

# ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

## TITLE 1. ADMINISTRATION

### PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

#### CHAPTER 354. MEDICAID HEALTH SERVICES

##### SUBCHAPTER A. PURCHASED HEALTH SERVICES

#### DIVISION 18. MATERNITY CLINIC SERVICES

##### 1 TAC §354.1271

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §354.1271, concerning Benefits and Limitations.

The amendment to §354.1271 is adopted without changes to the proposed text as published in the February 9, 2024, issue of the *Texas Register* (49 TexReg 611). This rule will not be republished.

##### BACKGROUND AND JUSTIFICATION

The amendment complies with House Bill (H.B.) 12, 88th Texas Legislature, Regular Session, 2023, which requires HHSC to provide 12 months of postpartum Medicaid coverage to all women receiving Medicaid at the time their pregnancy ends in accordance with Section 1902(e)(16) of the Social Security Act, which is a state option. If the option is elected under Medicaid, states are required to provide the same 12-month postpartum coverage to targeted low-income pregnant members in the Children's Health Insurance Program (CHIP).

##### COMMENTS

The 31-day comment period ended March 11, 2024.

During this period, HHSC did not receive any comments regarding the proposed rule.

##### STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021(c), which provides HHSC with the authority to administer the federal medical assistance program in Texas and to establish methods of administration and adopt necessary rules for the proper and efficient operation of the medical assistance program.

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

Filed with the Office of the Secretary of State on May 13, 2024.

TRD-202402123

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Effective date: June 2, 2024

Proposal publication date: February 9, 2024

For further information, please call: (512) 206-4621



#### CHAPTER 366. MEDICAID ELIGIBILITY FOR WOMEN, CHILDREN, YOUTH, AND NEEDY FAMILIES

The Texas Health and Human Services Commission (HHSC) adopts amendments to §366.303, concerning Definitions, §366.325, concerning Medical Eligibility Effective Dates, §366.827, concerning Medicaid Eligibility Effective Dates, §366.1011, concerning Eligible Group, §366.1025, concerning Medicaid Eligibility Effective Dates, and §366.1031, concerning Eligibility Renewal.

The amendments are adopted without changes to the proposed text as published in the February 9, 2024, issue of the *Texas Register* (49 TexReg 613). These rules will not be republished.

##### BACKGROUND AND JUSTIFICATION

The amendments comply with House Bill (H.B.) 12, 88th Texas Legislature, Regular Session, 2023, which requires HHSC to provide 12 months of postpartum Medicaid coverage to all women receiving Medicaid at the time their pregnancy ends in accordance with Section 1902(e)(16) of the Social Security Act, which is a state option. If the option is elected under Medicaid, states are required to provide the same 12-month postpartum coverage to targeted low-income pregnant members in the Children's Health Insurance Program (CHIP).

##### COMMENTS

The 31-day comment period ended March 11, 2024.

During this period, HHSC received a comment regarding the proposed rules from one commenter, the Texas Medical Association. A summary of the comment relating to the rules and HHSC's response follows.

Comment: Regarding §366.303, the commenter has concerns about the requirement that prohibits a postpartum mother from being eligible to receive continuous eligibility for the remainder

of the 12-month postpartum period when the individual voluntarily disenrolls from Medicaid or CHIP. The commenter's concern is that the prohibition is contrary to the bill's stated legislative purpose of "extending coverage" and that "the inability to re-enroll could lead to unduly harsh results." The commenter recommended that HHSC amend the rules to allow postpartum mothers who voluntarily disenroll from Medicaid or CHIP to be able to reenroll within the 12-month postpartum period.

Response: HHSC respectfully declines to make the suggested change. Federal regulations and guidance require the continuous eligibility during pregnancy and the extended postpartum period to end if the individual voluntarily withdraws. In accordance with Section 1902(e)(16) of the Social Security Act, if the individual is certified and enrolled in CHIP during their pregnancy and then voluntarily withdraws from CHIP during their postpartum period, the individual would not be eligible to receive continuous eligibility in Medicaid because the individual did not receive Medicaid while pregnant. However, the individual can re-apply for Medicaid or CHIP coverage, at which time HHSC would be required to make a new determination of eligibility in accordance with state and federal law. The continuous eligibility the individual previously received prior to voluntarily withdrawing would no longer apply.

## SUBCHAPTER C. PREGNANT WOMEN'S MEDICAID

### 1 TAC §366.303, §366.325

#### STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021(c), which provides HHSC with the authority to administer the federal medical assistance program in Texas and to establish methods of administration and adopt necessary rules for the proper and efficient operation of the medical assistance program.

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

Filed with the Office of the Secretary of State on May 13, 2024.

TRD-202402125

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Effective date: June 2, 2024

Proposal publication date: February 9, 2024

For further information, please call: (512) 206-4621



## SUBCHAPTER H. MEDICALLY NEEDY PROGRAM

### 1 TAC §366.827

#### STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021(c), which provides HHSC with the authority to administer the federal medical assistance program in Texas and to establish methods of administration and adopt necessary rules for the proper and efficient operation of the medical assistance program.

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

Filed with the Office of the Secretary of State on May 13, 2024.

TRD-202402126

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Effective date: June 2, 2024

Proposal publication date: February 9, 2024

For further information, please call: (512) 206-4621



## SUBCHAPTER J. FORMER FOSTER CARE CHILDREN'S PROGRAM

### 1 TAC §§366.1011, 366.1025, 366.1031

#### STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021(c), which provides HHSC with the authority to administer the federal medical assistance program in Texas and to establish methods of administration and adopt necessary rules for the proper and efficient operation of the medical assistance program.

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

Filed with the Office of the Secretary of State on May 13, 2024.

TRD-202402124

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Effective date: June 2, 2024

Proposal publication date: February 9, 2024

For further information, please call: (512) 206-4621



## CHAPTER 370. STATE CHILDREN'S HEALTH INSURANCE PROGRAM

The Texas Health and Human Services Commission (HHSC) adopts amendments to §370.42, concerning Age Limits, §370.49, concerning Pregnant CHIP Members, §370.60, concerning Renewal, and §370.307, concerning Continuous Enrollment Period.

The amendments are adopted without changes to the proposed text as published in the February 9, 2024, issue of the *Texas Register* (49 TexReg 616). These rules will not be republished.

#### BACKGROUND AND JUSTIFICATION

The amendments comply with House Bill (H.B.) 12, 88th Texas Legislature, Regular Session, 2023, which requires HHSC to provide 12 months of postpartum Medicaid coverage to all women receiving Medicaid at the time their pregnancy ends in accordance with Section 1902(e)(16) of the Social Security Act, which is a state option. If the option is elected under Medicaid, states are required to provide the same 12-month postpartum coverage to targeted low-income pregnant members in the Children's Health Insurance Program (CHIP).

#### COMMENTS

The 31-day comment period ended March 11, 2024.

During this period, HHSC received a comment regarding the proposed rules from one commenter, the Texas Medical Association. A summary of the comment relating to the rules and HHSC's response follows.

Comment: Regarding §370.49, the commenter has concerns about the requirement that prohibits a postpartum mother from being eligible to receive continuous eligibility for the remainder of the 12-month postpartum period when the individual voluntarily disenrolls from Medicaid or CHIP. The commenter's concern is that the prohibition is contrary to the bill's stated legislative purpose of "extending coverage" and that "the inability to re-enroll could lead to unduly harsh results." The commenter recommended that HHSC amend the rules to allow postpartum mothers who voluntarily disenroll from Medicaid or CHIP to be able to reenroll within the 12-month postpartum period.

Response: HHSC respectfully declines to make the suggested change. Federal regulations and guidance require the continuous eligibility during pregnancy and the extended postpartum period to end if the individual voluntarily withdraws. In accordance with Section 1902(e)(16) of the Social Security Act, if the individual is certified and enrolled in CHIP during their pregnancy and then voluntarily withdraws from CHIP during their postpartum period, the individual would not be eligible to receive continuous eligibility in Medicaid because the individual did not receive Medicaid while pregnant. However, the individual can re-apply for Medicaid or CHIP coverage, at which time HHSC would be required to make a new determination of eligibility in accordance with state and federal law. The continuous eligibility the individual previously received prior to voluntarily withdrawing would no longer apply.

### SUBCHAPTER B. APPLICATION SCREENING, REFERRAL, PROCESSING, RENEWAL, AND DISENROLLMENT DIVISION 4. ELIGIBILITY CRITERIA

#### 1 TAC §370.42, §370.49

STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Health and Safety Code Chapters 62 and 63, which provide HHSC with the authority to administer CHIP in Texas and adopt rules as necessary to implement the chapters.

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

Filed with the Office of the Secretary of State on May 13, 2024.

TRD-202402127

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Effective date: June 2, 2024

Proposal publication date: February 9, 2024

For further information, please call: (512) 206-4621



### DIVISION 6. RENEWAL PROCESS

#### 1 TAC §370.60

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Health and Safety Code Chapters 62 and 63, which provide HHSC with the authority to administer CHIP in Texas and adopt rules as necessary to implement the chapters.

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

Filed with the Office of the Secretary of State on May 13, 2024.

TRD-202402128

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Effective date: June 2, 2024

Proposal publication date: February 9, 2024

For further information, please call: (512) 206-4621



### SUBCHAPTER C. ENROLLMENT, RENEWAL, DISENROLLMENT, AND COST SHARING DIVISION 1. ENROLLMENT AND DISENROLLMENT

#### 1 TAC §370.307

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Health and Safety Code Chapters 62 and 63, which provide HHSC with the authority to administer CHIP in Texas and adopt rules as necessary to implement the chapters.

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

Filed with the Office of the Secretary of State on May 13, 2024.

TRD-202402129

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Effective date: June 2, 2024

Proposal publication date: February 9, 2024

For further information, please call: (512) 206-4621



## TITLE 19. EDUCATION

### PART 2. TEXAS EDUCATION AGENCY

#### CHAPTER 101. ASSESSMENT

##### SUBCHAPTER DD. COMMISSIONER'S

##### RULES CONCERNING SUBSTITUTE

##### ASSESSMENTS FOR GRADUATION

###### 19 TAC §101.4003

The Texas Education Agency adopts an amendment to §101.4003, concerning Texas Assessments of Knowledge and Skills (TAKS) exit-level alternate assessments. The amendment is adopted without changes to the proposed text as published in the February 16, 2024 issue of the *Texas Register* (49 TexReg 834) and will not be republished. The adopted amendment updates the performance standards for former students whose assessment graduation requirement was the TAKS based on the redesign of the State of Texas Assessments of Academic Readiness (STAAR®).

**REASONED JUSTIFICATION:** Section 101.4003 specifies the assessments and corresponding passing scores allowed as alternate assessments for certain former students whose assessment graduation requirement was TAKS. As required in Texas Education Code, §39.025, some of the alternate assessments former students may use to satisfy graduation assessment requirements in place of TAKS exit-level assessments are the STAAR® end-of-course (EOC) assessments.

In 2023, STAAR® was redesigned as required by House Bill (HB) 3906, 86th Texas Legislature, 2019, and HB 3261, 87th Texas Legislature, Regular Session, 2021. Based on the required redesign, STAAR® performance standards were re-evaluated and updated.

The adopted amendment updates Figure: 19 TAC §101.4003(a) to align the performance standards for former students whose assessment graduation requirements was TAKS with the

updated performance standards for the STAAR® EOC assessments. The performance standards in Figure: 19 TAC §101.4003(a) for STAAR® Algebra I, English II, Biology, and U.S. History EOC assessments are amended to ensure they reflect an equivalent level of rigor as the performance standards that were in place for the TAKS exit-level assessments.

**SUMMARY OF COMMENTS AND AGENCY RESPONSES:** The public comment period on the proposal began February 16, 2024, and ended March 18, 2024. Following is a summary of public comments received and agency responses.

**Comment:** One Texas school district administrator commented that the proposed amendment to the rule for alternate assessments should include the Texas Success Initiative Assessment 2.0 (TSIA2).

**Response:** The agency disagrees. TAKS equivalent passing standards on TSIA2 are not available; therefore, only the Texas Success Initiative Assessment, not the TSIA2, is permitted as an alternate assessment for former students whose assessment graduation requirement was TAKS.

**STATUTORY AUTHORITY.** The amendment is adopted under Texas Education Code (TEC), §28.02541, which requires the commissioner of education by rule to establish a procedure to determine whether certain former students, who have met curriculum requirements for graduation but have not performed satisfactorily on an assessment instrument, may qualify to graduate and receive a high school diploma; and TEC, §39.025, which establishes the secondary-level performance required to receive a Texas high school diploma, establishes alternate assessment options for students who entered Grade 9 prior to the 2011-2012 school year or Grade 10 or above in the 2011-2012 school year, and requires the commissioner to establish satisfactory performance levels on the alternate assessments.

**CROSS REFERENCE TO STATUTE.** The amendment implements Texas Education Code, §28.02541 and §39.025.

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

Filed with the Office of the Secretary of State on May 8, 2024.

TRD-202402062

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: May 28, 2024

Proposal publication date: February 16, 2024

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



## CHAPTER 102. EDUCATIONAL PROGRAMS

### SUBCHAPTER MM. COMMISSIONER'S

#### RULES CONCERNING SUPPLEMENTAL

#### SPECIAL EDUCATION SERVICES PROGRAM

###### 19 TAC §102.1601

The Texas Education Agency (TEA) adopts an amendment to §102.1601, concerning the supplemental special education services (SSES) and instructional materials program for certain public school students receiving special education services.

The amendment is adopted with changes to the proposed text as published in the February 23, 2024 issue of the *Texas Register* (49 TexReg 955) and will be republished. The adopted amendment implements House Bill 1926, 88th Texas Legislature, Regular Session, 2023, which removed the expiration date of the program and removed a limit on the maximum amount of funds that can be spent on the program. Instead, the program will be limited only to the appropriation set aside by the legislature. The adopted amendment also modifies eligibility criteria, establishes an annual application window and procedures for families who miss the window, and removes program notification requirements in certain circumstances.

**REASONED JUSTIFICATION:** Section 102.1601 defines the eligibility criteria, application process, and use of funds for the SSES program and clarifies restrictions on the program.

The adopted amendment to §102.1601 adds new subsection (a) to reflect that TEA will administer this program under the name Parent-Directed Special Education Services to better signal to parents the intended scope of the program. Adopted changes throughout the section would align with this program name change.

The adopted amendment to relettered subsection (c) clarifies that only students served by special education under an individualized education program, as opposed to a services plan as part of a proportionate share responsibility, are eligible for the program. In subsection (c)(2), a reference to the program's launch in the 2020-2021 school year has been added to clarify that students who have already received this grant are no longer eligible.

Relettered subsection (d)(1) identifies the specific grant amount, noting that the grants are subject to state appropriations. The adopted amendment to relettered subsection (d)(2) clarifies that TEA will use the fall data submission deadline to verify student eligibility for the program. Language is removed that references prioritization based on eligibility for the National School Lunch Program. This prioritization is already included in subsection (d)(1), which states that accounts are prioritized for students who are eligible for the compensatory education allotment.

Relettered subsection (e) is amended to delete an operational requirement for the education service center to increase the number of qualified service providers, as there is a continuous process for providers who wish to be considered.

New subsection (f)(3) is added to establish an annual application window. For applicants who do not show as eligible under the fall Public Education Information Management System (PEIMS) data collection used by TEA, a parent will need to submit evidence of eligibility when submitting the application. New subsection (f)(6) adds a requirement for a parent or guardian of a student who is deemed not eligible through PEIMS verification or did not submit the necessary paperwork during the application window when applicable to wait until the following school year's application window to reapply.

Relettered subsection (j) is amended to remove the program notification requirement if a school district or open-enrollment charter school has verified that a parent has already received or applied for a program grant.

Based on public comment, subsection (j)(1) is changed at adoption to remove the proposed phrase "on applying" from the admission, review, and dismissal (ARD) committee requirement to provide information on the SSES program.

#### SUMMARY OF COMMENTS AND AGENCY RESPONSES:

The public comment period on the proposal began February 23, 2024, and ended March 25, 2024, and included public hearings on March 7 and 8, 2024. Following is a summary of public comments received and agency responses.

**Comment:** The Texas Council of Administrators of Special Education (TCASE) and Disability Rights Texas (DRTX) commented that the proposed rule should not include a name change for the SSES program to Parent-Directed Special Education Services and should retain the term "supplemental".

**Response:** The agency disagrees. Removing "supplemental" in the name of the grant and adding "parent directed" makes it clearer that these are funds that the parent can decide how to use to benefit their own student.

**Comment:** TCASE commented that the proposed amendment in re-lettered subsection (j) should not include the ARD committee requirement to provide instructions on applying for the SSES program.

**Response:** The agency agrees and has removed "on applying" at adoption in relettered subsection (j) to delete this reference.

**Comment:** TCASE requested that TEA provide districts with an accurate data interface to determine if a student has already accessed an SSES grant.

**Response:** This comment is outside the scope of the proposed rulemaking. However, the agency provides the following clarification. Creating a real-time data system at this time is not possible or feasible. TEA will continue to provide local educational agencies with the list of their remaining eligible students annually prior to the application window.

**Comment:** TCASE expressed appreciation for the annual application window established in new subsection (f)(3) and recommended that TEA update their SSES resources for families on the TEA website states that the program is offered on a "first come, first serve" basis.

**Response:** This comment is outside the scope of the proposed rulemaking. However, the agency provides the following clarification. All outreach materials will be updated to match the new programmatic changes as a result of this rule change.

**Comment:** DRTX commented that the proposed rule should clarify that adult students with disabilities may apply for and receive SSES grants.

**Response:** The agency disagrees. Re-lettered subsection (c) establishes eligibility criteria to include an adult student who is enrolled in an 18+ program as eligible for the program. If an adult student applies for the program, program staff would verify eligibility on a case-by-case basis.

**STATUTORY AUTHORITY.** The amendment is adopted under Texas Education Code (TEC), §29.041, which establishes requirements for providing a supplemental special education services (SSES) and instructional materials program for certain public school students receiving special education services and requires the commissioner of education by rule to determine, in accordance with TEC, Chapter 29, Subchapter A-1, the criteria for providing a program to provide supplemental special education services and instructional materials for eligible public school students; TEC, §29.042, as amended by House Bill 1926, 88th Texas Legislature, Regular Session, 2023, which requires the commissioner to determine requirements related to the establishment and administration of the SSES program;

TEC, §29.043, which requires the commissioner to establish an application process for the SSES program; TEC, §29.044, which requires the commissioner to determine eligibility criteria for the approval of an application submitted under TEC, §29.043; TEC, §29.045, which requires the commissioner to determine requirements for students meeting eligibility criteria and requirements for assigning and maintaining accounts under TEC, §29.042(b); TEC, §29.046, which requires the commissioner to determine requirements and restrictions related to account use for accounts assigned to students under TEC, §29.045; TEC, §29.047, which requires the commissioner to determine requirements related to criteria and application for agency-approved providers and vendors; TEC, §29.048, which requires the commissioner to determine responsibilities for the admission, review, and dismissal committee; and TEC, §29.049, which requires that the commissioner adopt rules as necessary to establish and administer the SSES and instructional materials program.

**CROSS REFERENCE TO STATUTE.** The amendment implements Texas Education Code, §29.041; §29.042, as amended by House Bill 1926, 88th Texas Legislature, Regular Session, 2023; and §§29.043-29.049.

*§102.1601. Supplemental Special Education Services and Instructional Materials Program for Certain Public School Students Receiving Special Education Services.*

(a) The Texas Education Agency (TEA) will administer the Supplemental Special Education Services Program described in Texas Education Code (TEC), Chapter 29, Subchapter A-1, under the name Parent-Directed Special Education Services (PDSES). Any reference to the Supplemental Special Education Services Program, supplemental special education services, supplemental special education instructional materials, or SSES in state law and TEA materials is to be considered synonymous with the PDSES program.

(b) Definitions. For the purposes of this section, the following definitions apply.

(1) Eligible student--A student who meets all program eligibility criteria under TEC, §29.044, and this section.

(2) Management system--The online system provided by the marketplace vendor to allow for account creation, management of funds, and access to the marketplace.

(3) Marketplace--The virtual platform where parents and guardians with program funds may purchase goods and services.

(4) Marketplace vendor--The vendor chosen by TEA to create an online marketplace for the use of program funds.

(5) Parent-directed special education instructional materials (materials)--This term has the meaning defined in TEC, §29.041, and specifically excludes materials that are provided as compensatory services or as a means of providing a student with a free appropriate public education.

(6) Parent-directed special education services (services)--This term has the meaning defined in TEC, §29.041, and specifically excludes services that are provided as compensatory services or as a means of providing a student with a free appropriate public education or an independent educational evaluation.

(7) Program--This term has the meaning in TEC, Chapter 29, Subchapter A-1, as well as the PDSES program.

(c) Eligibility criteria. All students currently enrolled in a Texas public school district or open-enrollment charter school who are served under an individualized education program (IEP) in a special

education program, including, but not limited to, students in early childhood special education, prekindergarten, Kindergarten-Grade 12, and 18-and-over transition programs, are eligible for the program with the following exclusions:

(1) students who do not reside in Texas or move out of the state, not including military-connected students entitled to enroll or remain enrolled while outside the state; or

(2) students who previously received a program grant, beginning with the program's launch in the 2020-2021 school year.

(d) Awards.

(1) Parents and guardians of eligible students will receive grants of \$1,500 as long as funds are available for use in the purchasing of materials and services through the curated marketplace of educational goods and services. Parents and guardians may receive only one grant for each eligible student. A student enrolled in a school district or open-enrollment charter school that is eligible for a compensatory education allotment under TEC, §48.104, will be prioritized to receive a grant award.

(2) TEA will use Public Education Information Management System (PEIMS) codes submitted by school districts and open-enrollment charter schools by each school year's TEA-established fall data submission deadline to verify eligibility in order to award accounts for the program.

(e) Establishment of the marketplace.

(1) In accordance with TEC, §29.042(d), TEA shall award an education service center (ESC) with an operational and school district support grant, which may include, but is not limited to, the following operational requirements:

(A) writing and administering a contract for a vendor for the program marketplace that curates the content in its marketplace for educational relevancy. In accordance with the Family Educational Rights and Privacy Act, the contract must require the vendor for the marketplace to protect and keep confidential students' personally identifiable information, which may not be sold or monetized;

(B) providing technical assistance to parents and guardians throughout the program process;

(C) serving as the main point of contact for the selected marketplace vendor to ensure eligible student accounts are appropriately spent down;

(D) approving or denying all purchases from the program marketplace, including communication with parents and guardians about purchase order requests; and

(E) approving or denying all potential service providers.

(2) Providers of materials and services may apply to be listed in the marketplace. To become an approved marketplace service provider, an applicant must sign a service provider agreement and comply with licensing, safety, and employee background checks.

(A) Organization service providers are required to provide their Texas Tax ID for TEA to verify the validity of the organization.

(B) Individual service providers are required to provide proof of credentials and licensing in accordance with the individual service provider categories established by TEA.

(3) TEA shall provide a process for the application and approval of vendors to the marketplace.

(4) TEA and the marketplace vendor shall provide a curated list of vendors through which parents and guardians can purchase educationally relevant materials. The established marketplace vendor shall be responsible for ensuring the vendors comply with program parameters as they relate to the marketplace and be responsible for all communications with marketplace vendors.

(f) Application process for grant on behalf of a student.

(1) TEA is responsible for the application process and the determination of which applicants are approved for program grants.

(2) Parents and guardians who would like to apply on behalf of their eligible students must complete the online application.

(3) TEA will establish an annual application window. If applications are submitted during the window for students who would not show as eligible under the fall PEIMS data collection used by TEA under subsection (d)(2) of this section, a parent must submit evidence of eligibility when submitting the application.

(4) Upon approval of the application:

(A) TEA shall send contact information for parents and guardians of eligible students in a secure manner to the online marketplace vendor for account creation and distribution;

(B) parents and guardians of eligible students will receive an email to the same email address provided during application from the marketplace vendor with information on how to access their accounts; and

(C) parents and guardians will be awarded an account of \$1,500, depending on availability of funds, per eligible student to be used to purchase services and materials.

(5) Parents and guardians of students who are deemed not eligible or who are determined to have violated account use restrictions under subsection (i) of this section will receive notification from TEA and be provided an opportunity to appeal the denial or account use termination. TEA shall exercise its discretion to determine the validity of any such appeal.

(6) A parent or guardian of a student who is deemed not eligible because the student cannot be verified through the PEIMS process described under subsection (d)(2) of this section or because the parent or guardian did not submit the necessary documentation during the designated application window for a student who became eligible after the timeline described in subsection (d)(2) of this section but before the end of the application window must wait until the following school year's application window to reapply.

(7) If necessary, eligible students will be placed on a waitlist and parents and guardians will be notified. When additional funds become available, priority will be given in the order established by the waitlist and in accordance with subsection (d) of this section.

(8) TEA shall maintain confidentiality of students' personally identifiable information in accordance with the Family Educational Rights and Privacy Act and, to the extent applicable, the Health Insurance Portability and Accountability Act.

(g) Approval of application; assignment of account.

(1) TEA shall set aside funds for a pre-determined number of accounts of \$1,500 to be awarded to parents and guardians of eligible students.

(2) Parents and guardians with more than one eligible student may apply and receive a grant for each eligible student.

(3) Approved parents and guardians will receive an award notification email from the marketplace vendor and may begin spending account funds upon completion of account setup.

(4) Parents and guardians who receive an award notification but whose student no longer qualifies under subsection (c) of this section shall notify TEA of their student's change in eligibility status.

(5) Within 30 calendar days from receiving an award notification email, parents and guardians must:

(A) access or log in to their account or the account may be subject to reclamation; and

(B) agree to and sign the parental agreement.

(h) Use of funds. Use of program funds provided to parents and guardians are limited as follows.

(1) Only materials and services available through the marketplace of approved providers and vendors may be purchased with program funds.

(2) Materials and services must directly benefit the eligible student's educational needs.

(3) Materials shall be used in compliance with TEA purchasing guidelines.

(4) If TEA approves vendors for a category of material under subsection (e) of this section, materials must be purchased from the TEA-approved vendor for that category of material. If TEA does not establish criteria for a category of materials, funds in a student's account may be used to purchase the materials from any vendor.

(5) The contracted ESC has full authority to reject or deny any purchase.

(6) Parents and guardians may not use program funds for reimbursement of goods or services obtained outside of the marketplace. Program funds shall not be paid directly to parents or guardians of eligible students.

(i) Account use restrictions. TEA may, subject to the appeal process referenced in subsection (f)(5) of this section, close or suspend accounts and reclaim a portion or all of the funds from accounts in the marketplace if:

(1) the materials or services that parents or guardians attempt to purchase are not educational in nature or are deemed to be in violation of the purchasing guidelines set forth by TEA;

(2) it is determined that the materials or services purchased do not meet the definitions in subsection (b)(5) and (6) of this section;

(3) the program parental agreement is not signed within 30 calendar days of receipt of account email from the marketplace vendor; or

(4) a student no longer meets the eligibility criteria set out in subsection (c) of this section.

(j) Requirements to provide information. School districts and open-enrollment charter schools shall notify families of the program and, unless the school district or charter school has verified that a parent has already received or applied for a program grant, shall provide the following at the student's admission, review, and dismissal (ARD) committee meeting:

(1) instructions and resources on accessing the online accounts, including the application window established by TEA; and

(2) information about the types of goods and services that are available through the program grant.

(k) Restrictions. A student's ARD committee may not consider a student's current or anticipated eligibility for any materials or services that may be provided under this section when developing or revising a student's IEP, when determining a student's educational setting, or in the provision of a free appropriate public education.

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

Filed with the Office of the Secretary of State on May 8, 2024.

TRD-202402061

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: May 28, 2024

Proposal publication date: February 23, 2024

For further information, please call: (512) 475-1997



## TITLE 26. HEALTH AND HUMAN SERVICES

### PART 1. HEALTH AND HUMAN SERVICES COMMISSION

#### CHAPTER 307. BEHAVIORAL HEALTH PROGRAMS

##### SUBCHAPTER G. BEHAVIORAL HEALTH GRANT AND FUNDING PROGRAMS

The Texas Health and Human Services Commission (HHSC) adopts §307.301, concerning Purpose, §307.305, concerning General Conditions of a Grant, §307.307, concerning Eligible Applicants, §307.309, concerning Eligible Projects, §307.311, concerning Grant Proposals and Selection Process, §307.313, concerning Contract Execution, and §307.315, concerning Project Review and Evaluation Report, in new Subchapter G, new Division 1, concerning Mental Health Grant Program for Justice-Involved Individuals, and new §307.351, concerning Purpose, §307.353, concerning Definitions, §307.355, concerning General Conditions of a Grant, §307.357, concerning Eligible Applicants, §307.359, concerning Eligible Projects, §307.361, concerning Grant Proposals and Selection Process, §307.363, concerning Selection Criteria, §307.365, concerning Contract Execution, and §307.367, concerning Project Review and Evaluation Report, in new Subchapter G, new Division 2, concerning Rural Initiatives Grant Program.

Sections 307.303, 307.309, 307.311, and 307.359 are adopted with changes to the proposed text as published in the February 9, 2024, issue of the *Texas Register* (49 TexReg 620). These rules will be republished.

Sections 307.301, 307.305, 307.307, 307.313, 307.315, 307.351, 307.353, 307.355, 307.357, 307.361, 307.363, 307.365, and 307.367 are adopted without changes to the proposed text as published in the February 9, 2024, issue of the *Texas Register* (49 TexReg 620). These rules will not be republished.

#### BACKGROUND AND JUSTIFICATION

The purpose of the adopted rules is to comply with Senate Bill (S.B.) 1677, 88th Legislature, Regular Session, 2023, which re-

quires HHSC to adopt rules to implement Texas Government Code §531.0993(d-1), and §531.09936.

The adopted rules in new Subchapter G, outline the general conditions of the grant, eligible applicants, selection process, contract execution, reporting requirements, and HHSC inspections of the operation and provision of mental health services under the Mental Health Grant for Justice-Involved Individuals (MHGJII) and the Rural Initiatives Grant Program.

The adopted rules in Division 1 establish the requirements of the MHGJII to provide grants to county-based community collaboratives for the purpose of reducing: (1) recidivism by, the frequency of arrests of, and incarceration of persons with mental illness; and (2) the total waiting time for forensic commitment of persons with mental illness to a state hospital. The adopted rules outline the assistance offered by HHSC to community collaboratives that include a county with a population of less than 250,000 in submitting a proposal for the MHGJII.

The adopted rules in Division 2 establish the requirements for the Rural Initiatives Grant Program, to provide grants to establish or expand behavioral health centers or jail diversion centers in a local service area of a local mental health authority (LMHA) or local behavioral health authority located primarily in rural areas to provide one or more of the following types of services: (1) additional forensic hospital beds and competency restoration services; (2) inpatient and outpatient mental health services to adults and children; or (3) services to reduce recidivism and the frequency of arrest, incarceration, and emergency detentions among persons with mental illness.

#### COMMENTS

The 31-day comment period ended Monday, March 11, 2024.

During this period, HHSC received comments regarding the proposed rules from four commenters, including Meadows Mental Health Policy Institute, Disability Rights of Texas, Texas Council on Developmental Disabilities, and Texas Jail Project. A summary of comments relating to the rules and HHSC's responses follows.

Meadows Mental Health Policy Institute's comment was focused on making sure that the rule language aligns with the intent of S.B. 292, 85th Legislature, Regular Session, 2017, concerning interdisciplinary rapid response teams. The joint comment received from Disability Rights of Texas, Texas Council on Developmental Disabilities, and Texas Jail Project focused on three recommendations related to enhancing the outcomes and safety of justice-involved individuals, and the provision of clear information to the public as to the regulations applicable to the grant.

Comment: A commenter suggested changing the definition of "rapid response team" so that it aligns with the intent of S.B. 292 to establish interdisciplinary rapid response teams to reduce law enforcement involvement with mental health emergencies. The suggested language included adding a law enforcement officer as part of this team, removing the reference to responding to individuals in a hospital or facility, and stating the goal of preventing an arrest.

Response: HHSC agrees with the comment and revised the definition in §307.303 of "rapid response team" by adding that the team may include a first responder such as law enforcement or emergency management services and adding the goal of preventing an arrest that leads to justice involvement, preventing harm to self or to others and death. HHSC also removed reference to a team responding to individuals in a hospital or facility.



Comment: A commenter recommends that the rule language specifically speak to allowing grant dollars to hire a liaison to work between the mental health authority and the jail. The liaison could be employed by and housed with either entity.

Response: HHSC disagrees with the comment and declines to make the suggested change, as the funds for this program allow for the creative development of program solutions for programs in jail settings that could include this type of workforce. The intent of the grant program is to allow the use of workforce and resources according to the needs in the communities and locations that the program will be implemented.

Comment: A commenter recommends HHSC add language to encourage the separation of individuals in jail awaiting competency restoration from the general inmate population to better ensure the safety of a vulnerable population, and that HHSC could assign extra points or increase consideration if this is included in the grant proposal.

Response: HHSC disagrees with the comment and declines to make the suggested recommendation as it is not applicable to all programs covered by this rule.

Comment: A commenter recommends that §307.313 and §307.365 delineate the state laws that are applicable to ensure the public and providers and regulatory staff have the same understanding.

Response: HHSC disagrees with the comment and declines the suggested change as the contract of the selected grantees will include the information of all applicable federal and state laws, and applicable regulations. Selected grantees will have the opportunity to ask questions about the terms of the contract before it is executed.

HHSC made changes in §307.303 to clarify the assertive community treatment (ACT) definition and §307.309 to clarify that grant proposals for ACT must be in addition to the ACT required in the LMHA/LBHA performance contract. HHSC made edits to §307.311(b) to clarify that an applicant must include in the proposal "how the applicant will meet" the objectives described in subsection (b)(1) and a minor edit in subsection (b)(1)(B). HHSC made edits to §307.359 to clarify the requirements for eligible projects.

## DIVISION 1. MENTAL HEALTH GRANT PROGRAM FOR JUSTICE INVOLVED INDIVIDUALS

**26 TAC §§307.301, 307.303, 307.305, 307.307, 307.309, 307.311, 307.313, 307.315**

### STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; §531.0993 which requires HHSC to establish a program to provide grants to county-based community collaboratives for the purposes of reducing: (1) recidivism by, the frequency of arrests of, and incarceration of persons with mental illness; and (2) the total waiting time for forensic commitment of persons with mental illness to a state hospital; and §531.09936 which requires HHSC to establish or expand behavioral health centers or jail diversion centers in LMHA service areas to: (1) provide additional forensic hospital beds and competency restoration services; (2) provide inpatient

and outpatient mental health services to adults and children; and (3) provide services to reduce recidivism and the frequency of arrest, incarceration, and emergency detentions among persons with mental illness in the service areas.

The new sections affect Texas Government Code §531.0055, §531.0993, and §531.09936.

### §307.303. Definitions.

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

(1) ACT--Assertive community treatment. A 24-hour team-based service that provides treatment, rehabilitation, and support services in the community to individuals who have a history of multiple psychiatric hospitalizations (two or more in 180 days or four or more in two years) or at least one hospitalization of greater than 30 days duration in the last two years. The provision of ACT requires the following.

(A) Individuals identified as needing ACT services must be prioritized for supportive housing, supported employment, and co-occurring psychiatric and substance use disorder services as needed.

(B) The use of an integrated services approach merging clinical and rehabilitation staff expertise, such as psychiatric, substance use, vocational or employment, and supportive housing, within one mobile service delivery system.

(C) ACT Teams provide permanent supportive housing services, supported employment services, substance use services, psychotherapy services, and mental health rehabilitation services to individuals they serve with minimal external referrals for these services. Referrals are appropriate for specialized therapeutic modalities for complex trauma.

(D) Services are delivered on an individual basis with the exception of group activities to reduce social isolation or address substance use issues.

(E) The ACT Team has a maximum case ratio of 10 service recipients per staff person.

(F) The ACT Team implements ACT services according to the Substance Abuse and Mental Health Services Administration's evidence-based practices and the guidelines defined by Health and Human Services Commission .

(2) Applicant--An entity that submits a proposal to apply for a grant award that is part of a community collaborative.

(3) Community collaborative--A partnership that includes a county, a local mental health authority, or local behavioral health authority that operates in the county, and each hospital district, if any, located in the county. A community collaborative may include other local entities designated by the collaborative's members.

(4) Continuity of care--This term has the meaning set forth in §306.153 of this title (relating to Definitions).

(5) FACT--Forensic assertive community treatment. A service delivery model intended for individuals with serious mental illness who are involved with the criminal justice system. These individuals may have co-occurring substance use and physical health disorders. FACT addresses the likelihood that an individual will engage in future illegal behavior in the form of a new crime or failure to comply with conditions of probation or parole, and factors that increase an individual's likelihood of re-offense, such as lack of employment or livable wages, or the presence of a substance use disorder.

(6) Grantee--A recipient of a grant awarded under this division.

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

(8) Local behavioral health authority--An entity designated as the local behavioral health authority by HHSC in accordance with Texas Health and Safety Code §533.0356.

(9) Local mental health authority--An entity designated as the local mental health authority by HHSC in accordance with Texas Health and Safety Code §533.035(a).

(10) Mental health jail diversion program--A program that serves individuals with behavioral health needs who are involved, or at risk of involvement, in the criminal justice system by diverting the individuals from jail and providing the individuals with, or connecting them to, community mental health and substance use services.

(11) Rapid response team--An interdisciplinary team that includes at least one behavioral health provider and may also include a first responder such as law enforcement or emergency management services. This team provides rapid assessment and deployment of resources for individuals who are experiencing acute clinical deterioration, or signs of imminent clinical deterioration, related to acute stress or a psychiatric condition that impairs or impedes their mental health in the community with the goal of preventing harm to self or to others, death, or an arrest that leads to justice involvement; preventing a higher intensive level of care, or hospitalization in the community; and connecting individuals to necessary behavioral health and intellectual disability services.

#### §307.309. Eligible Projects.

Grant proposals must meet the requirements and specifications set forth in the competitive request for proposal by HHSC. Projects eligible for grant funding include:

- (1) continuation of a mental health jail diversion program;
- (2) establishment or expansion of a mental health jail diversion program;
- (3) establishment of alternatives to competency restoration in a state hospital, including outpatient competency restoration, inpatient competency restoration in a setting other than a state hospital, or jail-based competency restoration;
- (4) provision of ACT in addition to the ACT required by the local mental health authority or local behavioral health authority performance contract or FACT with an outreach component;
- (5) provision of intensive mental health services and substance use treatment not readily available in the county;
- (6) provision of continuity of care services for an individual being released from a state hospital;
- (7) establishment of interdisciplinary rapid response teams to reduce law enforcement's involvement with mental health emergencies; and
- (8) provision of local community hospital, crisis, respite, or residential beds.

#### §307.311. Grant Proposals and Selection Process.

(a) Grant funds are made available to a local mental health authority or local behavioral health authority representing a community collaborative through a competitive request for proposal process.

(b) An applicant must include in the proposal how the applicant will meet:

(1) the objectives of reducing:

(A) recidivism by, the frequency of arrests of, and incarceration of persons with mental illness; and

(B) the total wait time for forensic commitment of persons with mental illness to a state hospital;

(2) a statement indicating the amount of matching funds the collaborative is able to provide; and

(3) a plan that:

(A) is endorsed by each of the collaborative's member entities;

(B) identifies a target population;

(C) describes how the grant money and matching funds will be used;

(D) includes outcome measures to evaluate the success of the plan; and

(E) describes how the success of the plan in accordance with the outcome measures would further the state's interest in the grant program's purposes.

(c) An applicant must submit a proposal for a grant directly to HHSC in the time and manner specified by HHSC. A proposal received after the deadline will not be considered. HHSC reviews and evaluates eligible, complete, and timely proposals in accordance with the evaluation methodology published in the request for proposal or other notice of potential grant award issued by HHSC.

(d) From money appropriated to HHSC for each state fiscal year to implement this grant, HHSC reserves at least 20 percent of that total for grants to community collaboratives that include a county with a population of less than 250,000.

(e) An applicant that includes a county with a population of less than 250,000 may request technical assistance or data from HHSC up to six months before the release of a funding opportunity.

(f) To the extent money appropriated to HHSC for a state fiscal year to implement this grant remains available to HHSC after grant recipients are selected for the fiscal year, HHSC makes grants available using the money remaining for the fiscal year through a competitive request for proposal process. Subsection (d) of this section does not apply to this process.

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

Filed with the Office of the Secretary of State on May 13, 2024.

TRD-202402139

Karen Ray

Chief Counsel

Health and Human Services Commission

Effective date: June 2, 2024

Proposal publication date: February 9, 2024

For further information, please call: (512) 568-4605

◆ ◆ ◆

## DIVISION 2. RURAL INITIATIVES GRANT PROGRAM

**26 TAC §§307.351, 307.353, 307.355, 307.357, 307.359, 307.361, 307.363, 307.365, 307.367**

**STATUTORY AUTHORITY**

The new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; §531.0993 which requires HHSC to establish a program to provide grants to county-based community collaboratives for the purposes of reducing: (1) recidivism by, the frequency of arrests of, and incarceration of persons with mental illness; and (2) the total waiting time for forensic commitment of persons with mental illness to a state hospital; and §531.09936 which requires HHSC to establish or expand behavioral health centers or jail diversion centers in LMHA service areas to: (1) provide additional forensic hospital beds and competency restoration services; (2) provide inpatient and outpatient mental health services to adults and children; and (3) provide services to reduce recidivism and the frequency of arrest, incarceration, and emergency detentions among persons with mental illness in the service areas.

The new sections affect Texas Government Code §531.0055, §531.0993, and §531.09936.

*§307.359. Eligible Projects.*

Proposals must meet the requirements and specifications set forth in requests for proposals issued by HHSC. Proposals must be to expand or establish a behavioral health center or jail diversion center to provide one or more of the following types of services:

- (1) forensic hospital beds and competency restoration services;
- (2) inpatient and outpatient mental health services for adults and children, including counseling and psychiatric services; or
- (3) services to reduce recidivism and the frequency of arrest, incarceration, and emergency detentions among persons with mental illness in the local service area.

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

Filed with the Office of the Secretary of State on May 13, 2024.

TRD-202402144

Karen Ray

Chief Counsel

Health and Human Services Commission

Effective date: June 2, 2024

Proposal publication date: February 9, 2024

For further information, please call: (512) 568-4605



**TITLE 28. INSURANCE**

**PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION**

**CHAPTER 180. MONITORING AND ENFORCEMENT**

**SUBCHAPTER A. GENERAL RULES FOR ENFORCEMENT**

**28 TAC §180.2**

**INTRODUCTION.** The Texas Department of Insurance, Division of Workers' Compensation (DWC) adopts amendments to 28 TAC §180.2, concerning filing a complaint. The amendments are adopted without changes to the proposed text published in the March 22, 2024, issue of the *Texas Register* (49 TexReg 1872). The rule will not be republished.

**REASONED JUSTIFICATION.** The amendments prevent health care providers or their agents from trying to use DWC's complaint process to collect fees instead of submitting their medical fee disputes properly through the medical fee dispute resolution (MFDR) process established by Texas Labor Code §413.031. Under the MFDR process, health care providers have one year after the date of service to bring a fee dispute, unless an exception applies. However, some health care providers and their agents have tried to use DWC's complaint process to collect disputed fees when they fail to file a fee dispute before the MFDR deadline. To address this problem, the amendments clarify that a health care provider cannot submit a complaint about a medical billing issue if the date of service for the medical billing issue was more than 12 months before the date of the complaint, unless an MFDR deadline exception applies. The restriction does not apply to a health care provider submitting a complaint under Insurance Code Chapter 1305.

The amendments also include nonsubstantive editorial and formatting changes that make updates for plain language and agency style to improve the rule's clarity.

Amending §180.2 is necessary to ensure that no health care provider or agent can use the complaint process to circumvent the MFDR filing deadline in 28 TAC §133.307(c), concerning medical fee dispute resolution. Labor Code §402.023 requires the commissioner to adopt rules about filing complaints, including how to file a complaint and what constitutes a frivolous complaint. Labor Code §413.031 requires the commissioner to adjudicate disputes over the amount of payment due for services determined to be medically necessary and appropriate for treatment of a compensable injury. DWC's MFDR rules, including §133.307, contain requirements for adjudicating those disputes. Amending §180.2 as proposed will prevent health care providers and their agents from using DWC's complaint process to avoid the MFDR rules that the commissioner adopted to comply with Labor Code §§402.023 and 413.031.

**SUMMARY OF COMMENTS AND AGENCY RESPONSE.**

**Commenters:** DWC received three written comments on the proposal by the April 22, 2024, deadline, and no oral comments at the April 16, 2024, public hearing. Commenters in support of the proposal were: the American Property Casualty Insurance Association (APCIA) and the Insurance Council of Texas (ICT). An anonymous person or organization commented against the proposal.

**Comments on §180.2.** Two commenters stated that the proposed amendment will help prevent inappropriate and untimely requests for payments, promote fairness, and help ensure a level playing field, where all health care providers follow the same rules for resolving fee disputes, resulting in a more efficient and effective workers' compensation system in Texas.

Agency Response to Comments on §180.2. DWC appreciates the comments and agrees.

Comment on §180.2. A commenter suggested that the proposed rule be further amended to include a requirement that a health care provider can only submit a complaint about a medical billing issue if the health care provider has not been paid per the fee guidelines or rules, and can show that the health care provider has done the following on time: billed for the services, submitted a request for reconsideration, and filed for medical fee dispute resolution.

Agency Response to Comment on §180.2. DWC appreciates the comment but declines to make the suggested change. DWC believes that the suggested change would be unduly limiting for health care providers, and would create a system in which even health care providers that were paid late, as long as they were paid, would be unable to file a complaint.

Comment on §180.2. A commenter stated that the rule does not allow a complaint about a cumulative issue with an insurance carrier consistently committing a violation. The commenter stated that some insurance carriers indicate that they never received a bill even when presented with proof of receipt, consistently deny or reduce bills even though they are aware that the bills warrant payment, or deny bills for reasons they know to be incorrect. The commenter stated that health care providers and agents make complaints to get DWC to enforce its rules for insurance carriers or their bill review agents, and that health care providers and agents are having to hire additional staff to try to collect on bills from insurance carriers that have ignored, denied, or improperly reduced the bills. The commenter stated that, while the proposed rule will eliminate system burden for DWC and insurance carriers, it provides no relief for health care providers in their complaints.

Agency Response to Comment on §180.2. DWC appreciates the comment but disagrees that the amendments prevent a health care provider from submitting a complaint about a cumulative issue with an insurance company's payment practices. The MFDR process and the complaint process address different kinds of issues and provide different kinds of relief, although there can be some overlap in the information considered in each process. The MFDR process provides relief for a health care provider when the health care provider is owed money from a bill and the insurance carrier has improperly denied or reduced payment. The complaint process is to ensure compliance with the applicable statutes and DWC rules. DWC considers repeated violations and patterns of misconduct when assessing penalties in enforcement cases. The amended rule does not prevent filing a complaint for issues that would not be appropriate for MFDR—it only restricts the timeframe for a health care provider that has missed the MFDR filing deadline and now wants to use the complaint process to get around the missed deadline and collect on a medical bill.

Comment on §180.2. A commenter stated that DWC rules do not require a health care provider to collect their workers' compensation bills or to file requests for reconsideration or medical dispute resolution at all, but that the rules do require an insurance company to take final action on a medical bill within 45 days of receiving the claim; and that an insurance carrier commits an administrative violation if they fail to pay, reduce, or deny and notify the health care provider of their intent to audit the bill. The commenter also stated that an insurance carrier violates §134.201(b) when continued noncompliance on multiple bills over long periods of time shows willfulness and intentional violation. The com-

menter stated that if a health care provider can prove that the insurance carrier received a bill on time, and the insurance carrier cannot prove that they took final action on the medical bill within 45 days of receiving it, then that would be a violation. The commenter stated that the complaint process and the request for reconsideration and medical dispute resolution processes are independent of each other and should remain that way. The commenter stated that, while health care providers and their agents understand that the request for reconsideration and medical dispute resolution processes are necessary for the proper collection of a medical bill, a complaint can and should be filed separately and independently on an insurance carrier or their agents for violations of the rules.

Agency Response to Comment on §180.2. DWC rules do not require a health care provider to request reconsideration or medical dispute resolution because not every bill needs this action. But if a health care provider wants to dispute how an insurance carrier has handled a particular bill or a set of bills, the MFDR process that DWC adopted under Labor Code §413.031 is the way to adjudicate those disputes. The amended rule does not prevent filing a complaint for issues that would not be appropriate for MFDR—it only restricts the timeframe for a health care provider that has missed the MFDR filing deadline and now wants to use the complaint process to get around the missed deadline and collect on a medical bill.

Comment on §180.2. A commenter stated that if the rule is going to have a time limit for filing complaints on the insurance carrier, this should also apply to filing complaints on health care providers. The commenter stated that health care providers are responding to complaints that are years after the date of service.

Agency Response to Comment on §180.2. DWC appreciates the comment but declines to make the change because it is beyond the scope of this project. DWC proposed the amendments to ensure that medical fee disputes are properly brought under the established MFDR process, and that health care providers cannot use the complaint process as a back door to dispute a medical billing issue if they miss the MFDR deadlines. That said, on the topic of complaint timing, DWC has made improvements in the last few years, and is now resolving about 97% of enforcement cases within 365 days.

Comment on §180.2. A commenter suggested that insurance carriers and their bill review agents should be required to attend training seminars. The commenter stated that health care providers in the system are required to attend continued training and testing and compliance with system rules and adherence to the Labor Code. The commenter stated that insurance companies should also be required to be in compliance with DWC rules and the Labor Code. The commenter stated that DWC should address timely and correct payment to health care providers immediately, especially MD and DO providers, who have the highest number of complaints due to the financial and additional time requirements just to get paid for their services, to ensure that providers remain in the DWC system. The commenter stated that the system is currently struggling with the lack of MD and DO providers, as well as specialty providers, and cannot afford to lose those providers due to issues of insurance carriers consistently violating 28 TAC §§133.240(a) and (o), and 134.201, and Labor Code §§415.002 and 415.021.

Agency Response to Comment on §180.2. DWC appreciates the comment but declines to make the change because it is beyond the scope of this project. Insurance carriers are already required to comply with applicable statutes and rules. The

complaints DWC receives from health care providers are fairly evenly split among MDs, DOs, and DCs. DWC proposed the amendments to ensure that medical fee disputes are properly brought under the established MFDR process, and that health care providers cannot use the complaint process as a back door to dispute a medical billing issue if they miss the MFDR deadlines.

Comment on §180.2. A commenter stated that the proposed rule does not sufficiently address changes to 28 TAC §§133.240(a) and (o), and 134.201, and Labor Code §§415.002(a)(11) and (20), and 415.021. The commenter stated that the proposed rule actually contradicts those sections.

Agency Response to Comment on §180.2. DWC appreciates the comment but disagrees that the proposed text omits changes to or contradicts the cited sections. This is a solution that is narrowly tailored to continue to allow health care providers to bring their medical billing disputes properly under the MFDR process while preventing abuse of the complaint system when the health care provider has failed to meet the MFDR filing deadlines. The amendments do not affect the cited sections, which deal with requirements for insurance carriers to take action on medical bills, and with administrative violations for noncompliance with those, as well as medical fee guideline requirements. Additional amendments to the cited sections would not accomplish their goal of stopping attempts to circumvent the MFDR process for adjudicating medical billing disputes.

STATUTORY AUTHORITY. The commissioner of workers' compensation adopts the amendments to 28 TAC §180.2 under Labor Code §§402.023, 408.027, 413.031, 415.003, 402.00111, 402.00116, and 402.061.

Labor Code §402.023 requires the commissioner to adopt rules about the filing of a complaint under Title 5, Subtitle A of the Labor Code. The rules must, at a minimum, ensure that DWC clearly defines the method for filing a complaint and define what constitutes a frivolous complaint under Subtitle A.

Labor Code §408.027 addresses payment of health care providers in accordance with the fee guidelines or contracted network rates, and requires the commissioner to adopt rules necessary to implement the provisions of §§408.027 and 408.0271.

Labor Code §413.031 addresses medical dispute resolution. It entitles a party, including a health care provider, to a review of a medical service provided or for which authorization of payment is sought if a health care provider is denied payment or paid a reduced amount for the medical service rendered; denied authorization for the payment for the service requested or performed if authorization is required or allowed by Subtitle A or commissioner rules; ordered by the commissioner to refund a payment received; or ordered to make a payment that was refused or reduced for a medical service rendered. It also entitles a health care provider who submits a charge in excess of the fee guidelines or treatment policies to a review of the medical service to determine if reasonable medical justification exists for the deviation. It requires the commissioner to adopt rules to notify claimants of their rights for that process, and states that DWC's role is to adjudicate the payment given the relevant statutory provisions and commissioner rules. It also requires the commissioner to specify by rule the appropriate dispute resolution process for disputes in which a claimant has paid for medical services and seeks reimbursement. It allows the commissioner to prescribe by rule an alternative dispute resolution process to

resolve disputes about medical services costing less than the cost of a review of the medical necessity of a health care service by an independent review organization.

Labor Code §415.003 states that a health care provider commits an administrative violation if the person: (1) submits a charge for health care that was not furnished; (2) administers improper, unreasonable, or medically unnecessary treatment or services; (3) makes an unnecessary referral; (4) violates DWC's fee and treatment guidelines; (5) violates a commissioner rule; or (6) fails to comply with a provision of Subtitle A.

Labor Code §402.00111 provides that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority under Title 5 of the Labor Code.

Labor Code §402.00116 provides that the commissioner of workers' compensation shall administer and enforce this title, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to DWC or the commissioner.

Labor Code §402.061 provides that the commissioner of workers' compensation shall adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

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

Filed with the Office of the Secretary of State on May 7, 2024.

TRD-202402039

Kara Mace

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

Effective date: May 27, 2024

Proposal publication date: March 22, 2024

For further information, please call: (512) 804-4703



## TITLE 31. NATURAL RESOURCES AND CONSERVATION

### PART 10. TEXAS WATER DEVELOPMENT BOARD

#### CHAPTER 360. DESIGNATION OF RIVER AND COASTAL BASINS

##### 31 TAC §§360.1 - 360.3

The Texas Water Development Board (TWDB) adopts 31 Texas Administrative Code (TAC) §§360.1 - 360.3 concerning Designation of River and Coastal Basins. The proposal is adopted without changes as published in the February 2, 2024, issue of the *Texas Register* (49 TexReg 489) and will not be republished.

##### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED AMENDMENT.

31 TAC, Chapter 360 contains the agency's rules related to the designation of river and coastal basins in accordance with the requirement of Texas Water Code Section 16.051(c). The TWDB proposed amendments to the rules to modernize the rule language and reflect the new manner that the TWDB stores the digital files of the maps of that designate the state's river and coastal basins.

## SECTION BY SECTION DISCUSSION OF ADOPTED AMENDMENTS.

In §360.1, the section is adopted with amendments that modernize the rule language.

In §360.2, the section is adopted with amendments that modernize the rule language.

In §360.3, the section is adopted with amendments updating how the TWDB stores the digital files of the state's designated river and coastal basins. The section is also amended to remove references to the storage of a "quad map" on a CD-ROM, because CD-ROMs are no longer the medium the TWDB uses to store digital files. As stated in the proposal for rulemaking, the amendments to this section do not change any of the state's designations of its river and coastal basins.

Additionally, in §360.3, subsections (a) through (w) contain figures that were not proposed to be amended in the proposal for rulemaking. No changes are adopted to subsection (a) through (w) in §360.3.

### REGULATORY IMPACT ANALYSIS DETERMINATION (Texas Government Code §2001.0225)

The TWDB reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the rulemaking is not subject to Texas Government Code §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the rulemaking is to modernize the rule language and to update how the TWDB stores the digital files of the designations of the state's coastal and river basins.

Even if the rule were a major environmental rule, Texas Government Code §2001.0225 still would not apply to this rulemaking because Texas Government Code §2001.0225 only applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

This rulemaking does not meet any of these four applicability criteria because it: (1) does not exceed any federal law; (2) does not exceed an express requirement of state law; (3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and (4) is not proposed solely under the general powers of the agency, but rather the specific statutory authorization for this specific rulemaking is authorized by Texas Water Code §16.051(c). Therefore, this rule does not fall under any of the applicability criteria in Texas Government Code §2001.0225.

### TAKINGS IMPACT ASSESSMENT (Texas Government Code §2007.043)

The TWDB evaluated this rule and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this proposed amendment is to update how the TWDB stores the digital files of the designations of the state's coastal and river basins and modernize the rule language.

The TWDB's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this proposed rule because this is an action that is reasonably taken to fulfill an obligation under state law, which is exempt under Texas Government Code §2007.003(b)(4). The TWDB is the agency charged with designating the state's coastal and river basins in accordance with Chapter 16, Texas Water Code.

Nevertheless, the TWDB further evaluated this rule and performed an assessment of whether it constitutes a taking under Texas Government Code Chapter 2007. Promulgation and enforcement of this proposed rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulation does not affect a landowner's rights in private real property because this rulemaking does not burden, restrict, or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. In other words, this proposed rule is merely an amendment to reflect how the TWDB stores the digital files of the designations of the state's coastal and river basins and modernize the rule language. It does not require regulatory compliance with any persons or political subdivisions. Therefore, the rule does not constitute a taking under Texas Government Code, Chapter 2007.

### PUBLIC COMMENTS (Texas Government Code §2001.033(a)(1))

The public comment period ended March 4, 2024. No public comments were received; therefore, no revisions to the rule as proposed will be made and the rule as published in (49 TexReg 489) will not be republished.

### STATUTORY AUTHORITY (Texas Government Code §2001.033(a)(2))

The amendment is adopted under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and under the authority of Texas Water Code §16.051(c).

This rulemaking affects Water Code, §16.051(c).

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

Filed with the Office of the Secretary of State on May 9, 2024.

TRD-202402078

Ashley Harden

General Counsel

Texas Water Development Board

Effective date: May 29, 2024

Proposal publication date: February 2, 2024

For further information, please call: (512) 463-8676

## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

# PART 7. TEXAS COMMISSION ON LAW ENFORCEMENT

## CHAPTER 211. ADMINISTRATION

### 37 TAC §211.1, §211.16

The Texas Commission on Law Enforcement (Commission) adopts amended 37 Texas Administrative Code §211.1, Definitions, and §211.16, Establishment or Continued Operation of an Appointing Entity, with changes to the proposed text as published in the March 22, 2024, issue of the *Texas Register* (49 TexReg 1876). The rules will be republished.

These adopted amended rules were developed with input from an advisory committee as required by Texas Occupations Code §1701.163. Pursuant to Senate Bill 1445 (88R), the Minimum Standards for Law Enforcement Agencies Advisory Committee was charged under Texas Occupations Code §1701.163 with developing rules to establish minimum standards with respect to the creation or continued operation of a law enforcement agency based on the function, size, and jurisdiction of the agency.

These adopted amended rules conform with the amendment to Texas Occupations Code §1701.163 made by Senate Bill 1445 (88R). The amendment to 37 Texas Administrative Code §211.1 adds four definitions for the terms less lethal force weapon, patrol vehicle, sustainable funding sources, and uniform. The amendment to 37 Texas Administrative Code §211.1 also adds language to the definition for firearms. The amendment to 37 Texas Administrative Code §211.16 outlines the minimum standards for the creation or continued operation of a law enforcement agency. Before applying, an entity authorized by law to create a law enforcement agency must complete training on the establishment and continued operation of a new agency. Prospective agencies will then be required to submit an application providing evidence that the prospective agency meets the minimum standards. Existing agencies will be required to submit an annual report between January 1st and March 1st of each year documenting continued compliance with the minimum standards. Texas Occupations Code §1701.163 requires minimum standards relating to the public benefit of the agency to the community, sustainable funding sources, physical resources available to officers, physical facilities of the agency, required policies, the agency's administrative structure, liability insurance, and any other standard the Commission requires.

The public comment period began on March 22, 2024, and ended on April 29, 2024, at the conclusion of the public meeting of the Commission. The following is a summary of the public comments received and Commission responses.

**Comment:** Skylor Hearn, Executive Director of the Sheriffs' Association of Texas, suggested that instead of one-size-fits-all rules, §211.16 should focus on small, non-constitutionally mandated agencies. Allen Castleberry, Sheriff of Kimble County, suggested that Sheriffs' offices be exempted from the requirements of §211.16.

**Response:** The Legislature, through Senate Bill 1445 and effectuated in amended Texas Occupations Code §1701.163, requires the Commission to establish minimum standards with respect to the creation or continued operation of a law enforcement agency based on the function, size, and jurisdiction of the agency. Larger and constitutionally-mandated agencies, including Sheriffs' offices, were not exempted from this requirement.

**Comment:** Larry Smith, President of the Sheriffs' Association of Texas, commented that §211.16 is an unfunded mandate that goes far beyond the statutory language. Allen Castleberry, Sheriff of Kimble County, commented that Sheriffs' offices do not need any more unfunded mandates. Scott Cass, Sheriff of Lamar County, commented that it looks like there more things in §211.16 than the Legislature intended through Senate Bill 1445 (88R). Carlos Lopez, 2nd Vice President of the Justices of the Peace and Constables Association of Texas, commented that lots of small agencies are worried about funding and that administrative rules do not supersede the Texas Constitution.

**Response:** The Legislature, through Senate Bill 1445 and effectuated in amended Texas Occupations Code §1701.163, requires the Commission to establish minimum standards with respect to the creation or continued operation of a law enforcement agency based on the function, size, and jurisdiction of the agency. These rules were developed and proposed by an advisory committee for final approval by the Commission as required by Texas Occupations Code §1701.163. Texas Occupations Code §1701.163 includes many items that the Commission must address by rule. In addition, Texas Occupations code §1701.163(8) contains a catch-all provision that allows the Commission to establish minimum standards for any other standard that the Commission considers necessary.

**Comment:** Larry Smith, President of the Sheriffs' Association of Texas, and Nathan Johnson, Sheriff of Real County, commented that the Commission does not have the authority to inactivate constitutionally-mandated agencies as described in proposed §211.16(f). David Hullum, County Judge of Eastland County, asked if the Commission can place a constitutionally-mandated agency on inactive status. Scott Cass, Sheriff of Lamar County, asked what does "inactive" mean for a constitutional office. Carlos Lopez, 2nd Vice President of the Justices of the Peace and Constables Association of Texas, commented that the Commission does not have the authority to deactivate an agency for noncompliance with these new minimum standards.

**Response:** The language in proposed §211.16(f) referencing inactivation has been removed from the adopted version.

**Comment:** Larry Smith, President of the Sheriffs' Association of Texas, commented that newly-elected officials enter officer on January 1st and the annual report for existing agencies is due by March 1st, which only gives a newly-elected officials two months to come into compliance.

**Response:** The specific circumstances that may lead to an existing agency not meeting minimum standards will be taken into account by the Commission. If this specific situation arises, please reach out to the Commission immediately so that we can work together to help the agency meet minimum standards.

**Comment:** Larry Smith, President of the Sheriffs' Association of Texas, suggested that there should not be any informal exceptions to §211.16 and that any exceptions should be explicitly stated.

**Response:** There will not be informal exceptions to the requirements of §211.16 and the Commission has not suggested that there will be. Some minor changes to the adopted version of this rule will provide clarification. And generally, other statutes and rules can affect the meaning and implementation of another statute or rule.

**Comment:** Larry Smith, President of the Sheriffs' Association of Texas, suggested that agencies whose chief administrators are

elected officials under Article 5 of the Texas Constitution be exempted from proposed §211.16(f). Skylor Hearn, Executive Director of the Sheriffs' Association of Texas, suggested that constitutional and statutory agencies should be exempted from the annual report required in §211.16(f). Gene Ellis, Executive Director of the Texas Police Chiefs Association, suggested that accredited agencies should be exempted from the annual report required in §211.16(f) and commented that the annual report is a burdensome and bureaucratic process for both the Commission and all law enforcement agencies. Gene Ellis also proposed that the required annual report for existing agencies only be a one-time occurrence to get the initial information needed or that the annual report be conducted during audits by Commission field service agents. Johnwayne Valdez, Sheriff of Rusk County, commented that he is concerned with what the minimum standards reporting will look like. Carlos Lopez, 2nd Vice President of the Justices of the Peace and Constables Association of Texas, suggested to provide an exception to §211.16(f) for chief administrators under Article 5 of the Texas Constitution.

Response: The Commission has adopted a modification to proposed §211.16(f) that removed the inactivation language, but still requires all law enforcement agencies to submit an annual report each year. The adopted version of §211.16(f) is: "All law enforcement agencies must complete and submit an annual report due between January 1st and March 1st of each year documenting their continued compliance with the requirements of this rule." The requirements of this annual report have not been finally determined. The Commission may consider the accreditation status of an agency when formulating the annual report to simplify the process. Texas Occupations Code §1701.163 requires that the Commission establish minimum standards for the continued operation of a law enforcement agency, which does not suggest a one-time check by the Commission. Also, the Commission believes that the annual report is the least burdensome process for the Commission and law enforcement agencies alike as compared to annual audits conducted by Commission staff.

Comment: David Hullum, County Judge of Eastland County, asked if agencies will be required to provide firearms, less lethal force weapons, and bullet-resistant vests to their officers.

Response: The rule does not mandate who is responsible for purchasing these items, it is only required that these items are available to their officers. To provide clarification, the Commission has adopted a modification to proposed §211.16(a)(3)(A) by removing the phrase: "provided by either the officer or the agency." This resolves the ambiguity for other physical resources required to be available to officers that made no mention of which party was to provide them.

Comment: David Hullum, County Judge of Eastland County, asked if an agency can outsource the storage of evidence to another agency.

Response: The rule contemplates "other acceptable secure evidence storage" in §211.16(a)(4)(A).

Comment: David Hullum, County Judge of Eastland County, asked if Constables' offices are required to have a vehicle owned and insured by the agency. Jay Druessedow, Constable of Eastland County Precinct 2, commented that there appears to be a foreseeable fiscal implication to state or local governments by requiring each agency to have a vehicle owned and insured by the agency. Nathan Johnson, Sheriff of Real County, commented that the requirement that each agency have a vehicle owned and insured by the agency will be burdensome to the many one-per-

son Constables' offices across the state. Scott Cass, Sheriff of Lamar County, commented that he was concerned about funding for vehicles.

Response: The Commission has adopted a modification to proposed §211.16(a)(3)(F) that exempts law enforcement agencies in existence before June 1, 2024, from this requirement. The adopted version of §211.16(a)(3)(F) is: "at least one motor vehicle owned and insured by an agency created on or after June 1, 2024." Constables' offices in existence before June 1, 2024, will not be required to have a vehicle owned and insured by the agency.

Comment: David Hullum, County Judge of Eastland County, asked if Constables' offices will be required to take the Commission training required in §211.16(b).

Response: The training required by §211.16(b) only applies to entities that are applying to create a new agency on or after June 1, 2024.

Comment: Nathan Johnson, Sheriff of Real County, commented that §211.16 will create a new regulation and that there will be foreseeable fiscal implications to state or local governments.

Response: The statute, Texas Occupations Code §1701.163, may impose additional fiscal impacts to state or local governments and other persons required to comply. However, §211.16 does not create foreseeable fiscal implications on top of those already imposed by the statute.

Comment: Nathan Johnson, Sheriff of Real County, commented that the Commission is supplanting their idea of what should constitute a baseline for a law enforcement agency in §211.16 with that of the local authority.

Response: The Commission was required by Senate Bill 1445 (88R) to establish minimum standards with respect to the creation or continued operation of a law enforcement agency. These rules were developed with input from an advisory committee consisting of individuals from different types of agencies, different-sized agencies, agencies in different regions of the state, law enforcement unions, and others.

Comment: Marvin Acker, Investigator with the Cherokee County District Attorney's Office, asked if there will be further guidance for smaller agencies and agencies that perform fewer functions with regards to the requirements in §211.16.

Response: These rules will not go into effect until September 1, 2025, for agencies in existence on or before June 1, 2024. The Commission will provide education and guidance regarding the requirements. And as always, you can submit questions to the Commission and your field service agent.

Comment: Andrew Huntington, Lieutenant with the Baylor University Police Department, suggested striking "public" from the requirement that an agency "provides public benefit to the community" in §211.16(a)(1) because some agencies service private universities.

Response: Texas Occupations Code §1701.163 requires a determination regarding the public benefit of creating the agency in the community. The provision of law enforcement services to private universities is still a public benefit to the community.

Comment: Nathan Johnson, Sheriff of Real County, commented regarding the requirement to possess a cell phone that in some areas there is no cell phone service so there is no point in having them.



Response: Officers are only required to have a cell phone available to them if the officer is not required to have a radio communication device and the officer may have contact with the general public.

Comment: Nathan Johnson, Sheriff of Real County, suggested that the language regarding the physical resources required for officers be changed to "to have or to have available."

Response: The language of §211.16(a)(3), "has physical resources available to officers," already covers this proposed suggestion.

The amended rules are adopted under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, and §1701.163, Minimum Standards for Law Enforcement Agencies. Texas Occupations Code §1701.151 authorizes the Commission to adopt rules for the administration of Occupations Code Chapter 1701. Texas Occupations Code §1701.163 requires the Commission to adopt rules to establish minimum standards with respect to the creation or continued operation of a law enforcement agency.

The amended rules as adopted affect or implement Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, and §1701.163, Minimum Standards for Law Enforcement Agencies. No other code, article, or statute is affected by this adoption.

#### §211.1. Definitions.

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

(1) Academic alternative program--A program for college credit offered by a training provider recognized by the Southern Association of Colleges and Schools or its successors and the Texas Higher Education Coordinating Board, authorized by the commission to conduct preparatory law enforcement training as part of a degree plan program, and consisting of commission-approved curricula.

(2) Academic provider--A school, accredited by the Southern Association of Colleges and Schools or its successors and the Texas Higher Education Coordinating Board, which has been approved by the commission to provide basic licensing courses.

(3) Accredited college or university--An institution of higher education that is accredited or authorized by the Southern Association of Colleges and Schools, the Middle States Association of Colleges and Schools, the New England Association of Schools and Colleges, the North Central Association of Colleges and Schools, the Northwest Commission on Colleges and Universities, the Western Association of Schools and Colleges or its successors, or an international college or university evaluated and accepted by a United States accredited college or university.

(4) Active--A license issued by the commission that meets the current requirements of licensure and training as determined by the commission.

(5) Administrative Law Judge (ALJ)--An administrative law judge appointed by the chief administrative law judge of the State Office of Administrative Hearings.

(6) Agency--A law enforcement unit or other entity, whether public or private, authorized by Texas law to appoint a person licensed or certified by the commission.

(7) Appointed--Elected or commissioned by an agency as a peace officer, reserve or otherwise selected or assigned to a position

governed by the Texas Occupations Code, Chapter 1701, without regard to pay or employment status.

(8) Background investigation--An investigation completed by the enrolling or appointing entity into an applicant's personal history as set forth in §217.1(b)(10).

(9) Basic licensing course--Any current commission developed course that is required before an individual may be licensed by the commission.

(10) Certified copy--A true and correct copy of a document or record certified by the custodian of records of the submitting entity.

(11) Chief administrator--The head or designee of a law enforcement agency.

(12) Commission--The Texas Commission on Law Enforcement.

(13) Commissioned--Has been given the legal power to act as a peace officer or reserve, whether elected, employed, or appointed.

(14) Commissioners--The nine commission members appointed by the governor.

(15) Contract jail--A correctional facility, operated by a county, municipality or private vendor, operating under a contract with a county or municipality, to house inmates convicted of offenses committed against the laws of another state of the United States, as provided by Texas Government Code, §511.0092.

(16) Contract Jailer--A person licensed as a Jailer in a Contract Jail or employed by an agency outside of a County Jail whose employing agency provides services inside of a County Jail which would require the person to have a Jailer License.

(17) Contractual training provider--A law enforcement agency or academy, a law enforcement association, alternative delivery trainer, distance education, academic alternative, or proprietary training provider that conducts specific education and training under a contract with the commission.

(18) Convicted--Has been adjudged guilty of or has had a judgment of guilt entered in a criminal case that has not been set aside on appeal, regardless of whether:

(A) the sentence is subsequently probated and the person is discharged from probation;

(B) the charging instrument is dismissed and the person is released from all penalties and disabilities resulting from the offense; or

(C) the person is pardoned, unless the pardon is expressly granted for subsequent proof of innocence.

(19) Community supervision--Any court-ordered community supervision or probation resulting from a deferred adjudication or conviction by a court of competent jurisdiction. However, this does not include supervision resulting from a pretrial diversion.

(20) Diploma mill--An entity that offers for a fee with little or no coursework, degrees, diplomas, or certificates that may be used to represent to the general public that the individual has successfully completed a program of secondary education or training.

(21) Distance education--Study, at a distance, with an educational provider that conducts organized, formal learning opportunities for students. The instruction is offered wholly or primarily by distance study, through virtually any media. It may include the use of: videotapes, DVD, audio recordings, telephone and email communications, and Web-based delivery systems.

(22) Duty ammunition--Ammunition required or permitted by the agency to be carried on duty.

(23) Executive director--The executive director of the commission or any individual authorized to act on behalf of the executive director.

(24) Experience--Includes each month, or part thereof, served as a peace officer, reserve, jailer, telecommunicator, or federal officer. Credit may, at the discretion of the executive director, be awarded for relevant experience from an out-of-state agency.

(25) Family Violence--In this chapter, has the meaning assigned by Chapter 71, Texas Family Code.

(26) Field training program--A program intended to facilitate a transition from the academic setting to the performance of the general duties of the appointing agency.

(27) Firearms--Any handgun, shotgun, precision rifle, patrol rifle, or fully automatic weapon that is carried by the individual officer in an official capacity. Conducted energy devices (CEDs) are not firearms.

(28) Firearms proficiency--Successful completion of the annual firearms proficiency requirements.

(29) Fit for duty review--A formal specialized examination of an individual, appointed to a position governed by the Texas Occupations Code, Chapter 1701, without regard to pay or employment status, to determine if the appointee is able to safely and/or effectively perform essential job functions. The basis for these examinations should be based on objective evidence and a reasonable basis that the cause may be attributable to a medical and/or psychological condition or impairment. Objective evidence may include direct observation, credible third party reports; or other reliable evidence. The review should come after other options have been deemed inappropriate in light of the facts of the case. The selected Texas licensed medical doctor or psychologist, who is familiar with the duties of the appointee, conducting an examination should be consulted to ensure that a review is indicated. This review may include psychological and/or medical fitness examinations.

(30) High School Diploma--An earned high school diploma from a United States high school, an accredited secondary school equivalent to that of United States high school, or a passing score on the general education development test indicating a high school graduation level. Documentation from diploma mills is not acceptable.

(31) Home School Diploma--An earned diploma from a student who predominately receives instruction in a general elementary or secondary education program that is provided by the parent, or a person in parental authority, in or through the child's home. (Texas Education Code §29.916)

(32) Honorably Retired Peace Officer--An unappointed person with a Texas Peace Officer license who has a cumulative total of 15 years of full-time service as a Peace Officer. An Honorably Retired Peace Officer does not carry any Peace Officer authority.

(33) Individual--A human being who has been born and is or was alive.

(34) Jailer--A person employed or appointed as a jailer under the provisions of the Local Government Code, §85.005, or Texas Government Code §511.0092.

(35) Killed in the line of duty--A death that is the directly attributed result of a personal injury sustained in the line of duty.

(36) Law--Including, but not limited to, the constitution or a statute of this state, or the United States; a written opinion of a court of record; a municipal ordinance; an order of a county commissioners' court; or a rule authorized by and lawfully adopted under a statute.

(37) Law enforcement academy--A school operated by a governmental entity which may provide basic licensing courses and continuing education under contract with the commission.

(38) Law enforcement automobile for training--A vehicle equipped to meet the requirements of an authorized emergency vehicle as identified by Texas Transportation Code §546.003 and §547.702.

(39) Less lethal force weapon--A weapon designed or intended for use on individuals or groups of individuals which, in the course of expected or reasonably foreseen use, has a lower risk of causing death or serious injury than do firearms. Less lethal force weapons do not include firearms or other weapons whose expected or reasonably foreseen use would result in life-threatening injuries. Less lethal force weapons may include police batons, hand-held chemical irritants, chemical irritants dispersed at a distance, conducted electrical weapons, kinetic impact projectiles, water cannons, and acoustic weapons and equipment. An officer provided or equipped with a less lethal force weapon should be trained, qualified, or certified in its use.

(40) Lesson plan--A plan of action consisting of a sequence of logically linked topics that together make positive learning experiences. Elements of a lesson plan include: measurable goals and objectives, content, a description of instructional methods, tests and activities, assessments and evaluations, and technologies utilized.

(41) License--A license required by law or a state agency rule that must be obtained by an individual to engage in a particular business.

(42) Licensee--An individual holding a license issued by the commission.

(43) Line of duty--Any lawful and reasonable action, which an officer identified in Texas Government Code, Chapter 3105 is required or authorized by rule, condition of employment, or law to perform. The term includes an action by the individual at a social, ceremonial, athletic, or other function to which the individual is assigned by the individual's employer.

(44) Moral character--The propensity on the part of a person to serve the public of the state in a fair, honest, and open manner.

(45) Officer--A peace officer or reserve identified under the provisions of the Texas Occupations Code, §1701.001.

(46) Patrol rifle--Any magazine-fed repeating rifle with iron/open sights or with a frame mounted optical enhancing sighting device, 5 power or less, that is carried by the individual officer in an official capacity.

(47) Patrol vehicle--A vehicle equipped with emergency lights, siren, and the means to safely detain and transport a combative detainee.

(48) Peace officer--A person elected, employed, or appointed as a peace officer under the provisions of the Texas Occupations Code, §1701.001.

(49) Personal Identification Number (PID)--A unique computer-generated number assigned to individuals for identification in the commission's electronic database.

(50) Placed on probation--Has received an adjudicated or deferred adjudication probation for a criminal offense.

(51) POST--State or federal agency with jurisdiction similar to that of the commission, such as a peace officer standards and training agency.

(52) Precision rifle--Any rifle with a frame mounted optical sighting device greater than 5 power that is carried by the individual officer in an official capacity.

(53) Proprietary training contractor--An approved training contractor who has a proprietary interest in the intellectual property delivered.

(54) Public security officer--A person employed or appointed as an armed security officer identified under the provisions of the Texas Occupations Code, §1701.001.

(55) Reactivate--To make a license issued by the commission active after a license becomes inactive. A license becomes inactive at the end of the most recent unit or cycle in which the licensee is not appointed and has failed to complete legislatively required training.

(56) Reinstate--To make a license issued by the commission active after disciplinary action or failure to obtain required continuing education.

(57) Reserve--A person appointed as a reserve law enforcement officer under the provisions of the Texas Occupations Code, §1701.001.

(58) School marshal--A person employed and appointed by the board of trustees of a school district, the governing body of an open-enrollment charter school, the governing body of a private school, or the governing board of a public junior college under Texas Code of Criminal Procedure, Article 2.127 and in accordance with and having the rights provided by Texas Education Code, §37.0811.

(59) Self-assessment--Completion of the commission created process, which gathers information about a training or education program.

(60) Separation--An explanation of the circumstances under which the person resigned, retired, or was terminated, reported on the form currently prescribed by the commission, in accordance with Texas Occupations Code, §1701.452.

(61) SOAH--The State Office of Administrative Hearings.

(62) Successful completion--A minimum of:

- (A) 70 percent or better; or
- (B) C or better; or
- (C) pass, if offered as pass/fail.

(63) Sustainable funding sources--Funding from an agency's governing body such as property tax, sales tax, use and franchise fees, and the issuance of traffic citations subject to section 542.402 of the Texas Transportation Code. Term limited sources, such as grants, are not sustainable funding sources.

(64) TCLEDDS--Texas Commission on Law Enforcement Data Distribution System.

(65) Telecommunicator--A person employed as a telecommunicator under the provisions of the Texas Occupations Code, §1701.001.

(66) Training coordinator--An individual, appointed by a commission-recognized training provider, who meets the requirements of §215.9 of this title.

(67) Training cycle--A 48-month period as established by the commission. Each training cycle is composed of two contiguous 24-month units.

(68) Training hours--Classroom or distance education hours reported in one-hour increments.

(69) Training program--An organized collection of various resources recognized by the commission for providing preparatory or continuing training. This program includes, but is not limited to, learning goals and objectives, academic activities and exercises, lesson plans, exams, skills training, skill assessments, instructional and learning tools, and training requirements.

(70) Training provider--A governmental body, law enforcement association, alternative delivery trainer, or proprietary entity credentialed by or authorized under a training provider contract with the commission to provide preparatory or continuing training for licensees or potential licensees.

(71) Uniform--Dress that makes an officer immediately identifiable as a peace officer, to include a visible badge. Acceptable uniform dress must be defined in agency policy and consistent in its application and use across the agency.

(72) Verification (verified)--The confirmation of the correctness, truth, or authenticity of a document, report, or information by sworn affidavit, oath, or deposition.

(b) The effective date of this section is June 1, 2024.

§211.16. *Establishment or Continued Operation of an Appointing Entity.*

(a) To establish that an agency or a prospective agency meets the minimum standards for the creation or continued operation of a law enforcement agency, the agency must provide evidence that the agency:

- (1) provides public benefit to the community;
- (2) has sustainable funding sources that meet or exceed the continued operating expenses outlined in a line-item budget for the agency;
- (3) has physical resources available to officers, including:
  - (A) at least one firearm per officer on duty;
  - (B) at least one less lethal force weapon per officer on duty;
  - (C) effective communications equipment, specifically:
    - (i) at least one radio communication device per officer on duty performing patrol, courtroom security, traffic enforcement, responding to calls for service, assigned to a controlled access point, acting as a visual deterrent to crime, surveillance, warrant execution, and service of civil process; and
    - (ii) at least one cell phone device per officer on duty who may have contact with the general public and is not performing any of the duties described in (i);
    - (D) at least one bullet-resistant vest per officer on duty with vest panels that:
      - (i) have been certified as compliant by the National Institute of Justice (NIJ);
      - (ii) are within the ballistic performance warranty period listed by the manufacturer on the affixed tags; and
      - (iii) have never been shot or otherwise compromised;

(E) at least one uniform per officer whose duties include any of the following:

- (i) performing patrol;
- (ii) courtroom security;
- (iii) traffic enforcement;
- (iv) responding to calls for service;
- (v) assigned to a controlled access point;
- (vi) acting as a visual deterrent to crime;
- (vii) warrant execution; or
- (viii) service of civil process;

(F) at least one motor vehicle owned and insured by an agency created on or after June 1, 2024; and

(G) patrol vehicles owned, insured, and equipped by the agency and provided to officers whose duties include any of the following:

- (i) performing patrol;
- (ii) traffic enforcement; or
- (iii) responding to calls for service;

(4) has physical facilities, including:

(A) an evidence room or other acceptable secure evidence storage for officers whose duties include any of the following:

- (i) performing patrol;
- (ii) traffic enforcement;
- (iii) criminal investigations;
- (iv) responding to calls for service; or
- (v) executing search or arrest warrants;

(B) a dispatch area for any agency appointing and employing telecommunicators; and

(C) a public area including written notices posted and visible 24 hours a day explaining:

- (i) how to receive the most immediate assistance in an emergency;
- (ii) how to make a nonemergency report of a crime; and

(iii) how to make a compliment or complaint on a member of the agency by mail, online, or by phone;

(5) has policies, including policies on:

- (A) use of force;
- (B) vehicle pursuit;
- (C) professional conduct of officers;
- (D) domestic abuse protocols;
- (E) response to missing persons;
- (F) supervision of part-time officers;
- (G) impartial policing;
- (H) medical and psychological examination of licensees;
- (I) active shooters;

(J) barricaded subjects;

(K) evidence collection and handling;

(L) eyewitness identification;

(M) misconduct investigations;

(N) hiring a license holder;

(O) personnel files;

(P) uniform and dress code;

(Q) training required to maintain licensure; and

(R) outside and off-duty employment;

(6) has an established administrative structure, including:

(A) an organizational chart for the agency that illustrates the division and assignment of licensed and unlicensed personnel;

(B) a projection for the number of full-time peace officers, part-time peace officers, and unpaid peace officers that the agency would employ during the year if at full staffing; and

(C) the number of School Resource Officer (SRO) positions employed by the agency and working in schools if the agency is not an independent school district (ISD) police department;

(7) has liability insurance for the agency and its vehicles;

(8) has a defined process by which the agency will receive by mail, online, and by phone and document compliments and complaints on its employees; and

(9) any other information the commission requires.

(b) An entity authorized by law to establish a law enforcement agency and appoint licensees must first complete training offered and required by the commission on the establishment and continued operation of a new agency. The entity may then make application for an agency number by submitting the current agency number application form, any associated application fee, and evidence that they meet the requirements of this rule.

(c) An entity authorized by Local Government Code, §361.022 to operate a correctional facility to house inmates, in this state, convicted of offenses committed against the laws of another state of the United States, and appoint jailers requiring licensure by the commission, may make application for an agency number by submitting the current agency number application form, any associated application fee, and a certified copy of the contract under which the facility will operate.

(d) A political subdivision wanting to establish a consolidated emergency telecommunications center and appoint telecommunicators, as required by Texas Occupations Code, §1701.405, may make application for an agency number by submitting the current agency number application form, any associated application fee and a certified copy of the consolidation contract.

(e) The Texas Department of Criminal Justice - Pardon and Parole Division, a community supervision and corrections department, or a juvenile probation department may make application for an agency number if seeking firearms training certificates for parole officers, community supervision and corrections officers, or juvenile probation officers by submitting the current agency number application form and any associated application fee.

(f) All law enforcement agencies must complete and submit an annual report due between January 1st and March 1st of each year

documenting their continued compliance with the requirements of this rule.

(g) The effective date of this section for agencies not in existence before June 1, 2024, is June 1, 2024. The effective date of this section for agencies already in existence before June 1, 2024, is September 1, 2025.

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

Filed with the Office of the Secretary of State on May 10, 2024.

TRD-202402099

Gregory Stevens

Executive Director

Texas Commission on Law Enforcement

Effective date: June 1, 2024

Proposal publication date: March 22, 2024

For further information, please call: (512) 936-7700

