

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 16. ECONOMIC REGULATION

PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 401. ADMINISTRATION OF STATE LOTTERY ACT

The Texas Lottery Commission (Commission or TLC) proposes amendments to 16 TAC §401.158 (Suspension or Revocation of License), §401.160 (Standard Penalty Chart), and §401.355 (Restricted Sales). The purpose of the proposed amendments is to promote and ensure integrity, security, honesty, and fairness in the operation and administration of the Texas Lottery by prohibiting the use of lottery ticket courier services that, by any remote means, such as telephone, Internet application, or mobile application, accept and fulfill, for a fee or compensation, orders to purchase lottery tickets on behalf of another person not present to effect an in-person sale (couriers). The TLC intends to exercise this authority through administrative enforcement proceedings to revoke the lottery ticket sales agent license of a retailer that works in concert with a courier, whether under a common ownership arrangement or otherwise.

Robert Tirloni, Lottery Operations Director, has determined that for each year of the first five years the proposed amendments will be in effect, the anticipated public benefits are the promotion of the integrity, security, honesty, and fairness of the Texas Lottery, and helping to ensure that Texas Lottery retailers will clearly understand that their license will be revoked for knowingly selling lottery tickets to, working with, or otherwise assisting couriers, which will result in enhanced protection of the public from potential crime and other harms.

Sergio Rey, Chief Financial Officer, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no significant fiscal impact for state or local governments as a result of the proposed amendments. There will be no adverse effect on rural communities or local or state employment. Those retailers that are small- or micro-businesses whose licenses will be revoked for not abiding by these amendments will be negatively impacted. The Commission is aware of eight licensed retailers that are small businesses, as defined in the Texas Government Code §2006.001(2), that will be negatively impacted by the amendments (out of over 21,000 retailers statewide), and has determined there is no legal and feasible alternative to reduce the negative impact on these retailers and continue to achieve the purpose of the proposed amendments. The impact to small- or micro-business retailers who properly conduct business under a retailer license will vary based on the customer response to their localities. This impact is unquantifiable.

Pursuant to Texas Government Code §2001.0221, the Commission provides the following Government Growth Impact Statement for the proposed amendments. For each year of the first five years the proposed amendments will be in effect, Sergio Rey, Chief Financial Officer, has determined the following:

- (1) The proposed amendments do not create or eliminate a government program.
- (2) Implementation of the proposed amendments does not require the creation of new employee positions or the elimination of existing employee positions.
- (3) Implementation of the proposed amendments does not require an increase or decrease in future legislative appropriations to the Commission.
- (4) The proposed amendments do not require an increase or decrease in fees paid to the Commission.
- (5) The proposed amendments do create new regulations.
- (6) The proposed amendments expand an existing regulation.
- (7) The proposed amendments do not increase or decrease the number of individuals subject to the rule's applicability.
- (8) The proposed amendments do not positively or adversely affect this state's economy.

The Commission requests comments on the proposed amendments from any interested person. Comments may be submitted to Bob Biard, General Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at legal.input@lottery.state.tx.us. Comments must be received within 30 days after publication of this proposal in the *Texas Register* to be considered. The Commission will also hold a public hearing to receive comments on this proposal at 10:00 a.m. on April 3, 2025, at 1801 Congress Ave., George H. W. Bush Building, 4th Floor, Board Room 4.300, Austin, Texas 78701.

SUBCHAPTER B. LICENSING OF SALES AGENTS

16 TAC §401.158, §401.160

These amendments are proposed under Texas Government Code §466.015(c)(15)(A), which authorizes the Commission to adopt rules to promote and ensure the integrity, security, honesty, and fairness of the operation and administration of the lottery; and §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

This proposal is intended to implement Texas Government Code, Chapter 466.

§401.158. *Suspension or Revocation of License.*

(a) (No change.)

(b) Without limiting the commission's ability to consider factors listed in §401.153(b) of this title as grounds for suspension or revocation of a license issued under this subchapter, the commission may also suspend or revoke a license for reasons including, but not limited to, any of the following:

(1) - (26) (No change.)

(27) licensee sells tickets over the telephone or Internet, [~~internet~~] or via mail order sales; or establishes or promotes a group purchase or pooling arrangement under which tickets are purchased on behalf of the group or pool and any prize is divided among the members of the group or pool, and the licensee intentionally or knowingly:

(A) uses any part of the funds solicited or accepted for a purpose other than purchasing tickets on behalf of the group or pool; or

(B) retains a share of any prize awarded as compensation for establishing or promoting the group purchase or pooling arrangement;

(28) - (40) (No change.)

(41) licensee fails to pay the full amount of money owed to the commission after a nonsufficient funds transfer or non-transfer of funds to the commission's account (revocation only); [~~or~~]

(42) licensee knowingly sells tickets to, works with, or otherwise assists a lottery ticket courier service (revocation only); or

(43) [(42)] licensee has violated a provision of the State Lottery Act, Government Code, Chapter 466, or a commission rule adopted under the State Lottery Act.

(c) For purposes of this chapter, the term "lottery ticket courier service" means a service that, by any remote means, such as telephone, Internet application, or mobile application, accepts and fulfills, for a fee or compensation, orders to purchase lottery tickets on behalf of another person not present to effect an in-person sale.

§401.160. *Standard Penalty Chart.*

(a) - (g) (No change.)

(h) Standard Penalty Chart.

Figure: 16 TAC §401.160(h)

~~Figure: 16 TAC §401.160(h)~~

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 5, 2025.

TRD-202500797

Bob Biard

General Counsel

Texas Lottery Commission

Earliest possible date of adoption: April 20, 2025

For further information, please call: (512) 344-5392



SUBCHAPTER E. RETAILER RULES

16 TAC §401.355

These amendments are proposed under Texas Government Code §466.015(c)(15)(A), which authorizes the Commission

to adopt rules to promote and ensure the integrity, security, honesty, and fairness of the operation and administration of the lottery; and §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

This proposal is intended to implement Texas Government Code, Chapter 466.

§401.355. *Restricted Sales.*

(a) Retailers shall not sell lottery tickets via the Internet [~~internet~~] or by mail, phone, fax, or other similar method of communications. Retailers shall not sell a lottery ticket or any other document evidencing a right, privilege, or share in a lottery ticket from another jurisdiction by any means.

(b) Retailers shall not knowingly sell tickets to, work with, or otherwise assist a lottery ticket courier service.

(c) [~~(b)~~] Retailers shall not sell tickets to persons under the age of 18. Any ticket purchased by or sold to an individual under the age of 18 years shall be void and the prize otherwise payable on the ticket is treated as an unclaimed prize under Texas Government Code §466.408.

(d) [~~(c)~~] Retailers shall not sell a ticket or pay a lottery prize to another person that the retailer knows is:

(1) an officer or an employee of the commission;

(2) an officer, member, or employee of a lottery operator;

(3) an officer, member, or employee of a contractor or subcontractor that is excluded by the terms of its contract from playing lottery games;

(4) the spouse, child, brother, sister, or parent of a person described by paragraph (1), (2), or (3) of this subsection who resides within the same household as that person.

(e) [~~(d)~~] Retailers shall not sell tickets from a game after the game's closing date.

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 5, 2025.

TRD-202500798

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General Counsel

Texas Lottery Commission

Earliest possible date of adoption: April 20, 2025

For further information, please call: (512) 344-5392



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 55. DATA GOVERNANCE AND REPORTING THROUGH AN AUTOMATED SYSTEM

19 TAC §55.1001

The Texas Education Agency (TEA) proposes new §55.1001, concerning Public Education Information Management System (PEIMS) data and reporting standards. The proposed new sec-

tion would relocate existing standards from 19 TAC §61.1025 with no changes to the content of the rule.

BACKGROUND INFORMATION AND JUSTIFICATION: Proposed new §55.1001 would move existing language from 19 TAC §61.1025, which relates to PEIMS data and reporting standards. The relocation is necessary due to a comprehensive reorganization of 19 TAC Chapter 61. No changes from the existing rule are proposed.

FISCAL IMPACT: Terri Hanson, associate commissioner for data and business, 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 create a new regulation to relocate existing standards.

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 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. Hanson 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 allowing for TEA rules to be reorganized. 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 21, 2025, and ends April 21, 2025. 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 21, 2025. 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/).

STATUTORY AUTHORITY. The new section is proposed under Texas Education Code (TEC), §48.008, which establishes the Public Education Information Management System (PEIMS), a system school districts shall use to report information to the agency; and TEC, §48.009, which specifies certain required reporting by school districts through PEIMS.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §48.008 and §48.009.

§55.1001. Public Education Information Management System (PEIMS) Data and Reporting Standards.

(a) Data submissions. The Public Education Information Management System (PEIMS) consists of all data submitted by school districts, charter schools, campuses, and other educational organizations and entities to the Texas Education Agency (TEA).

(b) Standards. Data standards, established by the commissioner of education under Texas Education Code (TEC), §48.008, shall be used by school districts and charter schools to submit information required for the legislature and the TEA to perform their legally authorized functions. Data standards shall be published annually in official TEA publications. These publications shall be widely disseminated and include:

(1) descriptions of the data collections and submission requirements;

(2) descriptions of data elements and the codes used to report them, which include the number of reported incidents of bullying, including cyberbullying, that have occurred at each campus; the number of reported incidents of cyberbullying at each campus; and pregnancy as a reason a student withdraws from or otherwise no longer attends public school;

(3) detailed responsibilities of school districts, education service centers, and the TEA in connection with the data submission processes, including each deadline for submission and resubmission; and

(4) descriptions of the data submission requirements, including submission record layout specifications and data edit specifications.

(c) External review process. The commissioner shall establish a policy advisory group that provides oversight of data collections and reporting standards policies. The policy advisory group membership shall be composed of representatives of school districts, charter schools, education service centers, state government, and educational associations. Subcommittees consisting of technical experts and representatives from user groups may be established by the commissioner to provide timely and impartial reviews of requested changes or additions to TEA data collections and reporting standards. The procedure for adding, deleting, or modifying data elements described in paragraphs (1)-(5) of this subsection provides consistency in updates to the data and reporting standards. The commissioner may approve changes to the data and reporting standards outside this process if necessary to expedite implementation of data collections and reporting.

(1) Prepare proposal. A written proposal is prepared to add, delete, or modify data elements. The proposal provides justification for

the data collection, determination of data availability, and definitions of critical attributes and required analyses of requested data elements.

(2) Conduct research. Survey a sampling of districts to update and refine cost estimates, assess district burden, and determine any benefits from a pilot of the data collection.

(3) Solicit feedback. The subcommittee(s) established by the commissioner and other appropriate TEA committees review proposals and make formal, written recommendations to the policy advisory group. The policy advisory group reviews proposals and committee recommendations and makes recommendations to the commissioner for approval, modification, or rejection of the proposed changes.

(4) Collect data. Data standards and software made available to districts online are updated annually, implementing changes to data submissions requirements.

(5) Reevaluate data requirements. All data elements are reviewed by the commissioner-appointed subcommittee(s) and policy advisory group on a three-year cycle as part of an ongoing sunset process. The sunset process is designed to ensure that data standards meet the requirements specified in TEC, §48.008(c)(1)-(3) and (d).

(d) Internal review process. The commissioner shall establish and determine the membership of a TEA committee that provides oversight of the TEA data collections and reporting policies. The commissioner shall also establish a TEA subcommittee that reviews data collections and reporting standards according to the requirements specified in TEC, §48.008(c)(1)-(3) and (d). The subcommittee is also responsible for maintaining data collections at the TEA. The procedure for adding, deleting, or modifying data elements described in subsection (c)(1)-(5) of this section provides consistency in updates to data and reporting standards. The commissioner may approve changes to data and reporting standards outside this process if necessary to expedite implementation.

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 10, 2025.

TRD-202500836

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: April 20, 2025

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



CHAPTER 61. SCHOOL DISTRICTS

SUBCHAPTER BB. COMMISSIONER'S RULES ON REPORTING REQUIREMENTS

19 TAC §61.1025

The Texas Education Agency (TEA) proposes the repeal of §61.1025, concerning Public Education Information Management System (PEIMS) data and reporting standards. The proposed repeal would relocate the existing standards to proposed new 19 TAC §55.1001 with no changes to the content of the rule.

BACKGROUND INFORMATION AND JUSTIFICATION: Section 61.1025 outlines data and reporting standards for PEIMS. The proposed repeal of §61.1025 would move the existing language

to proposed new §55.1001. The relocation is necessary due to a comprehensive reorganization of 19 TAC Chapter 61.

FISCAL IMPACT: Terri Hanson, associate commissioner for data and business, 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 an existing regulation to relocate the standards.

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 create a new regulation; would not expand or limit 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. Hanson 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 allowing for TEA rules to be reorganized. 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 21, 2025, and ends April 21, 2025. 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 21, 2025. A form for submitting public comments is available on the TEA website at https://tea.texas.gov/About_TEA/Laws_and_Rules/Com-

missioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/.

STATUTORY AUTHORITY. The repeal is proposed under Texas Education Code (TEC), §48.008, which establishes the Public Education Information Management System (PEIMS), a system school districts shall use to report information to the agency; and TEC, §48.009, which specifies certain required reporting by school districts through PEIMS.

CROSS REFERENCE TO STATUTE. The repeal implements Texas Education Code, §48.008 and §48.009.

§61.1025. *Public Education Information Management System (PEIMS) Data and Reporting Standards.*

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 10, 2025.

TRD-202500837

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: April 20, 2025

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



CHAPTER 100. CHARTERS
SUBCHAPTER AA. COMMISSIONER'S
RULES CONCERNING OPEN-ENROLLMENT
CHARTER SCHOOLS
DIVISION 3. COMMISSIONER ACTION,
PERFORMANCE MONITORING, AND
INTERVENTION

19 TAC §§100.1033, 100.1035, 100.1037, 100.1039

The Texas Education Agency (TEA) proposes new §100.1033 and amendments to §§100.1035, 100.1037, and 100.1039, concerning commissioner action, performance monitoring, and intervention for open-enrollment charter schools. The revisions would establish performance frameworks for charter schools established under Texas Education Code (TEC), Chapter 12, Subchapter G, including adult charter schools and adult charter schools in correctional facilities, by defining evaluation criteria in the new Adult Charter School Performance Framework (ACSPF) Manual. The manual would tie charter amendments, renewals, and expansions to these performance standards, including enrollment caps and discretionary renewal. The proposed revisions would also update existing rules regarding expansion and renewal to reference the new performance frameworks.

BACKGROUND INFORMATION AND JUSTIFICATION: The proposed revisions would add new §100.1033 to specify performance frameworks for Subchapter G charter schools and amend §§100.1035, 100.1037, and 100.1039 to include information relevant to Subchapter G charter schools.

New §100.1033(a) would be added to establish performance frameworks for adult charter schools, including adult charter schools in correctional facilities. It would provide the foundation

for creating the ACSPF Manual, detailing the timeframe for updates, performance domains, criteria for assigning performance levels, and indicators used to evaluate academic, operational, and governance performance.

New §100.1033(b) would be added to detail the measures the ACSPF Manual would include for Subchapter G charter schools. It would also encompass performance domains that evaluate academic growth, career readiness, one-year post-graduation outcomes, longitudinal postsecondary results, longitudinal wage and career growth, and operational performance.

New §100.1033(c) would be added to outline the performance levels for charter schools in the ACSPF report according to the criteria defined in the ACSPF Manual. These criteria include academic, financial, operational, and governance indicators.

The proposed amendment to §100.1035(b)(3) would add language to include Subchapter G charter schools, incorporating their performance under §100.1033 into the evaluation criteria for charter amendment requests.

The proposed amendment to §100.1035(c)(1)(B) would insert language that establishes a deadline for when expansion requests must be submitted for Subchapter G charter schools.

The proposed amendment to §100.1035(5)(A)(i) would add language that grants the commissioner of education authority to approve expansion amendment requests related to increasing maximum allowable enrollment, with a specific limitation that Subchapter G charter schools cannot exceed an enrollment cap of 2,000 students.

The proposed amendment to §100.1037(d)(2)(A) would insert language that requires the commissioner to consider the results of a Subchapter G charter school's annual evaluation under the ACSPF Manual when evaluating a petition for discretionary renewal.

The proposed amendment to §100.1037 would add new subsection (f) to specify the criteria, requirements, or special conditions Subchapter G charter schools must meet to qualify for renewal.

New §100.1037(f)(1) would be added to clarify the process for discretionary renewal. This change would allow adult high school charters to submit petitions for discretionary renewal, which must be evaluated through the discretionary renewal process. Under this new paragraph, these schools would not be eligible to apply for expedited renewal.

New §100.1037(f)(2) would be added to establish the criteria for discretionary renewal. It would clarify the standard by which the commissioner will evaluate petitions for discretionary renewal. The overall evaluation process would be based on the academic performance criteria outlined in the ACSPF Manual.

New §100.1037(f)(3) would clarify the commissioner's authority to revoke a Subchapter G charter school's charter if the charter school's adult education program fails to meet the minimum performance standards established in the ACSPF for three consecutive school years after the second year of operation.

The proposed amendment to §100.1039(3)(F) would insert language specifying that Subchapter G charter schools must meet the performance measures outlined in the ACSPF or risk revocation of their charter.

FISCAL IMPACT: Marian Schutte, deputy associate commissioner for authorizing, 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 assessed the Government Growth Impact Statement for the proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would create a new regulation and expand existing regulations by establishing standards for evaluating the performance of Subchapter G charter schools, including adult charter schools and adult charter schools in correctional facilities.

The proposal 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 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. Schutte 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 create clear performance frameworks and evaluation criteria for Subchapter G charter schools, including adult charter schools and adult charter schools in correctional facilities, ensuring accountability and consistent quality standards that meet the needs of adult learners and workforce readiness. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would introduce data and reporting responsibilities for authorized Subchapter G adult high school charter schools. This framework would expand upon the existing Charter School Performance Framework by incorporating additional metrics specifically tailored to the performance and accountability standards for adult high school programs. Schools would be required to submit annual data through various collection methods, including survey tools and school-provided data, ensuring comprehensive reporting at the district level. Compliance with this mandatory reporting would be grounded in legal mandates such as TEC, §12.262, with data informing state oversight and decision-making processes.

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 21, 2025, and ends April 21, 2025. 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 21, 2025. 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/).

STATUTORY AUTHORITY. The new section and amendments are proposed under Texas Education Code (TEC), §12.262, which requires the commissioner, working alongside the advisory committee established under TEC, §12.254, to develop and adopt an accountability framework. This framework must establish standards to evaluate the performance of adult education programs operating under charters granted under TEC, Chapter 12, Subchapter G; and TEC, §12.265, which requires the commissioner to adopt rules necessary to administer the program under TEC, Chapter 12, Subchapter G, including rules to implement and administer TEC, §12.262, and allows the commissioner to establish maximum number of students who may be enrolled in an adult education program under TEC, Subchapter G.

CROSS REFERENCE TO STATUTE. The new section and amendments implement Texas Education Code, §12.262 and §12.265.

§100.1033. Performance Frameworks for Subchapter G Charter Schools.

(a) The performance of an adult high school charter school program will be measured annually against criteria set forth in the Adult Charter School Performance Framework (ACSPF) Manual established under Texas Education Code (TEC), §12.262. The ACSPF Manual also contains the framework for a school located in a correctional facility, as that term is defined by Texas Penal Code, §1.07. Notwithstanding substantial modifications to the framework, the manual will be updated annually to reflect the requirements and data sources for each indicator.

(b) The ACSPF Manual will include measures for Subchapter G charter schools and include performance domains that measure:

- (1) academic growth;
- (2) career readiness;
- (3) one-year post-graduation and longitudinal postsecondary outcomes;
- (4) longitudinal wage and career growth; and
- (5) operational performance.

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

- (1) Academic Indicators: the charter school's performance on academic growth, career readiness, one-year post-graduation and longitudinal postsecondary outcomes, and longitudinal wage and career growth;
- (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 reporting 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 and 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) and §100.1033 of this title (relating to Performance Frameworks for Subchapter G 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 or no later than June 30 of each year for which the expansion will be effective for Subchapter G charter schools.

(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. For Subchapter G charter schools, the maximum enrollment may not exceed more than 2,000 students.

(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(9) 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 requested prior to the opening of a new campus associated with an approved expansion amendment. Charter holders of charter schools that receive high-quality campus designation from the commissioner will be eligible to par-

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 each campus 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.

(E) Notice of the commissioner's decision regarding a high-quality campus designation will be made within 60 calendar days of the date the charter holder submits a completed request. The notice of the commissioner's determination may be sent electronically.

(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, shared services cooperatives or shared services agreements, 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 af-

ter 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, or the results of the charter's annual evaluation under the performance framework set forth in the Adult Charter School Performance Framework (ACSPF) Manual established under TEC, §12.262; 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) Special rules for adult high school charter school program charters. The following provisions apply to the renewal of the charter of an adult high school charter school authorized under TEC, Chapter 12, Subchapter G.

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

(2) Academic criteria for discretionary renewal of adult high school charter school program charters. In considering a petition for discretionary renewal by an adult high school charter school, the commissioner shall use academic criteria as outlined in the ACSFP Manual established under TEC, §12.262.

(3) Revocation of adult high school charter school charters. The commissioner may revoke a charter to operate an adult education program if the charter's adult education program fails to meet the minimum performance standards established in the ACSFP adopted by rule in §100.1033 of this title (relating to Performance Frameworks for Subchapter G Charter Schools) for three consecutive school years after the second year of operation.

(g) [(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.

(h) [(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).

(i) [(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.

(j) [(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.

(k) [(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 management, 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 or Adult Charter School Performance Framework established under TEC, §12.262.

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 10, 2025.

TRD-202500838

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: April 20, 2025

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



TITLE 22. EXAMINING BOARDS

PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 281. ADMINISTRATIVE PRACTICE AND PROCEDURES

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §281.2

The Texas State Board of Pharmacy proposes amendments to §281.2, concerning Definitions. The amendments, if adopted, correct the chapter range in the definition of the Act.

Daniel Carroll, Pharm.D., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Dr. Carroll has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be clear and correct regulations. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local

or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

For each year of the first five years the proposed amendments will be in effect, Dr. Carroll has determined the following:

- (1) The proposed amendments do not create or eliminate a government program;
- (2) Implementation of the proposed amendments does not require the creation of new employee positions or the elimination of existing employee positions;
- (3) Implementation of the proposed amendments does not require an increase or decrease in the future legislative appropriations to the agency;
- (4) The proposed amendments do not require an increase or decrease in fees paid to the agency;
- (5) The proposed amendments do not create a new regulation;
- (6) The proposed amendments do not limit or expand an existing regulation;
- (7) The proposed amendments do not increase or decrease the number of individuals subject to the rule's applicability; and
- (8) The proposed amendments do not positively or adversely affect this state's economy.

Written comments on the amendments may be submitted to Eamon D. Briggs, Deputy General Counsel, Texas State Board of Pharmacy, 1801 Congress Avenue, Suite 13.100, Austin, Texas, 78701-1319, FAX (512) 305-8061. Comments must be received by 5:00 p.m., April 29, 2025.

The amendments are proposed under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

The amendments are proposed under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§281.2. Definitions.

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

- (1) Act--The Texas Pharmacy Act, Chapters 551 - 569 [551 - 566], Texas Occupations Code, as amended.
- (2) Administrative law judge--A judge employed by the State Office of Administrative Hearings.
- (3) Agency--The Texas State Board of Pharmacy, and its divisions, departments, and employees.
- (4) Administrative Procedure Act (APA)--Government Code, Chapter 2001, as amended.

(5) Board--The Texas State Board of Pharmacy.

(6) Confidential address of record--The home address required to be provided by each individual, who is a licensee, registrant, or pharmacy owner and where service of legal notice will be sent. The address is confidential, as set forth in §555.001(d) of the Act, and not subject to disclosure under the Public Information Act.

(7) Contested case--A proceeding, including but not restricted to licensing, in which the legal rights, duties, or privileges of a party are to be determined by the board after an opportunity for adjudicative hearing.

(8) Diversion of controlled substances--An act or acts which result in the distribution of controlled substances from legitimate pharmaceutical or medical channels in violation of the Controlled Substances Act or rules promulgated pursuant to the Controlled Substances Act or rules relating to controlled substances promulgated pursuant to this Act.

(9) Diversion of dangerous drugs--An act or acts which result in the distribution of dangerous drugs from legitimate pharmaceutical or medical channels in violation of the Dangerous Drug Act or rules promulgated pursuant to the Dangerous Drug Act or rules relating to dangerous drugs promulgated pursuant to this Act.

(10) Executive director/secretary--The secretary of the board and executive director of the agency.

(11) License--The whole or part of any agency permit, certificate, approval, registration, or similar form of permission required by law.

(12) Licensee--Any individual or person to whom the agency has issued any permit, certificate, approved registration, or similar form of permission authorized by law.

(13) Licensing--The agency process relating to the granting, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license.

(14) Official act--Any act performed by the board pursuant to a duty, right, or responsibility imposed or granted by law, rule, or regulation.

(15) Person--An individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity.

(16) President--The president of the Texas State Board of Pharmacy.

(17) Presiding Officer--The president of the Texas State Board of Pharmacy or, in the president's absence, the highest ranking officer present at a board meeting.

(18) Publicly available address of record--The alternate address required to be provided by each licensee, registrant, or pharmacy owner, which will be released to the public, as set forth in §555.001(d) of the Act, and is subject to disclosure under the Public Information Act.

(A) The alternate address must be a business address or other alternate address, such as the home address of the individual's relative, where mail can be received on a regular basis.

(B) A pharmacy must provide the physical address of the pharmacy to be used for this purpose.

(19) Quorum--A majority of the members of the board appointed and serving on the board.

(20) State Office of Administrative Hearings (SOAH)--The agency to which contested cases are referred by the Texas State Board of Pharmacy.

(21) Sample--A prescription drug which is not intended to be sold and is intended to promote the sale of the drug.

(22) Texas Public Information Act--Government Code, Chapter 552.

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 7, 2025.

TRD-202500825

Daniel Carroll, Pharm.D.

Executive Director

Texas State Board of Pharmacy

Earliest possible date of adoption: April 20, 2025

For further information, please call: (512) 305-8084



CHAPTER 291. PHARMACIES

SUBCHAPTER A. ALL CLASSES OF PHARMACIES

22 TAC §291.9

The Texas State Board of Pharmacy proposes amendments to §291.9, concerning Prescription Pick Up Locations. The amendments, if adopted, allow a pharmacist or pharmacy to deliver prescription drugs by means of a contract carrier and certain prescription drugs by use of unmanned aircraft systems.

Daniel Carroll, Pharm.D., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Dr. Carroll has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be to improve medication access, delivery choice, and health outcomes for Texas citizens. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

For each year of the first five years the proposed amendments will be in effect, Dr. Carroll has determined the following:

(1) The proposed amendments do not create or eliminate a government program;

(2) Implementation of the proposed amendments does not require the creation of new employee positions or the elimination of existing employee positions;

(3) Implementation of the proposed amendments does not require an increase or decrease in the future legislative appropriations to the agency;

(4) The proposed amendments do not require an increase or decrease in fees paid to the agency;

(5) The proposed amendments do not create a new regulation;

(6) The proposed amendments do limit an existing regulation;

(7) The proposed amendments do not increase or decrease the number of individuals subject to the rule's applicability; and

(8) The proposed amendments would have a de minimis impact on this state's economy.

Written comments on the amendments may be submitted to Eamon D. Briggs, Deputy General Counsel, Texas State Board of Pharmacy, 1801 Congress Avenue, Suite 13.100, Austin, Texas, 78701-1319, FAX (512) 305-8061. Comments must be received by 5:00 p.m., April 29, 2025.

The amendments are proposed under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§291.9. *Prescription Pick Up Locations.*

(a) No person, firm, or business establishment may have, participate in, or permit an arrangement, branch, connection or affiliation whereby prescriptions are solicited, collected, picked up, or advertised to be picked up, from or at any location other than a pharmacy which is licensed and in good standing with the board.

(b) A pharmacist or pharmacy by means of its employee or by use of a common or contract carrier [(e.g., U.S. Mail)], at the request of the patient, may:

(1) pick up prescription orders at the:

(A) office or home of the prescriber;

(B) residence or place of employment of the person for whom the prescription was issued; or

(C) hospital or medical care facility in which the patient is receiving treatment; and

(2) deliver prescription drugs to the:

(A) office of the prescriber if the prescription is:

(i) for a dangerous drug; or

(ii) for a single dose of a controlled substance that is for administration to the patient in the prescriber's office;

(B) residence of the person for whom the prescription was issued;

(C) place of employment of the person for whom the prescription was issued, if the person is present to accept delivery; or

(D) hospital or medical care facility in which the patient is receiving treatment.

(c) A pharmacist or pharmacy by use of unmanned aircraft systems (i.e., "drones"), at the request of a patient or patient's agent, may deliver prescription drugs, excluding controlled substances, sterile compounded preparations, or drugs requiring storage below a "cool" temperature as defined by §291.15 of this title (relating to Storage of Drugs), to the residence of the person for whom the prescription was issued.

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 7, 2025.

TRD-202500826

Daniel Carroll, Pharm.D.

Executive Director

Texas State Board of Pharmacy

Earliest possible date of adoption: April 20, 2025

For further information, please call: (512) 305-8084



22 TAC §291.12

The Texas State Board of Pharmacy proposes amendments to §291.12, concerning Delivery of Prescription Drugs. The amendments, if adopted, allow and specify requirements for delivery of prescription drugs by contract carriers and unmanned aircraft systems.

Daniel Carroll, Pharm.D., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Dr. Carroll has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be to improve medication access, delivery choice, and health outcomes for Texas citizens. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

For each year of the first five years the proposed amendments will be in effect, Dr. Carroll has determined the following:

(1) The proposed amendments do not create or eliminate a government program;

(2) Implementation of the proposed amendments does not require the creation of new employee positions or the elimination of existing employee positions;

(3) Implementation of the proposed amendments does not require an increase or decrease in the future legislative appropriations to the agency;

(4) The proposed amendments do not require an increase or decrease in fees paid to the agency;

(5) The proposed amendments do not create a new regulation;

(6) The proposed amendments do limit an existing regulation;

(7) The proposed amendments do not increase or decrease the number of individuals subject to the rule's applicability; and

(8) The proposed amendments would have a de minimis impact on this state's economy.

Written comments on the amendments may be submitted to Eamon D. Briggs, Deputy General Counsel, Texas State Board of Pharmacy, 1801 Congress Avenue, Suite 13.100, Austin, Texas 78701-1319, FAX (512) 305-8061. Comments must be received by 5:00 p.m., April 29, 2025.

The amendments are proposed under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§291.12. *Delivery of Prescription Drugs.*

(a) Applicability. This section applies to the delivery of prescription drugs by a pharmacy licensed by the board as a Class A, Class A-S, Class E, or Class E-S pharmacy.

(b) Definitions.

(1) Common carrier--A person or entity who holds out to the general public a willingness to provide transportation of property from place to place for compensation in the normal course of business.

(2) Contract carrier--A person or entity who provides to industrial customers, pursuant to the terms of a bilateral agreement, the transportation of property for compensation in the normal course of business.

(c) [(b)] Delivery by common or contract carrier. A pharmacy may deliver prescription drugs by use of a common or contract carrier [(e.g., U.S. Mail)] as provided in §291.9 of this title (relating to Prescription Pick Up Locations) on request of the patient or patient's agent. [Common carrier means a person or entity who holds out to the general public a willingness to provide transportation of property from place to place for compensation in the normal course of business.] A pharmacy that delivers prescription drugs by use of a common or contract carrier providing a same-day courier service is not subject to subsection (b) of this section and shall comply with subsection (c) of this section.

(1) Standards. The pharmacy shall ensure that all prescription drugs are delivered to the patient or patient's agent in accordance with nationally recognized standards, such as those of the manufacturer or the United States Pharmacopeia. The pharmacy is responsible for any problems in the delivery of a prescription drug by a contract carrier.

(2) Packaging. The pharmacy shall ensure that prescription drugs are packaged in commercially available tamper evident packaging.

(3) Temperature. The pharmacy shall ensure that any prescription drug delivered by a common or contract carrier is packaged in a manner that maintains a temperature range appropriate for the drug. This may include, without limitation, use of temperature tags, time temperature strips, insulated packaging, gel ice packs, or a combination of these as necessary.

(4) Irregularity in delivery. The pharmacy shall provide a method by which a patient or patient's agent can notify the pharmacy as to any irregularity in the delivery of the patient's prescription, to include but not be limited to:

- (A) timeliness of delivery;
- (B) condition of the prescription drug upon delivery;
- (C) failure to receive the proper prescription drug.

(5) Refusal to deliver. The pharmacy shall refuse to deliver by common or contract carrier a prescription drug which in the professional opinion of the dispensing pharmacist may be clinically compromised by delivery by common or contract carrier.

(d) [(e)] Delivery by pharmacy employee or common or contract carrier providing a same-day courier service. A pharmacy may deliver prescription drugs by means of its employee or a common or contract carrier providing a same-day courier service as provided in §291.9 of this title on request of the patient or patient's agent.

(1) Standards. The pharmacy is responsible for any problems in the delivery of the prescription drug.

(2) Temperature. The prescription drug shall be maintained within the temperature range allowed by the United States Pharmacopeia or recommended by the manufacturer until the delivery has been received by the patient or patient's agent.

(e) Delivery by unmanned aircraft systems (i.e., "drones"). A pharmacy may deliver prescription drugs, excluding controlled substances, sterile compounded preparations, or drugs requiring storage below a "cool" temperature as defined by §291.15 of this title (relating to Storage of Drugs), by use of a common or contract carrier providing an unmanned aircraft system delivery service as provided in §291.9 of this title on request of the patient or patient's agent.

(1) Standards. Unmanned aircraft systems shall maintain appropriate federal registration and comply with all state and federal laws and rules. The pharmacy shall ensure that all prescription drugs are delivered to the patient or patient's agent in accordance with nationally recognized standards, such as those of the manufacturer or the United States Pharmacopeia. The pharmacy is responsible for any problems in the delivery of the prescription drug.

(2) The pharmacist-in-charge is responsible for developing written policies and procedures regarding prescription drug delivery in accordance with this subsection to be used by pharmacy personnel to include, but not be limited to, the following:

- (A) training pharmacy personnel engaged in preparing and packaging prescription drugs for delivery;
- (B) packaging prescription drugs for delivery;
- (C) verification of the correct recipient and delivery address;
- (D) maintaining the confidentiality of prescription records;
- (E) secure transfer of prescription drugs from the pharmacy;
- (F) provision of patient counseling;
- (G) remediation of errors in delivery or adverse events;
- and
- (H) recordkeeping.

(3) Packaging. The pharmacy shall ensure that prescription drugs are packaged in commercially available tamper evident packaging.

(4) Temperature. The prescription drug shall be maintained within the temperature range allowed by the United States Pharmacopeia or recommended by the manufacturer until the delivery has been received by the patient or patient's agent.

(5) Records. The pharmacy shall document each change in the chain of custody of a prescription drug, including departure of the prescription drug from the pharmacy, transfer to the person or entity fulfilling delivery, and delivery to the patient.

(6) Confirmation of presence at residence. The pharmacy shall receive confirmation from the patient or patient's agent that the patient or patient's agent is present at the residence before unmanned aircraft system delivery is initiated.

(7) Security. The pharmacy must ensure that delivery is made to a reasonably secure location at the patient's residence that minimizes the opportunity for unauthorized access to prescription drugs and confidential prescription records.

(f) [(d)] All deliveries. A pharmacy that delivers prescription drugs by common or contract carrier, [or] by pharmacy employee or [by a] common or contract carrier providing a same-day courier service, or by common or contract carrier providing an unmanned aircraft systems delivery service shall also comply with the following:

(1) Counseling information. The pharmacy shall comply with the requirements of §291.33(c)(1)(F) of this title (relating to Operational Standards).

(2) Notification of delivery. The pharmacy shall notify the patient or patient's agent of the delivery of a prescription drug.

(3) Compromised delivery. If a pharmacist determines a prescription drug is in any way compromised during delivery, the pharmacy shall replace the drug or arrange for the drug to be replaced, either by promptly delivering a replacement to the patient or by promptly contacting the prescriber to arrange for the drug to be dispensed to the patient by a pharmacy of the patient's or patient's agent's choice.

(4) Records. The pharmacy shall maintain records for two years on the following events:

(A) when a prescription drug was sent and delivered to the patient or patient's agent; and

(B) patient complaints regarding compromised deliveries, which may be documented in the patient profile.

(5) Controlled substances. A pharmacy shall comply with all state and federal laws and rules relating to the delivery of controlled substances.

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 7, 2025.

TRD-202500827

Daniel Carroll, Pharm.D.

Executive Director

Texas State Board of Pharmacy

Earliest possible date of adoption: April 20, 2025

For further information, please call: (512) 305-8084



SUBCHAPTER B. COMMUNITY PHARMACY (CLASS A)

22 TAC §291.32

The Texas State Board of Pharmacy proposes amendments to §291.32, concerning Personnel. The amendments, if adopted, exclude central fill pharmacies that have no patient-facing contact from the required minimum ratio of pharmacists to pharmacy technicians and pharmacy technician trainees.

Daniel Carroll, Pharm.D., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Dr. Carroll has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be providing pharmacies more flexibility in the staffing of pharmacy technicians to better serve the needs of the pharmacy's patients. There is no anticipated adverse economic impact on large, small or micro-businesses

(pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

For each year of the first five years the proposed amendments will be in effect, Dr. Carroll has determined the following:

(1) The proposed amendments do not create or eliminate a government program;

(2) Implementation of the proposed amendments does not require the creation of new employee positions or the elimination of existing employee positions;

(3) Implementation of the proposed amendments does not require an increase or decrease in the future legislative appropriations to the agency;

(4) The proposed amendments do not require an increase or decrease in fees paid to the agency;

(5) The proposed amendments do not create a new regulation;

(6) The proposed amendments do limit an existing regulation;

(7) The proposed amendments do not increase or decrease the number of individuals subject to the rule's applicability; and

(8) The proposed amendments do not positively or adversely affect this state's economy.

Written comments on the amendments may be submitted to Eamon D. Briggs, Deputy General Counsel, Texas State Board of Pharmacy, 1801 Congress Avenue, Suite 13.100, Austin, Texas 78701-1319, FAX (512) 305-8061. Comments must be received by 5:00 p.m., April 29, 2025.

The amendments are proposed under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§291.32. Personnel.

(a) Pharmacist-in-charge.

(1) General.

(A) Each Class A pharmacy shall have one pharmacist-in-charge who is employed on a full-time basis and who may be the pharmacist-in-charge for only one such pharmacy; provided, however, such pharmacist-in-charge may be the pharmacist-in-charge of:

(i) more than one Class A pharmacy, if the additional Class A pharmacies are not open to provide pharmacy services simultaneously; or

(ii) during an emergency, up to two Class A pharmacies open simultaneously if the pharmacist-in-charge works at least 10 hours per week in each pharmacy for no more than a period of 30 consecutive days.

(B) The pharmacist-in-charge shall comply with the provisions of §291.17 of this title (relating to Inventory Requirements).

(C) The pharmacist-in-charge of a Class A pharmacy may not serve as the pharmacist-in-charge of a Class B pharmacy or a Class C pharmacy with 101 beds or more.

(2) Responsibilities. The pharmacist-in-charge shall have responsibility for the practice of pharmacy at the pharmacy for which he or she is the pharmacist-in-charge. The pharmacist-in-charge may advise the owner on administrative or operational concerns. The pharmacist-in-charge shall have responsibility for, at a minimum, the following:

(A) educating and training of pharmacy technicians and pharmacy technician trainees;

(B) supervising a system to assure appropriate procurement of prescription drugs and devices and other products dispensed from the Class A pharmacy;

(C) disposing of and distributing drugs from the Class A pharmacy;

(D) storing all materials, including drugs, chemicals, and biologicals;

(E) maintaining records of all transactions of the Class A pharmacy necessary to maintain accurate control over and accountability for all pharmaceutical materials required by applicable state and federal laws and sections;

(F) supervising a system to assure maintenance of effective controls against the theft or diversion of prescription drugs, and records for such drugs;

(G) adhering to policies and procedures regarding the maintenance of records in a data processing system such that the data processing system is in compliance with Class A pharmacy requirements;

(H) legally operating the pharmacy, including meeting all inspection and other requirements of all state and federal laws or sections governing the practice of pharmacy; and

(I) if the pharmacy uses an automated pharmacy dispensing system, shall be responsible for the following:

(i) consulting with the owner concerning and adherence to the policies and procedures for system operation, safety, security, accuracy and access, patient confidentiality, prevention of unauthorized access, and malfunction;

(ii) inspecting medications in the automated pharmacy dispensing system, at least monthly, for expiration date, misbranding, physical integrity, security, and accountability;

(iii) assigning, discontinuing, or changing personnel access to the automated pharmacy dispensing system;

(iv) ensuring that pharmacy technicians, pharmacy technician trainees, and licensed healthcare professionals performing any services in connection with an automated pharmacy dispensing system have been properly trained on the use of the system and can demonstrate comprehensive knowledge of the written policies and procedures for operation of the system; and

(v) ensuring that the automated pharmacy dispensing system is stocked accurately and an accountability record is maintained in accordance with the written policies and procedures of operation.

(b) Owner. The owner of a Class A pharmacy shall have responsibility for all administrative and operational functions of the pharmacy. The pharmacist-in-charge may advise the owner on administrative and operational concerns. The owner shall have responsibility for, at a minimum, the following, and if the owner is not a Texas licensed pharmacist, the owner shall consult with the pharmacist-in-charge or another Texas licensed pharmacist:

(1) establishing policies for procurement of prescription drugs and devices and other products dispensed from the Class A pharmacy;

(2) establishing policies and procedures for the security of the prescription department including the maintenance of effective controls against the theft or diversion of prescription drugs;

(3) if the pharmacy uses an automated pharmacy dispensing system, reviewing and approving all policies and procedures for system operation, safety, security, accuracy and access, patient confidentiality, prevention of unauthorized access, and malfunction;

(4) providing the pharmacy with the necessary equipment and resources commensurate with its level and type of practice; and

(5) establishing policies and procedures regarding maintenance, storage, and retrieval of records in a data processing system such that the system is in compliance with state and federal requirements.

(c) Pharmacists.

(1) General.

(A) The pharmacist-in-charge shall be assisted by a sufficient number of additional licensed pharmacists as may be required to operate the Class A pharmacy competently, safely, and adequately to meet the needs of the patients of the pharmacy.

(B) All pharmacists shall assist the pharmacist-in-charge in meeting his or her responsibilities in ordering, dispensing, and accounting for prescription drugs.

(C) Pharmacists are solely responsible for the direct supervision of pharmacy technicians and pharmacy technician trainees and for designating and delegating duties, other than those listed in paragraph (2) of this subsection, to pharmacy technicians and pharmacy technician trainees. Each pharmacist shall be responsible for any delegated act performed by pharmacy technicians and pharmacy technician trainees under his or her supervision.

(D) Pharmacists shall directly supervise pharmacy technicians and pharmacy technician trainees who are entering prescription data into the pharmacy's data processing system by one of the following methods.

(i) Physically present supervision. A pharmacist shall be physically present to directly supervise a pharmacy technician or pharmacy technician trainee who is entering prescription data into the data processing system. Each prescription entered into the data processing system shall be verified at the time of data entry. If the pharmacist is not physically present due to a temporary absence as specified in §291.33(b)(3) of this title (relating to Operational Standards), on return the pharmacist must:

(I) conduct a drug regimen review for the prescriptions data entered during this time period as specified in §291.33(c)(2) of this title; and

(II) verify that prescription data entered during this time period was entered accurately.

(ii) Electronic supervision. A pharmacist may electronically supervise a pharmacy technician or pharmacy technician trainee who is entering prescription data into the data processing system provided the pharmacist:

(I) has the ability to immediately communicate directly with the technician/trainee;

(II) has immediate access to any original document containing prescription information or other information related

to the dispensing of the prescription. Such access may be through imaging technology provided the pharmacist has the ability to review the original, hardcopy documents if needed for clarification; and

(III) verifies the accuracy of the data entered information prior to the release of the information to the system for storage and/or generation of the prescription label.

(iii) Electronic verification of data entry by pharmacy technicians or pharmacy technician trainees. A pharmacist may electronically verify the data entry of prescription information into a data processing system provided:

(I) the pharmacist has the ability to immediately communicate directly with the technician/trainee;

(II) the pharmacist electronically conducting the verification is either a:

(-a-) Texas licensed pharmacist; or

(-b-) pharmacist employed by a Class E pharmacy that:

(-1-) has the same owner as the Class A pharmacy where the pharmacy technicians/trainees are located; or

(-2-) has entered into a written contract or agreement with the Class A pharmacy which outlines the services to be provided and the responsibilities and accountabilities of each pharmacy in compliance with federal and state laws and regulations;

(III) the pharmacy establishes controls to protect the privacy and security of confidential records; and

(IV) the pharmacy keeps permanent records of prescriptions electronically verified for a period of two years.

(E) All pharmacists, while on duty, shall be responsible for the legal operation of the pharmacy and for complying with all state and federal laws or rules governing the practice of pharmacy.

(F) A dispensing pharmacist shall be responsible for and ensure that the drug is dispensed and delivered safely and accurately as prescribed, unless the pharmacy's data processing system can record the identity of each pharmacist involved in a specific portion of the dispensing processing. If the system can track the identity of each pharmacist involved in the dispensing process, each pharmacist involved in the dispensing process shall be responsible for and ensure that the portion of the process the pharmacist is performing results in the safe and accurate dispensing and delivery of the drug as prescribed. The dispensing process shall include, but not be limited to, drug regimen review and verification of accurate prescription data entry, including prescriptions placed on hold, packaging, preparation, compounding, transferring, labeling, and performance of the final check of the dispensed prescription. An intern has the same responsibilities described in this subparagraph as a pharmacist but must perform his or her duties under the supervision of a pharmacist.

(2) Duties. Duties which may only be performed by a pharmacist are as follows:

(A) receiving oral prescription drug orders for controlled substances and reducing these orders to writing, either manually or electronically;

(B) interpreting prescription drug orders;

(C) selecting drug products;

(D) performing the final check of the dispensed prescription before delivery to the patient to ensure that the prescription has been dispensed accurately as prescribed;

(E) communicating to the patient or patient's agent information about the prescription drug or device which in the exercise of the pharmacist's professional judgment, the pharmacist deems significant, as specified in §291.33(c) of this title;

(F) communicating to the patient or the patient's agent on his or her request information concerning any prescription drugs dispensed to the patient by the pharmacy;

(G) assuring that a reasonable effort is made to obtain, record, and maintain patient medication records;

(H) interpreting patient medication records and performing drug regimen reviews;

(I) performing a specific act of drug therapy management for a patient delegated to a pharmacist by a written protocol from a physician licensed in this state in compliance with the Medical Practice Act;

(J) verifying that controlled substances listed on invoices are received by clearly recording his/her initials and date of receipt of the controlled substances; and

(K) transferring or receiving a transfer of original prescription information for a controlled substance on behalf of a patient.

(3) Special requirements for compounding. All pharmacists engaged in compounding non-sterile preparations shall meet the training requirements specified in §291.131 of this title (relating to Pharmacies Compounding Non-Sterile Preparations).

(d) Pharmacy Technicians and Pharmacy Technician Trainees.

(1) General.

(A) All pharmacy technicians and pharmacy technician trainees shall meet the training requirements specified in §297.6 of this title (relating to Pharmacy Technician and Pharmacy Technician Trainee Training).

(B) Special requirements for compounding. All pharmacy technicians and pharmacy technician trainees engaged in compounding non-sterile preparations shall meet the training requirements specified in §291.131 of this title.

(2) Duties.

(A) Pharmacy technicians and pharmacy technician trainees may not perform any of the duties listed in subsection (c)(2) of this section.

(B) A pharmacist may delegate to pharmacy technicians and pharmacy technician trainees any nonjudgmental technical duty associated with the preparation and distribution of prescription drugs provided:

(i) unless otherwise provided under §291.33 of this subchapter, a pharmacist verifies the accuracy of all acts, tasks, and functions performed by pharmacy technicians and pharmacy technician trainees;

(ii) pharmacy technicians and pharmacy technician trainees are under the direct supervision of and responsible to a pharmacist; and

(iii) only pharmacy technicians and pharmacy technician trainees who have been properly trained on the use of an automated pharmacy dispensing system and can demonstrate comprehen-

sive knowledge of the written policies and procedures for the operation of the system may be allowed access to the system.

(C) Pharmacy technicians and pharmacy technician trainees may perform only nonjudgmental technical duties associated with the preparation and distribution of prescription drugs, as follows:

- (i) initiating and receiving refill authorization requests;
- (ii) entering prescription data into a data processing system;
- (iii) taking a stock bottle from the shelf for a prescription;
- (iv) preparing and packaging prescription drug orders (i.e., counting tablets/capsules, measuring liquids and placing them in the prescription container);
- (v) affixing prescription labels and auxiliary labels to the prescription container;
- (vi) reconstituting medications;
- (vii) prepackaging and labeling prepackaged drugs;
- (viii) loading bulk unlabeled drugs into an automated dispensing system provided a pharmacist verifies that the system is properly loaded prior to use;
- (ix) loading prepackaged containers previously verified by a pharmacist or manufacturer's unit of use packages into an automated dispensing system in accordance with §291.33(i)(2)(D)(III) of this subchapter;
- (x) compounding non-sterile prescription drug orders; and
- (xi) compounding bulk non-sterile preparations.

(D) In addition to the duties listed above in subparagraph (C) of this paragraph, pharmacy technicians may perform the following nonjudgmental technical duties associated with the preparation and distribution of prescription drugs:

- (i) receiving oral prescription drug orders for dangerous drugs and reducing these orders to writing, either manually or electronically;
- (ii) transferring or receiving a transfer of original prescription information for a dangerous drug on behalf of a patient; and
- (iii) contacting a prescriber for information regarding an existing prescription for a dangerous drug.

(3) Ratio of on-site pharmacists to pharmacy technicians and pharmacy technician trainees.

(A) Except as provided in subparagraphs (B) and (C) [subparagraph (B)] of this paragraph, the ratio of on-site pharmacists to pharmacy technicians and pharmacy technician trainees may be 1:6, provided the pharmacist is on-site and a maximum of three of the six are pharmacy technician trainees. The ratio of pharmacists to pharmacy technician trainees may not exceed 1:3.

(B) Subparagraph (A) of this paragraph does not apply to a central fill pharmacy, as defined in §291.125 of this title (relating to Centralized Prescription Dispensing), that has no patient-facing contact. For purposes of this subparagraph, patient-facing contact means any direct interaction between a pharmacy employee and a patient or patient's agent.

(C) ~~[(B)]~~ As specified in §568.006 of the Act, a Class A pharmacy may have a ratio of on-site pharmacists to pharmacy technicians/pharmacy technician trainees of 1:5 provided:

- (i) the Class A pharmacy:
 - (I) dispenses no more than 20 different prescription drugs; and
 - (II) does not produce sterile preparations including intravenous or intramuscular drugs on-site; and
- (ii) the following conditions are met:
 - (I) at least four are pharmacy technicians and not pharmacy technician trainees; and
 - (II) the pharmacy has written policies and procedures regarding the supervision of pharmacy technicians and pharmacy technician trainees, including requirements that the pharmacy technicians and pharmacy technician trainees included in a 1:5 ratio may be involved only in one process at a time. For example, a technician/trainee who is compounding non-sterile preparations or who is involved in the preparation of prescription drug orders may not also call physicians for authorization of refills.

(e) Identification of pharmacy personnel. All pharmacy personnel shall be identified as follows.

(1) Pharmacy technicians. All pharmacy technicians shall wear an identification tag or badge that bears the person's name and identifies him or her as a pharmacy technician, or a certified pharmacy technician, if the technician maintains current certification with the Pharmacy Technician Certification Board or any other entity providing an examination approved by the board.

(2) Pharmacy technician trainees. All pharmacy technician trainees shall wear an identification tag or badge that bears the person's name and identifies him or her as a pharmacy technician trainee.

(3) Pharmacist interns. All pharmacist interns shall wear an identification tag or badge that bears the person's name and identifies him or her as a pharmacist intern.

(4) Pharmacists. All pharmacists shall wear an identification tag or badge that bears the person's name and identifies him or her as a pharmacist.

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 7, 2025.

TRD-202500828

Daniel Carroll, Pharm.D.

Executive Director

Texas State Board of Pharmacy

Earliest possible date of adoption: April 20, 2025

For further information, please call: (512) 305-8084



SUBCHAPTER C. NUCLEAR PHARMACY (CLASS B)

22 TAC §291.55

The Texas State Board of Pharmacy proposes amendments to §291.55, concerning Records. The amendments, if adopted, up-

date a citation concerning a statutory provision that has been repealed.

Daniel Carroll, Pharm.D., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Dr. Carroll has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be clear and correct regulations. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

For each year of the first five years the proposed amendments will be in effect, Dr. Carroll has determined the following:

- (1) The proposed amendments do not create or eliminate a government program;
- (2) Implementation of the proposed amendments does not require the creation of new employee positions or the elimination of existing employee positions;
- (3) Implementation of the proposed amendments does not require an increase or decrease in the future legislative appropriations to the agency;
- (4) The proposed amendments do not require an increase or decrease in fees paid to the agency;
- (5) The proposed amendments do not create a new regulation;
- (6) The proposed amendments do not limit or expand an existing regulation;
- (7) The proposed amendments do not increase or decrease the number of individuals subject to the rule's applicability; and
- (8) The proposed amendments do not positively or adversely affect this state's economy.

Written comments on the amendments may be submitted to Eamon D. Briggs, Deputy General Counsel, Texas State Board of Pharmacy, 1801 Congress Avenue, Suite 13.100, Austin, Texas 78701-1319, FAX (512) 305-8061. Comments must be received by 5:00 p.m., April 29, 2025.

The amendments are proposed under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§291.55. *Records.*

(a) Maintenance of records.

(1) Every inventory or other record required to be kept under this section shall be:

(A) kept by the pharmacy and be available, for at least two years from the date of such inventory or record, for inspecting and copying by the board or its representative, and other authorized local, state, or federal law enforcement agencies; and

(B) supplied by the pharmacy within 72 hours, if requested by an authorized agent of the board. If the pharmacy maintains

the records in an electronic format, the requested records must be provided in a mutually agreeable electronic format if specifically requested by the board or its representative. Failure to provide the records set out in this subsection, either on site or within 72 hours, constitutes prima facie evidence of failure to keep and maintain records in violation of the Act.

(2) Records of controlled substances listed in Schedules I and II shall be maintained separately from all other records of the pharmacy.

(3) Records of controlled substances, other than original prescription drug orders, listed in Schedules III - V shall be maintained separately or readily retrievable from all other records of the pharmacy. For purposes of this subsection, "readily retrievable" means that the controlled substances shall be asterisked, red-lined, or in some other manner readily identifiable apart from all other items appearing on the record.

(4) Records, except when specifically required to be maintained in original or hard copy form, may be maintained in an alternative data retention system, such as a data processing system or direct imaging system provided:

(A) the records maintained in the alternative system contain all of the information required on the manual record; and

(B) the data processing system is capable of producing a hard copy of the record upon request of the board, its representative, or other authorized local, state, or federal law enforcement or regulatory agencies.

(b) Prescriptions.

(1) Professional responsibility. Pharmacists shall exercise sound professional judgment with respect to the accuracy and authenticity of any radioactive prescription drug order they dispense. If the pharmacist questions the accuracy or authenticity of a radioactive prescription drug order, he/she shall verify the order with the practitioner prior to dispensing.

(2) Oral radioactive prescription drug orders.

(A) Only a pharmacist may receive an oral prescription drug order for a controlled substance. Only an authorized nuclear pharmacist, or a pharmacist-intern or pharmacy technician under the direct supervision of an authorized nuclear pharmacist, may receive from a practitioner or a practitioner's designated agent:

(i) an oral therapeutic prescription drug order; or

(ii) an oral diagnostic prescription drug order in instances where patient specificity is required for patient safety (e.g., radiolabeled blood products, radiolabeled antibodies).

(B) A practitioner shall designate in writing the name of each agent authorized by the practitioner to communicate prescriptions orally for the practitioner. The practitioner shall maintain at the practitioner's usual place of business a list of the designated agents. The practitioner shall provide a pharmacist with a copy of the practitioner's written authorization for a specific agent on the pharmacist's request.

(C) A pharmacist may not dispense an oral radioactive prescription drug order for a dangerous drug or a controlled substance issued by a practitioner licensed in the Dominion of Canada or the United Mexican States unless the practitioner is also licensed in Texas.

(3) Radioactive prescription drug orders issued by practitioners in another state.

(A) Dangerous drug prescription orders. A pharmacist may dispense a radioactive prescription drug order for dangerous drugs

issued by practitioners in a state other than Texas in the same manner as radioactive prescription drug orders for dangerous drugs issued by practitioners in Texas are dispensed.

(B) Controlled substance prescription drug orders. A pharmacist may dispense radioactive prescription drug orders for controlled substances in Schedule III, IV, or V issued by a practitioner in another state provided:

(i) the radioactive prescription drug order is written, oral, or telephonically or electronically communicated prescription as allowed by the DEA issued by a person practicing in another state and licensed by another state as a physician, dentist, veterinarian, or podiatrist, who has a current federal Drug Enforcement Administration registration number, and who may legally prescribe Schedule III, IV, or V controlled substances in such other state; and

(ii) the radioactive prescription drug order is not dispensed more than six months from the initial date of issuance.

(4) Radioactive prescription drug orders issued by practitioners in the United Mexican States or the Dominion of Canada.

(A) Controlled substance prescription drug orders. A pharmacist may not dispense a radioactive prescription drug order for a Schedule II, III, IV, or V controlled substance issued by a practitioner licensed in the Dominion of Canada or the United Mexican States.

(B) Dangerous drug prescription drug orders. A pharmacist may dispense a radioactive prescription drug order for a dangerous drug issued by a person licensed in the Dominion of Canada or the United Mexican States as a physician, dentist, veterinarian, or podiatrist provided the radioactive prescription drug order is an original written prescription.

(C) Prescription drug orders for Schedule II controlled substances. No Schedule II controlled substance may be dispensed without a written prescription drug order of a practitioner on an official prescription form as required by the Texas Controlled Substances Act, §481.075.

(5) Electronic radioactive prescription drug orders. For the purpose of this paragraph, electronic radioactive prescription drug orders shall be considered the same as oral radioactive prescription drug orders.

(A) An electronic radioactive prescription drug order may be transmitted by a practitioner or a practitioner's designated agent:

(i) directly to a pharmacy; or

(ii) through the use of a data communication device provided:

(I) the confidential prescription information is not altered during transmission; and

(II) confidential patient information is not accessed or maintained by the operator of the data communication device other than for legal purposes under federal and state law.

(B) A practitioner shall designate in writing the name of each agent authorized by the practitioner to electronically transmit prescriptions for the practitioner. The practitioner shall maintain at the practitioner's usual place of business a list of the designated agents. The practitioner shall provide a pharmacist with a copy of the practitioner's written authorization for a specific agent on the pharmacist's request.

(C) A pharmacist may not dispense an electronic radioactive prescription drug order for a:

(i) Schedule II controlled substance except as authorized in §481.075[for faxed prescriptions in §481.074], Health and Safety Code; or

(ii) dangerous drug or controlled substance issued by a practitioner licensed in the Dominion of Canada or the United Mexican States unless the practitioner is also licensed in Texas.

(6) Original prescription drug order records.

(A) Original prescriptions shall be maintained and readily retrievable by the pharmacy and remain accessible for a period of two years from the date of filling.

(B) If an original prescription drug order is changed, such prescription order shall be invalid and of no further force and effect; if additional drugs are to be dispensed, a new prescription drug order with a new and separate number is required.

(C) Original prescriptions shall be maintained in one of the following formats:

(i) in three separate files as follows:

(I) prescriptions for controlled substances listed in Schedule II;

(II) prescriptions for controlled substances listed in Schedules III - V; and

(III) prescriptions for dangerous drugs and non-prescription drugs; or

(ii) within a patient medication record system provided that original prescriptions for controlled substances are maintained separate from original prescriptions for noncontrolled substances and prescriptions for Schedule II controlled substances are maintained separate from all other original prescriptions.

(D) Original prescription records other than prescriptions for Schedule II controlled substances may be stored on microfilm, microfiche, or other system which is capable of producing a direct image of the original prescription record, e.g., a digitalized imaging system. If original prescription records are stored in a direct imaging system, the following is applicable:

(i) The original prescription records must be maintained and readily retrievable as specified in subparagraph (C) of this paragraph.

(ii) The pharmacy must provide immediate access to equipment necessary to render the records easily readable.

(7) Prescription drug order information.

(A) All original radioactive prescription drug orders shall bear:

(i) the name of the patient, if applicable at the time of the order;

(ii) the name of the institution;

(iii) the name, and if for a controlled substance, the address and DEA registration number of the practitioner;

(iv) the name of the radiopharmaceutical;

(v) the amount of radioactive material contained in millicuries (mCi), microcuries (uCi), or becquerels (Bq) and the corresponding time that applies to this activity, if different than the requested calibration date and time;

(vi) the date and time of calibration; and

(vii) the date of issuance.

(B) At the time of dispensing, a pharmacist is responsible for the addition of the following information to the original prescription:

(i) the unique identification number of the prescription drug order;

(ii) the initials or identification code of the person who compounded the sterile radiopharmaceutical and the pharmacist who checked and released the product unless maintained in a readily retrievable format;

(iii) the name, quantity, lot number, and expiration date of each product used in compounding the sterile radiopharmaceutical; and

(iv) the date of dispensing, if different from the date of issuance.

(8) Refills. A radioactive prescription drug order must be filled from an original prescription which may not be refilled.

(c) Policy and procedure manual.

(1) All nuclear pharmacies shall maintain a policy and procedure manual. The nuclear pharmacy policy and procedure manual is a compilation of written policy and procedure statements.

(2) A technical operations manual governing all nuclear pharmacy functions shall be prepared. It shall be continually revised to reflect changes in techniques, organizations, etc. All pharmacy personnel shall be familiar with the contents of the manual.

(3) The nuclear pharmacy policies and procedures manual shall be prepared by the pharmacist-in-charge with input from the affected personnel and from other involved staff and committees to govern procurement, preparation, distribution, storage, disposal, and control of all drugs used and the need for policies and procedures relative to procurement of multisource items, inventory, investigational drugs, and new drug applications.

(d) Other records. Other records to be maintained by a pharmacy:

(1) a permanent log of the initials or identification codes which identifies each dispensing pharmacist by name (the initials or identification codes shall be unique to ensure that each pharmacist can be identified, i.e., identical initials or identification codes shall not be used);

(2) copy 3 of DEA order forms (DEA 222) which have been properly dated, initialed, and filed, and all copies of each unaccepted or defective order form and any attached statements or other documents;

(3) a hard copy of the power of attorney to sign DEA 222 order forms (if applicable);

(4) suppliers' invoices of controlled substances; a pharmacist shall verify that the controlled drugs listed on the invoices were actually received by clearly recording his/her initials and the actual date of receipt of the controlled substances;

(5) suppliers' credit memos for controlled substances and dangerous drugs;

(6) a hard copy of inventories required by §291.17 of this title (relating to Inventory Requirements);

(7) hard copy reports of surrender or destruction of controlled substances and/or dangerous drugs to an appropriate state or federal agency;

(8) records of distribution of controlled substances and/or dangerous drugs to other pharmacies, practitioners, or registrants; and

(9) a hard copy of any notification required by the Texas Pharmacy Act or these sections, including, but not limited to, the following:

(A) reports of theft or significant loss of controlled substances to DEA and the board;

(B) notifications of a change in pharmacist-in-charge of a pharmacy; and

(C) reports of a fire or other disaster which may affect the strength, purity, or labeling of drugs, medications, devices, or other materials used in the diagnosis or treatment of injury, illness, and disease.

(e) Permission to maintain central records. Any pharmacy that uses a centralized recordkeeping system for invoices and financial data shall comply with the following procedures.

(1) Controlled substance records. Invoices and financial data for controlled substances may be maintained at a central location provided the following conditions are met.

(A) Prior to the initiation of central recordkeeping, the pharmacy submits written notification by registered or certified mail to the divisional director of DEA as required by the Code of Federal Regulations, Title 21, §1304.04(a), and submits a copy of this written notification to the board. Unless the registrant is informed by the divisional director of DEA that permission to keep central records is denied, the pharmacy may maintain central records commencing 14 days after receipt of notification by the divisional director.

(B) The pharmacy maintains a copy of the notification required in subparagraph (A) of this paragraph.

(C) The records to be maintained at the central record location shall not include executed DEA order forms, prescription drug orders, or controlled substance inventories, which shall be maintained at the pharmacy.

(2) Dangerous drug records. Invoices and financial data for dangerous drugs may be maintained at a central location.

(3) Access to records. If the records are kept on microfilm, computer media, or in any form requiring special equipment to render the records easily readable, the pharmacy shall provide access to such equipment with the records.

(4) Delivery of records. The pharmacy agrees to deliver all or any part of such records to the pharmacy location within two business days of written request of an authorized agent of the board or any other authorized official.

(5) Ownership of pharmacy records. For purposes of these sections, a pharmacy licensed under the Act is the only entity which may legally own and maintain prescription drug records.

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 7, 2025.
TRD-202500829

Daniel Carroll, Pharm.D.
Executive Director
Texas State Board of Pharmacy
Earliest possible date of adoption: April 20, 2025
For further information, please call: (512) 305-8084

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SUBCHAPTER D. INSTITUTIONAL PHARMACY (CLASS C)

22 TAC §291.72

The Texas State Board of Pharmacy proposes amendments to §291.72, concerning Definitions. The amendments, if adopted, add definitions for the terms "common ownership" and "owner of record."

Daniel Carroll, Pharm.D., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Dr. Carroll has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be clear and correct regulations that reflect the Board's current practices concerning the licensure of pharmacies. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

For each year of the first five years the proposed amendments will be in effect, Dr. Carroll has determined the following:

- (1) The proposed amendments do not create or eliminate a government program;
- (2) Implementation of the proposed amendments does not require the creation of new employee positions or the elimination of existing employee positions;
- (3) Implementation of the proposed amendments does not require an increase or decrease in the future legislative appropriations to the agency;
- (4) The proposed amendments do not require an increase or decrease in fees paid to the agency;
- (5) The proposed amendments do not create a new regulation;
- (6) The proposed amendments do expand an existing regulation;
- (7) The proposed amendments do not increase or decrease the number of individuals subject to the rule's applicability; and
- (8) The proposed amendments would have a de minimis impact on this state's economy.

Written comments on the amendments may be submitted to Eamon D. Briggs, Deputy General Counsel, Texas State Board of Pharmacy, 1801 Congress Avenue, Suite 13.100, Austin, Texas 78701-1319, FAX (512) 305-8061. Comments must be received by 5:00 p.m., April 29, 2025.

The amendments are proposed under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board inter-

prets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§291.72. Definitions.

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

(1) Accurately as prescribed--Distributing and/or delivering a medication drug order:

(A) to the correct patient (or agent of the patient) for whom the drug or device was prescribed;

(B) with the correct drug in the correct strength, quantity, and dosage form ordered by the practitioner; and

(C) with correct labeling as ordered by the practitioner and required by rule.

(2) Act--The Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Occupations Code, as amended.

(3) Administer--The direct application of a prescription drug by injection, inhalation, ingestion, or any other means to the body of a patient by:

(A) a practitioner, an authorized agent under his supervision, or other person authorized by law; or

(B) the patient at the direction of a practitioner.

(4) Automated compounding or counting device--An automated device that compounds, measures, counts and/or packages a specified quantity of dosage units of a designated drug product.

(5) Automated medication supply system--A mechanical system that performs operations or activities relative to the storage and distribution of medications for administration and which collects, controls, and maintains all transaction information.

(6) Board--The State Board of Pharmacy.

(7) Clinical Pharmacy Program--An ongoing program in which pharmacists are on duty during the time the pharmacy is open for pharmacy services and pharmacists provide direct focused, medication-related care for the purpose of optimizing patients' medication therapy and achieving definite outcomes, which includes the following activities:

(A) prospective medication therapy consultation, selection, and adjustment;

(B) monitoring laboratory values and therapeutic drug monitoring;

(C) identifying and resolving medication-related problems; and

(D) disease state management.

(8) Common ownership--Two or more pharmacies with an identical owner of record with the Board.

(9) [(8)] Confidential record--Any health-related record that contains information that identifies an individual and that is maintained by a pharmacy or pharmacist, such as a patient medication record, prescription drug order, or medication drug order.

(10) [(9)] Consultant pharmacist--A pharmacist retained by a facility on a routine basis to consult with the facility in areas that pertain to the practice of pharmacy.

(11) [(10)] Controlled substance--A drug, immediate precursor, or other substance listed in Schedules I - V or Penalty Groups 1 - 4 of the Texas Controlled Substances Act, as amended, or a drug, immediate precursor, or other substance included in Schedules I - V of the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended (Public Law 91-513).

(12) [(11)] Dangerous drug--A drug or device that:

(A) is not included in Penalty Group 1, 2, 3, or 4, Chapter 481, Health and Safety Code, and is unsafe for self-medication; or

(B) bears or is required to bear the legend:

(i) "Caution: federal law prohibits dispensing without prescription" or "Rx only" or another legend that complies with federal law; or

(ii) "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian."

(13) [(12)] Device--An instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component part or accessory, that is required under federal or state law to be ordered or prescribed by a practitioner.

(14) [(13)] Direct copy--Electronic copy or carbonized copy of a medication order, including a facsimile (FAX) or digital image.

(15) [(14)] Dispense--Preparing, packaging, compounding, or labeling for delivery a prescription drug or device in the course of professional practice to an ultimate user or his agent by or pursuant to the lawful order of a practitioner.

(16) [(15)] Distribute--The delivery of a prescription drug or device other than by administering or dispensing.

(17) [(16)] Distributing pharmacist--The pharmacist who checks the medication order prior to distribution.

(18) [(17)] Downtime--Period of time during which a data processing system is not operable.

(19) [(18)] Drug regimen review--

(A) An evaluation of medication orders and patient medication records for:

(i) known allergies;

(ii) rational therapy--contraindications;

(iii) reasonable dose and route of administration;

(iv) reasonable directions for use;

(v) duplication of therapy;

(vi) drug-drug interactions;

(vii) drug-food interactions;

(viii) drug-disease interactions;

(ix) adverse drug reactions; and

(x) proper utilization, including overutilization or underutilization.

(B) The drug regimen review may be conducted prior to administration of the first dose (prospective) or after administration of the first dose (retrospective).

(20) [(19)] Electronic signature--A unique security code or other identifier which specifically identifies the person entering infor-

mation into a data processing system. A facility which utilizes electronic signatures must:

(A) maintain a permanent list of the unique security codes assigned to persons authorized to use the data processing system; and

(B) have an ongoing security program which is capable of identifying misuse and/or unauthorized use of electronic signatures.

(21) [(20)] Expiration date--The date (and time, when applicable) beyond which a product should not be used.

(22) [(21)] Facility--

(A) a hospital or other patient facility that is licensed under Chapter 241 or 577, Health and Safety Code;

(B) a hospice patient facility that is licensed under Chapter 142, Health and Safety Code;

(C) an ambulatory surgical center licensed under Chapter 243, Health and Safety Code; or

(D) a hospital maintained or operated by the state.

(23) [(22)] Floor stock--Prescription drugs or devices not labeled for a specific patient and maintained at a nursing station or other hospital department (excluding the pharmacy) for the purpose of administration to a patient of the facility.

(24) [(23)] Formulary--List of drugs approved for use in the facility by the committee which performs the pharmacy and therapeutics function for the facility.

(25) [(24)] Full-time pharmacist--A pharmacist who works in a pharmacy from 30 to 40 hours per week or if the pharmacy is open less than 60 hours per week, one-half of the time the pharmacy is open.

(26) [(25)] Hard copy--A physical document that is readable without the use of a special device (i.e., data processing system, computer, etc).

(27) [(26)] Hot water--The temperature of water from the pharmacy's sink maintained at a minimum of 105 degrees F (41 degrees C).

(28) [(27)] Institutional pharmacy--Area or areas in a facility where drugs are stored, bulk compounded, delivered, compounded, dispensed, and distributed to other areas or departments of the facility, or dispensed to an ultimate user or his or her agent.

(29) [(28)] Investigational new drug--New drug intended for investigational use by experts qualified to evaluate the safety and effectiveness of the drug as authorized by the Food and Drug Administration.

(30) [(29)] Medical Practice Act--The Texas Medical Practice Act, Subtitle B, Occupations Code, as amended.

(31) [(30)] Medication order--A written order from a practitioner or a verbal order from a practitioner or his authorized agent for administration of a drug or device.

(32) [(31)] Number of beds--The total number of beds is determined by the:

(A) number of beds for which the hospital is licensed by the Texas Department of State Health Services; or

(B) average daily census as calculated by dividing the total number of inpatients admitted during the previous calendar year by 365 (or 366 if the previous calendar year is a leap year).

(33) Owner of record--The direct owner of the pharmacy provided on the pharmacy's application for a pharmacy license or most recent approved change of ownership form.

(34) [(32)] Part-time pharmacist--A pharmacist either employed or under contract, who routinely works less than full-time.

(35) [(33)] Patient--A person who is receiving services at the facility (including patients receiving ambulatory procedures and patients conditionally admitted as observation patients), or who is receiving long term care services or Medicare extended care services in a swing bed on the hospital premise or an adjacent, readily accessible facility that is under the authority of the hospital's governing body. For the purposes of this definition, the term "long term care services" means those services received in a skilled nursing facility which is a distinct part of the hospital and the distinct part is not licensed separately or formally approved as a nursing home by the state, even though it is designated or certified as a skilled nursing facility. A patient includes a person confined in any correctional institution operated by the state of Texas.

(36) [(34)] Perpetual inventory--An inventory which documents all receipts and distributions of a drug product, such that an accurate, current balance of the amount of the drug product present in the pharmacy is indicated.

(37) [(35)] Pharmaceutical care--The provision of drug therapy and other pharmaceutical services intended to assist in the cure or prevention of a disease, elimination or reduction of a patient's symptoms, or arresting or slowing of a disease process.

(38) [(36)] Pharmacist-in-charge--Pharmacist designated on a pharmacy license as the pharmacist who has the authority or responsibility for a pharmacy's compliance with laws and rules pertaining to the practice of pharmacy.

(39) [(37)] Pharmacy and therapeutics function--Committee of the medical staff in the facility which assists in the formulation of broad professional policies regarding the evaluation, selection, distribution, handling, use, and administration, and all other matters relating to the use of drugs and devices in the facility.

(40) [(38)] Pharmacy technician--An individual who is registered with the board as a pharmacy technician and whose responsibility in a pharmacy is to provide technical services that do not require professional judgment regarding preparing and distributing drugs and who works under the direct supervision of and is responsible to a pharmacist.

(41) [(39)] Pharmacy technician trainee--An individual who is registered with the board as a pharmacy technician trainee and is authorized to participate in a pharmacy's technician training program.

(42) [(40)] Pre-packaging--The act of re-packaging and re-labeling quantities of drug products from a manufacturer's original container into unit-dose packaging or a multiple dose container for distribution within the facility except as specified in §291.74(f)(3)(B) of this title (relating to Operational Standards).

(43) [(41)] Prescription drug--

(A) A substance for which federal or state law requires a prescription before it may be legally dispensed to the public;

(B) A drug or device that under federal law is required, prior to being dispensed or delivered, to be labeled with either of the following statements:

(i) Caution: federal law prohibits dispensing without prescription or "Rx only" or another legend that complies with federal law; or

(ii) Caution: federal law restricts this drug to use by or on order of a licensed veterinarian; or

(C) A drug or device that is required by any applicable federal or state law or regulation to be dispensed on prescription only or is restricted to use by a practitioner only.

(44) [(42)] Prescription drug order--

(A) a written order from a practitioner or a verbal order from a practitioner or his authorized agent to a pharmacist for a drug or device to be dispensed; or

(B) a written order or a verbal order pursuant to Subtitle B, Chapter 157, Occupations Code.

(45) [(43)] Rural hospital--A licensed hospital with 75 beds or fewer that:

(A) is located in a county with a population of 50,000 or less as defined by the United States Census Bureau in the most recent U.S. census; or

(B) has been designated by the Centers for Medicare and Medicaid Services as a critical access hospital, rural referral center, or sole community hospital.

(46) [(44)] Sample--A prescription drug which is not intended to be sold and is intended to promote the sale of the drug.

(47) [(45)] Supervision--

(A) Physically present supervision--In a Class C pharmacy, a pharmacist shall be physically present to directly supervise pharmacy technicians or pharmacy technician trainees.

(B) Electronic supervision--In a Class C pharmacy in a facility with 100 beds or less, a pharmacist licensed in Texas may electronically supervise pharmacy technicians or pharmacy technician trainees to perform the duties specified in §291.73(e)(2) of this title (relating to Personnel) provided:

(i) the pharmacy uses a system that monitors the data entry of medication orders and the filling of such orders by an electronic method that shall include the use of one or more the following types of technology:

(I) digital interactive video, audio, or data transmission;

(II) data transmission using computer imaging by way of still-image capture and store and forward; and

(III) other technology that facilitates access to pharmacy services;

(ii) the pharmacy establishes controls to protect the privacy and security of confidential records;

(iii) the pharmacist responsible for the duties performed by a pharmacy technician or pharmacy technician trainee verifies:

(I) the data entry; and

(II) the accuracy of the filled orders prior to release of the order; and

(iv) the pharmacy keeps permanent digital records of duties electronically supervised and data transmissions associated with electronically supervised duties for a period of two years.

(C) If the conditions of subparagraph (B) of this paragraph are met, electronic supervision shall be considered the equivalent of direct supervision for the purposes of the Act.

(48) [(46)] Tech-Check-Tech--Allowing a pharmacy technician to verify the accuracy of work performed by another pharmacy technician relating to the filling of floor stock and unit dose distribution systems for a patient admitted to the hospital if the patient's orders have previously been reviewed and approved by a pharmacist.

(49) [(47)] Texas Controlled Substances Act--The Texas Controlled Substances Act, the Health and Safety Code, Chapter 481, as amended.

(50) [(48)] Unit-dose packaging--The ordered amount of drug in a dosage form ready for administration to a particular patient, by the prescribed route at the prescribed time, and properly labeled with name, strength, and expiration date of the drug.

(51) [(49)] Unusable drugs--Drugs or devices that are unusable for reasons, such as they are adulterated, misbranded, expired, defective, or recalled.

(52) [(50)] Written protocol--A physician's order, standing medical order, standing delegation order, or other order or protocol as defined by rule of the Texas Medical Board under the Texas Medical Practice Act Subtitle B, Chapter 157, Occupations Code.

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 7, 2025.

TRD-202500830

Daniel Carroll, Pharm.D.

Executive Director

Texas State Board of Pharmacy

Earliest possible date of adoption: April 20, 2025

For further information, please call: (512) 305-8084



SUBCHAPTER F. NON-RESIDENT PHARMACY (CLASS E)

22 TAC §291.102

The Texas State Board of Pharmacy proposes amendments to §291.102, concerning Definitions. The amendments, if adopted, correct the chapter range in the definition of the Act.

Daniel Carroll, Pharm.D., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Dr. Carroll has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be clear and correct regulations. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

For each year of the first five years the proposed amendments will be in effect, Dr. Carroll has determined the following:

(1) The proposed amendments do not create or eliminate a government program;

(2) Implementation of the proposed amendments does not require the creation of new employee positions or the elimination of existing employee positions;

(3) Implementation of the proposed amendments does not require an increase or decrease in the future legislative appropriations to the agency;

(4) The proposed amendments do not require an increase or decrease in fees paid to the agency;

(5) The proposed amendments do not create a new regulation;

(6) The proposed amendments do not limit or expand an existing regulation;

(7) The proposed amendments do not increase or decrease the number of individuals subject to the rule's applicability; and

(8) The proposed amendments do not positively or adversely affect this state's economy.

Written comments on the amendments may be submitted to Eamon D. Briggs, Deputy General Counsel, Texas State Board of Pharmacy, 1801 Congress Avenue, Suite 13.100, Austin, Texas 78701-1319, FAX (512) 305-8061. Comments must be received by 5:00 p.m., April 29, 2025.

The amendments are proposed under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§291.102. Definitions.

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

(1) Act--The Texas Pharmacy Act, Chapters 551 - 569 [551-566], Occupations Code, as amended.

(2) Accurately as prescribed--Dispensing, delivering, and/or distributing a prescription drug order:

(A) to the correct patient (or agent of the patient) for whom the drug or device was prescribed;

(B) with the correct drug in the correct strength, quantity, and dosage form ordered by the practitioner; and

(C) with correct labeling (including directions for use) as ordered by the practitioner. Provided, however, that nothing herein shall prohibit pharmacist substitution if substitution is conducted in strict accordance with applicable laws and rules, including Subchapter A of Chapter 562 of the Texas Pharmacy Act relating to Prescription and Substitution Requirements.

(3) Board--The Texas State Board of Pharmacy.

(4) Class E pharmacy license or non-resident pharmacy license--a license issued to a pharmacy located in another state whose primary business is to:

(A) dispense a prescription drug or device under a prescription drug order and to deliver the drug or device to a patient, including a patient in this state, by the United States mail, common carrier, or delivery service;

(B) process a prescription drug order for a patient, including a patient in this state; or

(C) perform another pharmaceutical service defined by board rule.

(5) Confidential Record--Any health related record, including a patient medication record, prescription drug order, or medication order that:

(A) contains information that identifies an individual; and

(B) is maintained by a pharmacy or pharmacist.

(6) Deliver or delivery--The actual, constructive, or attempted transfer of a prescription drug or device or controlled substance from one person to another, whether or not for a consideration.

(7) Dispense--Preparing, packaging, compounding, or labeling, in the course of professional practice, a prescription drug or device for delivery to an ultimate user or the user's agent under a practitioner's lawful order.

(8) Distribute--To deliver a prescription drug or device other than by administering or dispensing.

(9) Generically equivalent--A drug that is "pharmaceutically equivalent" and "therapeutically equivalent" to the drug prescribed.

(10) New prescription drug order--A prescription drug order that:

(A) has not been dispensed to the patient in the same strength and dosage form by this pharmacy within the last year;

(B) is transferred from another pharmacy; and/or

(C) is a discharge prescription drug order. (Note: furlough prescription drug orders are not considered new prescription drug orders.)

(11) Pharmaceutically equivalent--Drug products which have identical amounts of the same active chemical ingredients in the same dosage form and which meet the identical compendial or other applicable standards of strength, quality, and purity according to the United States Pharmacopoeia or other nationally recognized compendium.

(12) Pharmacist--For the purpose of this subchapter, a person licensed to practice pharmacy in the state where the Class E pharmacy is located.

(13) Pharmacist-in-charge--The pharmacist designated on a pharmacy license as the pharmacist who has the authority or responsibility for a pharmacy's compliance with statutes and rules pertaining to the practice of pharmacy.

(14) Practitioner--

(A) a person licensed or registered to prescribe, distribute, administer, or dispense a prescription drug or device in the course of professional practice in this state, including a physician, dentist, podiatrist, or veterinarian but excluding a person licensed under the Act;

(B) a person licensed by another state, Canada, or the United Mexican States in a health field in which, under the law of this state, a license holder in this state may legally prescribe a dangerous drug; or

(C) a person practicing in another state and licensed by another state as a physician, dentist, veterinarian, or podiatrist, who has a current federal Drug Enforcement Administration registration num-

ber and who may legally prescribe a Schedule II, III, IV, or V controlled substance, as specified under Chapter 481, Health and Safety Code, in that other state.

(15) Prescription drug order--an order from a practitioner or a practitioner's designated agent to a pharmacist for a drug or device to be dispensed.

(16) Therapeutically equivalent--Pharmaceutically equivalent drug products which, when administered in the same amounts, will provide the same therapeutic effect, identical in duration and intensity.

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 7, 2025.

TRD-202500831

Daniel Carroll, Pharm.D.

Executive Director

Texas State Board of Pharmacy

Earliest possible date of adoption: April 20, 2025

For further information, please call: (512) 305-8084



SUBCHAPTER G. SERVICES PROVIDED BY PHARMACIES

22 TAC §291.120

The Texas State Board of Pharmacy proposes amendments to §291.120, concerning General. The amendments, if adopted, add definitions for the terms "common ownership" and "owner of record."

Daniel Carroll, Pharm.D., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Dr. Carroll has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be clear and correct regulations that reflect the Board's current practices concerning the licensure of pharmacies. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

For each year of the first five years the proposed amendments will be in effect, Dr. Carroll has determined the following:

(1) The proposed amendments do not create or eliminate a government program;

(2) Implementation of the proposed amendments does not require the creation of new employee positions or the elimination of existing employee positions;

(3) Implementation of the proposed amendments does not require an increase or decrease in the future legislative appropriations to the agency;

(4) The proposed amendments do not require an increase or decrease in fees paid to the agency;

(5) The proposed amendments do not create a new regulation;

- (6) The proposed amendments do expand an existing regulation;
- (7) The proposed amendments do not increase or decrease the number of individuals subject to the rule's applicability; and
- (8) The proposed amendments would have a de minimis impact on this state's economy.

Written comments on the amendments may be submitted to Eamon D. Briggs, Deputy General Counsel, Texas State Board of Pharmacy, 1801 Congress Avenue, Suite 13.100, Austin, Texas 78701-1319, FAX (512) 305-8061. Comments must be received by 5:00 p.m., April 29, 2025.

The amendments are proposed under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§291.120. *General.*

(a) Purpose. This subchapter applies to all classes of pharmacies except as otherwise noted.

(b) Definitions.

(1) The Texas Pharmacy Act or Act--Subtitle J, other than Chapter 567, Occupations Code, as amended.

(2) Board--The Texas State Board of Pharmacy.

(3) Common ownership--Two or more pharmacies with an identical owner of record with the Board.

(4) Owner of record--The direct owner of the pharmacy provided on the pharmacy's application for a pharmacy license or most recent approved change of ownership form.

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 7, 2025.

TRD-202500832

Daniel Carroll, Pharm.D.

Executive Director

Texas State Board of Pharmacy

Earliest possible date of adoption: April 20, 2025

For further information, please call: (512) 305-8084



CHAPTER 315. CONTROLLED SUBSTANCES

22 TAC §315.13

The Texas State Board of Pharmacy proposes amendments to §315.13, concerning Official Prescription Form - Effective September 1, 2016. The amendments, if adopted, remove a recordkeeping requirement concerning a statutory provision that has been repealed and the effective date from the short title.

Daniel Carroll, Pharm.D., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Dr. Carroll has

determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be clear and correct regulations. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

For each year of the first five years the proposed amendments will be in effect, Dr. Carroll has determined the following:

(1) The proposed amendments do not create or eliminate a government program;

(2) Implementation of the proposed amendments does not require the creation of new employee positions or the elimination of existing employee positions;

(3) Implementation of the proposed amendments does not require an increase or decrease in the future legislative appropriations to the agency;

(4) The proposed amendments do not require an increase or decrease in fees paid to the agency;

(5) The proposed amendments do not create a new regulation;

(6) The proposed amendments do not limit or expand an existing regulation;

(7) The proposed amendments do not increase or decrease the number of individuals subject to the rule's applicability; and

(8) The proposed amendments do not positively or adversely affect this state's economy.

Written comments on the amendments may be submitted to Eamon D. Briggs, Deputy General Counsel, Texas State Board of Pharmacy, 1801 Congress Avenue, Suite 13.100, Austin, Texas 78701-1319, FAX (512) 305-8061. Comments must be received by 5:00 p.m., April 29, 2025.

The amendments are proposed under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§315.13. *Official Prescription Form [- Effective September 1, 2016].*

(a) Accountability. A practitioner who obtains from the board an official prescription form is accountable for each numbered form.

(b) Prohibited acts. A practitioner may not:

(1) allow another practitioner to use the individual practitioner's official prescription form;

(2) pre-sign an official prescription blank;

(3) post-date an official prescription; or

(4) leave an official prescription blank in a location where the practitioner should reasonably believe another could steal or misuse a prescription.

(c) While not in use. While an official prescription blank is not in immediate use, a practitioner may not maintain or store the book at a location so the book is easily accessible for theft or other misuse.

(d) Voided. A practitioner must account for each voided official prescription form by sending the voided form to the board.

(e) Types of forms. Forms may be single or multiple copy forms as provided by the board.

~~[(f) Faxed forms. Faxed official prescription forms will be accounted for as in the TCSA, §481.074(e).]~~

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 7, 2025.

TRD-202500833

Daniel Carroll, Pharm.D.

Executive Director

Texas State Board of Pharmacy

Earliest possible date of adoption: April 20, 2025

For further information, please call: (512) 305-8084



PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 463. APPLICATIONS AND EXAMINATIONS

SUBCHAPTER F. PROFESSIONAL DEVELOPMENT

22 TAC §463.35

The Texas Behavioral Health Executive Council on behalf of the Texas State Board of Examiners of Psychologists proposes amendments to §463.35, relating to Professional Development.

Overview and Explanation of the Proposed Rule. The proposed amendment will clarify the nature of professional development a licensee must receive related to maintaining competency when providing services to unique populations.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to licensees, applicants, and the general public because the proposed rule will provide greater clarity, consistency, and efficiency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year pe-

riod the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed rule may be submitted by mail to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 1801 Congress Ave., Ste. 7.300, Austin, Texas 78701 or via <https://www.bhec.texas.gov/proposed-rule-changes-and-the-rulemaking-process/>. The deadline for receipt of comments is 5:00 p.m., Central Time, on April 20, 2025, which is at least 30 days from the date of publication of this proposal in the *Texas Register*.

Applicable Legislation. This rule is proposed pursuant to the specific legal authority granted to the Executive Council by H.B. 1501, 86th Leg., R.S. (2019).

Statutory Authority. The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which

vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §501.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Psychologists previously voted and, by a majority, approved to propose this rule to the Executive Council. The rule is specifically authorized by §501.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Texas Occupations Code and may propose this rule.

Lastly, the Executive Council proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

§463.35. *Professional Development.*

(a) Minimum Professional Development Hours Required:

(1) A licensee must complete 40 hours of professional development during each renewal period that they hold a license. The 40 hours of professional development must include 6 hours in ethics and 6 hours designed to ensure competency when providing services to a distinct population, defined as a group of people who share a common attribute, trait, or defining characteristic of the licensee's choice [~~in cultural diversity or competence~~].

(2) A licensee may carry forward to the next renewal period, a maximum of 10 hours accrued during the current renewal period if those hours are not needed for renewal.

(b) Acceptable ethics hours include, but are not limited to professional development on:

- (1) state or federal laws, including agency rules, relevant to the practice of psychology;
- (2) practice guidelines established by local, regional, state, national, or international professional organizations;
- (3) training or education designed to demonstrate or affirm the ideals and responsibilities of the profession; and
- (4) training or education intended to assist licensees in determining appropriate decision-making and behavior, improve consistency in or enhance the professional delivery of services, and provide a minimum acceptable level of practice.

~~[(e) Acceptable cultural diversity or competency hours include, but are not limited to, professional development regarding age, disability, ethnicity, gender, gender identity, language, national origin, race, religion, culture, sexual orientation, and socio-economic status.]~~

~~(c) [(d)] Acceptable Professional Development Activities:~~

~~(1) All professional development hours must have been received during the renewal period unless allowed under subsection (a)(2) of this section, and be directly related to the practice of psychology;~~

~~(2) The Council shall make the determination as to whether the activity claimed by the licensee is directly related to the practice of psychology;~~

~~(3) Except for hours claimed under subsection (g), all professional development hours obtained must be designated by the provider in a letter, email, certificate, or transcript that displays the licensee's name, topic covered, date(s) of training, and hours of credit earned; and~~

~~(4) Multiple instances or occurrences of a professional development activity may not be claimed for the same renewal period.~~

~~(d) [(e)] Licensees must obtain at least fifty percent of their professional development hours from one or more of the following providers:~~

~~(1) an international, national, regional, state, or local association of medical, mental, or behavioral health professionals;~~

~~(2) public school districts, charter schools, or education service centers;~~

~~(3) city, county, state, or federal governmental entities;~~

~~(4) an institution of higher education accredited by a regional accrediting organization recognized by the Council for Higher Education Accreditation, the Texas Higher Education Coordinating Board, or the United States Department of Education;~~

~~(5) religious or charitable organizations devoted to improving the mental or behavioral health of individuals;~~

~~(6) a hospital or hospital system, including any clinic, division, or department within a hospital or hospital system; or~~

~~(7) any provider approved or endorsed by a provider listed herein.~~

~~(e) [(f)] Licensees shall receive credit for professional development activities according to the number of hours designated by the provider, or if no such designation, on a one-for-one basis with one credit hour for each hour spent in the professional development activity.~~

~~(f) [(g)] Notwithstanding subsection (e) above, licensees may claim professional development credit for each of the following activities:~~

~~(1) Passage of the jurisprudence examination. Licensees who pass the jurisprudence examination may claim 1 hour of professional development in ethics.~~

~~(2) Preparing and giving a presentation at a professional development activity. The maximum number of hours that may be claimed for this activity is 5 hours.~~

~~(3) Authoring a book or peer reviewed article. The maximum number of hours that may be claimed for this activity is 5 hours.~~

~~(4) Teaching or attending a graduate level course. The maximum number of hours that may be claimed for this activity is 5 hours.~~

~~(5) Self-study. The maximum number of hours that may be claimed for this activity is 1 hour.~~

(6) Successful completion of a training course on human trafficking prevention described by §116.002 of the Occupations Code. Licensees who complete this training may claim 1 hour of professional development credit.

(7) Providing supervision to supervisees delivering psychological services to individuals residing in a rural mental health discipline Health Professional Shortage Area (HPSA) identified by the U.S. Health Resources & Services Administration (HRSA). The maximum number of hours that may be claimed for this activity is 20 and hours claimed may not be counted toward the ethics or distinct population [cultural diversity or competency requirements].

(g) [(h)] The Council does not pre-evaluate or pre-approve professional development providers or hours.

(h) [(i)] Licensees shall maintain proof of professional development compliance for a minimum of 3 years after the applicable renewal period.

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 6, 2025.

TRD-202500817

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: April 20, 2025

For further information, please call: (512) 305-7706



CHAPTER 465. RULES OF PRACTICE

22 TAC §465.38

The Texas Behavioral Health Executive Council on behalf of the Texas State Board of Examiners of Psychologists proposes amendments to §465.38, relating to Psychological Services for Schools.

Overview and Explanation of the Proposed Rule. The proposed amendments will update the description of the scope of practice for Licensed Specialists in School Psychology to better reflect the full scope of practice and align with national standards, without substantively altering the scope of practice.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to licensees, applicants, and the general public because the proposed rule will provide greater clarity, consistency, and efficiency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be

no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed rule may be submitted by mail to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 1801 Congress Ave., Ste. 7.300, Austin, Texas 78701 or via <https://www.bhec.texas.gov/proposed-rule-changes-and-the-rulemaking-process/>. The deadline for receipt of comments is 5:00 p.m., Central Time, on April 20, 2025, which is at least 30 days from the date of publication of this proposal in the *Texas Register*.

Applicable Legislation. This rule is proposed pursuant to the specific legal authority granted to the Executive Council by H.B. 1501, 86th Leg., R.S. (2019).

Statutory Authority. The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this

State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §501.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Psychologists previously voted and, by a majority, approved to propose this rule to the Executive Council. The rule is specifically authorized by §501.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Texas Occupations Code and may propose this rule.

Lastly, the Executive Council proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

§465.38. *Psychological Services for Schools.*

(a) This rule acknowledges the unique difference in the delivery of school psychological services in public and private schools from psychological services in the private sector. The Council recognizes the purview of the State Board of Education and the Texas Education Agency in safeguarding the rights of school children in Texas. The mandated multidisciplinary team decision making, hierarchy of supervision, regulatory provisions, and past traditions of school psychological service delivery both nationally and in Texas, among other factors, allow for rules of practice in public and private schools which reflect these occupational distinctions from the private practice of psychology.

(b) Scope of Practice.

(1) School psychological services include the delivery of a comprehensive range of services to support the academic, emotional, social, behavioral, and mental health development and needs of students, which includes the promotion of students' strengths, as well as the identification and treatment of mental health disorders and disabilities impacting student educational performances.

~~{(1) An LSSP is a person who is trained to address psychological and behavioral problems manifested in and associated with educational systems by utilizing psychological concepts and methods in programs or actions which attempt to improve the learning, adjustment and behavior of students. Such activities include, but are not limited to, addressing special education eligibility, conducting manifestation determinations, and assisting with the development and implementation of individual educational programs, conducting behavioral assess-~~

~~ments, and designing and implementing behavioral interventions and supports.}~~

(2) School psychological services include, but are not limited to:

(A) Assessment, which includes psychoeducational, cognitive, psychological, emotional, behavioral, and other assessments; universal screenings; and various data collection methods to:

(i) identify and address student academic, social, emotional, developmental, and mental and behavioral health needs;

(ii) make eligibility recommendations for special education services;

(iii) assess risk of harm to self or others, and;

(iv) evaluate effectiveness of services and practices.

(B) Prevention and Intervention services to support student learning, which include facilitating delivery of curricula and instructional strategies, school-wide, group, and individual interventions to support student achievement, student wellness, mental and behavioral health, promoting safe learning environments and addressing other barriers to learning.

(C) Mental and Behavioral Health Services, which includes individual, group and/or school-wide services to promote social, emotional, mental and behavioral health, and prosocial and positive behaviors. Such services also include individual or group counseling, behavioral assessment and intervention, and consultation with families, educational staff, and other interested parties.

(D) Consultation and Collaboration, which includes engagement in collaborative problem-solving as a vehicle to plan, implement, and evaluate academic and mental and behavioral health services, which may include psychoeducation for students, families, school personnel, and other relevant parties.

(E) Development of programs, which includes designing, implementing, or evaluating safe, supportive, and educationally and psychologically sound learning environments; engaging in crisis prevention, response, and intervention; acting as a catalyst for educator and family engagement in adaptations and innovations; and facilitating the psychoeducational development of individual families or groups.

~~{(2) The assessment of emotional or behavioral disturbance, solely for educational purposes, using psychological techniques and procedures is considered the practice of school psychology.}~~

(3) The delivery of school psychological services in the public schools of this state shall be consistent with nationally recognized standards for the practice of school psychology. Licensees providing school psychological services in a private school should comply with those same nationally recognized standards where possible, but at a minimum, must comply with all applicable Council rules, including those related to informed consent, notification of the right to file a complaint, competency, forensic services, and misuse of services.

(c) The specialist in school psychology license permits the licensee to provide school psychological services only in public and private schools. A person utilizing this license may not provide psychological services in any context or capacity outside of a public or private school.

(d) The correct title for an individual holding a specialist in school psychology license is Licensed Specialist in School Psychology or (LSSP), or the individual may use the title School Psychologist as referenced in §21.003 of the Education Code. An LSSP who

has achieved certification as a Nationally Certified School Psychologist (NCSP) may use this credential along with the license title of LSSP.

(e) Providers of Psychological Services Within the Public Schools.

(1) School psychological services may be provided in Texas public schools only by individuals authorized by this Council to provide such services. Individuals who may provide such school psychological services include:

(A) LSSPs; and

(B) interns and post-doctoral fellows working towards licensure as a psychologist.

(2) Licensees who do not hold the specialist in school psychology license may contract for specific types of psychological services, such as clinical psychology, counseling psychology, neuropsychology, and family therapy, but any such contracting may not involve the broad range of school psychological services listed in subsection (b)(1) of this section.

(3) An LSSP who contracts with a school to provide school psychological services must notify the school of any intent or plan to subcontract or assign those services to another provider prior to entering into the agreement. An LSSP subject to this provision shall be responsible for ensuring the school psychological services delivered comply with subsection (b)(3) of this section.

(f) Compliance with Applicable Education Laws. LSSPs shall comply with all applicable state and federal laws affecting the practice of school psychology, including, but not limited to:

(1) Texas Education Code;

(2) Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. §1232g;

(3) Individuals with Disabilities Education Improvement Act (IDEIA), 20 U.S.C. §1400 et seq.;

(4) Texas Public Information Act, Texas Government Code, Chapter 552;

(5) Section 504 of the Rehabilitation Act of 1973;

(6) Americans with Disabilities Act (ADA) 42 U.S.C. §12101; and

(7) HIPAA when practicing in a private school.

(g) Informed Consent in a Public School. Informed consent for a Licensed Specialist in School Psychology must be obtained in accordance with the Individuals with Disabilities Education Improvement Act (IDEIA) and the U.S. Department of Education's rules governing parental consent when delivering school psychological services in the public schools, and is considered to meet the requirements for informed consent under Board rules. No additional informed consent, specific to any Council rules, is necessary in this context. Licensees providing psychological services under subsection (e)(2) of this section, or in a private school however, must obtain informed consent as otherwise required by the Council rules.

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

Filed with the Office of the Secretary of State on March 6, 2025.
TRD-202500818

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: April 20, 2025

For further information, please call: (512) 305-7706



PART 30. TEXAS STATE BOARD OF EXAMINERS OF PROFESSIONAL COUNSELORS

CHAPTER 681. PROFESSIONAL COUNSELORS

SUBCHAPTER C. APPLICATION AND LICENSING

22 TAC §681.72

The Texas Behavioral Health Executive Council on behalf of the Texas State Board of Examiners of Professional Counselors proposes amendments to §681.72, relating to Required Application Materials.

Overview and Explanation of the Proposed Rule. The proposed amendment would remove the expiration provisions related to supervision training courses required for applications for supervisor status.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to licensees, applicants, and the general public because the proposed rule will provide greater clarity and consistency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule will have no impact on local em-

ployment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed rule may be submitted by mail to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 1801 Congress Ave., Ste. 7.300, Austin, Texas 78701 or via <https://www.bhec.texas.gov/proposed-rule-changes-and-the-rulemaking-process/>. The deadline for receipt of comments is 5:00 p.m., Central Time, on April 20, 2025, which is at least 30 days from the date of publication of this proposal in the *Texas Register*.

Applicable Legislation. This rule is proposed pursuant to the specific legal authority granted to the Executive Council by H.B. 1501, 86th Leg., R.S. (2019).

Statutory Authority. The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §503.2015 of the Tex. Occ. Code the Texas State Board of Examiners of Professional Counselors previously voted and, by a majority, approved to propose this rule to the Executive Council. The rule is specifically authorized by §503.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of

care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Texas Occupations Code and may propose this rule.

Lastly, the Executive Council proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

§681.72. Required Application Materials.

(a) To apply for LPC Associate, the applicant must submit:

- (1) the Council's application form;
- (2) all applicable fees;
- (3) official examination results from the National Board of Certified Counselors verifying a passing score on the National Counselor Exam (NCE) or National Clinical Mental Health Counselor Exam (NCMHCE);

(4) completion certificate for the Texas jurisprudence exam dated no more than six months before the date the application was received;

- (5) an official graduate transcript(s);
- (6) a practicum/graduate intern documentation form;
- (7) a supervisory agreement form; and

(8) The holder of a current license in good standing issued by another jurisdiction equivalent to the Texas LPC Associate license must submit official verification of his or her license, including official verification of any supervised experience recognized by the issuing jurisdiction. If supervised experience cannot be verified by the issuing jurisdiction, the Council may consider a supervised experience documentation form with verification of the supervisor's credentials.

(b) To apply for LPC as the holder of a current Texas LPC Associate license, the applicant must submit:

- (1) the Council's application form;
- (2) all applicable fees;
- (3) completion certificate for the jurisprudence exam dated no more than six months before the date the application for LPC was received;

(4) the Council's supervised experience documentation form; and

- (5) other information or forms as requested by the Council.

(c) To apply for LPC as the holder of a current license equivalent to a Texas LPC license issued by another jurisdiction, the applicant's license must be in good standing and must submit:

(1) all of the items listed in subsection (a)(1) - (6) [(a)(1) - (5)] of this section;

(2) official verification of the license, including official verification of any supervised experience recognized by the issuing jurisdiction; and

(3) other information or forms as requested by the Council.

(d) To apply for supervisor status, an LPC must:

(1) have held the LPC license in good standing for at least 60 months;

(2) submit an application and all applicable fees; and

(3) submit a completion certificate for an acceptable supervisor training. An acceptable supervisor training is:

(A) a doctoral level course in the supervision of professional counseling or mental health services which was taken for credit at an accredited school and documented on an official transcript; ~~the qualifying doctoral level course may have been completed no more than five (5) years before the date the application for supervisor status was received~~; or

(B) a 40-clock-hour supervision course as set forth in §681.147 of this title. ~~[(relating to 40-ClockHour Supervisor Training Course); the qualifying 40-clock-hour supervision course may have been completed no more than two (2) years before the date the application for supervisor status was received]~~

(e) An applicant who holds a current LPC license in good standing issued by another jurisdiction must be substantially equivalent to Texas licensure requirements.

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 6, 2025.

TRD-202500821

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Professional Counselors

Earliest possible date of adoption: April 20, 2025

For further information, please call: (512) 305-7706



22 TAC §681.140

The Texas Behavioral Health Executive Council on behalf of the Texas State Board of Examiners of Professional Counselors proposes amendments to §681.140, relating to Requirements for Continuing Education.

OVERVIEW AND EXPLANATION OF THE PROPOSED RULE.

The proposed amendment will clarify the nature of professional development a licensee must receive related to maintaining competency when providing services to unique populations.

FISCAL NOTE. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

PUBLIC BENEFIT. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to licensees, applicants, and the general public because the proposed rule will provide greater clarity and consistency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

PROBABLE ECONOMIC COSTS. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT STATEMENT. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO-BUSINESSES AND RURAL COMMUNITIES. Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

LOCAL EMPLOYMENT IMPACT STATEMENT. Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

REQUIREMENT FOR RULES INCREASING COSTS TO REGULATED PERSONS. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

GOVERNMENT GROWTH IMPACT STATEMENT. For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

TAKINGS IMPACT ASSESSMENT. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

REQUEST FOR PUBLIC COMMENTS. Comments on the proposed rule may be submitted by mail to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council.

cil, 1801 Congress Ave., Ste. 7.300, Austin, Texas 78701 or via <https://www.bhec.texas.gov/proposed-rule-changes-and-the-rulemaking-process/>. The deadline for receipt of comments is 5:00 p.m., Central Time, on April 20, 2025, which is at least 30 days from the date of publication of this proposal in the *Texas Register*.

APPLICABLE LEGISLATION. This rule is proposed pursuant to the specific legal authority granted to the Executive Council by H.B. 1501, 86th Leg., R.S. (2019).

STATUTORY AUTHORITY. The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §503.2015 of the Tex. Occ. Code the Texas State Board of Examiners of Professional Counselors previously voted and, by a majority, approved to propose this rule to the Executive Council. The rule is specifically authorized by §503.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Texas Occupations Code and may propose this rule.

Lastly, the Executive Council proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

§681.140. Requirements for Continuing Education.

(a) Minimum Continuing Education Hours Required.

(1) An LPC must complete 24 hours of continuing education during each renewal period that they hold a license. The 24 hours of continuing education must include 6 hours in ethics and 3 hours designed to ensure competency when providing services to a distinct population, defined as a group of people who share a common attribute, trait, or defining characteristic of the licensee's choice ~~[in cultural diversity or competency].~~

(2) A licensee may carry forward to the next renewal period, a maximum of 10 hours accrued during the current renewal period if those hours are not needed for renewal.

(b) Special Continuing Education Requirements.

(1) A licensee with supervisory status must complete 6 hours of continuing education in supervision.

(2) A licensee must successfully complete the Texas jurisprudence examination each renewal period. Licensees who pass the Texas jurisprudence examination may claim 1 hour of continuing education in ethics.

(3) The special continuing education requirements set out in this subsection may be counted toward the minimum continuing education hours required under subsection (a) of this section.

(c) Acceptable ethics hours include, but are not limited to continuing education on:

(1) state or federal laws, including agency rules, relevant to the practice of professional counseling;

(2) practice guidelines established by local, regional, state, national, or international professional organizations;

(3) training or education designed to demonstrate or affirm the ideals and responsibilities of the profession; and

(4) training or education intended to assist licensees in determining appropriate decision-making and behavior, improve consistency in or enhance the professional delivery of services, and provide a minimum acceptable level of practice.

~~[(d) Acceptable cultural diversity or competency hours include, but are not limited to continuing education regarding age, disability, ethnicity, gender, gender identity, language, national origin, race, religion, culture, sexual orientation, and socio-economic status.]~~

(d) ~~[(e)]~~ Acceptable Continuing Education Activities.

(1) All continuing education hours must have been received during the renewal period unless allowed under subsection (a)(2) of this section, and be directly related to the practice of professional counseling;

(2) The Council shall make the determination as to whether the activity claimed by the licensee is directly related to the practice of professional counseling;

(3) Except for hours claimed under subsection (g) ~~[(h)]~~ of this section, all continuing education hours obtained must be designated by the provider in a letter, email, certificate, or transcript that displays the licensee's name, topic covered, date(s) of training, and hours of credit earned; and

(4) Multiple instances or occurrences of a continuing education activity may not be claimed for the same renewal period.

~~[(e)]~~ ~~[(f)]~~ Licensees must obtain at least fifty percent of their continuing education hours from one or more of the following providers:

(1) an international, national, regional, state, or local association of medical, mental, or behavioral health professionals;

(2) public school districts, charter schools, or education service centers;

(3) city, county, state, or federal governmental entities;

(4) an institution of higher education accredited by a regional accrediting organization recognized by the Council for Higher Education Accreditation, the Texas Higher Education Coordinating Board, or the United States Department of Education;

- (5) religious or charitable organizations devoted to improving the mental or behavioral health of individuals;
- (6) a licensee with supervisor status;
- (7) a hospital or hospital system, including any clinic, division, or department within a hospital or hospital system; or
- (8) any provider approved or endorsed by a provider listed herein.

(f) [(g)] Licensees shall receive credit for continuing education activities according to the number of hours designated by the provider, or if no such designation, on a one-for-one basis with one credit hour for each hour spent in the continuing education activity.

(g) [(h)] Notwithstanding subsection (e) [(f)] of this section, licensees may claim continuing education credit for each of the following activities:

- (1) Preparing and giving a presentation at a continuing education activity. The maximum number of hours that may be claimed for this activity is 5 hours.
- (2) Authoring a book or peer reviewed article. The maximum number of hours that may be claimed for this activity is 5 hours.
- (3) Teaching or attending a graduate level course. The maximum number of hours that may be claimed for this activity is 5 hours.
- (4) Self-study. The maximum number of hours that may be claimed for this activity is 1 hour. Self-study is credit that is obtained from any type of activity that is performed by an individual licensee acting alone. Such activities include, but are not limited to, reading materials directly related to the practice of professional counseling. Time spent individually viewing or listening to audio, video, digital, or print media as part of an organized continuing education activity, program, or offering from a third-party is not subject to this self-study limitation and may count as acceptable education under other parts of this rule.
- (5) Successful completion of a training course on human trafficking prevention described by §116.002 of the Occupations Code. Licensees who complete this training may claim 1 hour of continuing education credit.

(h) [(i)] The Council does not pre-evaluate or pre-approve continuing education providers or hours.

(i) [(j)] Licensees shall maintain proof of continuing education compliance for a minimum of 3 years after the applicable renewal period.

[(k) Subsection (f) of this rule is effective January 1, 2024.]

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 6, 2025.
 TRD-202500822
 Darrel D. Spinks
 Executive Director
 Texas State Board of Examiners of Professional Counselors
 Earliest possible date of adoption: April 20, 2025
 For further information, please call: (512) 305-7706



PART 34. TEXAS STATE BOARD OF SOCIAL WORKER EXAMINERS

CHAPTER 781. SOCIAL WORKER LICENSURE

SUBCHAPTER C. APPLICATION AND LICENSING

22 TAC §781.501

The Texas Behavioral Health Executive Council on behalf of the Texas State Board of Social Worker Examiners proposes amendments to §781.501, relating to Requirements for Continuing Education.

Overview and Explanation of the Proposed Rule. The proposed amendment will clarify the nature of professional development a licensee must receive related to maintaining competency when providing services to unique populations.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to licensees, applicants, and the general public because the proposed rule will provide greater clarity and consistency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or

amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed rule may be submitted by mail to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 1801 Congress Ave., Ste. 7.300, Austin, Texas 78701 or via <https://www.bhec.texas.gov/proposed-rule-changes-and-the-rulemaking-process/>. The deadline for receipt of comments is 5:00 p.m., Central Time, on April 20, 2025, which is at least 30 days from the date of publication of this proposal in the *Texas Register*.

Applicable Legislation. This rule is proposed pursuant to the specific legal authority granted to the Executive Council by H.B. 1501, 86th Leg., R.S. (2019).

Statutory Authority. The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §505.2015 of the Tex. Occ. Code the Texas State Board of Social Worker Examiners previously voted and, by a majority, approved to propose this rule to the Executive Council. The rule is specifically authorized by §505.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been

proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Texas Occupations Code and may propose this rule.

Lastly, the Executive Council proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

§781.501. Requirements for Continuing Education.

(a) Minimum Continuing Education Hours Required:

(1) A licensee must complete 30 hours of continuing education during each renewal period that they hold a license. The 30 hours of continuing education must include 6 hours in ethics and 3 hours designed to ensure competency when providing services to a distinct population, defined as a group of people who share a common attribute, trait, or defining characteristic of the licensee's choice [in cultural diversity or competency].

(2) A licensee may carry forward to the next renewal period, a maximum of 10 hours accrued during the current renewal period if those hours are not needed for renewal.

(b) Special Continuing Education Requirements.

(1) A licensee with supervisory status must complete 6 hours of continuing education in supervision.

(2) The special continuing education requirements set out in this subsection may be counted toward the minimum continuing education hours required under subsection (a) of this section.

(c) Acceptable ethics hours include, but are not limited to continuing education on:

(1) state or federal laws, including agency rules, relevant to the practice of social work;

(2) practice guidelines established by local, regional, state, national, or international professional organizations;

(3) training or education designed to demonstrate or affirm the ideals and responsibilities of the profession; and

(4) training or education intended to assist licensees in determining appropriate decision-making and behavior, improve consistency in or enhance the professional delivery of services, and provide a minimum acceptable level of practice.

~~[(d) Acceptable cultural diversity or competency hours include, but are not limited to continuing education regarding age, disability, ethnicity, gender, gender identity, language, national origin, race, religion, culture, sexual orientation, and socio-economic status.]~~

(d) ~~[(e)]~~ Acceptable Continuing Education Activities.

(1) All continuing education hours must have been received during the renewal period unless allowed under subsection (a)(2) of this section, and be directly related to the practice of social work;

(2) The Council shall make the determination as to whether the activity claimed by the licensee is directly related to the practice of social work;

(3) Except for hours claimed under subsection (g) ~~[(h)]~~ of this section, all continuing education hours obtained must be designated by the provider in a letter, email, certificate, or transcript that dis-

plays the licensee's name, topic covered, date(s) of training, and hours of credit earned; and

(4) Multiple instances or occurrences of a continuing education activity may not be claimed for the same renewal period.

(e) [(f)] Licensees must obtain at least fifty percent of their continuing education hours from one or more of the following providers:

(1) an international, national, regional, state, or local association of medical, mental, or behavioral health professionals;

(2) public school districts, charter schools, or education service centers;

(3) city, county, state, or federal governmental entities;

(4) an institution of higher education accredited by a regional accrediting organization recognized by the Council for Higher Education Accreditation, the Texas Higher Education Coordinating Board, or the United States Department of Education;

(5) religious or charitable organizations devoted to improving the mental or behavioral health of individuals;

(6) a licensee that is a Council-approved supervisor;

(7) a hospital or hospital system, including any clinic, division, or department within a hospital or hospital system; or

(8) any provider approved or endorsed by a provider listed herein.

(f) [(g)] Licensees shall receive credit for continuing education activities according to the number of hours designated by the provider, or if no such designation, on a one-for-one basis with one credit hour for each hour spent in the continuing education activity.

(g) [(h)] Notwithstanding subsection (e) [(f)] of this section, licensees may claim continuing education credit for each of the following activities:

(1) Passage of the jurisprudence examination. Licensees who pass the jurisprudence examination may claim 1 hour of continuing education in ethics.

(2) Preparing and giving a presentation at a continuing education activity. The maximum number of hours that may be claimed for this activity is 5 hours.

(3) Authoring a book or peer reviewed article. The maximum number of hours that may be claimed for this activity is 5 hours.

(4) Teaching or attending a university or college level course. The maximum number of hours that may be claimed for this activity is 5 hours.

(5) Self-study. The maximum number of hours that may be claimed for this activity is 1 hour. Self-study is credit that is obtained from any type of activity that is performed by an individual licensee acting alone. Such activities include, but are not limited to, reading materials directly related to the practice of social work. Time spent individually viewing or listening to audio, video, digital, or print media as part of an organized continuing education activity, program or offering from a third-party is not subject to this self-study limitation and may count as acceptable continuing education under other parts of this rule.

(6) Successful completion of a training course on human trafficking prevention described by §116.002 of the Occupations Code. Licensees who complete this training may claim 1 hour of continuing education credit.

(7) Providing field or practicum instruction to social work students. A field or practicum instructor may claim one hour of continuing education credit for each hour of college or university credit that is awarded to the social work student receiving instruction. The maximum number of hours that may be claimed for this activity is 10 hours per renewal period, and hours claimed may not be counted toward the ethics or distinct population [cultural diversity or competency] requirements.

(h) [(i)] The Council does not pre-evaluate or pre-approve continuing education providers or hours.

(i) [(j)] Licensees shall maintain proof of continuing education compliance for a minimum of 3 years after the applicable renewal period.

[(k) Subsection (f) of this rule is effective January 1, 2024.]

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 6, 2025.

TRD-202500820

Darrel D. Spinks

Executive Director

Texas State Board of Social Worker Examiners

Earliest possible date of adoption: April 20, 2025

For further information, please call: (512) 305-7706

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PART 35. TEXAS STATE BOARD OF EXAMINERS OF MARRIAGE AND FAMILY THERAPISTS

CHAPTER 801. LICENSURE AND REGULATION OF MARRIAGE AND FAMILY THERAPISTS

SUBCHAPTER C. APPLICATIONS AND LICENSING

22 TAC §801.261

The Texas Behavioral Health Executive Council on behalf of the Texas State Board of Examiners of Marriage and Family Therapists proposes amendments to §801.261, relating to Requirements for Continuing Education.

OVERVIEW AND EXPLANATION OF THE PROPOSED RULE. The proposed amendment will clarify the nature of professional development a licensee must receive related to maintaining competency when providing services to unique populations.

FISCAL NOTE. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

PUBLIC BENEFIT. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to applicants, licensees, and the general public because the proposed rule will provide greater clarity, consistency, and efficiency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

PROBABLE ECONOMIC COSTS. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT STATEMENT. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO-BUSINESSES AND RURAL COMMUNITIES. Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

LOCAL EMPLOYMENT IMPACT STATEMENT. Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

REQUIREMENT FOR RULES INCREASING COSTS TO REGULATED PERSONS. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

GOVERNMENT GROWTH IMPACT STATEMENT. For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

TAKINGS IMPACT ASSESSMENT. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

REQUEST FOR PUBLIC COMMENTS. Comments on the proposed rule may be submitted by mail to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council,

1801 Congress Ave., Ste. 7.300, Austin, Texas 78701 or via <https://www.bhec.texas.gov/proposed-rule-changes-and-the-rulemaking-process/>. The deadline for receipt of comments is 5:00 p.m., Central Time, on April 20, 2025, which is at least 30 days from the date of publication of this proposal in the *Texas Register*.

APPLICABLE LEGISLATION. This rule is proposed pursuant to the specific legal authority granted to the Executive Council by H.B. 1501, 86th Leg., R.S. (2019).

STATUTORY AUTHORITY. The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Marriage and Family Therapists previously voted and, by a majority, approved to propose this rule to the Executive Council. The rule is specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may propose this rule.

Lastly, the Executive Council also proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

§801.261. Requirements for Continuing Education.

(a) Minimum Continuing Education Hours Required

(1) An LMFT must complete 30 hours of continuing education during each renewal period that they hold a license. The 30 hours of continuing education must include 6 hours in ethics and 3 hours designed to ensure competency when providing services to a distinct population, defined as a group of people who share a common attribute, trait, or defining characteristic of the licensee's choice [in cultural diversity or competency].

(2) A licensee may carry forward to the next renewal period, a maximum of 10 hours accrued during the current renewal period if those hours are not needed for renewal.

(b) Special Continuing Education Requirements. The special continuing education requirements set out in this subsection may be counted toward the minimum continuing education hours required under subsection (a) of this section.

(1) A licensee with supervisory status must complete 6 hours of continuing education in supervision.

(2) A licensee with supervisory status must take and pass the jurisprudence examination. One hour of continuing education in ethics may be claimed for passing the jurisprudence examination.

(3) A licensee who provides telehealth services must complete 2 hours of continuing education in technology-assisted services.

(c) Acceptable ethics hours include, but are not limited to continuing education on:

(1) state or federal laws, including agency rules, relevant to the practice of marriage and family therapy;

(2) practice guidelines established by local, regional, state, national, or international professional organizations;

(3) training or education designed to demonstrate or affirm the ideals and responsibilities of the profession; and

(4) training or education intended to assist licensees in determining appropriate decision-making and behavior, improve consistency in or enhance the professional delivery of services, and provide a minimum acceptable level of practice.

~~[(d) Acceptable cultural diversity or competency hours include, but are not limited to continuing education regarding age, disability, ethnicity, gender, gender identity, language, national origin, race, religion, culture, sexual orientation, and socio-economic status.]~~

(d) ~~[(e)]~~ Acceptable Continuing Education Activities.

(1) All continuing education hours must have been received during the renewal period unless allowed under subsection (a)(2)~~[(3)]~~ of this section, and be directly related to the practice of marriage and family therapy;

(2) The Council shall make the determination as to whether the activity claimed by the licensee is directly related to the practice of marriage and family therapy;

(3) Except for hours claimed under subsection (g) ~~[(h)]~~ of this section, all continuing education hours obtained must be designated by the provider in a letter, email, certificate, or transcript that displays the licensee's name, topic covered, date(s) of training, and hours of credit earned.

(4) Multiple instances or occurrences of a continuing education activity may not be claimed for the same renewal period.

(e) ~~[(f)]~~ Licensees must obtain at least fifty percent of their continuing education hours from one or more of the following providers:

(1) an international, national, regional, state, or local association of medical, mental, or behavioral health professionals;

(2) public school districts, charter schools, or education service centers;

(3) city, county, state, or federal governmental entities;

(4) an institution of higher education accredited by a regional accrediting organization recognized by the Council for Higher Education Accreditation, the Texas Higher Education Coordinating Board, or the United States Department of Education;

(5) religious or charitable organizations devoted to improving the mental or behavioral health of individuals;

(6) A graduate-level licensee with supervisor status;

(7) a hospital or hospital system, including any clinic, division, or department within a hospital or hospital system; or

(8) any provider approved or endorsed by a provider listed herein.

(f) ~~[(g)]~~ Licensees shall receive credit for continuing education activities according to the number of hours designated by the provider, or if no such designation, on a one-for-one basis with one credit hour for each hour spent in the continuing education activity.

(g) ~~[(h)]~~ Notwithstanding subsection (e) ~~[(f)]~~ above, licensees may claim continuing education credit for each of the following activities:

(1) Passage of the jurisprudence examination. Licensees who pass the jurisprudence examination may claim 1 hour of continuing education in ethics.

(2) Preparing and giving a presentation at a continuing education activity. The maximum number of hours that may be claimed for this activity is 5 hours.

(3) Authoring a book or peer reviewed article. The maximum number of hours that may be claimed for this activity is 5 hours.

(4) Teaching or attending a graduate level course. The maximum number of hours that may be claimed for this activity is 5 hours.

(5) Self-study. The maximum number of hours that may be claimed for this activity is 1 hour. Self-study is credit that is obtained from any type of activity that is performed by an individual licensee acting alone. Such activities include, but are not limited to, reading materials directly related to the practice of marriage and family therapy. Time spent individually viewing or listening to audio, video, digital, or print media as part of an organized continuing education activity, program, or offering from a third-party is not subject to this self-study limitation and may count as acceptable education under other parts of this rule.

(6) Successful completion of a training course on human trafficking prevention described by §116.002 of the Occupations Code. Licensees who complete this training may claim 1 hour of continuing education credit.

(h) ~~[(i)]~~ The Council does not pre-evaluate or pre-approve continuing education providers or hours.

(i) ~~[(j)]~~ Licensees shall maintain proof of continuing education compliance for a minimum of 3 years after the applicable renewal period.

~~[(k) Subsection (f) of this rule is effective January 1, 2024]~~

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 6, 2025.
TRD-202500819

Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Marriage and Family Therapists
Earliest possible date of adoption: April 20, 2025
For further information, please call: (512) 305-7706



PART 41. TEXAS BEHAVIORAL HEALTH EXECUTIVE COUNCIL

CHAPTER 882. APPLICATIONS AND LICENSING

SUBCHAPTER E. CONTINUING EDUCATION

22 TAC §882.50

The Texas Behavioral Health Executive Council proposes amendments to §882.50, relating to Continuing Education and Audits.

Overview and Explanation of the Proposed Rule. The proposed amendment will require license holders to use any online system adopted by the Council for reporting continuing education hours.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to applicants, licensees, and the general public because the proposed rule will provide greater clarity, consistency, and efficiency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rule does not impose any new or additional

costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

REQUEST FOR PUBLIC COMMENTS. Comments on the proposed rule may be submitted by mail to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 1801 Congress Ave., Ste. 7.300, Austin, Texas 78701 or via <https://www.bhec.texas.gov/proposed-rule-changes-and-the-rulemaking-process/index.html>. The deadline for receipt of comments is 5:00 p.m., Central Time, on April 20, 2025, which is at least 30 days from the date of publication of this proposal in the *Texas Register*.

Applicable Legislation. This rule is proposed pursuant to the specific legal authority granted to the Executive Council by H.B. 1501, 86th Leg., R.S. (2019).

Statutory Authority. The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

The Executive Council also proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

§882.50. Continuing Education and Audits.

(a) All persons issued a license by the Council are obligated to continue their professional education by completing a minimum amount of continuing education during each renewal period that they hold a license from this agency. The specific continuing education requirements for a license holder will be determined by the member board authorized to set those requirements.

(b) Licensees shall report continuing education in the manner prescribed by the Council, including registering for and using any online system for documenting continuing education adopted by the Council.

(c) [(b)] The Council conducts two types of audits regarding continuing education. Licensees shall comply with all agency requests for documentation and information concerning compliance with continuing education requirements.

(1) Random audits. Each month, 5% of the licensees will be selected by an automated process for an audit of the licensee's compliance with the agency's continuing education requirements. The agency will notify a licensee of the audit. Upon receipt of an audit notification, a licensee must submit continuing education documentation in the manner requested by the Council. [through the agency's online licensing system, or by email, or regular mail before a license will be renewed]

(2) Individualized audits. The Council may also conduct audits of a specific licensee's compliance with its continuing education requirements at any time the agency determines there are grounds to believe that a licensee has not complied with the requirements of this rule. Upon receipt of notification of an individualized audit, the licensee must submit all requested documentation within the time period specified in the notification.

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 6, 2025.

TRD-202500814

Darrel D. Spinks

Executive Director

Texas Behavioral Health Executive Council

Earliest possible date of adoption: April 20, 2025

For further information, please call: (512) 305-7706



CHAPTER 884. COMPLAINTS AND ENFORCEMENT

SUBCHAPTER B. INVESTIGATIONS AND DISPOSITION OF COMPLAINTS

22 TAC §884.10

The Texas Behavioral Health Executive Council proposes amendments to §884.10, relating to Investigation of Complaints.

Overview and Explanation of the Proposed Rule. The proposed amendments will clarify when a licensee is presumed to be engaging in the scope of practice of their license, and therefore subject to the jurisdiction of the Council, versus when conduct or statements by a licensee that are within the scope of practice will, nevertheless, be considered not done under the authority of their license.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or

administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to applicants, licensees, and the general public because the proposed rule will provide greater clarity, consistency, and efficiency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

REQUEST FOR PUBLIC COMMENTS. Comments on the proposed rule may be submitted by mail to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 1801 Congress Ave., Ste. 7.300, Austin, Texas 78701 or

via <https://www.bhec.texas.gov/proposed-rule-changes-and-the-rulemaking-process/index.html>. The deadline for receipt of comments is 5:00 p.m., Central Time, on April 20, 2025, which is at least 30 days from the date of publication of this proposal in the *Texas Register*.

Applicable Legislation. This rule is proposed pursuant to the specific legal authority granted to the Executive Council by H.B. 1501, 86th Leg., R.S. (2019).

Statutory Authority. The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

The Executive Council also proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

§884.10. *Investigation of Complaints.*

(a) The following priority rating system shall serve to distinguish between categories of complaints. The priority rating system is as follows:

(1) High Priority - cases involving sexual misconduct or a probability of imminent physical harm to the public or a member of the public; and

(2) Regular Priority - cases involving all other violations of state or federal law.

(b) The Enforcement Division shall investigate all complaints in a timely manner. A schedule shall be established for conducting each phase of a complaint that is under the control of the Council not later than the 30th day after the date the complaint is received. The schedule shall be kept in the information file of the complaint, and all parties shall be notified of the projected time requirements for pursuing the complaint. A change in the schedule must be noted in the complaint information file, and all parties to the complaint must be notified in writing not later than the seventh day after the date the change is made.

(c) The Council may accept, but is not obligated to investigate, a complaint that lacks sufficient information to identify the source or the name of the person who filed the complaint, a complaint that lacks sufficient evidence to identify a specific violation, or a complaint with an uncooperative complainant.

(d) A complainant may explain the allegations made in the complaint by attaching or including with the complaint any evidence the complainant believes is relevant to a determination of the allegations, including written statements or communications, medical or mental health records, recordings, photographs, or other documentary evidence.

(e) A review will be conducted upon receipt of a complaint to determine if the Council has jurisdiction over the complaint, and if so, whether the complaint states an allegation which, if true, would constitute a violation of the Council's rules or other law within the jurisdiction of the Council.

(f) When a licensee's conduct or statements could lawfully be made under an authority separate from their license issued by the Council, any conduct or statement that falls within the scope of practice of their license will be presumed to be taken or made under the authority of that license, and therefore within the jurisdiction of the Council, unless the licensee can show:

(1) no reasonable person would believe the conduct or statement occurred in the context of a professional relationship, or

(2) the licensee clearly and unequivocally disclaimed acting under the authority of their license prior to the conduct or statement, received written acknowledgement and consent from any clients that no professional services would be provided under the authority of their license, and did not otherwise engage at any time in the scope of practice of their license in relation to the conduct or statement.

(g) [(f)] Complaints that do not state a violation of a law within the jurisdiction of the Council shall be dismissed. If the complaint alleges a violation of a law within the jurisdiction of another agency, the complaint will be referred to that agency as required or allowed by law.

(h) [(g)] Complaints that state a violation of a law within the jurisdiction of the Council shall be investigated by an investigator assigned by the Enforcement Division.

(i) [(h)] Licensees will receive written notice of any alleged complaint(s), including specific information regarding any violation(s) encountered. Notice to a licensee is effective and service is complete when sent by registered or certified mail to the licensee's address of record at the time of the mailing.

(j) [(i)] Following completion of the investigation, an investigation report shall be drafted. This report shall include a recommendation as to whether the investigation has produced sufficient evidence to establish probable cause that a violation has occurred.

(k) [(j)] The Enforcement Division Manager (or the manager's designee) and legal counsel shall review the investigation report to determine if there is probable cause that a violation occurred.

(l) [(k)] A complaint for which the staff determines probable cause exists shall be referred for an informal conference by agency staff or a member board's Disciplinary Review Panel. Agency staff shall send the respondent notice of the date and time of the informal conference.

(m) [(l)] A complaint for which staff or a Disciplinary Review Panel determines that probable cause does not exist shall be referred for dismissal.

(n) [(m)] The services of a private investigator shall be retained only in the event that staff investigator positions are vacant or inadequate to provide essential investigative services. The services of a private investigative agency shall be obtained in accordance with the state's procurement procedures.

(o) [(n)] If a complainant or respondent are represented by an attorney, any notice or service required by law shall be made upon the attorney at the attorney's last known address.

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 6, 2025.

TRD-202500815



CHAPTER 885. FEES

22 TAC §885.1

The Texas Behavioral Health Executive Council proposes amendments to §885.1, relating to Executive Council Fees.

Overview and Explanation of the Proposed Rule. The proposed amendment would eliminate the fee requirement for a verification, which is available on the Council website.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to applicants, licensees, and the general public because the proposed rule will provide greater clarity, consistency, and efficiency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the

residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

REQUEST FOR PUBLIC COMMENTS. Comments on the proposed rule may be submitted by mail to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 1801 Congress Ave., Ste. 7.300, Austin, Texas 78701 or via <https://www.bhec.texas.gov/proposed-rule-changes-and-the-rulemaking-process/index.html>. The deadline for receipt of comments is 5:00 p.m., Central Time, on April 20, 2025, which is at least 30 days from the date of publication of this proposal in the *Texas Register*.

Applicable Legislation. This rule is proposed pursuant to the specific legal authority granted to the Executive Council by H.B. 1501, 86th Leg., R.S. (2019).

Statutory Authority. The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

The Executive Council also proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

§885.1. *Executive Council Fees.*

(a) General provisions.

(1) All fees are nonrefundable, nontransferable, and cannot be waived except as otherwise permitted by law. Any attempt to cancel, initiate a chargeback, or seek recovery of fees paid to the Council may result in the opening of a complaint against a licensee or applicant.

(2) Fees required to be submitted online to the Council must be paid by debit or credit card. All other fees paid to the Council must be in the form of a personal check, cashier's check, or money order.

(3) For applications and renewals the Council is required to collect fees to fund the Office of Patient Protection (OPP) in accordance with Texas Occupations Code §101.307, relating to the Health Professions Council.

(4) For applications, examinations, and renewals the Council is required to collect subscription or convenience fees to recover costs associated with processing through Texas.gov.

(5) All examination fees are to be paid to the Council's designee.

(b) The Executive Council adopts the following chart of fees:

(1) Fees effective through August 31, 2023.

Figure: 22 TAC §885.1(b)(1) (No change.)

(2) Fees effective on September 1, 2023.

Figure: 22 TAC §885.1(b)(2)

[Figure: 22 TAC §885.1(b)(2)]

(c) Late fees. (Not applicable to Inactive Status)

(1) If the person's license has been expired (i.e., delinquent) for 90 days or less, the person may renew the license by paying to the Council a fee in an amount equal to one and one-half times the base renewal fee.

(2) If the person's license has been expired (i.e., delinquent) for more than 90 days but less than one year, the person may renew the license by paying to the Council a fee in an amount equal to two times the base renewal fee.

(3) If the person's license has been expired (i.e., delinquent) for one year or more, the person may not renew the license; however, if eligible the person may apply for reinstatement of the license.

(d) Open Records Fees. In accordance with §552.262 of the Government Code, the Council adopts by reference the rules devel-

oped by the Office of the Attorney General in 1 TAC Part 3, Chapter 70 (relating to Cost of Copies of Public Information) for use by each governmental body in determining charges under Government Code, Chapter 552 (Public Information) Subchapter F (Charges for Providing Copies of Public Information).

(e) Military Exemption for Fees. All licensing and examination base rate fees payable to the Council are waived for applicants who are:

(1) military service members and military veterans, as those terms are defined by Chapter 55, Occupations Code, whose military service, training, or education substantially meets all licensure requirements; or

(2) military service members, military veterans, and military spouses, as those terms are defined by Chapter 55, Occupations Code, who hold a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements of this state.

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 6, 2025.

TRD-202500816

Darrel D. Spinks

Executive Director

Texas Behavioral Health Executive Council

Earliest possible date of adoption: April 20, 2025

For further information, please call: (512) 305-7706

