qualifications must all employees meet, in Title 26, Texas Administrative Code, Chapter 748, Subchapter D, Reports and Record Keeping, and Subchapter E, Personnel.

BACKGROUND AND PURPOSE

The proposal is necessary to amend existing rules in Chapter 748 to implement Senate Bill (S.B.) 1469, 88th Legislature, Regular Session, 2023.

S.B. 1469 added §42.0563 to Texas Human Resources Code (HRC) to require any person applying for a position at a child-care facility to complete and submit an affidavit that discloses whether the person has a charge, adjudication, or conviction related to having an inappropriate relationship with a minor; all relevant facts pertaining to any charge, adjudication, or conviction disclosed; and if the disclosure is related to a charge, whether the charge was determined to be true or false. The bill requires HHSC Child Care Regulation (CCR) to create a form to serve as the affidavit.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §748.363 includes adding a subsection to require an operation to maintain in each personnel record the form required by HRC §42.0563; amending language to further distinguish the affidavit required by HRC §42.059 from the one required by HRC §42.0563; and renumbering subsections because a new subsection is being added.

The proposed amendment to §748.505 includes adding language to require each employee to complete the form required by HRC §42.0563; amending language to further distinguish the affidavit required by HRC §42.059 from the one required by HRC §42.0563; and renumbering the paragraphs in subsection (b) because a new paragraph is being added; and updating a reference.

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, there will be no additional cost to state government as a result of enforcing or administering the rules as proposed. Enforcing or administering the rules does not have foreseeable implications relating to costs or revenues of 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 not create a new regulation;

(6) the proposed rules will expand 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 do not impose any additional costs

on small businesses, micro-businesses, or rural communities required to comply with the rules.

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 are necessary to protect the health, safety, and welfare of the residents of Texas; do not impose a cost on regulated persons; and are necessary to comply with state law.

PUBLIC BENEFIT AND COSTS

Rachel Ashworth-Mazerolle, Associate Commissioner for Child Care Regulation, has determined that for each year of the first five years the rule is in effect the public benefit will be increased compliance with statutory requirements; and enhanced child safety.

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 new requirement easily aligns with the current background check process .

TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to his or her 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

Questions about the content of this proposal may be directed to Ryan Malsbary by email at Ryan.Malsbary@hhs.texas.gov.

Written comments on the proposal may be submitted to Ryan Malsbary, Rules Writer, Child Care Regulation, Health and Human Services Commission, E-550, P.O. Box 149030, Austin, Texas 78714-9030; or by email to CCRRules@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 postmarked or shipped before the last day of the comment period; hand-delivered before 5:00 p.m. on the last working day of the comment period; or 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 23R076" in the subject line.

SUBCHAPTER D. REPORTS AND RECORD KEEPING

DIVISION 3. PERSONNEL RECORDS

26 TAC §748.363

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 §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective

Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42.

The amendment affects Texas Government Code §531.0055 and HRC §42.042 and §42.0563.

§748.363. *What information must the personnel record of an employee include?*

For each employee, the personnel record must include:

- (1) Documentation showing the date of employment;
- (2) Documentation showing how the person meets the minimum age and qualifications for the position;
- (3) Documentation that your operation has:
 - (A) Verified employment history as required by §748.751 of this chapter (relating to What are the requirements for obtaining and verifying an applicant's employment history?); and
 - (B) Conducted reference checks as required by §748.753 of this chapter (relating to What are the requirements for completing an applicant's reference checks?);
- (4) A current job description;
- (5) Evidence of any valid professional licensures, certifications, or registrations the person must have to meet qualifications for the position, such as a current renewal card or a letter from the credentialing entity verifying that the person has met the required renewal criteria;
- (6) A copy of the record of tuberculosis screening conducted prior to the person having contact with children in care showing that the employee is free of contagious tuberculosis as provided in §748.1583 of this title (relating to Who must have a tuberculosis (TB) examination?);
- (7) A notarized [~~Licensing~~] *Affidavit for Applicants for Employment with a Licensed Operation or Registered Child-Care Home (Form 2985)* [~~form~~] as specified in Texas Human Resources Code §42.059;
- (8) *A Pre-Employment Affidavit for Applicants for Employment at Certain Child Care Operations (Form 2912)* as specified in Texas Human Resources Code §42.0563;
- (9) [~~(8)~~] A statement signed and dated by the employee documenting that the employee has read a copy of the operational policies required by §748.103 of this title (relating to What policies and procedures must I submit for Licensing's approval as part of the application process?);
- (10) [~~(9)~~] A statement signed and dated by the employee indicating the employee must immediately report any suspected incident of child abuse, neglect, or exploitation to the Texas Abuse and Neglect Hotline and to the operation's administrator or administrator's designee;
- (11) [~~(10)~~] Proof of request for background checks required by Chapter 745, Subchapter F of this title (relating to Background Checks);
- (12) [~~(11)~~] For each person who transports a child, a copy of:
 - (A) The person's valid driver's license; or
 - (B) A driver's license check conducted through the Texas Department of Public Safety within the last 12 months;
- (13) [~~(12)~~] A record of training, including the date of the training, the number of training hours, and the curriculum covered;

(14) [(13)] Any documentation of the person's performance with the operation; and

(15) [(14)] The date and reason for the person's separation, if applicable.

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 February 26, 2024.

TRD-202400857

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: April 14, 2024

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



SUBCHAPTER E. PERSONNEL DIVISION 1. GENERAL REQUIREMENTS

26 TAC §748.505

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 §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42.

The amendment affects Texas Government Code §531.0055 and HRC §42.042 and §42.0563.

§748.505. *What minimum qualifications must all employees meet?*

(a) An employee's behavior or health status must not present a danger to children in care.

(b) Each employee must:

(1) Meet the requirements in Chapter 745, Subchapter F [of Chapter 745] of this title (relating to Background Checks);

(2) Have a record of a tuberculosis screening showing the employee is free of contagious TB as provided in §748.1583 of this chapter (relating to Who must have a tuberculosis (TB) examination);

(3) Be physically, mentally, and emotionally capable of performing assigned tasks and have the skills necessary to perform assigned tasks;

(4) Complete a notarized [*Licensing*] *Affidavit for Applicants for Employment with a Licensed Operation or Registered Child-Care Home (Form 2985) before you hire the employee [form]*, as specified in Texas Human Resources Code §42.059;

(5) Complete a *Pre-Employment Affidavit for Applicants for Employment at Certain Child Care Operations (Form 2912) before you hire the employee*, as specified in Texas Human Resources Code §42.0563; and

(6) [(5)] Have cleared a pre-employment screening assessment in which you determined the employee's suitability for the employee's position. The screening must have included:

(A) Verification of employment history as required by §748.751 of this subchapter (relating to What are the requirements for obtaining and verifying an applicant's employment history?); and

(B) Reference checks, as required by §748.753 of this subchapter (relating to What are the requirements for completing an applicant's reference checks?).

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 February 26, 2024.

TRD-202400858

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: April 14, 2024

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



TITLE 34. PUBLIC FINANCE

PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

CHAPTER 41. HEALTH CARE AND INSURANCE PROGRAMS

SUBCHAPTER A. RETIREE HEALTH CARE BENEFITS (TRS-CARE)

34 TAC §41.15

The Board of Trustees of the Teacher Retirement System of Texas (TRS) proposes new §41.15 (relating to Optional Dental Benefits Plan) under Subchapter A (relating to Retiree Health Care Benefits (TRS-CARE)) of Chapter 41 in Part 3 of Title 34 of the Texas Administrative Code.

BACKGROUND AND PURPOSE

The purpose of this proposed new rule is to implement Senate Bill (S.B.) 1854, 88th Legislature, Regular Session, 2023.

S.B. 1854 amended Chapter 1575 of the Insurance Code (TRS-Care) by adding a new Section 1575.1601, concerning Group Benefits for Dental and Vision Care, requiring the Board of Trustees ("the trustee") to establish or contract for and make available under the group program an optional plan that provides coverage for dental care.

Proposed new §41.15 implements Insurance Code §1575.1601 by establishing the rules that will apply to the optional dental benefits plan, including eligibility terms, definition of the plan year, enrollment and disenrollment terms, payment of contributions towards coverage, effective dates of coverage, expulsion for fraud, and competitive bidding.

FISCAL NOTE

Don Green, TRS Chief Financial Officer, has determined that for each year of the first five years the proposed new rule will be in effect, there will be no foreseeable fiscal implications for state or

local governments as a result of administering the proposed new rule.

PUBLIC COST/BENEFIT

For each year of the first five years the proposed new rule will be in effect, Mr. Green also has determined that the public benefit anticipated as a result of adopting the new rule will be to provide guidance with respect to TRS' implementation of the optional dental plan required under new Insurance Code §1575.1601. Mr. Green has also determined that there is no economic cost to entities required to comply with the proposed new rule. Further, Mr. Green has determined participants will incur a cost through the payment of premiums only if they choose to participate in an optional dental benefits plan and S.B. 1854 cannot be implemented without these premium payments.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

TRS has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed new rule. Therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under Government Code §2006.002.

LOCAL EMPLOYMENT IMPACT STATEMENT

TRS has determined that there will be no effect on local employment because of the proposed new rule. Therefore, no local employment impact statement is required under Government Code §2001.022.

GOVERNMENT GROWTH IMPACT STATEMENT

TRS has determined that for the first five years the proposed new rule is in effect, the proposed new rule will not create or eliminate any TRS programs; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to TRS; will not eliminate any fees currently paid to TRS; will not expand, limit or repeal an existing regulation; will not increase or decrease the number of individuals subject to the rule's applicability; and will not affect the state's economy.

This proposal creates a new regulation. Proposed §41.15 is a new rule through which TRS, as trustee of the Texas Public School Retired Employees Group Benefits Act created under Chapter 1575 of the Insurance Code, will establish a new optional dental benefits plan of group coverage under Section 1575.1601.

TAKINGS IMPACT ASSESSMENT

TRS has determined that there are no private real property interests affected by the proposed new rule, therefore, a takings impact assessment is not required under Government Code §2007.043.

COSTS TO REGULATED PERSONS

TRS has determined that Government Code §2001.0045 does not apply to the proposed new rule because it does not impose a cost on regulated persons.

COMMENTS

Comments may be submitted in writing to Brian Guthrie, TRS Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register*.

STATUTORY AUTHORITY

The new rule is being proposed under the authority of Chapter 1575, Insurance Code, which establishes the Texas Public School Retired Employees Group Benefits Act (TRS-CARE), §1575.052, which allows the trustee to adopt rules, plans, procedures, and orders reasonably necessary to implement Chapter 1575; Chapter 825, Texas Government Code, which governs the administration of TRS, §825.102, which authorizes the board of trustees to adopt rules for the transaction of the business of the board; and Senate Bill (S.B.) 1854 as enrolled by the 88th Legislature, Regular Session, on May 26, 2023 and effective on September 1, 2023.

CROSS-REFERENCE TO STATUTE

The proposed new rule implements Insurance Code §1575.1601, concerning Group Benefits for Dental and Vision Care.

§41.15. Optional Dental Benefits Plan.

(a) Establishment.

(1) In accordance with Section 1575.1601, Insurance Code, TRS makes available to individuals under the TRS-Care program an optional plan that provides coverage for dental care (hereinafter referred to as an "optional dental benefits plan").

(2) TRS may offer an optional dental benefits plan through an insurance carrier or the optional dental benefits plan may be self-funded.

(3) An optional dental benefits plan may have one or more benefit designs for participants to choose from, as determined by TRS.

(b) Eligibility.

(1) Only retirees, dependents, surviving spouses, and surviving dependent children, as defined under Chapter 1575, Insurance Code, are eligible to enroll in an optional dental benefits plan (hereinafter referred to as "eligible members").

(2) Individuals shall be eligible for an optional dental benefits plan under the same requirements as described in §41.10 of this title (relating to Eligibility to Enroll in the Health Benefits Program Under the Texas Public School Retired Employees Group Benefits Act (TRS-Care)).

(3) Eligible members may enroll in an optional dental benefits plan even if they are not enrolled or applying for enrollment in any other TRS-Care plan at the time of enrollment in an optional dental benefits plan.

(4) If an eligible member is eligible for an optional dental benefits plan as a retiree and also as a dependent of another retiree, the retiree may elect to participate in an optional dental benefits plan as a retiree or as a dependent but cannot participate as both. An eligible member must choose to participate as a retiree or as a dependent.

(c) Plan Year. The plan year for an optional dental benefits plan is from January 1 to December 31 (hereinafter referred to as "plan year").

(d) Enrollment and Disenrollment.

(1) Enrollment. Eligible members desiring to enroll in an optional dental benefits plan must do so within the open enrollment period or during an additional enrollment opportunity.

(A) Open Enrollment.

(i) An eligible member may enroll in an optional dental benefits plan during an open enrollment period established by TRS.

(ii) On behalf of the trustee, the executive director or a designee may prescribe open enrollment periods and the conditions under which eligible members may enroll during an open enrollment period.

(B) Additional Enrollment Opportunities. Individuals shall have the same additional enrollment opportunities for an optional dental benefits plan as those provided under §41.2(a) - (c) of this title (relating to Additional Enrollment Opportunities).

(2) Disenrollment. Eligible members may only disenroll from an optional dental benefits plan during the open enrollment period, with the exception that an eligible member may disenroll during a special enrollment opportunity as described by §41.2(b) of this title.

(3) Enrollment and Disenrollment Process. Eligible members must follow the enrollment and disenrollment processes established by TRS.

(e) Payment of Contributions.

(1) Retirees, surviving spouses, and surviving dependent children, or their representatives (collectively "participants") shall pay monthly contributions, as set by TRS, for their and their dependents' participation in an optional dental benefits plan and may, at TRS' sole discretion, be required to do so through deductions from the participant's TRS annuity payment or through direct payments to TRS or its designee.

(A) In accordance with Section 1575.153, Insurance Code, the participant must, in writing, authorize the trustee to deduct the entirety of the participant's contributions for the participant's coverage under the TRS-Care plan(s) from the participant's TRS annuity payment.

(B) If the amount of the participant's TRS annuity payment is not enough to cover all of the participant's contributions for coverage under the participants TRS-Care plan(s), the participant shall be directly billed by TRS or its designee.

(2) If a participant is required to pay their contributions for an optional dental benefits plan directly to TRS or its designee, failure to timely pay the full amount of a required contribution for coverage will result in termination of the optional dental benefits plan. Participants or eligible members that have lost their coverage due to lack of payment of contribution for coverage may be subject to recoupment by TRS of outstanding contribution amounts, penalties, and be subject to reenrollment conditions prior to reenrollment.

(f) Effective Date of Coverage.

(1) An optional dental benefits plan shall follow the same effective dates of coverage that apply under §41.7(a) - (h) and (j) of this title (relating to Effective Date of Coverage).

(2) In addition, if an eligible member enrolls during a TRS open enrollment period as described in subsection (d)(1)(A) of this section, the effective date of coverage shall be the first day of the plan year following the end of the open enrollment period.

(g) Expulsion for fraud. Expulsion for fraud from an optional dental benefits plan shall follow the same process as described in §41.14 of this title (relating to Expulsion from TRS-Care for Fraud).

(h) Competitive Bidding.

(1) Bid procedures for an optional dental benefits plan shall follow the same process as described in §41.9 of this title (relating to Bid Procedure).

(2) TRS may award separate contracts for different aspects in the administration of an optional dental benefits plan, such as insurance coverage, claims administration, utilization review services, administrative services, and ancillary services.

(3) Each bidder must comply with the minimum qualifications contained in the applicable solicitation from TRS.

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 March 4, 2024.

TRD-202400933

Don Green

Chief Financial Officer

Teacher Retirement System of Texas

Earliest possible date of adoption: April 14, 2024

For further information, please call: (512) 542-3528



34 TAC §41.16

The Board of Trustees of the Teacher Retirement System of Texas (TRS) proposes new §41.16 (relating to Optional Vision Benefits Plan) under Subchapter A (relating to Retiree Health Care Benefits (TRS-CARE)) of Chapter 41 in Part 3 of Title 34 of the Texas Administrative Code.

BACKGROUND AND PURPOSE

The purpose of this proposed new rule is to implement Senate Bill (S.B.) 1854, 88th Legislature, Regular Session, 2023.

S.B. 1854 amended Chapter 1575 of the Insurance Code (TRS-Care) by adding a new Section 1575.1601, concerning Group Benefits for Dental and Vision Care, requiring the Board of Trustees ("the trustee") to establish or contract for and make available under the group program an optional plan that provides coverage for vision care.

Proposed new §41.16 implements Insurance Code §1575.1601 by establishing the rules that will apply to the optional vision benefits plan, including eligibility terms, definition of the plan year, enrollment and disenrollment terms, payment of contributions towards coverage, effective dates of coverage, expulsion for fraud, and competitive bidding.

FISCAL NOTE

Don Green, TRS Chief Financial Officer, has determined that for each year of the first five years the proposed new rule will be in effect, there will be no foreseeable fiscal implications for state or local governments as a result of administering the proposed new rule.

PUBLIC COST/BENEFIT

For each year of the first five years the proposed new rule will be in effect, Mr. Green also has determined that the public benefit anticipated as a result of adopting the new rule will be to provide guidance with respect to TRS' implementation of the optional vision plan required under new Insurance Code §1575.1601. Mr. Green has also determined that there is no economic cost to entities required to comply with the proposed new rule. Further, Mr.

Green has determined participants will incur a cost through the payment of premiums only if they choose to participate in an optional vision benefits plan and S.B. 1854 cannot be implemented without these premium payments.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

TRS has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed new rule. Therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under Government Code §2006.002.

LOCAL EMPLOYMENT IMPACT STATEMENT

TRS has determined that there will be no effect on local employment because of the proposed new rule. Therefore, no local employment impact statement is required under Government Code §2001.022.

GOVERNMENT GROWTH IMPACT STATEMENT

TRS has determined that for the first five years the proposed new rule is in effect, the proposed new rule will not create or eliminate any TRS programs; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to TRS; will not eliminate any fees currently paid to TRS; will not expand, limit or repeal an existing regulation; will not increase or decrease the number of individuals subject to the rule's applicability; and will not affect the state's economy.

This proposal creates a new regulation. Proposed §41.16 is a new rule through which TRS, as trustee of the Texas Public School Retired Employees Group Benefits Act created under Chapter 1575 of the Insurance Code, will establish a new optional vision benefits plan of group coverage under Section 1575.1601.

TAKINGS IMPACT ASSESSMENT

TRS has determined that there are no private real property interests affected by the proposed new rule, therefore, a takings impact assessment is not required under Government Code §2007.043.

COSTS TO REGULATED PERSONS

TRS has determined that Government Code §2001.0045 does not apply to the proposed new rule because it does not impose a cost on regulated persons.

COMMENTS

Comments may be submitted in writing to Brian Guthrie, TRS Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register*.

STATUTORY AUTHORITY

The new rule is being proposed under the authority of Chapter 1575, Insurance Code, which establishes the Texas Public School Retired Employees Group Benefits Act (TRS-CARE), §1575.052, which allows the trustee to adopt rules, plans, procedures, and orders reasonably necessary to implement Chapter 1575; Chapter 825, Texas Government Code, which governs the administration of TRS, §825.102, which authorizes the board of trustees to adopt rules for the transaction of the business of the board; and Senate Bill (S.B.) 1854 as enrolled by the 88th

Legislature, Regular Session, on May 26, 2023 and effective on September 1, 2023.

CROSS-REFERENCE TO STATUTE

The proposed new rule implements Insurance Code §1575.1601 concerning Group Benefits for Dental and Vision Care.

§41.16. Optional Vision Benefits Plan.

(a) Establishment.

(1) In accordance with Section 1575.1601, Insurance Code, TRS makes available to individuals under the TRS-Care program an optional plan that provides coverage for vision care (hereinafter referred to as an "optional vision benefits plan").

(2) TRS may offer an optional vision benefits plan through an insurance carrier or the optional vision benefits plan may be self-funded.

(3) An optional vision benefits plan may have one or more benefit designs for participants to choose from, as determined by TRS.

(b) Eligibility.

(1) Only retirees, dependents, surviving spouses, and surviving dependent children, as defined under Chapter 1575, Insurance Code, are eligible to enroll in an optional vision benefits plan (hereinafter referred to as "eligible members").

(2) Individuals shall be eligible for an optional vision benefits plan under the same requirements as described in §41.10 of this title (relating to Eligibility to Enroll in the Health Benefits Program Under the Texas Public School Retired Employees Group Benefits Act (TRS-Care)).

(3) Eligible members may enroll in an optional vision benefits plan even if they are not enrolled or applying for enrollment in any other TRS-Care plan at the time of enrollment in an optional vision benefits plan.

(4) If an eligible member is eligible for an optional vision benefits plan as a retiree and also as a dependent of another retiree, the retiree may elect to participate in an optional vision benefits plan as a retiree or as a dependent but cannot participate as both. An eligible member must choose to participate as a retiree or as a dependent.

(c) Plan Year. The plan year for an optional vision benefits plan is from January 1 to December 31 (hereinafter referred to as "plan year").

(d) Enrollment and Disenrollment.

(1) Enrollment. Eligible members desiring to enroll in an optional vision benefits plan must do so within the open enrollment period or during an additional enrollment opportunity.

(A) Open Enrollment.

(i) An eligible member may enroll in an optional vision benefits plan during an open enrollment period established by TRS.

(ii) On behalf of the trustee, the executive director or a designee may prescribe open enrollment periods and the conditions under which eligible members may enroll during an open enrollment period.

(B) Additional Enrollment Opportunities. Individuals shall have the same additional enrollment opportunities for an optional vision benefits plan as those provided under §41.2(a) - (c) of this title (relating to Additional Enrollment Opportunities).

(2) Disenrollment. Eligible members may only disenroll from an optional vision benefits plan during the open enrollment period, with the exception that an eligible member may disenroll during a special enrollment opportunity as described by §41.2(b) of this title.

(3) Enrollment and Disenrollment Process. Eligible members must follow the enrollment and disenrollment processes established by TRS.

(e) Payment of Contributions.

(1) Retirees, surviving spouses, and surviving dependent children, or their representatives (collectively, "participants") shall pay monthly contributions, as set by TRS, for their and their dependents' participation in an optional vision benefits plan and may, at TRS' sole discretion, be required to do so through deductions from the participant's TRS annuity payment or through direct payments to TRS or its designee.

(A) In accordance with Section 1575.153, Insurance Code, the participant must, in writing, authorize the trustee to deduct the entirety of the participant's contributions for the participant's coverage under the TRS-Care plan(s) from the participant's TRS annuity payment.

(B) If the amount of the participant's TRS annuity payment is not enough to cover all of the participant's contributions for coverage under the participants TRS-Care plan(s), the participant shall be directly billed by TRS or its designee.

(2) If a participant is required to pay their contributions for an optional vision benefits plan directly to TRS or its designee, failure to timely pay the full amount of a required contribution for coverage will result in termination of the optional vision benefits plan. Participants or eligible members that have lost their coverage due to lack of payment of contribution for coverage may be subject to recoupment by TRS of outstanding contribution amounts, penalties, and be subject to reenrollment conditions prior to reenrollment.

(f) Effective Date of Coverage.

(1) An optional vision benefits plan shall follow the same effective dates of coverage that apply under §41.7(a) - (h) and (j) of this title (relating to Effective Date of Coverage).

(2) In addition, if an eligible member enrolls during a TRS open enrollment period as described in subsection (d)(1)(A) of this section, the effective date of coverage shall be the first day of the plan year following the end of the open enrollment period.

(g) Expulsion for fraud. Expulsion for fraud from an optional vision benefits plan shall follow the same process as described in §41.14 of this title (relating to Expulsion from TRS-Care for Fraud).

(h) Competitive Bidding.

(1) Bid procedures for an optional vision benefits plan shall follow the same process as described in §41.9 of this title (relating to Bid Procedure).

(2) TRS may award separate contracts for different aspects in the administration of an optional vision benefits plan, such as insurance coverage, claims administration, utilization review services, administrative services, and ancillary services.

(3) Each bidder must comply with the minimum qualifications contained in the applicable solicitation from TRS.

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 March 4, 2024.

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Don Green

Chief Financial Officer

Teacher Retirement System of Texas

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For further information, please call: (512) 542-3528

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