

# 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 19. EDUCATION

### PART 2. TEXAS EDUCATION AGENCY

#### CHAPTER 102. EDUCATIONAL PROGRAMS

##### SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING EARLY CHILDHOOD EDUCATION PROGRAMS

###### 19 TAC §102.1003

The Texas Education Agency (TEA) adopts an amendment to §102.1003, concerning high-quality prekindergarten programs. The amendment is adopted with changes to the proposed text as published in the December 15, 2023 issue of the *Texas Register* (48 TexReg 7276) and will be republished. The adopted amendment addresses requirements for teachers of prekindergarten classes provided by an entity with which a school district contracts to provide prekindergarten as required by House Bill (HB) 2729, 88th Texas Legislature, Regular Session, 2023. The adopted amendment also makes technical edits for clarification and to update the rule to align with updated prekindergarten guidelines and current research.

**REASONED JUSTIFICATION:** Texas Education Code (TEC), §29.167, as amended by HB 2729, 88th Texas Legislature, Regular Session, 2023, adds two new options to the list of additional qualifications for prekindergarten program teachers. The bill eliminates until September 1, 2029, the requirement that prekindergarten partnership classroom teachers possess a certification under TEC, Chapter 21, and outlines the alternate qualifications for these teachers.

To implement HB 2729, the following changes are made.

The amendment to §102.1003(d) adds an associate or baccalaureate degree in early childhood education or a related field and at least eight years of experience teaching in a Texas Rising Star Program to the list of additional qualifications for prekindergarten program teachers.

New §102.1003(e) identifies specific requirements for teachers of prekindergarten classes provided by an entity with which a school district contracts to provide prekindergarten.

New §102.1003(f) requires a teacher of a bilingual or English as a second language class provided by an entity with which a school district contracts to provide prekindergarten to be appropriately certified to align with other requirements in state law.

New §102.1003(g) identifies the requirements for supervisors in programs provided by entities with which a school district contracts to provide prekindergarten.

In addition, the following changes are made to the rule.

Section 102.1003(a)(6) is amended to add children who reside in Texas and were in foster care in another state or territory to the eligibility requirements for public prekindergarten.

References to 2015 related to the Texas Prekindergarten Guidelines are removed to align the rule with updated guidelines. References to language and literacy throughout the rule are clarified as emergent literacy language and communication.

Subsection (c) adds a requirement that progress monitoring be conducted in the middle of the school year.

In re-lettered subsection (h), requirements related to family engagement plans are amended to include the requirement for the inclusion of a primary point of contact and contact information.

In re-lettered subsection (i), progress monitoring requirements are updated to include a requirement that school districts and charter schools plan for data-driven program improvements annually by using information from the district's or charter school's program evaluation to ensure the district's or charter school's prekindergarten program is meeting all high-quality prekindergarten requirements.

Additional technical edits update the rule to provide clarification and align with current research.

The following change was made to the rule since published as proposed.

In response to public comment, §102.1003(k) was amended to clarify that a school district or an open-enrollment charter school must attempt to maintain an average ratio in any prekindergarten program class of not less than one qualified teacher or teacher's aide for every 11 students. This amendment aligns the rule with a language change to replace the term "certified" with the term "qualified" that was made to the authorizing statute.

**SUMMARY OF COMMENTS AND AGENCY RESPONSES:** The public comment period on the proposal began December 15, 2023, and ended January 22, 2024. Following is a summary of the public comments received and agency responses.

**Comment:** Early Care & Education Consortium and KinderCare Learning Companies stated that §102.1003(k) should be amended to align with language in HB 2729, 88th Texas Legislature, Regular Session, 2023, to reflect the changes in TEC, §29.167(d), related to student-to-teacher ratios.

**Response:** The agency agrees and has amended §102.1003(k) at adoption to read, "one qualified teacher or teacher's aide for every 11 students," instead of the proposed "one certified teacher or teacher's aide."

**Comment:** Early Care & Education Consortium, KinderCare Learning Companies, Child Care Associates and ResponsiveEd stated that §102.1003 should be applied to eligible

three-year-old programs in addition to eligible four-year-old programs.

Response: The agency disagrees. TEC, §29.153(c-1), requires a prekindergarten class for children who are least four years of age to comply with the program standards required for high quality prekindergarten programs under TEC, Chapter 29, Subchapter E-1, High-Quality Prekindergarten Program Requirements. The statute does not apply to three-year-old programs.

Comment: Early Care & Education Consortium, KinderCare Learning Companies, Child Care Associates, ResponsiveEd, and The Commit Partnership stated that clarification is needed for the supervisor position introduced in HB 2729 and recommended that teachers of record in a partnership classroom who meet the teacher qualifications under §102.1003(d) be permitted to satisfy the supervisor requirement and not be required to have a separate supervisor.

Response: The agency disagrees. TEC, §29.167(b-1), requires that each teacher for a prekindergarten class provided by an entity with which a school district contracts to provide a prekindergarten program must be supervised by a person who meets the requirements under TEC, §29.167(b). There is no exception in the statute for a teacher of record who meets the qualifications under 19 TAC §102.1003(d).

Comment: Early Care & Education Consortium, KinderCare Learning Companies, Child Care Associates, ResponsiveEd, and The Commit Partnership stated that additional reporting should be required and reflected in data systems, including the Early Childhood Data System, to show all prekindergarten teachers in both school- and community-based public prekindergarten classrooms, including how teachers meet the requirements under §102.1003, where waivers are being used, and if teachers meet multiple components.

Response: The agency disagrees. Local education agencies are already required to report data related to high-quality prekindergarten under §102.1003 in the Early Childhood Data Submission for all public prekindergarten classrooms, including those in school- and community-based settings. Improvements to the Early Childhood Data System are outside the scope of the proposed rulemaking.

Comment: UnidosUS recommended that prekindergarten educators should be trained in bilingual and culturally responsive teaching methods.

Response: This comment is outside the scope of the proposed rulemaking.

Comment: UnidosUS recommended monitoring the impact of the new regulation on the recruitment of bilingual teachers and developing career paths for bilingual people interested in becoming prekindergarten teachers.

Response: This comment is outside the scope of the proposed rulemaking.

Comment: The Commit Partnership requested clarification on how many classrooms or students the supervisor position can oversee.

Response: The agency provides the following clarification. A person who supervises a prekindergarten program provided through a prekindergarten partnership may supervise multiple classrooms. Decisions regarding specific numbers should be made locally.

Comment: The Commit Partnership requested clarification on how local education agencies will evaluate the performance of supervisors in meeting these requirements. They indicated that current guidance does not provide enough direction for consistent implementation across local education agencies, which may result in less support to partner-site teachers compared to those teaching within the district.

Response: The agency provides the following clarification. The supervisor performance evaluation would be determined at the local education agency and partnering entity level to ensure consistent implementation for the prekindergarten programs within a local education agency.

**STATUTORY AUTHORITY.** The amendment is adopted under Texas Education Code (TEC), §29.167(a), which requires a school district to select and implement a curriculum for a prekindergarten program that includes the Texas Prekindergarten Guidelines, measures the progress of students in meeting the recommended learning outcomes, and does not use national curriculum standards developed by the Common Core State Standards Initiative; TEC, §29.167(b), as amended by House Bill (HB) 2729, 88th Texas Legislature, Regular Session, 2023, which establishes the qualifications an individual must possess to teach a public school prekindergarten class; TEC, §29.167(b-1), as added by HB 2729, 88th Texas Legislature, Regular Session, 2023, which establishes requirements, including qualifications an individual must possess to teach a prekindergarten class provided by an entity with which a school district contracts to provide a prekindergarten program; TEC, §29.167(b-2), as added by HB 2729, 88th Texas Legislature, Regular Session, 2023, which permits a supervisor of a prekindergarten program provided by an entity with which a school district contracts to supervise multiple prekindergarten classrooms to ensure programmatic compliance and support classroom instruction, the developmental needs of students, and continuous quality improvement; and TEC, §29.168, which requires the Texas Education Agency to collaborate with other state agencies to establish prioritized family engagement strategies to be included in a school district's family engagement plan. The engagement strategies must be based on empirical research, proven to demonstrate significant positive short-term and long-term outcomes for early childhood education, and include programs and interventions that engage a family in supporting a student's learning at home.

**CROSS REFERENCE TO STATUTE.** The amendment implements Texas Education Code, §29.167, as amended by House Bill 2729, 88th Texas Legislature, Regular Session, 2023, and §29.168.

*§102.1003. High-Quality Prekindergarten Program.*

(a) School districts and open-enrollment charter schools providing a prekindergarten program must provide high-quality educational services established under Texas Education Code (TEC), Chapter 29, Subchapter E-1, to qualifying students. A student is qualified to participate in a high-quality prekindergarten program if the student is four years of age on September 1 of the year the student begins the program and:

- (1) is unable to speak and comprehend the English language;
- (2) is educationally disadvantaged;
- (3) is a homeless child, as defined by 42 United States Code §11434a, regardless of the residence of the child, of either parent of the

child, or of the child's guardian or other person having lawful control of the child;

(4) is the child of an active duty member of the armed forces of the United States, including the state military forces or a reserve component of the armed forces, who is ordered to active duty by proper authority;

(5) is the child of a member of the armed forces of the United States, including the state military forces or a reserve component of the armed forces, who was injured or killed while serving on active duty;

(6) is or ever has been in the conservatorship of the Department of Family and Protective Services following an adversary hearing held as provided by Texas Family Code, §262.201, or foster care in another state or territory, if the child resides in Texas; or

(7) is the child of a person eligible for the Star of Texas Award as:

(A) a peace officer under Texas Government Code, §3106.002;

(B) a firefighter under Texas Government Code, §3106.003; or

(C) an emergency medical first responder under Texas Government Code, §3106.004.

(b) A school district or an open-enrollment charter school shall implement a curriculum for a high-quality prekindergarten program that addresses the Texas Prekindergarten Guidelines in the following domains:

- (1) social and emotional development;
- (2) emergent literacy language and communication;
- (3) emergent literacy reading;
- (4) emergent literacy writing;
- (5) mathematics;
- (6) science;
- (7) social studies;
- (8) fine arts;
- (9) physical development and health; and
- (10) technology.

(c) A school district or an open-enrollment charter school shall measure:

(1) at the beginning, middle, and end of the school year, the progress of each student in meeting the recommended end of prekindergarten year outcomes identified in the Texas Prekindergarten Guidelines using a progress monitoring tool included on the commissioner's list of approved prekindergarten instruments that measures:

- (A) social and emotional development, which may be referred to as "health and wellness" in a progress monitoring tool;
- (B) emergent literacy language and communication;
- (C) emergent literacy reading;
- (D) emergent literacy writing; and
- (E) mathematics; and

(2) the preparation of each student for kindergarten using a commissioner-approved multidimensional kindergarten instrument

during the first 60 days of school for reading and at least three developmental skills, including literacy, as described in TEC, §28.006.

(d) Each teacher of record in a high-quality prekindergarten program class must be certified under TEC, Chapter 21, Subchapter B, and have one of the following additional qualifications:

(1) a Child Development Associate (CDA) credential;

(2) a certification offered through a training center accredited by Association Montessori Internationale or through the Montessori Accreditation Council for Teacher Education;

(3) at least eight years' experience teaching in a nationally accredited child care program or a Texas Rising Star Program;

(4) an associate or baccalaureate degree in early childhood education or early childhood special education or a non-early childhood education degree with a documented minimum of 15 units of coursework in early childhood education;

(5) documented completion of the Texas School Ready Training Program (TSR Comprehensive); or

(6) be employed as a prekindergarten teacher in a school district that has ensured that:

(A) prior to assignment in a prekindergarten class, the teacher who provides prekindergarten instruction has completed at least 150 cumulative hours of documented professional development addressing the Texas Prekindergarten Guidelines in addition to other relevant topics related to high-quality prekindergarten over a consecutive five-year period;

(B) a teacher who has not completed training required in subparagraph (A) of this paragraph prior to assignment in a prekindergarten class completes:

(i) the first 30 hours of 150 cumulative hours of documented professional development before the beginning of the next school year. The professional development shall address topics relevant to high-quality prekindergarten and may include:

(I) the Texas Prekindergarten Guidelines;

(II) the use of student progress monitoring results to inform classroom instruction;

(III) improving the prekindergarten classroom environment to enhance student outcomes; and

(IV) improving the effectiveness of teacher interaction with students as determined by an evaluation tool; and

(ii) the additional hours in the subsequent four years in order to continue providing instruction in a high-quality prekindergarten classroom; and

(C) at least half of the hours required by subparagraph (A) or (B) of this paragraph include experiential learning, practical application, and direct interaction with specialists in early childhood education, mentors, or instructional coaches.

(e) Each teacher in a high-quality prekindergarten program class provided by an entity with which a school district contracts to provide a prekindergarten program must be supervised by a person who meets the requirements under subsection (d) of this section and must have one of the following additional qualifications:

(1) at least two years' experience teaching in a nationally accredited child care program or a Texas Rising Star Program and:

(A) a CDA credential or another early childhood education credential approved by the Texas Education Agency (TEA); or

(B) a certification offered through a training center accredited by Association Montessori Internationale or through the Montessori Accreditation Council for Teacher Education;

(2) an associate or baccalaureate degree in early childhood education or early childhood special education or a non-early childhood education degree with a documented minimum of 15 units of coursework in early childhood education;

(3) at least eight years' experience teaching in a nationally accredited child care program or a Texas Rising Star Program; or

(4) be employed as a prekindergarten teacher in a partnership program that has ensured that:

(A) prior to assignment in a prekindergarten class, the teacher has completed at least 150 cumulative hours of documented professional development addressing the Texas Prekindergarten Guidelines in addition to other relevant topics related to high-quality prekindergarten over a consecutive five-year period;

(B) a teacher who has not completed the training required in subparagraph (A) of this paragraph prior to assignment in a prekindergarten class completes:

(i) the first 30 hours of 150 cumulative hours of documented professional development before the beginning of the next school year. The professional development shall address topics relevant to high-quality prekindergarten and may include:

(I) the Texas Prekindergarten Guidelines;

(II) the use of student progress monitoring results to inform classroom instruction;

(III) improving the prekindergarten classroom environment to enhance student outcomes; and

(IV) improving the effectiveness of teacher interaction with students as determined by an evaluation tool; and

(ii) the additional hours in the subsequent four years in order to continue providing instruction in a high-quality prekindergarten classroom; and

(C) at least half of the hours required by subparagraph (A) or (B) of this paragraph include experiential learning, practical application, and direct interaction with specialists in early childhood education, mentors, or instructional coaches.

(f) A teacher of a bilingual or English as a second language (ESL) program class provided by an entity with which a school district contracts to provide a prekindergarten program must be appropriately certified for the grade and content and with the appropriate supplemental certification (either bilingual or ESL).

(g) A prekindergarten partnership supervisor:

(1) shall meet the requirements under subsection (d) of this section;

(2) may supervise multiple prekindergarten classrooms; and

(3) shall ensure programmatic compliance and support classroom instruction, the developmental needs of students, and continuous quality improvement, including professional development

(h) A school district or an open-enrollment charter school shall develop, implement, and make available on the district, charter, or campus website by November 1 of each school year a family engagement plan to assist the district in achieving and maintaining high levels of family involvement and positive family attitudes toward education.

The family engagement plan shall include a primary point of contact and contact information. An effective family engagement plan creates a foundation for the collaboration of mutual partners, embraces the individuality and uniqueness of families, and promotes a culture of learning that is child centered, age appropriate, and family driven.

(1) The following terms, when used in this section, shall have the following meanings.

(A) Family--Adults responsible for the child's care and children in the child's life who support the early learning and development of the child.

(B) Family engagement--The mutual responsibility of families, schools, and communities to build relationships to support student learning and achievement and to support family well-being and the continuous learning and development of children, families, and educators. Family engagement is fully integrated in the child's educational experience and supports the whole child and is both culturally responsive and linguistically appropriate.

(2) The family engagement plan shall:

(A) facilitate family-to-family support using strategies such as:

(i) creating a safe and respectful environment where families can learn from each other as individuals and in groups;

(ii) inviting former program participants, including families and community volunteers, to share their education and career experiences with current families; and

(iii) ensuring opportunities for continuous participation in events designed for families by families such as training on family leadership;

(B) establish a network of community resources using strategies such as:

(i) building strategic partnerships;

(ii) leveraging community resources;

(iii) monitoring and evaluating policies and practices to stimulate innovation and create learning pathways;

(iv) establishing and maintaining partnerships with businesses, faith-based organizations, and community agencies;

(v) identifying support from various agencies, including mental and physical health providers;

(vi) partnering with local community-based organizations and early learning programs to create a family-friendly transition plan for students arriving from early childhood settings;

(vii) providing and facilitating referrals to family support or educational groups based on family interests and needs;

(viii) communicating short- and long-term program goals to all stakeholders; and

(ix) identifying partners to provide translators and culturally relevant resources reflective of the home language;

(C) increase family participation in decision making using strategies such as:

(i) developing and supporting a family advisory council;

(ii) developing, adopting, and implementing identified goals within the annual campus/school improvement plan targeting family engagement;

(iii) developing and supporting leadership skills for family members and providing opportunities for families to advocate for their children/families;

(iv) collaborating with families to develop strategies to solve problems and serve as problem solvers;

(v) engaging families in shaping program activities and cultivating the expectation that information must flow in both directions to reflect two-way communication;

(vi) developing, in collaboration with families, clearly defined goals, outcomes, timelines, and strategies for assessing progress;

(vii) providing each family with an opportunity to review and provide input on program practices, policies, communications, and events in order to ensure the program is responsive to the needs of families; and

(viii) using appropriate tools such as surveys or focus groups to gather family feedback on the family engagement plan;

(D) equip families with tools to enhance and extend learning using strategies such as:

(i) providing families with updates at least three times a year that specify student progress in health and wellness, language and communication, emergent literacy reading, emergent literacy writing, and mathematics;

(ii) designing or implementing existing home educational resources to support learning at home while strengthening the family/school partnership;

(iii) providing families with information and/or training on creating a home learning environment connected to formal learning opportunities;

(iv) equipping families with resources and skills to support their children through the transition to school and offering opportunities for families and children to participate in parent/child learning sessions and visit the school in advance of the prekindergarten school year;

(v) providing complementary home learning activities for families to engage in at home with children through information presented in newsletters, online technology, social media, parent/family-teacher conferences, or other school- or center-related events;

(vi) providing families with information, best practices, and training related to age-appropriate developmental expectations;

(vii) emphasizing benefits of positive family practices such as attachment and nurturing that complement the stages of children's development;

(viii) collaborating with families to appropriately respond to children's behavior in a non-punitive, positive, and supportive way;

(ix) encouraging families to reflect on family experiences and practices in helping children; and

(x) assisting families to implement best practices that will help achieve the goals and objectives identified to meet the needs of the child and family;

(E) develop staff skills in evidence-based practices that support families in meeting their children's learning benchmarks using strategies such as:

(i) providing essential professional development for educators in understanding communication and engagement with families, including training on communicating with families in crisis;

(ii) promoting and developing family engagement as a core strategy to improve teaching and learning among all educators and staff; and

(iii) developing staff skills to support and use culturally diverse, culturally relevant, and culturally responsive family engagement strategies; and

(F) evaluate family engagement efforts and use evaluations for continuous improvement using strategies such as:

(i) conducting goal-oriented home visits to identify strengths, interests, and needs;

(ii) developing data collection systems to monitor family engagement and focusing on engagement of families from specific populations to narrow the achievement gap;

(iii) using data to ensure alignment between family engagement activities and district/school teaching and learning goals and to promote continuous family engagement;

(iv) ensuring an evaluation plan is an initial component that guides action;

(v) using a cyclical process to ensure evaluation results are used for continuous improvement and adjustment; and

(vi) ensuring teachers play a role in the family engagement evaluation process.

(i) In a format prescribed by TEA, a school district or an open-enrollment charter school shall:

(1) report the curriculum used in the high-quality prekindergarten program classes as required by subsection (b) of this section;

(2) report a description and the beginning- and end-of-year results of each commissioner-approved prekindergarten instrument used in the high-quality prekindergarten program classes as required by subsection (c) of this section;

(3) report:

(A) a description of each commissioner-approved multidimensional kindergarten readiness instrument used in the district or charter school to measure the effectiveness of the district's or charter school's high-quality prekindergarten program classes as required by subsection (c) of this section; and

(B) the results for at least 95% of the district's or charter school's kindergarten students on the commissioner-approved multidimensional kindergarten readiness instrument by the end of the TEA-determined assessment collection window;

(4) report additional teacher qualifications described in subsection (d) of this section;

(5) report the family engagement plan URL/website link described in subsection (h) of this section; and

(6) report the prekindergarten program evaluation type.

(j) A school district or an open-enrollment charter school shall:

(1) select and implement appropriate methods for evaluating the district's or charter school's high-quality prekindergarten program by using data from a student progress monitoring instrument from the commissioner's list of approved prekindergarten instruments;

(2) make data from the results of program evaluations available to parents; and

(3) plan for data-driven program improvements annually by using information from the district's or charter school's program evaluation to ensure the district's or charter school's prekindergarten program is meeting all high-quality prekindergarten indicators.

(k) A school district or an open-enrollment charter school must attempt to maintain an average ratio in any prekindergarten program class of not less than one qualified teacher or teacher's aide for every 11 students.

(l) A school district or an open-enrollment charter school shall maintain locally and provide at TEA's request the necessary documentation to ensure fidelity of high-quality prekindergarten program implementation.

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 20, 2024.

TRD-202402244

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



## TITLE 25. HEALTH SERVICES

### PART 11. CANCER PREVENTION AND RESEARCH INSTITUTE OF TEXAS

#### CHAPTER 701. POLICIES AND PROCEDURES

##### 25 TAC §701.3

The Cancer Prevention and Research Institute of Texas ("CPRIT" or "the Institute") adopts the amendments to 25 Texas Administrative Code §701.3 without changes to the proposed amendments as published in the March 22, 2024, issue of the *Texas Register* (49 TexReg 1863); therefore, the rules will not be republished. The amendment adds "Tranche" to CPRIT's list of defined terms in §701.3.

##### Reasoned Justification

The term "Tranche" refers to the portion of total Grant Award funds that is released to a Grant Recipient upon their successful completion of predefined milestones or adherence to specific timelines as outlined in the Grant Contract.

##### Summary of Public Comments and Staff Recommendation

CPRIT received no public comments regarding the proposed amendments to §701.3; CPRIT staff recommends moving forward with adoption of the amendments.

**Statutory Authority.** The rule changes are adopted under the authority of the Texas Health and Safety Code Annotated, § 102.108, which provides the Institute with broad rule-making authority to administer the chapter, including rules for awarding grants.

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 20, 2024.

TRD-202402243

Heidi McConnell

Chief Operating Officer

Cancer Prevention and Research Institute of Texas

Effective date: June 9, 2024

Proposal publication date: March 22, 2024

For further information, please call: (512) 463-3190



## CHAPTER 703. GRANTS FOR CANCER PREVENTION AND RESEARCH

### 25 TAC §§703.10, 703.21, 703.23

The Cancer Prevention and Research Institute of Texas ("CPRIT" or "the Institute") adopts the amendments to 25 Texas Administrative Code §703.10, §703.21, and §703.23 without changes to the proposed amendments as published in the March 22, 2024, issue of the *Texas Register* (49 TexReg 1867); therefore, the rules will not be republished. The amendments ensure CPRIT's consistent use of "Tranche" throughout Chapter 703.

##### Reasoned Justification

The rule amendments to Chapter 703 capitalize "Tranche" to consistently refer to the term as written and defined in §701.3 of this title (relating to Definitions).

##### Summary of Public Comments and Staff Recommendation

CPRIT received no public comments regarding the proposed amendments to §703.10, §703.21, and §703.23; CPRIT staff recommends moving forward with adoption of the amendments.

The rule changes are adopted under the authority of the Texas Health and Safety Code Annotated, § 102.108, which provides the Institute with broad rule-making authority to administer the chapter, including rules for awarding grants.

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 20, 2024.

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Heidi McConnell

Chief Operating Officer

Cancer Prevention and Research Institute of Texas

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For further information, please call: (512) 463-3190



## TITLE 28. INSURANCE

### PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 7. CORPORATE AND FINANCIAL  
REGULATION  
SUBCHAPTER B. INSURANCE HOLDING  
COMPANY SYSTEMS

28 TAC §7.216

The commissioner of insurance adopts new 28 TAC §7.216, concerning a liquidity stress test framework for certain insurance companies. Section 7.216 implements House Bill 2839, 88th Legislature, 2023. The new section is adopted with changes to the proposed text published in the December 8, 2023, issue of the *Texas Register* (48 TexReg 7159); a correction of error was published in the December 22, 2023, issue of the *Texas Register* (48 TexReg 8039). The Texas Department of Insurance (TDI) revised proposed §7.216 to clarify that copies of the National Association of Insurance Commissioners (NAIC) standards are available from either TDI or the NAIC. The section will be republished.

**REASONED JUSTIFICATION.** New §7.216 adopts a liquidity stress test framework and reporting requirements for certain insurers. The new section is necessary to implement HB 2839, which added new Insurance Code §823.0596. New Insurance Code §823.0596 requires the commissioner to adopt a liquidity stress test framework—including scope criteria and reporting templates—consistent with the framework published by the NAIC and report it to the NAIC to facilitate the aggregation of results from the liquidity stress test filed with this and other states. HB 2839 was a biennial recommendation from TDI. The liquidity stress test framework simulates large-scale asset sales in response to unexpected liquidity demands and assesses the potential impact of these sales on financial markets.

A secondary goal of the liquidity stress test implementation is to enhance monitoring of large life insurers that might be vulnerable to liquidity stress. Liquidity demands can be placed unexpectedly on an insurer that issues long-term cash-buildup products, particularly when policy and contract surrenders require cash and asset sales at greater-than-projected levels during widespread economic shifts. Elevated demand of cash payouts by customers can impact broader financial markets if those insurers are required to sell a significant amount of assets to meet demand.

New §7.216(a) provides the purpose of the section. New §7.216(b) adopts by reference the liquidity stress test framework as published by the NAIC. New §7.216(c) specifies the scope criteria and thresholds applicable to the liquidity stress test framework. New §7.216(d) specifies the appropriate reporting template. New §7.216(e) specifies that the ultimate controlling person of an insurer must submit the liquidity stress test framework filing using the appropriate reporting template in an electronic format. TDI changed the text of §7.216(e) as proposed to clarify that copies of the NAIC standards are available from either the NAIC or TDI. New §7.216(f) describes the exemption process. Only after consultation with other state insurance commissioners can the commissioner exempt from the filing requirement a data year that an insurer would otherwise be required to submit under subsection (e) of this section. New §7.216(g) states that if there is a conflict between the liquidity stress test framework adopted by NAIC and the Insurance Code or TDI rules, including new §7.216, the Insurance Code or TDI rule takes precedence and in all respects controls.

At its December 2023 meeting, the NAIC and its Financial Stability (E) Task Force and Macroprudential (E) Working Group adopted revisions to the liquidity stress test framework. This included minor edits from the 2022 framework.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

**Commenters:** TDI provided an opportunity for public comment on the rule proposal for a period that ended on January 8, 2024. TDI received comments from two commenters. Commenters in support of the proposal with changes were Centene Corporation and the Texas Association of Life and Health Insurers.

**Comment.** One commenter requests clarification on whether the liquidity stress test framework will be a requirement for 2024 filings for health entities. The commenter notes that the most recent framework as adopted by the NAIC Financial Stability (E) Task Force on December 1, 2023, is clearly scoped exclusively to life insurers.

**Agency Response.** TDI agrees and has removed mention of framework requirements where they had inadvertently been added to the wrong filing checklists. No changes are made to the rule text in response to the comment.

**Comment.** One commenter requests that the final adopted rule specifically refer to the specific liquidity stress test framework being adopted. The commenter notes that if the NAIC amends this framework in the future in any manner, then this could have a material impact on some insurers that may not be in the current scope criteria. Any companies not currently affected by the liquidity stress test framework could be impacted by future changes by the NAIC and should have the opportunity to comment through the formal rulemaking process before those changes are adopted in Texas. The commenter contends that any amendment by the NAIC would not be effective unless it is adopted by the TDI through formal rulemaking procedures.

**Agency Response.** TDI declines to make a change. TDI acknowledges that references to standards adopted by entities outside of TDI must be considered carefully. However, the entirety of the circumstances, including TDI's ability to participate in NAIC discussion and standards development, allows for the adoption of the liquidity stress test framework as proposed. TDI notes that the statute requires that the commissioner by rule adopt a liquidity stress test framework, including scope criteria and reporting templates, consistent with the framework published by the NAIC. The statute further explains that this consistency is to facilitate the aggregation of results from the liquidity stress test filed with this and other states.

The liquidity stress test framework has been adopted as an accreditation requirement effective January 1, 2026. If TDI were to not adopt the applicable liquidity stress test framework, Texas would be at risk of having its NAIC accreditation placed on probation, suspended, or revoked. An insurer domiciled in a nonaccredited state may face additional regulatory requirements when doing business outside that nonaccredited state.

TDI staff recognizes that insurers will need to be made aware of changes in the scope as specified in the framework. To promote awareness, TDI adds language to subsection §7.216(e) that provides that TDI will make available the liquidity stress test framework on request. TDI reminds insurers that the purpose of the liquidity stress test framework is to monitor macroprudential risk, and the scope criteria is intended to cover only large insurers.

TDI also notes that the rule as adopted includes the exemption possibility found in Insurance Code §823.0596(d). That provision states that the commissioner may exempt from the filing requirement for a data year an insurer described by subsection (b) after the commissioner consults with other state insurance commissioners regarding the impact that exempting the insurer may have on the aggregation of liquidity stress test results filed by other insurers with those states. TDI encourages insurers potentially affected by the filing requirements to communicate with TDI Financial Regulation Division staff. The statutory exemption process provides an opportunity to mitigate unexpected changes to the liquidity stress test framework scope criteria. TDI staff expects that the liquidity stress test framework scope criteria will not be reduced in real (inflation adjusted) terms. It is likely that insurers not already in the liquidity stress test framework scope criteria will reach that scope criteria threshold only through natural growth or merger. The future applicability of the liquidity stress test framework can thus be considered in the planning and operations of potentially affected insurers.

If the liquidity stress test framework changes prove to be more challenging to implement or monitor, interested stakeholders—including insurers—are welcome to petition for new rulemaking. The Administrative Procedure Act, Government Code §2001.021, and TDI rules at 28 TAC §1.202 provide procedures to formally request rulemaking. TDI will also continue to monitor the liquidity stress test framework adoption at the NAIC level and with respect to Texas filers. TDI will consider whether changes to this rule are necessary as circumstances warrant.

**STATUTORY AUTHORITY.** The commissioner adopts new §7.216 under Insurance Code §§823.012, 823.0596, and 36.001.

Insurance Code §823.012 states the commissioner may, after notice and opportunity for all interested persons to be heard, adopt rules and issue orders to implement Insurance Code Chapter 823, including the conducting of business and proceedings under Insurance Code Chapter 823.

Insurance Code §823.0596 requires the commissioner to adopt by rule a liquidity stress test framework, including scope criteria and reporting templates, consistent with the framework published by the NAIC to facilitate the aggregation of results from the liquidity stress test filed with this and other states.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

*§7.216. Liquidity Stress Test Framework.*

(a) Purpose. This section specifies the requirements for the ultimate controlling person of an insurance holding company system to submit a liquidity stress test framework necessary to report information as required by Insurance Code §823.0596.

(b) Liquidity stress test framework. The commissioner adopts by reference the liquidity stress test framework as adopted and published by the National Association of Insurance Commissioners (NAIC). The liquidity stress test framework is available on the department's website.

(c) Scope criteria. The scope criteria are the designated criteria and thresholds described in the liquidity stress test framework as adopted by reference in subsection (b) of this section.

(d) Reporting template. The reporting template an insurer must use is described in the liquidity stress test framework as adopted in subsection (b) of this section.

(e) Filing. Using the reporting template described in the liquidity stress test framework adopted by reference in subsection (b) of this section, the ultimate controlling person of an insurer must submit a liquidity stress test framework filing on or before June 30 of each year, using the appropriate reporting template in an electronic format acceptable to TDI. The electronic filing address is provided on TDI's website at [www.tdi.texas.gov](http://www.tdi.texas.gov). Copies of the latest editions of the reporting templates and related instruction manuals adopted and published by the NAIC may be obtained from the NAIC or from the Texas Department of Insurance, Financial Regulation Division.

(f) Exemption. Only after consultation with other state insurance commissioners will the commissioner exempt from the filing requirement a data year that an insurer would otherwise be required to submit under subsection (e) of this section.

(g) Conflicts. In the event of a conflict between the liquidity stress test framework adopted and published by the NAIC and the Insurance Code, any TDI rule, or any specific requirement of this section, the Insurance Code, TDI rule, or specific requirement of this section takes precedence and in all respects controls. The requirements of this section do not repeal, modify, or amend any TDI rule or any Insurance Code provision.

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

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Jessica Barta

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Texas Department of Insurance

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For further information, please call: (512) 676-6555



## TITLE 34. PUBLIC FINANCE

### PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

#### CHAPTER 5. FUNDS MANAGEMENT (FISCAL AFFAIRS)

##### SUBCHAPTER S. NEXT GENERATION 9-1-1 SERVICE FUND

###### 34 TAC §5.480

The Comptroller of Public Accounts adopts amendments to §5.480, concerning next generation 9-1-1 service fund, without changes to the proposed text as published in the April 5, 2024, issue of the *Texas Register* (49 TexReg 2170). The rule will not be republished.

The comptroller amends this section to comply with changes made to Health and Safety Code, §771.0713, relating to the Next Generation 9-1-1 Service Fund, by House Bill 3290, 88th Legislature, R.S., 2023. The legislation enacted within the last four



years that provides the statutory authority for the amendments is House Bill 2911, 87th Legislature, R.S., 2021, and House Bill 3290, 88th Legislature, R.S., 2023.

The amendments to subsection (a) add the definition of "Coronavirus funds" to shorten the references to these funds, making the rule easier to read.

The amendments to subsection (b) update this subsection to comply with Health and Safety Code, §771.0713(b), as amended by House Bill 3290.

The amendments to subsection (c) update this subsection to comply with Health and Safety Code, §771.0713(f), as amended by House Bill 3290; provides the date by which Coronavirus funds must be distributed; and clarify that money deposited to the credit of the fund may be distributed only as provided in Health and Safety Code, §771.0713(c), (c-1), (c-2), and (c-3).

The comptroller did not receive any comments regarding adoption of the amendment.

The amendments are adopted under House Bill 2911, §5, 87th Legislature, R.S., 2021, which requires the comptroller to adopt rules necessary to establish and administer the next generation 9-1-1 service fund established under Health and Safety Code, §771.0713.

The amendments implement Health and Safety Code, §771.0713.

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

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Comptroller of Public Accounts

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## **TITLE 37. PUBLIC SAFETY AND CORRECTIONS**

### **PART 7. TEXAS COMMISSION ON LAW ENFORCEMENT**

#### **CHAPTER 217. ENROLLMENT, LICENSING, APPOINTMENT, AND SEPARATION**

##### **37 TAC §217.9**

The Texas Commission on Law Enforcement (Commission) adopts new 37 Texas Administrative Code §217.9, Refusal by Licensee to Submit to Medical or Psychological Examination, with changes to the proposed text as published in the March 22, 2024, issue of the *Texas Register* (49 TexReg 1881). The rule will be republished.

This adopted new rule conforms with the addition of Texas Occupations Code §1701.167 made by Senate Bill 1445 (88R). Texas Occupations Code §1701.167 requires a law enforcement

agency to report to the Commission a refusal by a licensee to submit to a fitness-for-duty medical or psychological examination. After receiving the report of refusal, the Commission shall issue an order requiring the licensee to show cause for the refusal. If the licensee did not have good cause to refuse the examination, the Commission may suspend indefinitely or otherwise restrict the licensee's license until the licensee submits to the examination. If the licensee did have good cause to refuse the examination, the Commission shall withdraw the request for the examination. This adopted new rule outlines the process for determining whether a licensee had good cause to refuse to submit to a requested fitness-for-duty medical or psychological examination following submission of a report of refusal from a law enforcement agency to the Commission.

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:** Shane Linkous, General Counsel with the State Office of Administrative Hearings (SOAH), commented that SOAH interprets §217.9(a) to require exhaustion of administrative remedies at the local level before reporting the refusal to the Commission.

**Response:** The Commission agrees.

**Comment:** Shane Linkous, General Counsel with SOAH, commented that SOAH interprets §217.9(b) to only apply to the Commission's service of the show cause order and not to the service of documents once SOAH has acquired jurisdiction.

**Response:** The Commission agrees.

**Comment:** Shane Linkous, General Counsel with SOAH, commented that SOAH interprets the first sentence in adopted §217.9(c) as consistent with Texas Government Code §2001.053 and presumes this subsection is not intended to require a particular venue or method of appearance which may conflict with 1 Texas Administrative Code §§155.403-.405.

**Response:** The Commission generally agrees. The first sentence in adopted §217.9(c) is taken almost directly from Texas Occupations Code §1701.167(e).

**Comment:** Shane Linkous, General Counsel with SOAH, commented that SOAH interprets §217.9(d) to mean that the licensee carries the burden of proof at SOAH to establish by a preponderance of the evidence that the licensee had good cause to refuse the requested examination and that the hearing is limited in scope to only the issue of whether good cause exists for the licensee's refusal. The SOAH administrative law judge will issue a proposal for decision to be reviewed for final action by the Commission.

**Response:** The Commission agrees.

**Comment:** Shane Linkous, General Counsel with SOAH, suggested adding a provision to address the confidentiality of information relating to the fitness for duty process. SOAH interprets Texas Occupations Code §1701.167(i) to mean that these refusal hearings should be confidential and closed to the public.

**Response:** The Commission agrees and has added the confidentiality provision as a second sentence to §217.9(c), which states: "Pursuant to Texas Occupations Code §1701.167(i), records relating to a request or order of the commission or a hearing or examination conducted under Texas Occupations Code §1701.167, including, if applicable, the identity of the

person notifying the commission that a licensee may not meet the standards required under the adopted agency policy, are confidential."

The new rule is adopted under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority. Texas Occupations Code §1701.151 authorizes the Commission to adopt rules for the administration of Occupations Code Chapter 1701.

The new rule as adopted affects or implements Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, and §1701.167, Policy Regarding Examination of License Holder or Applicant. No other code, article, or statute is affected by this adoption.

*§217.9. Refusal by Licensee to Submit to Medical or Psychological Examination.*

(a) After receiving a report of a refusal by a licensee to submit to a requested medical or psychological examination, the commission shall issue a show cause order requiring the licensee to show cause for the refusal at a contested case hearing before SOAH.

(b) The contested case hearing shall be scheduled not later than the 30th day after the date notice of the show cause order is served on the licensee, which shall be provided by personal service or by registered mail, return receipt requested.

(c) The licensee may appear at the contested case hearing in person and by counsel and present evidence to justify the licensee's refusal to submit to the requested examination. Pursuant to Texas Occupations Code §1701.167(i), records relating to a request or order of the commission or a hearing or examination conducted under Texas Occupations Code §1701.167, including, if applicable, the identity of the person notifying the commission that a licensee may not meet the standards required under the adopted agency policy, are confidential.

(d) If it is determined that the licensee did not have good cause to refuse the medical or psychological examination, the commission shall issue an order suspending indefinitely or otherwise restricting the licensee's license until the licensee submits to the requested examination. If it is determined that the licensee did have good cause to refuse the medical or psychological examination, the commission shall issue an order withdrawing the request for the examination.

(e) The commission's order is subject to judicial review under Chapter 2001, Government Code.

(f) The effective date of this section is September 1, 2024.

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 20, 2024.

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Gregory Stevens  
Executive Director

Texas Commission on Law Enforcement

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



## CHAPTER 227. SCHOOL MARSHALS

37 TAC §§227.1, 227.4, 227.6

The Texas Commission on Law Enforcement (Commission) adopts amended 37 Texas Administrative Code §227.1, Appointing Entity Responsibilities, and new 37 Texas Administrative Code §227.4, Demonstration of Psychological Fitness, and §227.6, Fit for Duty Review, with non-substantive changes to the proposed text as published in the March 22, 2024, issue of the *Texas Register* (49 TexReg 1882). The rules will be republished.

This adopted amended rule and these adopted new rules conform with the addition of Texas Occupations Code §1701.167 made by Senate Bill 1445 (88R). Texas Occupations Code §1701.167 requires the Commission to adopt standards and procedures for the psychological examination of school marshal applicants, school marshal licensees, and school marshal licensees for whom there is reason to believe a new examination is necessary (fit for duty review) to ensure the individuals are able to perform the duties for which the school marshal license is required. This adopted amended rule and these adopted new rules outline the requirements and processes for the psychological examination of school marshal applicants and renewal applicants as well as the fit for duty psychological examination of school marshal licensees requested by the Commission. There is also a clarification of the reporting requirements for school marshal appointing entities.

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. No public comments were received regarding the proposed adoption of these rules.

The amended rule and new rules are adopted under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority. Texas Occupations Code §1701.151 authorizes the Commission to adopt rules for the administration of Occupations Code Chapter 1701.

The amended rule and new rules as adopted affect or implement Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, §1701.167, Policy Regarding Examination of License Holder or Applicant, and §1701.260, Training for Holders of License to Carry a Handgun; Certification of Eligibility for Appointment as School Marshal. No other code, article, or statute is affected by this adoption.

*§227.1. Appointing Entity Responsibilities.*

(a) A school district, open-enrollment charter school, public junior college, or private school shall:

(1) submit and receive approval for an application to appoint a person as a school marshal;

(2) upon authorization, notify the commission using approved format prior to appointment;

(3) report to the commission, within seven days, when a person previously authorized to act as a school marshal is no longer employed with the appointing entity;

(4) report to the commission, within seven days, when a person previously authorized to act as a school marshal is no longer authorized to do so by the appointing entity, commission standards, another state agency, or under other law;

(5) immediately report to the commission a school marshal's violation of any commission standard, including the discharge of a firearm carried under the authorization of this chapter outside of a training environment; and

(6) immediately report to the commission any indication, suspicion, or allegation that a school marshal is no longer psychologically fit to carry out the duties of a school marshal.

(b) An appointing entity shall not appoint or employ an ineligible person as a school marshal.

(c) For five years, the appointing entity must retain documentation that it has met all requirements under law in a format readily accessible to the commission. This requirement does not relieve an appointing entity from retaining all other relevant records not otherwise listed.

(d) The effective date of this section is September 1, 2024.

§227.4. *Demonstration of Psychological Fitness.*

(a) In order for an individual to enroll in any school marshal licensing training, obtain a school marshal license, or renew or reapply for a school marshal license, they must first demonstrate psychological fitness through a psychological examination.

(b) The psychological examination shall be conducted by a professional selected by the appointing, employing entity. The professional shall be either a psychologist licensed by the Texas State Board of Examiners of Psychologists or a psychiatrist licensed by the Texas Medical Board. The psychologist or psychiatrist must be familiar with the duties of a school marshal.

(c) The examination must be conducted pursuant to professionally recognized standards and methods. The examination process must consist of:

(1) a review of the duties and responsibilities of a school marshal as developed by the commission;

(2) at least two instruments, one which measures personality traits and one which measures psychopathology; and

(3) a face-to-face interview conducted after the instruments have been scored.

(d) The individual must be declared by that professional, on a form prescribed by the commission, to be in satisfactory psychological and emotional health to carry out the duties of a school marshal in an emergency shooting or situation involving an active shooter.

(e) If, after examination, the professional declines to declare the individual as psychologically fit, the individual must report the outcome to the commission on a form prescribed by the commission.

(f) An examination for license renewal or reactivation must be conducted within 90 days of the date of the application for license renewal or reactivation.

(g) The effective date of this section is September 1, 2024.

§227.6. *Fit for Duty Review.*

(a) When the commission receives a report or other reliable information that a school marshal may no longer be psychologically fit to carry out the duties of a school marshal, the commission may:

(1) issue an emergency suspension order; or

(2) require a fit for duty review upon identifying factors that indicate the licensee may no longer be able to perform the duties of a school marshal safely and effectively.

(b) The commission shall provide written notice of the psychological examination to the license holder not later than the tenth business day before the deadline to submit to the examination. Written notice shall include the reasons for the examination.

(c) The examination shall be conducted by a psychiatrist or psychologist chosen by the licensee.

(d) To facilitate the examination of any licensee, the commission will provide all appropriate documents and available information.

(e) The examining practitioner will provide the commission with a report indicating whether the school marshal is fit for duty. If the school marshal is unfit for duty, the practitioner will include the reasons or an explanation why the individual is unfit for duty.

(f) A second examination may be ordered by the commission if the commission questions the practitioner's report. The examination will be conducted by a psychiatrist or psychologist appointed by the commission. If the report of the appointed practitioner disagrees with the report of the initial practitioner, the final determination as to the school marshal's fitness shall be decided by the Executive Director.

(g) A school marshal who fails a psychological examination shall have their license suspended until the Executive Director orders it reinstated.

(h) Any school marshal ordered to undergo a fit for duty review shall comply with the terms of the order and cooperate fully with the examining practitioner.

(i) The effective date of this section is September 1, 2024.

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

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Gregory Stevens

Executive Director

Texas Commission on Law Enforcement

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