

PROPOSED RULES

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

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

TITLE 4. AGRICULTURE

PART 2. TEXAS ANIMAL HEALTH COMMISSION

CHAPTER 59. GENERAL PRACTICES AND PROCEDURES

4 TAC §59.4

The Texas Animal Health Commission (commission) proposes amendments to Title 4, Texas Administrative Code, Chapter 59 titled "General Practices and Procedures." Specifically, amendments to §59.4 regarding Cooperation with the Texas Department of Public Safety Regarding Enforcement of Entry Requirements.

BACKGROUND AND PURPOSE

The commission is tasked with the enforcement of livestock entry requirements. To carry out that mission, commission staff routinely cooperate with Texas Department of Public Safety (DPS) officers and local law enforcement. Recognizing the importance of this partnership, the Legislature enacted 161.051 and 161.052 of the Texas Agriculture Code which details the requirements of any memorandum of understanding entered into by the commission with DPS or local authorities. Section 59.4 of the commission's administrative rules sets forth the responsibilities of commission staff when partnering with DPS. The proposed amendments add similar language regarding the responsibilities of commission staff when partnering with local law enforcement.

SECTION-BY-SECTION DISCUSSION

Section 59.4 sets forth the responsibilities of commission staff when partnering with DPS to enforce entry requirements. The proposed amendments add similar guidance on the responsibilities of commission staff when working with local law enforcement authorities to enforce entry requirements.

FISCAL NOTE

Ms. Jeanine Coggeshall, General Counsel for the Texas Animal Health Commission, determined that for each year of the first five years that the rule is in effect, enforcing or administering the proposed rules does not have foreseeable implications relating to costs or revenues of state or local governments. Commission employees will administer and enforce these rules as part of their current job duties and resources. Ms. Coggeshall also determined for the same period that there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed amendments.

PUBLIC BENEFIT NOTE

Ms. Coggeshall determined that for each year of the first five years the rule is in effect, the anticipated public benefits are improved cooperation with local and state law enforcement to better enforce commission entry requirements.

TAKINGS IMPACT ASSESSMENT

The commission determined that the proposal does not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. Therefore, the proposed rules are compliant with the Private Real Property Preservation Act in Texas Government Code §2007.043 and do not constitute a taking.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission determined that the proposed rules would not impact local economies and, therefore, did not file a request for a local employment impact statement with the Texas Workforce Commission pursuant to Texas Government Code §2001.022.

REGULATORY ANALYSIS OF MAJOR ENVIRONMENTAL RULES

The commission determined that this proposal is not a "major environmental rule" as defined by Government Code §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

GOVERNMENT GROWTH IMPACT STATEMENT

In compliance with the requirements of Texas Government Code §2001.0221, the commission prepared the following Government Growth Impact Statement. The commission determined for each year of the first five years the proposed rules would be in effect, the proposed rules:

Will not create or eliminate a government program;

Will not require the creation or elimination of employee positions;

Will result in no assumed change in future legislative appropriations;

Will not affect fees paid to the commission;

Will create new regulation;

Will expand existing regulations;

Will not change the number of individuals subject to the rule; and

Will not affect the state's economy.

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

Ms. Coggeshall also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities pursuant to Texas Government Code, Chapter 2006. The rules do not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rules.

COSTS TO REGULATED PERSONS

The proposed amendments to Chapter 59 do not impose additional costs on regulated persons and are designed to provide guidance on the responsibilities of commission staff when partnering with local and state law enforcement to administer commission entry requirements. The proposed rules do not otherwise impose a direct cost on a regulated person, state agency, a special district, or a local government within the state.

PUBLIC COMMENT

Written comments regarding the proposed amendments may be submitted to Amanda Bernhard, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0719 or by e-mail to comments@tahc.texas.gov. To be considered, comments must be received no later than thirty (30) days from the date of publication of this proposal in the *Texas Register*. When faxing or emailing comments, please indicate "Comments on Proposed Rule-Chapter 59, General Practice and Procedures" in the subject line.

STATUTORY AUTHORITY

The amendments are proposed under the Texas Agriculture Code, Chapter 161, §161.046 which authorizes the commission to promulgate rules in accordance with the Texas Agriculture Code.

The amendments are proposed under §161.051 of the Texas Agriculture Code which provides that the commission shall adopt a memorandum of understanding with the Texas Department of Public Safety for the cooperation on enforcement of commission entry requirements.

The amendments are proposed under §161.052 of the Texas Agriculture Code which provides that the commission shall adopt a memorandum of understanding with local county authorities for the cooperation on enforcement of commission entry requirements.

No other statutes, articles, or codes are affected by this proposal.

§59.4. Cooperation with the Texas Department of Public Safety and Local Authorities for [Regarding] Enforcement of Entry Requirements.

(a) Commission staff shall ~~with~~ provide information to Texas Department of Public Safety (DPS) officers regarding health papers and permits required for entry of livestock into the state.^[3] ~~and~~ Commission staff shall investigate possible entry violations reported by DPS officers. Commission staff shall ~~with~~ notify DPS, when appropriate, of the location of commission roadblocks or special or night operations.

(b) Commission staff shall provide information to sheriff and deputies regarding health papers and permits required for entry of livestock into the state. Commission staff shall investigate possible entry violations reported by the sheriff or deputies. Commission staff shall notify the sheriff, when appropriate, of the location of commission roadblocks located in the county or special or night operations planned for the county.

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

Filed with the Office of the Secretary of State on May 20, 2024.

TRD-202402247

Jeanine Coggeshall

General Counsel

Texas Animal Health Commission

Earliest possible date of adoption: June 30, 2024

For further information, please call: (512) 839-0511

TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 2. ACADEMIC AND WORKFORCE EDUCATION

SUBCHAPTER I. REVIEW OF EXISTING DEGREE PROGRAMS

19 TAC §2.181, §2.182

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 2, Subchapter I, §2.181 and §2.182, concerning review of existing degree programs at public universities and public health-related institutions. Specifically, the amendments streamline graduate program review by eliminating duplicative reporting criteria. The amendments require Board staff to deliver an annual update on all new doctoral programs that are within the five-year post-implementation reporting period and provides the Board with authority to extend the reporting period beyond five years. The amendments authorize the Commissioner to grant an extension to the reporting deadline for institutions that demonstrate good cause.

Rule 2.181, Academic Programs at Public Universities and Public Health-Related Institutions, amendments remove duplicative language regarding reporting deadlines and requirements for existing graduate degree programs. Revisions include removing (10) which requires an institution to submit a graduate program review to the Coordinating Board no later than 180 days after receiving an evaluative report from an external review team and (11) which allows institutions to satisfy Coordinating Board graduate program reporting requirements by submitting reviews conducted for programmatic accreditation. These requirements are included in (8) of this section.

Rule 2.182, Doctoral and Professional Degree Programs, amendments add language requiring Board staff to submit annual reports to the Board on the progress of all new doctoral programs that are within the five-year post-implementation reporting period. The amendments give the Board authority to extend annual reporting requirements for new doctoral programs and provide the Commissioner with authority to extend an institution's reporting deadline.

Elizabeth Mayer, Assistant Commissioner Academic and Health Affairs, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for

state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

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

Elizabeth Mayer, Assistant Commissioner Academic and Health Affairs, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section is improved administrability of the Coordinating Board's existing program review processes. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

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

Comments on the proposal may be submitted to Elizabeth Mayer, Assistant Commissioner Academic and Health Affairs, P.O. Box 12788, Austin, Texas 78711-2788, or via email at AHA-comments@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendment is proposed under Texas Education Code, Section 61.002, which directs the Coordinating Board to coordinate higher education through efficient and effective use of resources and elimination of costly program duplication, and Section 61.0512(e), which requires the Coordinating Board to conduct reviews of programs at least every ten years after the program's establishment.

The proposed amendments affect Texas Education Code Sections 61.002 and 61.0512(e).

§2.181. Academic Programs at Public Universities and Public Health-Related Institutions.

(a) Each public institution of higher education, in accordance with the requirements of the institution's approved accreditor, shall have a process to review the quality and effectiveness of existing degree programs and for continuous improvement.

(b) Board staff [Staff] shall develop a process for conducting a periodic audit of the quality, productivity, and effectiveness of each existing master's, doctoral, and professional degree program at a public institution of higher education.

(c) Board staff [Staff] will meet the requirements of program review established by Texas Education Code, [Tex. Edu. Code]

§61.0512(e), by reviewing program data reported in the Accountability System for each undergraduate degree offered by a public institution of higher education in Texas.

(d) Each public university and public health-related institution shall review each of its master's, doctoral and professional degree programs at least once every ten (10) years.

(1) On a schedule to be determined by the Commissioner, each institution [institutions] shall submit a schedule of review for each [all] graduate program [programs] to the Assistant Commissioner with oversight of academic program approval.

(2) Each institution shall begin each review of a graduate degree program with a rigorous self-study.

(3) As part of the required review process, an institution shall use at least two external reviewers with subject-matter expertise who are employed by institutions of higher education outside of Texas. Each institution shall provide its external [External] reviewers [must be provided] with the materials and products of the self-study and must participate in a site review.

(4) Each external reviewer shall [External reviewers must] be part of a program that is nationally recognized for excellence in the discipline.

(5) Each external reviewer shall [External reviewers must] affirm that they have no conflict of interest related to the Board, the institution, or program under review.

(6) Each institution may review a closely-related program [Closely-related programs], defined as sharing the same four-digit Classification of Instructional Programs code, [may be reviewed] in a consolidated manner at the discretion of the institution.

(7) Each institution [Institutions] shall review a master's and doctoral program [programs] in the same discipline simultaneously, using the same self-study materials and reviewers. Each institution [Institutions] may also, at their discretion, review a baccalaureate program [programs] in the same discipline as master's and doctoral programs simultaneously.

(8) Each institution [Institutions] shall submit a report on the outcomes of each review, including the evaluation of the external reviewers and actions the institution has taken or will take to improve the program, and shall deliver these reports to Board staff [Staff] no later than 180 days after the reviewers have submitted their findings to the institution.

(9) Each institution [Institutions] may submit a review [reviews] of a master's, doctoral, or [and] professional program [programs] performed for reasons of programmatic licensure or accreditation in satisfaction of the review and reporting requirements in this subsection.

~~[(10) Each institution shall submit a report of the outcomes of each review, including the evaluation of the external reviewer(s) and actions the institution has taken or will take to improve the program, and shall deliver these reports to the Assistant Commissioner with oversight of academic approval not later than 180 days after the reviewer(s) have submitted their findings to the institution.]~~

~~[(11) Each institution may submit reviews of graduate programs performed for reasons of programmatic licensure or accreditation in satisfaction of the review and reporting requirements in this subsection.]~~

(c) Board staff [Staff] shall review all reports submitted for a master's, doctoral, or professional degree program and shall conduct analysis as necessary to ensure high quality. The Commissioner may

require an institution to take additional actions to improve its program as a result of Coordinating Board review.

§2.182. *Doctoral and Professional Degree Programs.*

(a) Board ~~staff~~ [Staff] shall monitor a new doctoral or professional degree program for a period of five (5) years following implementation of the program to ensure the institution has satisfied ~~that~~ any condition [~~conditions~~] of approval stipulated by the Board [~~have been satisfied~~] by the end of that period.

(b) The institution shall describe progress toward satisfaction of any condition [~~conditions~~] of approval to Board ~~staff~~ [Staff] in the new doctoral and professional program's annual reports to the Board.

(c) Board staff shall annually provide an update to the Commissioner and Board on the implementation status of approved doctoral and professional programs until the program has successfully completed the five-year progress monitoring period.

(d) [~~(e)~~] Board ~~staff~~ [Staff] shall not require a new doctoral or professional degree program that adequately satisfied all conditions of approval during the first five (5) years following program implementation to submit further annual reports unless directed to do so by the Commissioner or the Board.

(e) [~~(d)~~] The Commissioner may require any reporting necessary to determine whether the program remains in compliance with the terms of its program approval or these rules.

(f) The Commissioner may at his or her discretion grant a written extension of time to provide a report under this section if an institution demonstrates good cause.

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

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Nichole Bunker-Henderson
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Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6182



SUBCHAPTER P. APPROVAL PROCESS FOR OFF-CAMPUS COURSES, CERTIFICATES, AND DEGREE PROGRAMS

19 TAC §§2.380 - 2.393

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new rules in Texas Administrative Code, Title 19, Part 1, Chapter 2, Subchapter P, §§2.380 - 2.393, concerning approval of off-campus programs and courses. Specifically, this new section will establish updated procedures for approval of off-campus educational sites, courses, certificates and degree programs. These proposed rules will replace existing rules related to off-campus education in Chapter 4, Subchapter Q, which will be repealed in future rulemaking.

There are several significant changes related to how the Coordinating Board approves off-campus education in the proposed rules, compared to the existing rules. The first significant change is the removal of the Higher Education Regional Councils (HERCs) from the review process for off-campus courses

and programs. While the HERCs provide a unique space to encourage collaboration across regions, the HERC role is an advisory committee and does not have statutory authority for participation in the approval of programs. It is the Coordinating Board's intent not to dissolve the HERCs but work with institutions of higher education to reimagine the role of the HERCs to provide consultation and feedback on key policy areas of the state higher education landscape. The Coordinating Board will develop a new role for the HERCs in a future rulemaking with stakeholder feedback.

The second change is the requirement that an institution notify the Coordinating Board of any new off-campus educational site where the institution will offer courses, certificates, or less than fifty (50) percent of a new degree program. Once the institution has notified the Coordinating Board of the site, the institution may offer courses, certificates, or less than fifty (50) percent of a degree program at that site without additional notification to the Coordinating Board or other institutions. This reduces the notification and approval burden for institutions, while still allowing the Coordinating Board to ensure it has a record of all off-campus sites to ensure compliance with federal requests related to student financial aid.

Once an institution plans to offer fifty (50) percent or more of an existing degree program or a proposed new degree program at an off-campus educational site, the institution must seek approval from the Coordinating Board as outlined in the rules. Prior to approving delivery of a new or existing off-campus degree program, the Coordinating Board will send a notice to all regions where the degree program will be delivered. This process streamlines the submission of off-campus degree program requests, especially for community colleges, but still allows the Coordinating Board to consider comments related to unnecessary duplication in the approval process.

Rule 2.380, Purpose, establishes the purpose of the subchapter, to provide rules and regulations for public Institutions of higher education delivering self-supporting programs.

Rule 2.381, Authority, contains the legal authority for Chapter 2, Subchapter P, which is contained in Texas Education Code, §§61.0512(g) and 51.661.

Rule 2.382, Applicability, identifies for which types of courses and credentials these rules apply.

Rule 2.383, Definitions, provides definitions specific to off-campus education and includes types of off-campus educational sites also found in Chapter 5, Subchapter D, §5.73.

Rule 2.384, Standards and Criteria for Delivery of Off-Campus Education, modifies existing standards and criteria from Chapter 4, Subchapter Q, to simplify and align only with off-campus education.

Rule 2.385, Approval Required for A New Off-Campus Educational Site, provides steps required to notify the Coordinating Board of a new off-campus educational site where off-campus education will be delivered.

Rule 2.386, Discontinuation of An Off-Campus Educational Site, provides steps to notify the Coordinating Board of closure of an off-campus educational site.

Rule 2.387, Approval Required for A New Degree Program Offered at An Off-Campus Educational Site, outlines steps to request approval of off-campus delivery within new degree pro-

gram requests. This process already exists in new degree program approval required documents.

Rule 2.388, Approval Required for An Existing Degree Program Offered at An Off-Campus Educational Site, outlines steps to request delivery of a previously approved degree program at an off-campus location if fifty (50) percent or more of the degree program will be delivered at that site. Courses, certificates and degree programs with less than fifty (50) percent of the program delivered at an off-campus educational site do not require approval prior to delivery.

Rule 2.389, Approval Required for Off-Campus Education in the Texas State Technical College System, clarifies that Texas State Technical College System must adhere to additional guidelines as required in Chapter 11.

Rule 2.390, Modifications and Phase Out of Off-Campus Degree Programs, outlines steps for institution to modify or phase out an existing degree program offered at an off-campus educational site.

Rule 2.391, Notification Required for Off-Campus Clinical Courses, outlines the process for institutions to notify the Coordinating Board of off-campus clinical courses.

Rule 2.392, Approval Required and Criteria for Off-Campus Programs Outside the State of Texas, outlines the approval required for courses and programs offered outside the state of Texas such as study abroad courses.

Rule 2.393, Approval of Employer-Requested Off-Campus Career and Technical Education Programs, outlines the steps required for approval of courses and programs requested by an employer in accordance with Texas Education Code, §51.981

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

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

Elizabeth Mayer, Assistant Commissioner Academic and Health Affairs, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the subchapter will be simplification of the approval and reporting requirements for institutions while ensuring compliance with state and federal regulations. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

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

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

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

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

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

Comments on the proposal may be submitted to Elizabeth Mayer, Assistant Commissioner Academic and Health Affairs, P.O. Box 12788, Austin, Texas 78711-2788, or via email at AHA-comments@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new sections are proposed under Texas Education Code §61.0512(g), which states that institutions may offer off-campus credit courses only with prior approval from the Coordinating Board and Texas Education Code, §51.661, which authorizes the Coordinating Board to adopt state uniform service regions for Higher Education.

The proposed new sections affect Texas Education Code, §61.0512(g) and §51.661.

§2.380. Purpose.

This subchapter establishes rules for an institution of higher education governing the approval and delivery of credit courses, certificate programs, and degree programs offered at an off-campus educational site.

§2.381. Authority.

Authority for this subchapter is Texas Education Code, §61.0512(g), which states that an institution may offer off-campus credit courses only with prior approval from the Coordinating Board. Texas Education Code, §51.661, authorizes the Board to adopt state uniform service regions for higher education.

§2.382. Applicability.

(a) This subchapter applies to any institution of higher education seeking approval to offer a formula-funded or self-supporting for credit course, certificate, or degree program at an off-campus educational site, as defined in §2.383(8) of this subchapter (relating to Definitions).

(b) This subchapter does not apply to the following certificate types offered by a public junior college or technical college, as defined in Texas Education Code, §§61.003(2) and (16):

(1) Enhanced Skills Certificate;

(2) Advanced Technical Certificate;

(3) Occupational Skills Award;

(4) Institution Credential for Licensure or Credentialing; or

(5) Third-party credential offered by a public community or technical college at an off-campus educational site.

§2.383. Definitions.

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

(1) Community College Service Area--The territory served by a community college district as defined in Texas Education Code, §130.161.

(2) Extension Program--For Texas State Technical Colleges, as defined in §11.3(6) of this title (relating to Definitions),

credit and non-credit instruction in technical and vocational education offered at an extension center.

(3) Higher Education Region--The Board adopts the economic regions of this state as defined by the Texas Comptroller of Public Accounts as the higher education state uniform service regions as set out in §2.3 of this chapter (relating to Definitions).

(4) Memorandum of Understanding (MOU)--Formal Agreement between two or more institutions of higher education that define their roles in the establishment and operation of a multi-institutional teaching center. One or more private institutions may be included in the memorandum of understanding.

(5) Off-Campus Clinical Site--An off-campus educational site in which students engage in work-based learning experiences for medical, nursing, allied health, and other health-related programs.

(6) Off-Campus Degree Program--A degree program that delivers fifty (50) percent or more of required instruction or coursework in-person at an off-campus educational site.

(7) Off-Campus Education--A course, certificate, or degree program offered at an off-campus educational site.

(8) Off-Campus Educational Site--A location where an institution delivers required instruction for a credit-bearing course, certificate, or degree program in person. For a public university, health-related institution, or a Lamar state college, an off-campus educational site is any location outside the parent institution. For a community college (public junior college), an off-campus educational site is a site outside the public junior college service area. An off-campus educational site includes, but is not limited to:

(A) Branch Campus--For a university, a major, secondary location of an institution offering multiple programs usually with its own administrative structure and usually headed by a dean. A branch campus must be established by the Legislature or approved by the Board. A junior college branch campus is approved and operated in accordance with Texas Education Code, chapter 130, subchapter K, and Board rules.

(B) Extension Center--For Texas State Technical College, as defined in §11.3(5), a site, operating under the administration of a campus, that has an extension program.

(C) Multi-Institution Teaching Center (MITC)--For a university, an off-campus educational unit administered under a memorandum of understanding (MOU) between two or more institutions of higher education. It may also involve one or more private or independent institution of higher education. It has minimal administration and locally provided facilities.

(D) Regional Academic Health Center (RAHC)--A special purpose campus of a parent health-related institution(s) that may be used to provide undergraduate clinical education, graduate education, including a residency training program, or other level of medical education in specifically identified counties.

(E) Single institution center--An off-campus educational unit administered by a single parent institution. It has minimal administration and locally provided facilities.

(F) Special Purpose Campus--A major, secondary location of an institution offering programs related to specific and limited field(s) of study, usually with its own administrative structure and usually headed by a dean. Regional Academic Health Centers are considered special-purpose campuses. Special Purpose Campuses must be established by the Legislature or approved by the Board.

(G) University System Center (USC)--An off-campus educational unit administered by a single university system comprised of two or more of the system's parent institutions. A memorandum of understanding must be established between all parties that governs the operations of the USC. It has minimal administration and locally provided facilities.

(9) Off-Campus Student--A regularly enrolled student who is admitted to an institution and fifty (50) percent or more of the student's instruction is delivered in person at an off-campus location.

(10) On-Campus Student--A regularly enrolled student who is admitted to an institution and fifty (50) percent or more of instruction is delivered at an institution's main campus or on one or more of the campuses within a multi-campus public junior college.

(11) Parent Institution--The primary campus or campuses of an institution of higher education providing courses, certificates, and degree programs at an off-campus educational site.

(12) Study-Abroad Courses--Off-campus, academic credit instruction delivered outside the United States primarily to on-campus students. Study-Abroad Courses receive formula funding.

(13) Study-In-America Courses--Off-campus, academic credit instruction delivered outside Texas but in the United States primarily to on-campus students. Study-in-America Courses receive formula funding.

§2.384. Standards and Criteria for Delivery of Off-Campus Education.

A Texas institution of higher education providing off-campus education shall:

(1) Comply with the standards, criteria, and approval requirements of one of the Coordinating Board recognized regional accrediting organizations as defined in §4.192 of this title (relating to Recognized Accrediting Agencies);

(2) Ensure each instructional site for an off-campus program be of sufficient quality for the programs and courses offered;

(3) Provide each student with equivalent academic support services as a student enrolled in an on-campus course or program;

(4) Ensure students in an off-campus course or program satisfies equivalent institutional enrollment requirements as an on-campus student; and

(5) Select and evaluate faculty by equivalent standards, review, and approval procedures used by the institution to select and evaluate faculty responsible for on-campus courses and programs.

§2.385. Approval Required for A New Off-Campus Educational Site.

(a) Prior to delivery of a course, certificate, or less than fifty (50) percent of a degree program at a new off-campus educational site, each public institution of higher education shall notify the Coordinating Board of the new off-campus educational site.

(1) In the notification to the Coordinating Board, each institution shall provide the name and address of the off-campus educational site and shall certify compliance with Standards and Criteria for Delivery of Off-Campus Education as defined in §2.384 of this subchapter (relating to Standards and Criteria for Delivery of Off-Campus Education).

(2) For a new off-campus program offered at a new off-campus educational site, the institution shall provide notification of the off-campus educational site in the request for the new degree program

as outlined in §2.387 of this subchapter (relating to Approval Required for A New Degree Program Offered at An Off-Campus Educational Site).

(3) A new off-campus educational site is subject to Notification Only approval as outlined in §2.4(1) of this chapter (relating to Types of Approval Required).

(b) This subchapter does not apply to a course offered as a dual credit course to a high school student pursuant to chapter 4, subchapter D (relating to Dual Credit Partnerships Between Secondary Schools and Public Colleges).

(c) In addition to the approval required under this subchapter, Texas State Technical College shall comply with Texas Education Code, chapter 135 and chapter 11.

§2.386. Discontinuation of An Off-Campus Educational Site.

Discontinuation of an off-campus educational site is subject to Notification Only approval as outlined in §2.4(1) of this chapter (relating to Types of Approval Required).

§2.387. Approval Required for A New Degree Program Offered at An Off-Campus Educational Site.

(a) An institution of higher education shall obtain Coordinating Board approval to offer a new degree program at an off-campus educational site in its request for a new degree program if fifty (50) percent or more of the degree program will be delivered at the off-campus educational site. To request delivery of the off-campus degree program an institution shall:

(1) Provide the name and address of the off-campus educational site(s) where the program will be delivered in the new degree proposal form provided by the Coordinating Board.

(2) Certify that the institution is in compliance with the standards and criteria as set out in §2.384 of this subchapter (relating to Standards and Criteria for Delivery of Off-Campus Education).

(b) The Coordinating Board shall provide an informal notice and comment to institutions in the higher education region(s) where the off-campus degree program will be delivered as outlined in §2.7 of this chapter (relating to Informal Notice and Comment on Proposed Local Programs).

(c) A request for a new degree program offered at an off-campus educational site is subject to the designated approval required for the degree level as set out in subchapters D - G of this chapter (relating to Approval Process for New Associate Degrees, Approval Process for New Baccalaureate Programs at Public Junior Colleges, Approval Process for New Baccalaureate And Master's Degree Programs at Public Universities and Public Health-Related Institutions, and Approval Process for New Doctoral and Professional Degree Programs, respectively).

§2.388. Approval Required for An Existing Degree Program Offered at An Off-Campus Educational Site.

(a) Prior to delivery of fifty (50) percent or more of an existing degree program at an off-campus educational site, an institution of higher education shall submit a request for approval to the Coordinating Board.

(b) The Coordinating Board shall provide an informal notice and comment to institutions in the higher education region(s) where the off-campus degree program will be delivered as outlined in §2.7 of this chapter (relating to Informal Notice and Comment on Proposed Local Programs).

(c) Off-campus delivery of an existing degree program is subject to Assistant Commissioner approval or denial pursuant to approval

procedures in §2.9 of this chapter (relating to Revisions and Modifications of Degree Programs).

(d) If the Assistant Commissioner denies the request, an institution may appeal to the Commissioner. The Commissioner's decision is final and may not be appealed.

§2.389. Approval Required for Off-Campus Education in the Texas State Technical College System.

(a) Texas State Technical College shall request approval of an off-campus educational site in a manner prescribed by the Coordinating Board, pursuant to §11.23 of this title (relating to Approval and Operation of Extension Programs and Centers).

(b) Texas State Technical College shall request approval of an off-campus program or course in accordance with Texas Education Code, chapter 135 and chapter 11.

§2.390. Modifications and Phase Out of Off-Campus Degree Programs.

An institution may request a revision, modification, or phase out of an approved off-campus degree program pursuant to §2.9 of this chapter (relating to Revisions and Modifications of Degree Programs).

§2.391. Notification Required for Off-Campus Clinical Courses.

(a) An institution of higher education shall notify the Coordinating Board, in a manner prescribed by the Board each year, of off-campus clinical courses prior to delivery at an off-campus educational site.

(b) In the notification to the Coordinating Board the institution shall provide the following:

(1) The name and address of the off-campus educational site where the clinical course will be delivered;

(2) The anticipated number of students with placements at the off-campus clinical site;

(3) Whether the students enrolled in the clinical course are currently employed at the off-campus clinical site; and

(4) If applicable, written documentation from the clinical facility that there will be no reduction in the number of clinical opportunities available for use by area institutions.

§2.392. Approval Required and Criteria for Off-Campus Programs Outside the State of Texas.

(a) An institution offering a credit-bearing out-of-state or out-of-country course, degree program, or certificate shall:

(1) Adhere to the standards and criteria for off-campus education set forth in §2.384 of this subchapter (relating to Standards and Criteria for Delivery of Off-Campus Education);

(2) Have appropriate authorization from the state or country in which the off-campus education occurs;

(3) Notify the Board of all Study Abroad courses offered to regularly enrolled students. Study abroad courses are subject to notification only approval as outlined in §2.4(1) of this chapter (relating to Types of Approval Required); and

(4) Notify the Board of all Study-in-America courses offered to regularly enrolled students. Study in America courses are subject to notification only approval as outlined in §2.4(1) of this chapter.

(b) Self-supporting programs offered outside the state of Texas must adhere to rules related to self-supporting programs in subchapter O of this chapter (relating to Approval Process and Required Reporting for Self-Supporting Degree Programs).

§2.393. Approval of Employer-Requested Off-Campus Career and Technical Education Programs.

(a) The Coordinating Board shall approve an off-campus career and technical education program at a site requested by an employer that meets the requirements of this section for an institution that requests it if:

(1) The employer has solicited an agreement to offer the program at that site with another institution of higher education that offers the same or substantially similar program;

(2) The proposed site of the program meets one of the following criteria:

(A) The proposed site for the off-campus program is located within the uniform state service region in which the institution described by paragraph (1) of this subsection is located;

(B) If the institution is a public junior college, within the junior college district's service area; or

(C) If the institution is a public technical institute, the institution has approval required by statute and Board rule; and

(3) The institution of higher education described by paragraph (1) of this subsection does not finalize an agreement with the employer within six (6) weeks to provide the career and technical education program in the initial solicitation.

(b) The institution requesting approval for the program shall submit the application on the form prescribed by the Commissioner.

(c) A proposed program is subject to approval required under chapter 2 of this title (relating to Academic and Workforce Education) based on the type of program.

(d) The Board shall not require approval of a higher education regional council for the approval of a program under this section.

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

Filed with the Office of the Secretary of State on May 17, 2024.

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Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: June 30, 2024

For further information, please call: (512) 427-6182



CHAPTER 4. RULES APPLYING TO
ALL PUBLIC INSTITUTIONS OF HIGHER
EDUCATION IN TEXAS
SUBCHAPTER B. TRANSFER OF CREDIT,
CORE CURRICULUM AND FIELD OF STUDY
CURRICULA

19 TAC §§4.32, 4.33, 4.35

The Texas Higher Education Coordinating Board proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 4, Subchapter B, §§4.32, 4.33, and 4.35, regarding Field of Study Curricula. Specifically, this amendment will

implement the alternative field of study curriculum framework approved by the Texas Transfer Advisory Committee.

Section 4.32 amendments are designed to allow for two different framework structures for field of study curricula as approved by the Texas Transfer Advisory Committee (TTAC). Subsection (d) outlines semester credit hours for components of the standard field of study curriculum and subsection (e) outlines semester credit hour requirements for components of the alternative field of study curriculum approved by the TTAC.

Amendments to §§4.32(b)(2)(e), 4.33, and 4.35, are designed to change the name of what has previously been called the "alternative" Discipline Foundation Courses to "substitute" Discipline Foundation Courses as to not cause confusion by having an "alternative Field of Study" and "alternative Discipline Foundation Courses." The renamed substitute Discipline Foundation Courses apply only to each institution that requests approval for them. Institutional substitute discipline foundation courses must still be approved by the Commissioner of Higher Education as outlined in §4.35.

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

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

Elizabeth Mayer, Assistant Commissioner for Academic and Health Affairs, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be the providing more curricular flexibility for fully transferable field of study curricula, therefore increasing the number of disciplines available to students for block transfer of courses from a community college to a university. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

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

Comments on the proposal may be submitted to Elizabeth Mayer, Assistant Commissioner for Academic and Health Affairs, P.O. Box 12788, Austin, Texas 78711-2788, or via email

at AHAComments@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendment is proposed under Texas Education Code, Section 61.823, which provides the Coordinating Board with authority to approve Field of Study Curricula for certain fields of study or academic disciplines.

The proposed amendments affect Texas Education Code, Section 61.823.

§4.32. *Field of Study Curriculum.*

(a) In accordance with Texas Education Code, §61.823, the Board is authorized to approve Field of Study Curricula for certain fields of study/academic disciplines. The Board delegates to the Commissioner development of Field of Study Curricula with the assistance of the Texas Transfer Advisory Committee, as defined by Title 19, Subchapter V, Chapter 1. The Texas Transfer Advisory Committee is responsible for convening Discipline-Specific Subcommittees. Discipline-Specific Subcommittees shall provide subject-matter expertise to the Texas Transfer Advisory Committee in developing Field of Study Curricula in specific disciplines.

(b) A complete Field of Study Curriculum will consist of the following components:

(1) Selected Texas Core Curriculum courses.

(A) Selected Texas Core Curriculum courses relevant to the discipline may be included in the Field of Study Curriculum for that discipline.

(B) Discipline-Specific Subcommittees are responsible for identifying discipline-relevant courses from a list of all Texas Core Curriculum courses provided by the Board that may be used to satisfy core curriculum requirements. Each Discipline-Specific Subcommittee shall recommend identified Texas Core Curriculum courses to the Texas Transfer Advisory Committee.

(C) The Texas Transfer Advisory Committee shall recommend the Texas Core Curriculum courses selected for inclusion in a Field of Study Curriculum to the Commissioner who may approve or deny the inclusion of the recommended Texas Core Curriculum courses in the Field of Study Curriculum.

(D) Each institution of higher education must publish on its public website in manner easily accessed by students the Texas Core Curriculum courses selected for inclusion in a Field of Study Curriculum with the cross-listed TCCNS course number.

(2) Discipline Foundation Courses (DFC).

(A) Discipline Foundation Courses are a set of courses within a major course of study~~;~~ ~~consisting of up to twelve (12) semester credit hours,~~ selected for inclusion in a Field of Study Curriculum for that discipline. These courses will apply toward undergraduate degrees within the Field of Study Curriculum at all Texas public institutions that offer a corresponding major or track, except for those institutions approved to require alternative Discipline Foundation Courses under ~~[Title 19, Chapter 4, Subchapter B,] §4.35 of this subchapter~~ (relating to Petition for Substitute ~~[Alternative]~~ Discipline Foundation Courses).

(B) Each receiving institution must apply the semester credit hours a student has completed in a Discipline Foundation Course upon the student's transfer into a corresponding major or track. The sending institution must indicate Discipline Foundation Courses on the transfer student's transcript.

(C) Discipline-Specific Subcommittees are responsible for identifying discipline-relevant courses for inclusion on the Discipline Foundation Courses list. The Discipline-Specific Subcommittees must select from courses listed in the Lower-Division Academic Course Guide Manual. Each Discipline-Specific Subcommittee shall report this course list to the Texas Transfer Advisory Committee.

(D) The Texas Transfer Advisory Committee shall recommend the Discipline Foundation Courses selected by the Discipline Specific Subcommittees for inclusion in a Field of Study Curriculum to the Commissioner. The Commissioner may approve or deny the Discipline Foundation Courses recommended by the Texas Transfer Advisory Committee for inclusion in a Field of Study Curriculum.

(E) General academic teaching institutions may submit a request for a substitute ~~[an alternative]~~ set of Discipline Foundation Courses for a specific program of study according to the process in ~~[Title 19, Chapter 4, Subchapter B,] §4.35 of this subchapter.~~

(F) Each institution of higher education must report to the Coordinating Board and publish on its public website in manner easily accessed by students the Discipline Foundation Courses with the cross-listed TCCNS course numbers for each course.

(G) The Commissioner must publish the list of Discipline Foundation Courses for each approved Field of Study Curriculum on the agency website with the cross-listed TCCNS course number for each course.

(3) Directed Electives.

(A) Directed Electives are a set of courses that apply toward a major course of study within a Field of Study Curriculum at a specific general academic teaching institution.

~~[(B) The Directed Electives for each Field of Study Curriculum must consist of at least six (6) semester credit hours. The Directed Electives and Discipline Foundation Courses components combined may not exceed twenty (20) semester credit hours in total.]~~

~~(B) [(C)]~~ Faculty from each general academic teaching institution may select a list of Directed Electives for the major course of study corresponding to each Field of Study curriculum. Faculty must select the Directed Electives only from courses listed in the Lower-Division Academic Course Guide Manual.

~~(C) [(D)]~~ The Chief Academic Officer of the institution shall submit the list of Directed Electives for inclusion in a Field of Study Curriculum with the cross-listed TCCNS course number to the Commissioner not later than ~~forty-five (45) [45]~~ days after being sent the request from the Coordinating Board. The Coordinating Board shall publish the list of each institution's Directed Electives for each approved Field of Study Curriculum on the agency website with the cross-listed TCCNS course numbers for each course.

~~(D) [(E)]~~ An institution that does not submit its Directed Electives in accordance with subparagraph ~~(C) [(D)]~~ shall be required to accept any Directed Elective courses that appear on the Board's list for the Texas Direct Associate Degree for any institution's Field of Study Curriculum.

~~(E) [(F)]~~ Each institution of higher education must publish on its public website in a manner easily accessed by students Directed Electives with the cross-listed TCCNS course number.

~~(F) [(G)]~~ An institution shall accept and apply directed electives for fields of study upon transfer as long as the directed elective was active on the Coordinating Board's inventory of directed electives at the time the student completed the course at the community college.

(c) Standard Field of Study Curriculum. The standard field of study curriculum shall include the following:

(1) Selected core curriculum courses as prescribed in subsection (b)(1) of this section.

(2) Up to twelve (12) semester credit hours of Discipline Foundation Courses as prescribed in subsection (b)(2) of this section.

(3) At least six (6) semester credit hours of Directed Electives as prescribed in subsection (b)(3) of this section.

(4) The Directed Electives and Discipline Foundation Courses combined components of the standard field of study curriculum may not exceed twenty (20) semester credit hours in total.

(d) Alternative Field of Study Curriculum. The alternative framework for field of study curriculum shall include the following:

(1) Up to thirty (30) semester credit hours of selected Texas Core Curriculum Courses as prescribed by subsection (b) of this section.

(2) A minimum of eighteen (18) semester credit hours, not to exceed twenty-four (24) semester credit hours of Discipline Foundation Courses as prescribed in subsection (b)(2) of this section.

(3) Up to twelve (12) semester credit hours of Directed Electives as prescribed in subsection (b)(3) of this section.

(e) [(e)] A receiving general academic teaching institution shall determine whether a transfer student is Field of Study Curriculum complete upon the transfer student's enrollment. If a student successfully completes an approved Field of Study Curriculum, a general academic teaching institution must substitute that block of courses for the receiving institution's lower-division requirements for the degree program for the corresponding Field of Study Curriculum into which the student transfers. Upon enrollment, the general academic teaching institution must grant the student full academic credit toward the degree program for the block of courses transferred.

(f) [(f)] If a student transfers from one institution of higher education to another without completing the Field of Study Curriculum, the receiving institution must grant academic credit in the Field of Study Curriculum for each of the courses that the student has successfully completed in the Field of Study Curriculum of the sending institution. After granting the student credit for these courses, the institution may require the student to satisfy remaining course requirements in the current Field of Study Curriculum of the receiving general academic teaching institution, or to complete additional requirements in the receiving institution's program, as long as those requirements do not duplicate course content the student previously completed through the Field of Study Curriculum.

(g) [(g)] Each institution must note the selected Texas Core Curriculum component and Discipline Foundation Courses components of the Field of Study Curriculum courses on student transcripts as recommended by the Texas Association of Collegiate Registrars and Admissions Officers (TACRAO).

(h) [(h)] The Board shall publish on its website the components of each Field of Study Curriculum, including the selected Texas Core Curriculum courses, the Discipline Foundation Courses, and the Directed Electives of each general academic teaching institution.

(i) [(i)] Effective Dates.

(1) Unless repealed or replaced, Field of Study Curricula in effect as of March 1, 2021, will remain in effect until August 31, 2025, upon which date those Field of Study Curricula expire by operation of law. For Field of Study Curricula that are repealed, replaced, or expire

by operation of law, the following transition or "teach out" provisions apply:

(A) A student who has earned credit on or before August 31, 2022, in one or more courses included in a Field of Study Curriculum that exists on March 1, 2021, is entitled to complete that Field of Study Curriculum on or before August 31, 2025.

(B) A student who has not, on or before August 31, 2022, earned any course credit toward a Field of Study Curriculum in effect on March 1, 2021, is not entitled to transfer credit for that Field of Study Curriculum.

(2) After an institution's Spring 2026 enrollment deadline, a receiving institution is not required to transfer a complete Field of Study Curricula that expired prior to that date. A receiving institution may, at its discretion, choose to accept a complete or partial Field of Study Curricula that has expired.

§4.33. Approval of Field of Study Curricula.

(a) In accordance with [Title 19, Chapter 1, Subchapter V,] §1.239 of this title (relating to Duties of the Texas Transfer Advisory Committee), the Texas Transfer Advisory Committee shall review relevant data, coordinate a schedule of discipline-specific course reviews, and recommend Field of Study Curricula to the Commissioner and Board. In creating the schedule for development of Field of Study Curricula, the Texas Transfer Advisory Committee shall prioritize the factors set out in [Chapter 1, Subchapter V,] §1.239(a)(4).

(b) At the direction of the Texas Transfer Advisory Committee and in accordance with [Title 19, Subchapter V, Chapter 1] §1.242 of this title (relating to Duties of the Discipline-Specific Subcommittees), a Discipline-Specific Subcommittee shall review institutions' current program requirements and data about transfer students' course-taking and success in that discipline and recommend to the Texas Transfer Advisory Committee courses required in the Field of Study Curriculum for that major.

(c) The Texas Transfer Advisory Committee may consider for recommendation to the Commissioner Field of Study Curricula recommended by Discipline-Specific Subcommittees and any request by an institution for substitute [alternative] Discipline Foundation Courses as described in §4.35 of this subchapter (relating to Petition for Substitute Discipline Foundation Courses) [§4.34(d) - (k)].

(d) The Texas Transfer Advisory Committee's approval of a Field of Study Curriculum requires approval by a supermajority vote of two-thirds of the general academic teaching institution representatives who are present and voting and two-thirds of the public junior college representatives who are present and voting.

(1) If the Texas Transfer Advisory Committee fails to approve a Field of Study Curriculum, the Texas Transfer Advisory Committee may vote by a simple majority of all members present and voting to request that a Discipline Specific Subcommittee reconvene in an attempt to address any [and] concerns identified by the Texas Transfer Advisory Committee.

(2) Upon final recommendation of the Discipline-Specific Subcommittee, the Texas Transfer Advisory Committee may reconsider a vote to recommend to the Commissioner approval of a Field of Study Curriculum.

(e) The Commissioner may approve or deny a Field of Study Curriculum recommended by the Texas Transfer Advisory Committee.

(f) Before making a final determination whether to approve or deny a Field of Study Curriculum recommended by the Texas Transfer Advisory Committee, the Commissioner shall provide for informal notice and comment by publishing each proposed Field of Study Curricula

lum in the *Texas Register* In Addition section for a minimum of thirty (30) [30] days. The Commissioner shall consider any comments prior to approving or denying the Field of Study Curriculum. The Commissioner's decision is final and may not be appealed.

(g) The Commissioner shall report to the Board at each quarterly meeting on each Field of Study Curriculum the Commissioner approved since the last Board meeting.

(h) The Commissioner shall annually provide a written report to the Texas Transfer Advisory Committee members with information on all approved Field of Study Curricula.

§4.35. *Petition for Substitute [Alternative] Discipline Foundation Courses.*

(a) An institution may request the Commissioner to approve substitute [alternative] Discipline Foundation Courses based upon the following criteria:

(1) The institution demonstrates that approved Discipline Foundation Courses significantly vary from the institution's lower-division curriculum for a given major; or

(2) The institution demonstrates based on evidence that students completing approved Discipline Foundation Courses are not successful in the institution's upper-division curriculum.

(b) The Chief Academic Officer of an institution that requests substitute [alternative] Discipline Foundation Courses based on the criteria in this rule must submit a petition for substitute [alternative] Discipline Foundation Courses in writing to the Commissioner, along with a written, evidence-based rationale. The Commissioner shall promptly notify the Texas Transfer Advisory Committee of the request for substitute [alternative] Discipline Foundation Courses.

(c) Upon notification by the Commissioner, the Texas Transfer Advisory Committee shall evaluate the institution's request for substitute [alternative] Discipline Foundation Courses based upon the number of students affected, how the substitute [alternative] Discipline Foundation Courses would impact transfer, and any other criteria as decided by a majority vote of public junior college representative members and general academic teaching institution members present and voting.

(d) After review of the criteria, the Texas Transfer Advisory Committee shall vote on whether to recommend the substitute Discipline Foundation Courses [alternative DFC] to the Commissioner. A majority of the public junior college sector representatives and a majority of the general academic teaching institution sector representatives who are present and voting must both vote in favor for the substitute Discipline Foundation Courses [alternative DFC] to advance to the Commissioner for approval.

(e) No more than thirty (30) [30] days after its vote on the petition, the Texas Transfer Advisory Committee shall provide a written report to the Commissioner explaining the rationale for the action taken by the Texas Transfer Advisory Committee on the request for substitute [alternative] Discipline Foundation Courses.

(f) No more than thirty (30) [30] days after receiving the written report from the Texas Transfer Advisory Committee, the Commissioner shall consider the Texas Transfer Advisory Committee report and make a final determination whether to approve the substitute Discipline Foundation Courses [alternative DFC]. The Commissioner's decision is final and may not be appealed.

(g) The Commissioner shall inform the Board at the next quarterly meeting of all decisions to approve or deny petitions for substitute Discipline Foundation Courses [alternative DFC].

(h) The Coordinating Board shall maintain a public website that includes a list of all substitute [alternative] Discipline Foundation Courses approved by the Commissioner.

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

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Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6182



CHAPTER 10. GRANT PROGRAMS

SUBCHAPTER D. RURAL RESIDENT PHYSICIAN GRANT PROGRAM

19 TAC §§10.90 - 10.98

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new rules in Texas Administrative Code, Title 19, Part 1, Chapter 10, Subchapter D, §§10.90 - 10.98, concerning the administration of the Rural Resident Physician Grant Program established by House Bill 1065, 86th Texas Legislature. Specifically, this new subchapter establishes rules related to administration of the Rural Residency Physician Grant Program. The Coordinating Board used negotiated rulemaking to develop these proposed rules. The Coordinating Board will make reports of negotiated rulemaking committees available upon request.

Texas Education Code, Chapter 58A, Subchapter E, establishes the Rural Residency Physician Grant Program and authorizes the Coordinating Board to adopt rules for implementation. The proposed rules outline the application and evaluation processes, reporting, and other requirements for eligible entities to receive funding under the grant program

Rule 10.90, Purpose, establishes the purpose for the subchapter is to administer the Rural Resident Physician Grant Program which provides funding for the establishment or expansion of graduate medical education programs in rural Texas.

Rule 10.91, Authority, establishes authority for this subchapter is found in Texas Education Code, §58A.081, which grants the Coordinating Board with authority to adopt rules to administer the grant program.

Rule 10.92, Definitions, defines terms related to administration of the grant program.

Rule 10.93, Eligibility, establishes eligibility criteria to receive grant funding.

Rule 10.94, Application Process, describes main criteria that must be included in the grant application, including the number of residency positions created or maintained, budget, documentation on existing staffing and resources to support new residency positions, and evidence of support from the institution and community.

Rule 10.95, Evaluation of Applications, establishes selection criteria for awards.

Rule 10.96, Grant Awards, establishes how grant funding is awarded and defines allowable expenditures. Grantees may expend grant funds on resident physician salaries or other direct costs to create or maintain the residency position(s).

Rule 10.97, Reporting, establishes reporting requirements for grantees.

Rule 10.98, Additional Requirements, establishes criteria for returning unspent funds at the end of the grant term.

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

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

Elizabeth Mayer, Assistant Commissioner Academic and Health Affairs, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the subchapter will be grant management that is aligned with statute. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

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

Comments on the proposal may be submitted to Elizabeth Mayer, Assistant Commissioner Academic and Health Affairs, P.O. Box 12788, Austin, Texas 78711-2788, or via email at AHA-comments@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new section is proposed under Texas Education Code, Section 58A.081, which provides the Coordinating Board with the authority to administer the Rural Resident Physician Grant Program and adopt program rules.

The proposed new rules affect Texas Education Code, Section 58A.081.

§10.90. Purpose.

The purpose of this subchapter is to administer the Rural Resident Physician Grant Program to provide and oversee grants for the estab-

lishment or expansion of new graduate medical education programs in rural and non-metropolitan areas to help meet the health-care needs of rural communities in Texas.

§10.91. Authority.

The authority for this subchapter is found in Texas Education Code, chapter 58A, §58A.081.

§10.92. Definitions.

Definitions set forth in Texas Education Code, chapter 58A (relating to Programs Supporting Graduate Medical Education) are hereby incorporated into this rule. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Rural--A rural or non-metropolitan Texas region or community as defined by the Accreditation Council for Graduate Medical Education as a Health Professional Shortage Area or a Medically Underserved Area/Population.

(2) Rural Training Tracks--As defined in rules and regulations of the Centers for Medicare and Medicaid Services (CMS) in 42 CFR §413.79(k), is an ACGM-accredited program in which all or some residents/fellows gain both urban and rural experience with more than half of the education and training for the applicable resident(s)/fellow(s) taking place in a rural area.

§10.93. Eligibility.

(a) To be eligible to apply for and receive grant funding an entity must:

(1) be a new or expanded physician residency program at teaching hospitals and other appropriate health care entities; and

(2) have a resident physician site in a rural or non-metropolitan area as defined by Accreditation Council for Graduate Medical Education (ACGME).

(b) The Coordinating Board will designate an eligible site in cooperation with residency program directors and the ACGME.

§10.94. Application Process.

(a) Unless otherwise specified in the RFA, an eligible entity may submit a maximum of two (2) applications.

(b) To qualify for funding consideration, an eligible applicant must submit an application to the Coordinating Board. Each application shall:

(1) be submitted electronically in a format specified in the RFA;

(2) adhere to the grant program requirements contained in the RFA; and

(3) be submitted with approval of the President or Chief Executive Officer or designee on or before the day and time specified by the RFA.

(c) Submitted applications shall include:

(1) The number of residency positions that will be created or maintained if grant funds are awarded;

(2) A budget that includes the requested grant amount broken down by resident and type of residency position;

(3) documentation that an applicant's existing staffing and infrastructure is sufficient to support new or maintained residency positions and satisfy applicable accreditation requirements;

(4) detailed plans on how the new or maintained residency positions will produce physicians who are prepared for and plan to practice in rural areas;

(5) Evidence of support for residency training by both the institution and the community; and

(6) any other requirements as set forth in the RFA.

§10.95. Evaluation.

(a) The Coordinating Board shall competitively select applicants for funding based on requirements and award criteria provided in the RFA.

(b) Award criteria will include whether the rural area has the resources to support a physician residency program that at minimum meets applicable residency program accreditation requirements.

(c) The evaluation criteria will include priority for applications that propose creating rural training tracks or additional residency positions within an existing rural residency program or track.

§10.96. Grant Awards.

(a) The amount of funding available for the rural resident physician grant program is dependent on the legislative appropriation for the program for each biennial state budget. The Coordinating Board will provide award levels and estimated number of awards in the RFA.

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

(c) The Commissioner of Higher Education may adjust the size of a grant award to best fulfill the purpose of the RFA.

(d) The Coordinating Board may advance a grant award to a grantee.

(e) The Coordinating Board will first award grants for all residency positions awarded a grant under this subchapter in the preceding year before awarding a grant for a residency position that did not receive a grant in the preceding year, provided that the applicable grant recipient from the preceding year meets eligibility requirements for a new grant award and complied with all grant and application requirements set forth in this subchapter and the terms of the grant previously awarded. The Coordinating Board shall award all remaining funds pursuant to the evaluation criteria set forth in §10.95 of this subchapter (relating to Evaluation).

(f) The Coordinating Board will award any grant funds returned pursuant to §10.98 of this subchapter (relating to Additional Requirements) equitably to current awardees.

(g) A grantee shall only expend grant funds on the salary of the resident physician and other direct costs that are necessary and reasonable to create or maintain the residency position as stated in grantee's budget.

§10.97. Reporting Requirements.

A grantee shall file program, expenditure, and resident reports in the format required by the Coordinating Board by the deadlines set forth in the RFA. A grantee shall provide information that includes, but is not limited to, the following:

(1) The project is well-defined and includes research-based evidence to indicate the project will improve rural resident training and expand rural residency training tracks in the state.

(2) The proposed project can be completed within the grant period.

(3) The proposed project clearly outlines objectives, outcomes, and provides information on the characteristics of the program's community service area, overall medical provider ability, challenges to recruitment, and other relevant issues.

(4) The proposed project goals align with overall goals of the RFA to develop innovative approaches to addressing the needs of underserved rural communities or regions.

(5) The proposed project goals are realistic and appropriate to the goals of the applicant and are described in sufficient detail.

(6) The proposed project activities will likely continue after the grant period ends and are replicable in other sites.

(7) The proposed project evaluation for determining the project's success is described in sufficient detail and includes relevant information/data.

(8) The expected outcomes are achievable using the resources and plans the applicant submits.

(9) The expected outcomes would significantly improve rural residency training and healthcare in underserved regions and communities.

(10) The applicant's budget indicates financial resources are appropriately allocated to meet project goals and objectives.

§10.98. Additional Requirements.

(a) Cancellation or Suspension of Grant Solicitations. The Coordinating Board has the right to reject all applications and cancel a grant solicitation at any point.

(b) Forfeiture and Return of Funds.

(1) The grantee shall return any award funds remaining unspent at the end of the grant term as set forth in the RFA or Notice of Grant Award (NOGA) to the Coordinating Board within sixty (60) days.

(2) The grantee shall fill all funded residency positions no later than the first reporting deadline as set forth in the RFA. A grantee forfeits and must return, if grant funds were received, a proportionate share of the grant award for each unfilled residency position as determined by the Coordinating Board.

(3) A grantee shall notify the Coordinating Board within thirty (30) days of any funded residency positions becoming vacant. A grantee forfeits and shall return, if grant funds were received, a proportionate share of the grant award for each unfilled residency position as determined by the Coordinating Board.

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

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For further information, please call: (512) 427-6182



SUBCHAPTER E. PROFESSIONAL NURSING
SHORTAGE REDUCTION PROGRAM

19 TAC §§10.110 - 10.117

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new rules in Texas Administrative Code, Title 19, Part 1, Chapter 10, Subchapter E, §§10.110 - 10.117, concerning the administration of the Professional Nursing Shortage Reduction Program. Specifically, the proposed rules will replace the existing Professional Nursing Shortage Reduction Program rules currently in Chapter 22, Subchapter S, which will be repealed in future rulemaking. The proposed rules clarify grant award requirements based on statute and provide alignment with budgetary provisions included in rider. The Coordinating Board used negotiated rulemaking to develop these proposed rules. The Coordinating Board will make reports of negotiated rulemaking committees available upon request.

Rule 10.110, Purpose, establishes the purpose for the subchapter is to administer the Professional Nursing Shortage Reduction Program.

Rule 10.111, Authority, establishes authority for this subchapter is found in Texas Education Code, §§61.9621 - 61.9628, which grants the Coordinating Board with authority to adopt rules to administer the Professional Nursing Shortage Reduction Program.

Rule 10.112, Definitions, defines terms related to administration of the grant program.

Rule 10.113, Eligibility, establishes eligibility criteria for grant funding. Language clarifies eligibility of existing and new professional nursing programs.

Rule 10.114, Application Process, contains requirements for application submission and funding increases.

Rule 10.115, Evaluation of Applications, establishes selection criteria for awards.

Rule 10.116, Grant Awards, establishes how grant funding is appropriated and distributed. This section clarifies allowable and reasonable costs associated with the award.

Rule 10.117, Reporting, establishes reporting requirements for grantees.

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

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

Elizabeth Mayer, Assistant Commissioner Academic and Health Affairs, has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering the subchapter will be uniform processes for managing the grant that are more closely aligned with House Bill 1, 88th Legislature, Regular Session (2023). There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

(1) the rules will not create or eliminate a government program;

(2) implementation of the rules will not require the creation or elimination of employee positions;

(3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;

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

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

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

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

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

Comments on the proposal may be submitted to Elizabeth Mayer, Assistant Commissioner Academic and Health Affairs, P.O. Box 12788, Austin, Texas 78711-2788, or via email at AHA-comments@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new sections are proposed under Texas Education Code, Sections 61.9621 - 61.9628, which provides the Coordinating Board with the authority to administer the Professional Nursing Shortage Reduction Program, supervise institutional reporting requirements, and adopt program rules.

The proposed new rules affect Texas Education Code, Sections 61.9621 - 61.9628.

§10.110. Purpose.

The purpose of this subchapter is to administer the Professional Nursing Shortage Reduction Program to provide and oversee grants to eligible entities to meet the needs of the state of Texas for initially registered nurses both in number and type.

§10.111. Authority.

The authority for this subchapter is found in Texas Education Code, chapter 61, §§61.9621 -61.9628, which provides the Board with the authority to adopt rules to administer the Professional Nursing Shortage Reduction Program.

§10.112. Definitions.

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

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

(2) CBM Reporting Manual--The Coordinating Board's manual that defines deadlines and procedures for submitting data into the CBM the CBM Reporting System.

(3) CBM Reporting System--The Coordinating Board's Management Reporting System for collecting institutional data.

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

(5) Coordinating Board--The agency and staff that report to the Board and Commissioner of the agency known as the Texas Higher Education Coordinating Board.

(6) New Professional Nursing Program--A professional nursing program that only has two (2) years of graduation data.

(7) Private or Independent Institution of Higher Education--Includes only a private or independent college or university as defined in Texas Education Code, §61.003(15).

(8) Professional Nursing Program--An educational program that prepares a student for initial licensure as a registered nurse.

(9) Public Institution of Higher Education--Any public technical institute, public junior college, public senior college or university, medical or dental unit, or other agency of higher education as defined in Texas Education Code, §61.003(8).

(10) Request for Applications (RFA)--A type of solicitation notice in which the Coordinating Board announces available grant funding, sets forth the guidelines governing the program, provides evaluation criteria for submitted applications, and provides instructions for eligible entities to submit applications for such funding. The guidelines governing the program may include a Letter of Intent, eligibility requirements, performance expectations, budget guidelines, reporting requirements, and other standards of accountability for this program.

§10.113. Eligibility.

(a) To be eligible to apply for and receive funding under the Program an applicant must:

(1) Be a Texas public or private institution of higher education as defined by Texas Education Code, §61.003, or an entity that was eligible to receive a grant under the Program prior to September 1, 2009;

(2) Have a professional nursing program or new professional nursing program that is approved by and in good standing with the Texas Board of Nursing;

(3) Submit required nursing program data in the CBM Reporting System as outlined in the CBM Reporting Manual, including:

(A) Enrollments; and

(B) Graduates; and

(4) Any other eligibility criteria set forth in the RFA.

(b) The RFA may allow for a consortium of institutions to collaborate on a joint or regional basis to increase professional nursing program enrollment or graduates. Any eligibility criteria for a consortium application shall be set forth in the RFA.

§10.114. Application Process.

(a) Unless otherwise specified in the RFA, an eligible applicant may submit a maximum of one application.

(b) To qualify for funding consideration, an eligible applicant shall submit an application to the Coordinating Board. Each application shall:

(1) Be submitted electronically in a format specified in the RFA;

(2) Adhere to the grant program requirements contained in the RFA; and

(3) Be submitted with proper authorization on or before the day and time specified in the RFA.

(c) Each application shall at a minimum:

(1) State the number of additional enrollments or graduates over the prior academic year the professional nursing program intends to enroll or graduate if the institution receives a grant;

(2) List at least three benchmark targets and dates to monitor adequate progress toward reaching the goal set for in paragraph (1) of this subsection;

(3) Provide a budget, including a proposed payment schedule, for the grant funds reasonable and necessary to meet the planned increase in professional nursing program enrollment or graduation;

(4) Include a commitment letter signed by the applicant's President, Chief Executive Officer or designee that the applicant will meet or exceed the planned increase in enrollment or graduation for the professional nursing program for the grant term as specified in the RFA; and

(5) Meet any other requirement specified in the RFA.

§10.115. Evaluation of Applications.

The Commissioner shall approve applicants for funding based on requirements and award criteria provided in the RFA and in compliance with these rules.

§10.116. Grant Awards.

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

(b) The Coordinating Board shall approve awards as authorized in §1.16 of this title (relating to Contracts, Including Grants, for Materials and/or Services).

(c) Subject to subsection (b) of this section, the Commissioner may negotiate or adjust a grant award to best fulfill the purpose of the RFA and ensure an equitable distribution of grant funds among the types of professional nursing programs in order to increase the number of enrolling and graduating students.

(d) The Coordinating Board may advance a grant award to a grantee.

(e) A grant shall demonstrate through reporting that the grantee is in compliance with the terms of the grant award and is, at a minimum, meeting application benchmark requirements before the Coordinating Board may issue the next periodic grant award installment.

(f) The Coordinating Board shall set forth the determination of the allowability of administrative costs in the RFA.

(g) A grantee may use a grant award only on necessary and reasonable costs exclusively related to:

(1) enrolling additional nursing students;

(2) evidenced-based practices in the recruitment and retention of students;

(3) identifying, developing, or implementing innovative or evidenced-based practices to make effective and efficient use of professional nursing program faculty, instructional or clinical space, or other necessary resources including:

(A) regional shared services, courses, personnel, facilities, and responsibilities among two or more professional nursing programs; or

(B) employing or contracting with preceptors or part-time faculty to provide clinical instruction to accommodate increased student enrollment; and

(4) education, recruitment, or retention of professional nursing program faculty.

§10.117. Reporting.

Each grantee shall file an annual report, pursuant to Texas Education Code, §61.9626, in the format required by the Coordinating Board by the deadline set forth in the RFA. Grantees shall provide information that includes the following:

- (1) Status of the grant project activities;
- (2) Budget expenditures by budget category;
- (3) Student enrollment, retention, and demographic data as applicable;
- (4) Graduation status, as applicable;
- (5) Faculty hiring and retention data as applicable;
- (6) Matching contributions, if applicable; and
- (7) Any other information required by the RFA.

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

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Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6182



CHAPTER 13. FINANCIAL PLANNING

SUBCHAPTER R. STATE PUBLIC JUNIOR COLLEGE FINANCE PROGRAM REPORTING, AUDIT, AND OVERALLOCATION

19 TAC §§13.522 - 13.525, 13.528, 13.529

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 13, Subchapter R, §§13.522 - 13.525, 13.528, and 13.529, concerning audit and reporting provisions related to community college finance. Specifically, this amendment will clarify timelines related to ameliorating errors in data reporting and will align subchapter R with forthcoming rules the Coordinating Board intends to adopt.

Rule 13.522, Definitions, amends an existing definition for "Data Reporting Error" and adds a new definition for "Fundable Certified Data." These two definition changes will clarify elements of the timeline for making determinations of data reporting errors and ameliorating those errors: the window for determining a data reporting error has occurred will start on May 1 of the preceding fiscal year, which is the date fundable certified data will be considered finalized in the forthcoming subchapter U rules. This clarification of timeline allows the Coordinating Board flexibility to work with institutions in conducting the standard data collection process, while also setting in place a point at which any remaining errors need to be corrected through the formal data reporting error process outlined in §13.525. Additionally, a new definition is added for public junior colleges to clarify the reference to affected institutions.

Rule 13.523, Certification of Compliance, updates the email address where institutions may submit their attestations of certification of compliance and adds compliance monitoring findings under the list of disclosures. Statute grants the Coordinating Board authority to conduct compliance monitoring of institutions, including for accuracy of data reported for formula funding (Texas Education Code, §61.035). Adding a requirement for compliance

monitoring findings under this provision ensures the Coordinating Board will have a full picture of potentially relevant findings.

Rules 13.523 and 13.524 are amended to make conforming changes regarding how public junior colleges are referenced.

Rule 13.525, Commissioner Review of Required Reporting; Data Reporting Errors, makes two key changes: the proposed rule opens the window to make a data reporting error determination starting from finalization of fundable certified data, which is set at May 1; and the Chief Executive Officer of an institution potentially affected by a data reporting error may initially notify the Commissioner of Higher Education of the data reporting error. The proposed rule thus grants an affected college an avenue to notify the Coordinating Board of any significant discrepancies in data potentially affecting funding, requiring that a single official have responsibility for official data error notifications to ensure clarity of communication.

Rule 13.528, Recovery of Overallocated Funds, adjusts internal cross-references relating to funding allocation cycle to reference the Coordinating Board's forthcoming subchapter U, which will contain relevant rules.

Rule 13.529, Payment of Under-allocated Funds, similarly updates internal cross-references to point to the forthcoming subchapter U.

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

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

Emily Cormier, Assistant Commissioner for Funding, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be the clarification of data reporting and error amelioration timelines and align subchapter R with additional forthcoming community college finance rules. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

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

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

The amendment is proposed under Texas Education Code, Section 130A.005, which provides the Coordinating Board with the authority to adopt rules and require reporting to implement the Public Junior College State Finance Program.

The proposed amendment affects Texas Education Code, Section 130A.006.

§13.522. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings:

(1) **Audit**--An engagement to audit the program conducted by the Coordinating Board's Internal Auditor and internal audit or compliance monitoring staff pursuant to either Texas Education Code, §§130A.006(4) or 61.035. This term may include a site visit, desk review, or examination of the institution's use of funds allocated by the Coordinating Board and data reported to the Coordinating Board. The term includes auditing undertaken to obtain evidence to sufficiently examine or verify data submitted to the Coordinating Board to be used by the Coordinating Board for funding or policymaking decisions, including data used for formula funding allocations, to ensure the data is reported accurately.

(2) **Census Date**--Prior to September 1, 2024, as defined in subchapter P, §13.472, of this chapter (relating to Definitions). On or after September 1, 2024, as defined in subchapter S, §13.553, of this chapter (relating to Definitions).

(3) **Chief Audit Executive**--The Internal Auditor hired by the Coordinating Board to perform internal auditing and compliance monitoring on behalf of the Coordinating Board pursuant to Texas Education Code, chapters [Chapters] 61, 130, and 130A.

(4) **Compliance Monitoring**--A risk-based audit and compliance function conducted by the Coordinating Board pursuant to either Texas Education Code, §§130A.006(4) or 61.035, for the purpose of reviewing and assessing programmatic, legal, and fiscal compliance. This function may include conducting audits, site visits, desk reviews, or other examinations, to ensure that funds allocated or distributed by the Coordinating Board are allocated, distributed, and used in accordance with applicable law and Coordinating Board rule. The function includes obtaining evidence to sufficiently examine or verify data submitted to the Coordinating Board to be used by the Coordinating Board for funding or policymaking decisions, including data used for formula funding allocations, to ensure the data is reported accurately.

(5) **Data Reporting Error**--An error in fundable certified data or other data reported by an institution to be used to calculate formula funding for a fiscal year to the Coordinating Board after May 1 of the preceding fiscal year that the Commissioner of Higher Education in his or her discretion determines may result in a material impact in the formula funding a public junior college is entitled to or received. [An error in data or other information reported and certified by a public junior college to the Coordinating Board that the Commissioner of Higher Education in his or her discretion determines may result in a material impact in the formula funding a public junior college was entitled to or received.]

(6) **Desk Review**--An administrative review by the Coordinating Board that is based on information reported by an institution of higher education or a private or independent institution of higher

education, including supplemental information required by the Coordinating Board for purposes of compliance monitoring, except that the term does not include information or accompanying notes gathered by the Coordinating Board during a site visit.

(7) **Full-Time Student Equivalent (FTSE)**--Prior to September 1, 2024, as defined in subchapter P, §13.472, of this chapter. On or after September 1, 2024, as defined in subchapter S, §13.553, of this chapter.

(8) **Funding Adjustment**--Any increase or decrease in funding by the Coordinating Board to an institution of higher education based on an over- or under-allocation of funds.

(9) **Fundable Certified Data**--As defined in subchapter U of this chapter (relating to Community College Finance Program: Forecasting Methodology and Finance Policy).

(10) [(9)] **Over-allocation**--The over-payment of funds to a public junior college due to a data reporting error or other error by either the institution or the Coordinating Board that results in payments beyond what the institution is due.

(11) **Public Junior College**--In this subchapter, means a public junior college, public junior college district, or community college as defined in Texas Education Code, chapters 130 or 130A, unless expressly provided otherwise.

(12) [(10)] **Site Visit**--An announced or unannounced in-person visit by a representative of the Coordinating Board or its agent to an institution of higher education or a private or independent institution of higher education for the purposes of conducting an audit.

(13) [(11)] **Under-allocation**--The under-payment of funds to a public junior college due to a data reporting error or other error by either the institution or the Coordinating Board that results in payments less than what the institution was owed for the fiscal year.

§13.523. Certification of Compliance.

(a) A public junior college is not eligible to receive funds under this subchapter unless that public junior college submits a certification of compliance with the requirements of Texas Education Code, §130.003(b), and as stated herein.

(b) A public junior college must submit an attestation via email to ccfinance@highered.texas.gov [ccfinanceCTC@highered.texas.gov] certifying to compliance with Texas Education Code, §130.003(b), to the Coordinating Board by August 1 of each year. The certification must be signed by the public junior college's president, or Chief Executive Officer, as applicable. The certification must certify the following:

(1) That the public junior college is currently in compliance with each provision of Texas Education Code, §130.003; and

(2) The public junior college has complied with all laws and Coordinating Board rules for the establishment and operation of a public junior college.

(c) If a public junior college [district] has an unresolved or ongoing audit or compliance monitoring finding that the certifying official determines may preclude the public junior college's [district's] certification under Texas Education Code, §130.003(b), the public junior college [district] shall disclose the finding(s) and provide an explanation of the finding(s) and proposed resolution.

(1) The Commissioner of Higher Education shall determine whether the public junior college [district] can demonstrate that it [the district] will be in compliance for the purpose of receiving a scheduled payment.

(2) Any payment that the Coordinating Board makes to an institution pursuant to this subchapter is subject to recovery or recoupment if the certifying official does not make the required certification for the fiscal year for which the certification was required.

§13.524. Required Reporting.

(a) Required Reporting. A public junior college must submit data through required reporting mechanisms established by the Coordinating Board. The Coordinating Board may use information obtained through required reporting for:

- (1) calculating funding disbursed under this chapter;
- (2) providing timely data and analyses to inform management decisions by the governing body of each public junior college [district];
- (3) administering or evaluating the effectiveness of programs; or
- (4) auditing the program.

(b) Financial Reporting: The Community College Annual Reporting and Analysis Tool (CARAT) and Annual Financial Report (AFR) Reporting.

(1) Standards. Each public junior college [district] must submit their Annual Financial Report (AFR) for the preceding fiscal year by January 1. The public junior college must submit the AFR following the requirements provided in the Coordinating Board's Budget Requirements and Annual Financial Reporting Requirements for Texas Public Community Colleges, also known as the AFR Manual, for that fiscal year, in accordance with Texas Education Code, §61.065.

(2) Format. Each public junior college must report AFR data for each completed fiscal year as prescribed in the Community College Reporting and Analysis Tool (CARAT) by January 31 of the following fiscal year.

(3) Review Process. The Commissioner of Higher Education will update the AFR Manual, as required by Texas Education Code, §61.065. The AFR Manual will conform to Governmental Accounting Standards Board (GASB) statements and guidance.

(c) Financial Reporting: Report of Fundable Operating Expenses (RFOE).

(1) Standards. Each public junior college must report all instructional expenses from each completed fiscal year for each institutional discipline and unallocated administrative expenses as defined in the RFOE by January 31 of the following fiscal year.

(2) Coordinating Board staff shall use the data provided on expenses at public junior colleges to produce a study of costs for each instructional discipline each year. This study will review all expenses made by institutions for instruction and administration from all unrestricted sources of funds, including appropriated general revenue, tuition and fees, contract instruction, other educational and general revenue, and local tax revenue.

(d) Financial Reporting: Integrated Fiscal Reporting System (IFRS).

(1) Standards. Each public junior college shall [H] report comprehensive tuition and fee financial data each fiscal year through IFRS.

(2) The Coordinating Board may use data reported through IFRS to establish average annual tuition and fee charges as necessary to implement this chapter.

(e) Academic Reporting: Education Data System reporting.

(1) Standards. Each public junior college must use data standards established by the Commissioner of Higher Education to submit required information relating to the delivery of educational programs. The Commissioner of Higher Education shall adopt and publish annually data standards in official Coordinating Board publications, including through the Coordinating Board Management (CBM) Reporting and Procedures Manual for Texas Community, Technical, and State Colleges. The Coordinating Board will widely disseminate this publication, which will include:

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

(B) descriptions of data elements and the codes used to report them, including data used to calculate Full-Time Student Equivalent enrollments, Texas Success Initiative eligibility of students, student transfer, dual credit or dual enrollment, the number and type of credentials conferred, and other relevant student characteristics;

(C) detailed responsibilities of public junior colleges in connection to the data submission process, including each deadline for submission and resubmission; and

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

(2) A public junior college may report a student in attendance on the approved course census date for the purpose of funding under this subchapter, in accordance with Texas Education Code, §130A.008.

(3) Review Process. The Commissioner of Higher Education shall review the CBM Reporting and Procedures Manuals annually. The Commissioner of Higher Education may approve changes to the data and reporting standards outside of the annual review process to expedite implementation of data collections and reporting.

(4) Certification. The reporting official for each public junior college must certify the accuracy of the report by a certification statement submitted to the Coordinating Board's Educational Data Center in accordance with the template and instructions provided in the CBM Reporting and Procedures Manual.

(f) Academic Reporting: Ad Hoc Reporting Requests. As necessary to implement this chapter, the Commissioner of Higher Education may determine the need for additional, limited, supplemental requests for data and information from public junior colleges. To the extent Ad Hoc Reporting Requests may determine or influence funding disbursements under this subchapter, the Coordinating Board shall require the reporting official or another Coordinating Board designated official for each public junior college to certify the accuracy of the information contained in the report.

§13.525. Commissioner Review of Required Reporting; Data Reporting Errors.

(a) Upon finalization of fundable certified data, the [The] Commissioner of Higher Education at his or her discretion or upon recommendation of the Chief Audit Executive may direct Coordinating Board staff to review the accuracy of the data reported to the Coordinating Board by a public junior college under this subchapter using any of the following methods or combination thereof:

(1) The Chief Audit Executive or Coordinating Board staff may conduct periodic file reviews, desk-reviews, site visits, or audits of the accuracy of the data and information submitted for funding purposes, including regular reviews of submitted data carried out through standard data management, supporting data, audits conducted under this subchapter, or as a result of any other audit. Upon identifying a

potential data reporting error [that may impact formula funding], Coordinating Board staff shall notify the Commissioner of Higher Education as soon as practicable.

(2) Upon receiving a notification of a potential data reporting error from the Chief Audit Executive, ~~or~~ Coordinating Board staff, or the Chief Executive Officer of a public junior college whose data may be affected [of a potential data reporting error], the Commissioner of Higher Education may:

(A) direct staff to continue to gather additional information;

(B) determine that the discrepancy does not rise to the level of a data reporting error as defined in this chapter due to the materiality impact of the error; or

(C) determine that the discrepancy rises to the level of a data reporting error that requires a funding adjustment due to the materiality impact of the error or the amount of overallocation or underallocation.

(b) The Coordinating Board may review and or require correction of a data reporting error that occurred not more than seven years prior to a review conducted by Coordinating Board staff.

(c) Upon the Commissioner of Higher Education's determination that the discrepancy constitutes a data reporting error requiring a funding adjustment, staff will notify the public junior college within thirty (30) ~~[30]~~ business days.

(d) The Commissioner of Higher Education may use any method provided in §13.528 or §13.529 of this subchapter (relating to Recovery of Overallocated Funds and Payment of Under-allocated Funds, respectively) to make the necessary funding adjustments to correct an over- or under-allocation.

§13.528. Recovery of Overallocated Funds.

(a) If the Coordinating Board determines after closing out a fiscal year pursuant to subchapter P, §13.477, of this chapter (relating to Close Out), or any close-out or settle-up provisions contained in subchapter U [S] of this chapter (relating to Community College Finance Program: Forecasting Methodology and Finance Policy), that a data reporting error or any other error resulted in an overallocation of funds to the institution, the Coordinating Board shall use any method authorized under statute or this rule to make a funding adjustment necessary to correct the over-allocation.

(b) The Coordinating Board shall notify the institution not later than thirty (30) ~~[30]~~ business days after the Commissioner of Higher Education makes a determination of a data reporting error under §13.525 of this subchapter (relating to Commissioner Review of Required Reporting; Data Reporting Errors) or otherwise identifies an error requiring a funding adjustment to recover an overallocation. This notification must contain the amount of the overallocation and the basis for the determination.

(c) The institution may submit a written appeal to the Commissioner of Higher Education within thirty (30) ~~[30]~~ business days of receiving notification of an overallocation. The institution may attach any data or other written documentation that supports its appeal. The Commissioner of Higher Education shall review the appeal and determine in his or her sole discretion whether to affirm, deny, or modify the determination of overallocation within thirty (30) ~~[30]~~ business days of receipt. The Commissioner of Higher Education or Chief Audit Executive shall make an annual report of overallocation determinations to the Board.

(d) If the institution does not appeal or the Commissioner of Higher Education affirms the determination that an overallocation requiring a funding adjustment has occurred, the Coordinating Board shall recover an amount equal to the amount overallocated to the public junior college through one of the following methods:

(1) The Coordinating Board shall:

(A) withhold an amount equivalent to the overallocation by withholding from subsequent allocations of state funds for the current fiscal year as part of any [the] close out or settle up provisions contained in subchapter U of this chapter, or as otherwise authorized by law of the current fiscal year; or

(B) request and obtain a refund from the public junior college during the current fiscal year an amount equivalent to the amount of the overallocation; or

(C) If the Commissioner of Higher Education in his or her sole discretion determines that the recovery of an overallocation in the current or subsequent fiscal year will have a substantial negative impact on the operations of the institution or the education of students, the Commissioner of Higher Education may instead recover the overallocation pursuant to paragraph (2) of this subsection ~~[subsection (d)(2) of this section]~~.

(2) If the Commissioner of Higher Education in his or her sole discretion determines that an overallocation pursuant to paragraphs (1) or (2) of this subsection ~~[section]~~ was the result of exceptional circumstances reasonably caused by statutory changes to Texas Education Code, Chapters 130 or 130A, and related reporting requirements, the Coordinating Board may recover the overallocation over a period not to exceed the subsequent five fiscal years.

(e) In addition to the recovery of an over-allocation under this section, the Commissioner of Higher Education may establish a corrective action plan for a public junior college that has received an over-allocation of funds.

(f) If the public junior college fails to comply with an agreement to submit a refund established under this section, the Coordinating Board must report to the Comptroller of Public Accounts for recovery pursuant to Texas Education Code, Section 130A.009.

§13.529. Payment of Under-allocated Funds.

If the Commissioner of Higher Education determines that a data reporting error or any other error resulted in an under-allocation of funds, the Coordinating Board shall provide the funds to the institution pursuant to the close-out process in subchapter P, §13.477, of this chapter (relating to Close Out), any close-out or settle up provisions contained in subchapter U [S] of this chapter (relating to Community College Finance Program: Forecasting Methodology and Finance Policy), or as otherwise authorized by law.

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

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Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6548



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

19 TAC §§13.553 - 13.555, 13.559

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 13, Subchapter S, §§13.553 - 13.555, and new rule §13.559, concerning the base tier, performance tier, and the rates for the community college finance program. Specifically, these amendments will set the amount of money allocated in a fiscal year for the base tier at 5 percent and for the performance tier at 95 percent. In addition, these rules adopt monetary rates for each fundable outcome achieved by a community college.

Rules 13.553, Definitions, and 13.554, Base Tier Allotment, contain amendments that would establish a 95 to 5 percent split between total allocations in a fiscal year for performance tier and base tier respectively. The performance tier component of the community college finance system is designed to give community colleges financial incentive for successful completion of certain fundable outcomes, like student transfer, dual credit provision, and attainment of credentials of value. The base tier component of the system provides baseline state support for community colleges depending on ability to raise local funds to support operations. These amendments would carry out legislative intent in implementing the new community college finance program, ensuring that state funding is primarily focused on rewarding outcomes serving state, regional, and workforce needs (Texas Education Code, §130A.001).

Rule 13.555, Performance Tier Funding, sets out the major components of the performance tier: to receive funding, institutions must achieve certain types of fundable outcomes, weighted according to certain characteristics, multiplied by the monetary rate for each fundable outcome set in rule. The proposed amendments clarify that the Coordinating Board will determine institutions' weighted fundable outcome completions based on the better of the average of three fiscal years or the current fiscal year. This feature ensures that community colleges may expect predictability in the expected data projections the Coordinating Board will use to determine funding amounts, while still incentivizing exceptional current performance.

Rule 13.559, Performance Tier: Rates, sets the monetary rates for each type of fundable outcome achieved by an institution. These fundable outcomes include the conferring of fundable credentials (including associate degrees, bachelor's degrees, and many types of workforce credentials), the credential of value premium, student completion of 15 dual credit hours, and successful student transfer to a public four-year institution. Rates are generally maintained for consistency with those set for fiscal year 2024 formula funding, with the exception of dual credit attainment and occupational skills awards (OSAs). The dual credit outcome rate is increased to match the transfer outcome rate to reflect the efficacy of dual credit at preparing high school students to enter postsecondary education and avoid penalizing colleges when dual credit students enroll at other institutions after high school. The OSA rate is increased to match the rate for the institutional credential leading to licensure and certification (ICLC) to equally fund the conferral of these two short-term workforce credential types.

The rate for third-party credentials, a new fundable outcome, is set at the same rate as the other short-term workforce credentials. The rate for the Opportunity High School Diploma, another new fundable outcome, is set to match the transfer fundable outcome rate. Rates for the new credential of value premiums are set at 25 percent of the rate for each credential of value baseline to which they apply to reflect the added expenditures for financial aid and other student support that may be associated with helping students complete credentials more quickly and with lower costs.

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

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

Emily Cormier, Assistant Commissioner for Funding, has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering the section will be the implementation of legislative intent by fixing specific percentages for base tier funding and performance tier funding under the community college finance program and setting monetary rates for fundable outcomes. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

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

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

The amendments are proposed under Texas Education Code, Section 130A.005, which provides the Coordinating Board with the authority to adopt rules as necessary to implement and administer the community college finance program.

The proposed amendments affect Texas Education Code, Chapter 130A.

§13.553. *Definitions.*

The following words and terms, when used in this subchapter, shall have the following meanings:

(1) **Academically Disadvantaged**--A designation that applies to postsecondary students who have not met the college-readiness standard in one or more Texas Success Initiative (TSI) assessments as provided by §4.57 of this title (relating to Texas Success Initiative Assessment College Readiness Standards), and who were not classified as either waived or exempt pursuant to §4.54 of this title (relating to Exemption).

(2) **Adult Learner**--A student aged 25 or older on September 1 of the fiscal year for which the applicable data are reported, in accordance with Coordinating Board data reporting requirements.

(3) **Advanced Technical Certificate (ATC)**--A certificate that has a specific associate or baccalaureate degree or junior level standing in a baccalaureate degree program as a prerequisite for admission. An ATC consists of at least 16 semester credit hours (SCH) and no more than 45 SCH and must be focused, clearly related to the prerequisite degree, and justifiable to meet industry or external agency requirements.

(4) **Associate Degree**--An academic associate degree as defined under Texas Education Code, §61.003(11), or an applied associate degree as defined under Texas Education Code, §61.003(12)(B).

(5) **Baccalaureate Degree**--A degree program that includes any grouping of subject matter courses consisting of at least 120 SCH which, when satisfactorily completed by a student, will entitle that student to an undergraduate degree from a public junior college.

(6) **Base Tier Funding**--The amount of state and local funding determined by the Board for each public junior college that ensures the college has access to a defined level of funding for instruction and operations.

(7) **Base Year**--The time period comprising the year of contact hours used for calculating the contact hour funding to public junior colleges. The Base Year for a funded fiscal year consists of the reported Summer I and II academic term from the fiscal year two years prior to the funded fiscal year; the Fall academic term one fiscal year prior to the funded fiscal year; and the Spring academic term one fiscal year prior to the funded fiscal year.

(8) **Basic Allotment**--A calculation of the dollar value per Weighted FTSE, based on appropriations made in that biennium's General Appropriations Act pursuant to §13.554(c) of this subchapter (relating to Base Tier Allotment).

(9) **Census Date**--The date upon which a college may report a student in attendance for the purposes of formula funding, as specified in the Coordinating Board Management (CBM) manual for the year in which the funding is reported.

(10) **Continuing Education Certificate**--A credential awarded for completion of a program of instruction that meets or exceeds 360 contact hours and earns continuing education units. The certificate program is intended to prepare the student to qualify for employment; to qualify for employment advancement; or to bring the student's knowledge or skills up to date in a particular field or profession; and is listed in an institution's approved program inventory.

(11) **Credential of Value Baseline**--A credential earned by a student that would be expected to provide a positive return on investment. Credential of Value Baseline methodology is described in §13.556 of this subchapter (relating to Performance Tier: Fundable Outcomes).

(12) **Credential of Value Premium Fundable Outcome**--A fundable outcome earned by an institution for a credential earned by a student that would be expected to provide a wage premium. Credential of Value Premium methodology is described in §13.556 of this subchapter.

(13) **Credentialing Examination**--A licensure or registration exam required by a state or national regulatory entity or a certification exam required by an authorized professional organization. An authorized professional organization is a national, industry-recognized organization that sets occupational proficiency standards, conducts examinations to determine candidate proficiency, and confers an industry-based certification.

(14) **Dual Credit or Dual Enrollment Fundable Outcome**--An outcome achieved when a student earns at least 15 SCH or the equivalent of fundable dual credit or dual enrollment courses, defined as follows:

(A) Courses that qualify as dual credit courses as defined in §4.83(10) of this title (relating to Definitions); and:

(i) In fiscal year 2025 or later, apply toward an academic or career and technical education program requirement at the postsecondary level; or

(ii) In fiscal Year 2025 or later are completed by a student who graduates with a Texas First Diploma, as codified in chapter 21, subchapter D of this title (relating to Texas First early high school completion program).

(B) All dual credit courses taken by a student enrolled in an approved Early College High School program, as provided by Texas Education Code, §28.009, except a physical education course taken by a high school student for high school physical education credit.

(15) **Economically Disadvantaged**--A designation that applies to postsecondary students who received the federal Pell Grant under 20 U.S.C. §1070a.

(16) **Equivalent of a Semester Credit Hour**--A unit of measurement for a continuing education course, determined as a ratio of one continuing education unit to 10 contact hours of instruction, which may be expressed as a decimal. One semester credit hour of instruction equals 1.6 continuing education units of instruction. In a continuing education course, not fewer than 16 contact hours are equivalent to one semester credit hour.

(17) **Formula Funding**--The funding allocated by the Coordinating Board among all public junior colleges by applying provisions of the Texas Education Code, agency rule, and the General Appropriations Act to a sector-wide appropriation from the General Appropriations Act.

(18) **Full-Time Student Equivalent (FTSE)**--A synthetic measure of enrollment based on the number of instructional hours delivered by an institution of higher education divided by the number of hours associated with full-time enrollment for the time period in question.

(19) **Fundable Credential**--As defined in §13.556(b) of this subchapter.

(20) **Fundable Outcome Weights**--A multiplier applied to eligible fundable outcomes to generate a Weighted Outcome Completion for use in determining the Performance Tier allocation. The methodology for each Fundable Outcome Weight is defined in §13.557 of this subchapter (relating to Performance Tier: Fundable Outcome Weights).

(21) High-Demand Fields--A field in which an institution awards a credential that provides a graduate with specific skills and knowledge required for the graduate to be successful in a high-demand occupation, based on the list of high-demand fields as defined in subchapter T of this chapter (relating to Community College Finance Program: High-Demand Fields).

(22) Institutional Credentials Leading to Licensure or Certification (ICLC)--A credential awarded by an institution upon a student's completion of a course or series of courses that represent the achievement of identifiable skill proficiency and leading to licensure or certification. This definition includes a credential that meets the definition of an Occupational Skills Award in all respects except that the program may provide training for an occupation that is not included in the Local Workforce Development Board's Target Occupations list.

(23) Level 1 Certificate--A certificate designed to provide the necessary academic skills and the workforce skills, knowledge, and abilities necessary to attain entry-level employment or progression toward a Level 2 Certificate or an Applied Associate Degree, with at least 50% of course credits drawn from a single technical specialty. A Level 1 Certificate must be designed for a student to complete in one calendar year or less time and consists of at least 15 semester credit hours and no more than 42 semester credit hours.

(24) Level 2 Certificate--A certificate consisting of at least 30 semester credit hours and no more than 51 semester credit hours. Students enrolled in Level 2 Certificates must demonstrate meeting college readiness standards set forth in §4.57 of this title and other eligibility requirements determined by the institution.

(25) Local Share--The amount determined to be the institution's contribution of local funds to the Instruction and Operations (I&O) amount for each public junior college. The amount consists of estimated ad valorem maintenance and operations tax revenue and tuition and fees revenue, as determined by the Board.

(26) Non-Formula Support Item--An amount appropriated by line item in the General Appropriations Act to a single public junior college or limited group of colleges for a specific, named purpose.

(27) Occupational Skills Award (OSA)--A sequence of courses that meet the minimum standard for program length specified by the Texas Workforce Commission for the federal Workforce Innovation and Opportunity Act (WIOA) program (9-14 SCH for credit courses or 144-359 contact hours for workforce continuing education courses). An OSA must possess the following characteristics:

(A) The content of the credential must be recommended by an external workforce advisory committee, or the program must provide training for an occupation that is included on the Local Workforce Development Board's Target Occupations list;

(B) In most cases, the credential should be composed of Workforce Education Course Manual (WECM) courses only. However, non-stratified academic courses may be used if recommended by the external committee and if appropriate for the content of the credential;

(C) The credential complies with the Single Course Delivery guidelines for WECM courses; and

(D) The credential prepares students for employment in accordance with guidelines established for the Workforce Innovation and Opportunity Act.

(28) Opportunity High School Diploma Fundable Outcome--An alternative means by which adult students enrolled in a workforce program at a public junior college may earn a high school

diploma at a college through concurrent enrollment in a competency-based program, as codified in Texas Education Code, chapter 130, subchapter O, and Texas Administrative Code, Title 19, Part 1, Chapter 12.

(29) Semester Credit Hour (SCH)--A unit of measure of instruction, represented in intended learning outcomes and verified by evidence of student achievement, that reasonably approximates one hour of classroom instruction or direct faculty instruction and a minimum of two hours out of class student work for each week over a 15-week period in a semester system or the equivalent amount of work over a different amount of time. An institution is responsible for determining the appropriate number of semester credit hours awarded for its programs in accordance with Federal definitions, requirements of the institution's accreditor, and commonly accepted practices in higher education.

(30) Structured Co-Enrollment Fundable Outcome--A student who earns at least 15 semester credit hours at the junior college district in a program structured through a binding written agreement between a general academic teaching institution and a community college. Under such a program, students will be admitted to both institutions and recognized as having matriculated to both institutions concurrently. The Structured Co-enrollment Fundable Outcome does not include courses fundable under the Dual Credit or Dual Enrollment Fundable Outcome.

(31) Third-Party Credential--A certificate as defined in Texas Education Code, §61.003(12)(C), that is conferred by a third-party provider. The third-party provider of the certificate develops the instructional program content, develops assessments to evaluate student mastery of the instructional content, and confers the third-party credential. A third-party credential that meets the requirements of §13.556 of this subchapter is fundable in accordance with that section.

(32) Transfer Fundable Outcome--An institution earns a fundable outcome in the Performance Tier under §13.555 of this subchapter (relating to Performance Tier Funding) when a student enrolls in a general academic teaching institution, as defined in Texas Education Code, §61.003, after earning at least 15 semester credit hours from a single public junior college district as established under §13.556(e) of this subchapter. For the purpose of this definition, semester credit hours (SCH) shall refer to semester credit hours or the equivalent of semester credit hours.

(33) Weighted Full-Time Student Equivalent (Weighted FTSE or WFTSE)--A synthetic measure of enrollment equal to the number of instructional hours delivered by an institution of higher education divided by the number of hours associated with full-time enrollment for the fiscal year two years prior to the one for which formula funding is being calculated, where the hours delivered to students with certain characteristics carry a value other than one.

(34) Weighted Outcomes Completion--A synthetic count of completions of designated student success outcomes where outcomes achieved by students with certain characteristics carry a value other than one. The synthetic count may also represent a calculation, such as an average or maximizing function, other than a simple sum.

§13.554. *Base Tier Allotment.*

(a) Coordinating Board staff will calculate Base Tier funding for each public junior college district (district) as the greater of the Instruction and Operations (I&O) amount minus Local Share and zero.

(b) A district's I&O amount is the sum of the number of Weighted Full-Time Student Equivalents (Weighted FTSE) enrolled at the district multiplied by the Basic Allotment amount calculated

by the Commissioner of Higher Education as provided in subsection (c) of this section and the district's total Contact Hour Funding as determined by the Coordinating Board.

(1) Weighted FTSE for each district is the sum of the district's full-time student equivalents weighted for the student characteristics under subparagraph (B) of this paragraph and the scale adjustment as provided in Texas Education Code, §130A.054.

(A) For purposes of determining annual Weighted FTSE as a component of formula funding for the fiscal year under this section, a district's full-time student equivalents (FTSE) is equal to the sum of:

(i) the total semester credit hours in which for-credit students were enrolled at the district as of the census dates of all academic semesters or other academic terms that were reported for the fiscal year two years prior, divided by 30; and

(ii) the total contact hours in which continuing education students were enrolled at the district as of the census dates of all academic semesters or other academic terms that were reported for the fiscal year two years prior, divided by 900.

(B) The Coordinating Board shall apply a weight to the calculation of Weighted FTSE as follows:

(i) if a student is classified as economically disadvantaged during the fiscal year two years prior, FTSE generated by that student shall have an additional value of 25%;

(ii) if a student is classified as academically disadvantaged during the fiscal year two years prior, FTSE generated by that student shall have an additional value of 25%; and

(iii) if a student is classified as an adult learner on September 1 of the fiscal year two years prior, FTSE generated by that student shall have an additional value of 50%.

(C) The Coordinating Board calculates a district's scale adjustment weight as the greater of the difference between 5,000 and the number of FTSE as defined in subparagraph (A) of this paragraph multiplied by .40, and zero.

(2) For the purpose of calculating formula funding amounts for the fiscal year, Coordinating Board staff will calculate Contact Hour Funding for a public junior college district by first multiplying the number of reported certified fundable contact hours generated by the district in each discipline during the Base Year of the fiscal year by the average cost of delivery per contact hour for each discipline respectively as described in the Report of Fundable Operating Expenses in accordance with §13.524(c) of this chapter (relating to Required Reporting) and summing across all disciplines. Contact hours attributable to students enrolled in a junior-level or senior-level course are weighed in the same manner as a lower division course in a corresponding field. That sum will then be multiplied by a rate calculated by the Commissioner of Higher Education as provided in subsection (c) of this section in accordance with the General Appropriations Act to calculate the district's Contact Hour Funding.

(c) For purposes of determining the rate to be used for the Basic Allotment and the rate to be used for calculating districts' Contact Hour Funding, the Commissioner shall calculate the Basic Allotment and the rate to be used for calculating districts' Contact Hour Funding such that the rates necessary to maintain an equal split between: [Contact Hour Funding and Basic Allotment Funding for the fiscal year.]

(1) Contact Hour Funding and is equivalent to Basic Allotment Funding for the fiscal year; and

(2) The sum of base tier funding to all districts for the fiscal year equals one-nineteenth of the sum of performance tier foundation payments calculated using funding certified data as described in subchapter U of this chapter (relating to Community College Finance Program: Forecasting Methodology and Finance Policy) by June 1 prior to the fiscal year.

(3) The Commissioner may modify the base tier funding on a pro rata basis in accordance with this subsection to account for any changes to performance tier totals arising from any amendments to rule adopted by the Board between June 1 and the beginning of the fiscal year.

(d) For the purpose of calculating formula funding amounts for the fiscal year, the Local Share for each public junior college district equals the sum of:

(1) the estimated amount of revenue that would have been generated by the district if it had assessed a \$0.05 maintenance and operations ad valorem tax on each \$100 of taxable property value in its taxing district, as reported under §13.524 of this chapter, which the Coordinating Board will calculate as the district's current tax collection for fiscal year two years prior multiplied by the ratio of the maintenance and operations tax rate to the total tax rate, divided by the product of the maintenance and operations tax rate and 100 and multiplied by five; and

(2) the amount of tuition and fee revenue calculated as the sum of:

(A) the district's FTSE two fiscal years prior as defined in subsection (b)(1)(A) of this section, except for semester credit hours derived from students enrolled in dual credit or dual enrollment courses, multiplied by a rate calculated by the Commissioner of Higher Education, which is the enrollment-weighted statewide average of tuition and fees charges to full-time equivalent students residing within the district of the public junior college they attend, as reported by the public junior colleges in the Integrated Fiscal Reporting System for the fiscal year two fiscal years prior; and

(B) the total semester credit hours of dual credit courses in which students were enrolled as of the census dates of all academic semesters or other academic terms that were reported in the fiscal year two years prior, multiplied by the Financial Aid for Swift Transfer (FAST) tuition rate as codified in §13.504 of this chapter (relating to Financial Aid for Swift Transfer (FAST) Tuition Rate) in the fiscal year two years prior. For fiscal year 2023, the FAST tuition rate is equal to the rate for fiscal year 2024.

§13.555. Performance Tier Funding.

(a) Each public junior college district shall receive Performance Tier funding under Texas Education Code, chapter 130A, subchapter C. A district increases its Performance Tier funding amount by producing Fundable Outcomes, with Fundable Outcomes achieved in certain categories eligible for an additional multiplier (Fundable Outcome Weights), as calculated by the Coordinating Board. A Fundable Outcome multiplied by the Fundable Outcome Weight constitutes a Weighted Outcome Completion. A district's Performance Tier funding amount equals the total of each Weighted Outcome Completion multiplied by the funding rates for that completion, as identified in §13.559 of this subchapter (relating to Performance Tier: Rates). Funding rates include an additional weight for fundable credentials delivered in a high-demand field.

(b) Fundable Outcomes. Section 13.556 of this subchapter (relating to Performance Tier: Fundable Outcomes) defines each Fundable Outcome type, including the methodology used to calculate each outcome.

(c) Fundable Outcome Weight. Section 13.557 of this subchapter (relating to Performance Tier: Fundable Outcome Weights) and subchapter T of this chapter (relating to Community College Finance Program: High-Demand Fields) define each Fundable Outcome Weight type, including the methodology used to calculate each outcome. Fundable Outcome Weights consist of the following categories:

- (1) Fundable Outcomes achieved by economically disadvantaged students;
- (2) Fundable Outcomes achieved by academically disadvantaged students; and
- (3) Fundable Outcomes achieved by adult learners.

(d) For the purposes of calculating Weighted Outcome Completions for formula funding amounts for a fiscal year, the Coordinating Board shall calculate the funded number of Weighted Outcome Completions as the greater of the average of the district's Weighted Outcome Completion counts for the fiscal year being funded and two fiscal years prior, as calculated by subchapter U of this chapter (relating to Community College Finance Program: Forecasting Methodology and Finance Policy), and the count for the fiscal year being funded, as calculated according to subchapter U.

(e) Fundable Outcome Rates. Section 13.558 of this subchapter (relating to Performance Tier: High-Demand Fields) and §13.559 of this subchapter (relating to Performance Tier: Rates) defines fundable outcomes awarded in a high-demand field and the rates for each fundable outcome, including the higher rate for fundable credentials awarded in a high demand field.

§13.559. Performance Tier: Rates.

An institution receives the following rate for each fundable outcome, weighted according to the applicable provisions of §13.557 of this subchapter (relating to Performance Tier: Fundable Outcome Weights). Figure: 19 TAC §13.559

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

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Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6548



SUBCHAPTER S. COMMUNITY COLLEGE FINANCE PROGRAM

19 TAC §§13.560 - 13.562

The Texas Higher Education Coordinating Board (Coordinating Board) proposes the repeal of Texas Administrative Code, Title 19, Part 1, Chapter 13, Subchapter S, §§13.560 - 13.562, concerning formula transition funding, payment schedules, and limitations on spending. Specifically, this repeal will reorganize rules relating to public junior college finance in order to group rules by thematic content. The Coordinating Board intends to adopt a separate forthcoming subchapter relating to financial allocations for public junior colleges; this forthcoming chapter will contain the content of the rules proposed for repeal instead.

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

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

Emily Cormier, Assistant Commissioner for Funding, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be to improve readability of the rules through reorganization, by categorizing all rules related to financial allocations for the public junior college finance system in a forthcoming separate subchapter. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

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

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

The repeal is proposed under Texas Education Code, Section 130A.005, which provides the Coordinating Board with the authority to adopt rules and take other actions consistent with Texas Education Code, Chapter 61, Chapter 130, and Chapter 130A to implement Tex. H.B. 8, 88th Leg., R.S. (2023).

The proposed repeal affects Texas Education Code, Sections 130.0031 and 130A.007.

§13.560. Formula Transition Funding.

§13.561. Payment Schedule.

§13.562. Limitations on Spending.

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

Filed with the Office of the Secretary of State on May 17, 2024.

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SUBCHAPTER U. COMMUNITY COLLEGE FINANCE PROGRAM: FORECASTING METHODOLOGY AND FINANCE POLICY

19 TAC §§13.620 - 13.630

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new rules in Texas Administrative Code, Title 19, Part 1, Chapter 13, Subchapter U, §§13.620 - 13.630, concerning timeline of payments, methodologies, and processes necessary to calculate state formula funding for public community colleges. Specifically, these new sections will establish the structure necessary for a dynamic payment system, including parameters for forecasting and payment schedules for the coming fiscal years. The new dynamic payment system will minimize both the lag time between when colleges achieve fundable outcomes and when they receive performance funding and the impact from the changes to state funding that may result.

Rule 13.620, Purpose, states the purpose of the subchapter, which is to establish definitions, timeline of payments, methodologies, and other processes necessary to calculate and distribute formula funding to community colleges.

Rule 13.621, Authority, states the authority for the subchapter, contained in Texas Education Code, §130A.005. This provision allows the Coordinating Board to adopt rules to implement the State Public Junior College Finance Program, with relevant provisions in Texas Education Code, Chapters 61, 130, and 130A.

Rule 13.622, Applicability, establishes that, unless otherwise provided, the version of Subchapter U that was applicable to a fiscal year's formula funding is applicable to any adjustments to that funding that may be made during the subsequent fiscal year. This provides a reliable basis for colleges to estimate the future funding implications of strategic investments and programming decisions.

Rule 13.623, Definitions, list the definitions pertinent to the timeline of payments, forecasting outcomes, and the calculation of payments. The definitions include:

Certified Outcomes are the number of times a fundable outcome, as defined by Subchapter S, has occurred for a given year according to certified data.

Close Out Adjustment is defined as the amount of change between forecasting-based formula funding, inclusive of adjustments, and formula funding recalculated using entirely actual outcomes data instead of forecasted outcomes. This adjustment is applied to the first formula payment of the subsequent fiscal year.

Dynamic Adjustment is the update to the forecast-based formula funding for the current fiscal year that, if positive, is applied to the second of three payments in a fiscal year using more recent actual outcomes data to replace some forecasted outcomes and reforecast others.

Fundable Certified Data is data after May 1 of a fiscal year used to calculate formula funding for the next fiscal year. This is distinct from Certified Outcomes because institutions may correct their certified data after they submit it to the Coordinating Board. May 1 is a reasonable, operationally necessary deadline for these corrections to end, enabling official formula funding calculations to begin.

Foundation Payment is the term used to describe the sum of Base Tier and Performance Tier funding for a community college district in a fiscal year.

Error Adjustment is a correction to formula funding that takes place after the Close Out Adjustment.

Institution and Public Junior College are terms used to refer to the public community colleges.

Preliminary Outcomes are those outcomes used to calculate the dynamic adjustment, which is a mid-year correction to formula funding using less forecasted data and more actual data.

Settle Up Adjustment is the update to forecasting-based formula funding for the prior fiscal year that, if positive, is applied to the second of three payments in a fiscal year using more recent actual outcomes data to replace some forecasted outcomes and reforecast others.

Rule 13.624, Forecasting Fundable Outcomes, establishes the methodology by which fundable outcomes are forecasted. The methodology is time series projection with additive exponential triple smoothing towards the regression line where the independent variable is the year and the dependent variable is the performance for a given outcome. This method puts additional weight on more recent outcomes and accounts for seasonal patterns. The forecasted outcomes are bounded such that they cannot increase by more than 10 percent or decrease by 5 percent relative to the previous year, with an exception to provide an estimate when the value for the previous year is zero. Forecasts for the outcomes subtypes Academic Disadvantage, Economic Disadvantage, Adult Learner, and High-Demand Field assume that the ratio of total outcomes to each subtype outcome in the historical data is the same for the forecasted years.

Rule 13.625, Schedule and Composition of Payments for Fiscal Year 2025, establishes the specific structure of payments for FY 2025. For FY 2025 all non-formula funding would be distributed by September 25. Formula funding would be distributed in three payments: 50 percent of total formula funding in October (inclusive of any FY 2024 Close Out Adjustment amounts), 25 percent in February (inclusive of the FY 2025 Dynamic Adjustment), and 25 percent in June. The June payment may be prorated to bring total formula funding within legislative appropriation for community college formula funding. The addition of the Dynamic Adjustment in the spring payment creates a financial feedback mechanism at the earliest opportunity under the data collection timeline while avoiding undue disruption to college operations.

Rule 13.626, Schedule and Composition of Payments for Fiscal Year 2026, establishes the specific structure of payments for the indicated fiscal years. For FY 2026 all non-formula funding would be distributed by September 25. Formula funding would be distributed in three payments; 50 percent of total formula funding in October (inclusive of any FY 2025 Projected Settle Up Adjustment amounts), 25 percent in February (inclusive of the Dynamic Adjustment and FY 2025 Settle Up Adjustment amounts), and 25 percent in June. The rule establishes that the

Commissioner of Higher Education may adjust any payment under this schedule to ensure that a college receives the amount it is entitled to. The addition of the Projected Settle Up Adjustment in the fall payment creates the first instance when formula funding can be reduced in response to performance that fails to meet projections. It includes two key safeguard features: it uses only fundable certified outcomes, whereas mid-year, positive-only adjustments can be made with preliminary outcomes; and it is applied to the first payment of a fiscal year, providing colleges with adequate notice of their upcoming funding for budget and planning purposes.

Rule 13.627, Schedule and Composition of Payments Beginning Fiscal Year 2027, establishes the specific structure of payments for all fiscal years beginning in FY 2027. All non-formula funding would be distributed by September 25. Formula funding would be distributed in three payments; 50 percent of total formula funding in October (inclusive of any prior-year Projected Settle Up Adjustment amounts and Close Out Adjustments from two years prior), 25 percent in February (inclusive of the Dynamic Adjustment and prior-year Settle Up Adjustment amounts), and 25 percent in June. The June payment may be prorated to bring total formula funding within the amount appropriated by the legislature for community college formula funding. The Close Out Adjustment in the first payment provides the final alignment between the sum of performance payments and adjustments for the fiscal year two years prior and performance funding based entirely on fundable certified outcomes data from that year.

Rule 13.628, Substantial Negative Impacts, establishes that the Commissioner of Higher Education may apply required reductions in performance funding over a longer period of time as governed by the data error policy should the Commissioner of Higher Education determine that the standard settle-up or close-out process would have a substantial negative impact on an institution's operations or students.

Rule 13.629, Formula Transition Funding, establishes that after calculating the base tier and performance tier funding for each community college, the Coordinating Board shall ensure that a community college district does not receive less in formula funding in FY 2025 than it received in FY 2023 appropriations for formula funding (contact hours, success points, core operations, and bachelor's of applied technology funding) and need-based supplements. The proposed new rule moves an existing formula transition funding provision from Subchapter S to Subchapter U, as the subject matter more closely pertains to payment provisions. This provision smooths the transition from the prior system of formula funding predominantly based on contact hour generation to the new system of performance-based funding. It ensures that no institution will experience a significant detrimental impact on its operations as the new system adjusts funding and moves to outcome-driven performance.

Rule 13.630, Limitations on Spending, describes the restrictions on how community college districts may expend state-appropriated funds, in alignment with state statute (Texas Education Code, §130.003(c); General Appropriations Act, 88th Leg. R.S., H.B. 1, art. III-231, ch. 1170, Rider 14). The Coordinating Board proposes this provision in response to requests from stakeholders for greater clarification of permissible expenditures. The proposed new rule moves existing limitations on spending provision from Subchapter S to Subchapter U, as the subject matter more closely pertains to payment-related provisions.

Emily Cormier, Assistant Commissioner for Funding, has determined that for each of the first five years the sections are in

effect there could be fiscal implications for state appropriations depending on overall performance and student outcomes in the system as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rules. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

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

Emily Cormier, Assistant Commissioner for Funding, has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering the sections will be to establish a forecasting methodology and dynamic payment system for community colleges, and therefore minimizing the lag time between when colleges achieve fundable outcomes and when they receive performance funding and the impact from the changes to state funding that may result. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

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

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

The new sections are proposed under Texas Education Code, Section 130A.005, which provides the Coordinating Board with the authority to adopt rules to carry out the Public Junior College State Finance Program.

The proposed new sections affect Texas Education Code, Chapter 130A, and Sections 61.059 and 130.0031.

§13.620. Purpose.

The purpose of this subchapter is to establish the definitions, timeline of payments, methodologies, and processes necessary to calculate and distribute state formula funding under the State Public Junior College Finance Program (the Program).

§13.621. Authority.

The Coordinating Board adopts this subchapter pursuant to Texas Education Code, §130A.005, requiring the Coordinating Board to adopt

rules to implement the Community College Finance Program created in Texas Education Code, chapters 61, 130, and 130A.

§13.622. Applicability.

Unless otherwise provided, the Coordinating Board shall apply the rules in effect during a fiscal year to any payment adjustment based on differences between prior payments and payments recalculated as provided by this subchapter, including any adjustment made after the fiscal year has ended.

§13.623. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings:

(1) Certified Outcomes--Data reported by each institution for the number of fundable outcomes, or used to calculate the number of fundable outcomes, as defined by subchapter S of this chapter (relating to Community College Finance Program: Base and Performance Tier Methodology), generated in a prior fiscal year as required by a Coordinating Board rule, reporting manual, or other data submission instructions.

(2) Close-Out Adjustment--The amount added to or subtracted from the first formula funding payment made to a public junior college in a fiscal year to account for variance between the sum of all foundation payments and adjustments for a prior fiscal year and the recalculation of the performance tier portion of the foundation payment, in accordance with §13.555 of this chapter (relating to Performance Tier Funding), for the fiscal year based exclusively on fundable certified outcomes data. The first application of the close out adjustment will be to FY 2027 funding based on variance in FY 2025 funding.

(3) Dynamic Adjustment--The amount added to the second formula funding payment made to a public junior college in a fiscal year in the amount by which the foundation payment for that fiscal year as initially calculated is less than the recalculation of the foundation payment using data, including preliminary outcomes data, that have become available since the initial calculation. Dynamic adjustments may not be a negative amount.

(4) Error Adjustment--An ad hoc funding adjustment made by the Coordinating Board after the close-out adjustment to account for data or processing errors discovered after the close-out adjustment, as authorized by subchapter R of this chapter (relating to State Public Junior College Finance Program: Reporting, Audit, and Overallocation).

(5) Foundation Payment--The total of the base and performance tier payments to which a public junior college may be entitled for a given fiscal year, calculated by application of methodologies prescribed in subchapter S of this chapter (relating to Community College Finance Program: Base and Performance Tier Methodology). The Commissioner of Higher Education shall calculate the foundation payment for a fiscal year at the level calculated as of June 1 prior to the start of the fiscal year unless the Commissioner of Higher Education determines that calculation on that date could result in inaccurate funding to one or more institutions.

(6) Fundable Certified Data--Data reported by a public junior college for which both the certification date specified in the applicable rule or reporting manual or other data submission instructions and the date of May 1 of the current fiscal year have passed. The Coordinating Board shall use Fundable Certified Data as of May 1 of the current fiscal year to calculate the foundation payment amount for the next fiscal year.

(7) Institution--In this subchapter, means a public junior college, public junior college district, or community college as defined in Texas Education Code, chapters 130 or 130A, unless expressly provided otherwise.

(8) Preliminary Outcomes--The Coordinating Board shall calculate the preliminary outcomes based on data on the number of fundable outcomes reported by public junior colleges generated in the prior year for the purpose of calculating the dynamic adjustment and settle-up adjustment.

(9) Public Junior College--In this subchapter, means a public junior college, public junior college district, or community college as defined in Texas Education Code, chapters 130 or 130A, unless expressly provided otherwise.

(10) Settle-Up Adjustment--The amount added or subtracted to a college's current-year funding to account for variance between the prior-year foundation payment plus dynamic adjustment and the recalculation of the prior-year foundation payment based on preliminary data from the prior year itself. The Settle-Up Adjustment first applies to FY 2026 when the FY 2025 forecast is compared to FY 2025 preliminary outcomes.

§13.624. Forecasting Fundable Outcomes.

(a) Purpose. The purpose of this section is to establish the methodology for forecasting fundable performance outcomes to calculate performance tier funding amounts covering a time period for which performance data are not yet available. The Coordinating Board shall forecast each fundable performance outcome as defined under §13.556 of this chapter (relating to Performance Tier: Fundable Outcomes), except those set out under §13.553(28) and (31) of this chapter (relating to Definitions) for each public junior college using historical performance data. The Coordinating Board shall use these figures to calculate each performance tier payment for the funded fiscal year as established under §13.555 of this chapter (relating to Performance Tier Funding).

(b) Methodology. The Coordinating Board shall forecast the total annual count of a fundable performance outcome for a public junior college using the exponential triple smoothing method of trend analysis with additive error, trend, and seasonality parameters applied to time series data. This time series data shall use fundable certified data with the counts of fundable outcomes achieved annually by the public junior college during no fewer than the six most recent years for which data are available except as otherwise provided by subsection (c) of this section.

(c) Other time series data. The time series data for forecasting Occupational Skills Awards and Institutional Credentials Leading to Licensure or Certification shall use fundable certified data with the counts of each fundable outcome achieved annually by a public junior college during no fewer than the four most recent fiscal years for which data are available.

(d) Bounded projections. The forecasted total annual count of a fundable performance outcome for a fiscal year shall not exceed 110 percent nor be less than 95 percent of the count for the prior year. If the count for the prior year is also a forecasted value, then the maximum allowable change for the current year shall be calculated against the prior year's forecasted value as adjusted pursuant to this rule. If the value for a fundable performance outcome for the most recent actual, not forecasted data is zero, the forecast shall not be bounded in the next fiscal year. In no circumstances may an estimated fundable performance outcome be negative.

(e) As provided by §13.556 of this chapter, the Coordinating Board shall forecast the number of each fundable credential in a high-demand field, as defined under subchapter T of this chapter (relating to Community College Finance Program: High-Demand Fields), for a fiscal year by multiplying the average annual percentage of the credential conferred in a high-demand field in the credential's time series data by the total count of the credential forecast to be conferred in that year.

(f) As provided by §13.556 of this chapter, the Coordinating Board shall forecast the number of each fundable credential conferred to students who are academically disadvantaged, economically disadvantaged, and adult learners, as provided by §13.557 of this chapter (relating to Performance Tier: Fundable Outcome Weights), for a fiscal year by multiplying the average percentage of the credential conferred by the institution to students in each respective subgroup in the credential's time series data by the total count of the credential forecast to be conferred by the institution in that year.

§13.625. Schedule and Composition of Payments for Fiscal Year 2025.

(a) Non-Formula Support Items. For the purpose of distributing state appropriations to a public junior college in fiscal year 2025, the Coordinating Board shall distribute the full amount of all fiscal year non-formula support items appropriated to the institution in accordance with the provisions of the General Appropriations Act in effect for the biennium by September 25 of the fiscal year. The Coordinating Board shall recover any overallocation or adjust any installment required to comply with state law or Board rules.

(b) Formula Funding Amounts: Fall. For the purpose of distributing state appropriations to an institution in fiscal year 2025, the Coordinating Board shall distribute to each institution by October 15:

(1) FY 2025 Foundation payment: one-half of the foundation payment the Coordinating Board determines the institution may be entitled to receive in fiscal year 2025, including:

(A) Base tier funding for fiscal year 2025;

(B) Performance tier funding calculated using fundable certified performance outcomes data from fiscal year 2023; and

(C) Performance outcomes for fiscal years 2024 and 2025 forecasted pursuant to §13.624 of this subchapter (relating to Forecasting Fundable Outcomes).

(2) FY 2024 Close Out: In accordance with §13.477 of this part (relating to Close Out), the Coordinating Board shall close out fiscal year 2024.

(c) Formula Funding Amounts: Spring. For the purpose of distributing state appropriations to a public junior college in fiscal year 2025, the Coordinating Board shall distribute to each district by February 15, 2025:

(1) FY 2025 Foundation Payment: one-quarter of the foundation payment as described in subsection (b)(1) of this section.

(2) FY 2025 Dynamic Adjustment: the full positive amount by which the performance tier funding of the foundation payment as provided by subsection (b)(1) of this section is less than a calculation of performance tier funding using:

(A) fundable certified performance outcomes data from fiscal year 2023;

(B) preliminary outcomes data from 2024; and

(C) performance outcomes for all other elements for fiscal years 2024 and 2025 forecasted pursuant to §13.624 of this subchapter.

(d) Formula Funding Amounts: Summer. For the purpose of distributing state appropriations to a public junior college in fiscal year 2025, the Coordinating Board shall distribute to each junior college by a date as soon as is practicable after June 15, in accordance with the appropriations process, one-quarter of the foundation payment as described in subsection (b)(1) of this section, which amount may be multiplied by a number less than one as necessary to prevent formula fund-

ing distributions to institutions from exceeding state appropriations for such purpose, pursuant to the provisions of the General Appropriations Act, Texas Education Code, and all other applicable statutes and rules.

(e) The Commissioner of Higher Education may modify any installment under this schedule as necessary to provide an institution with the amount to which the institution is entitled under Texas Education Code, chapters 130 and 130A, the General Appropriations Act, a supplemental appropriations act, or chapter 13 of this title.

§13.626. Schedule and Composition of Payments for Fiscal Year 2026.

(a) Non-Formula Support Items. For the purpose of distributing state appropriations to a public junior college in fiscal year 2026, the Coordinating Board shall distribute the full amounts of all fiscal year 2026 non-formula support items appropriated to the institution in accordance with the provisions of the General Appropriations Act in effect for the biennium by September 25, 2025, or on a date as required by the General Appropriations Act. The Coordinating Board shall recover any overallocation or adjust any installment required to comply with state law or Board rules.

(b) Formula Funding Amounts: Fall. For the purpose of distributing state appropriations to a public junior college in fiscal year 2026, the Coordinating Board shall distribute to each district by October 15, 2025:

(1) FY 2026 Foundation Payment: one-half of the foundation payment the Coordinating Board determines the district may be entitled to receive in fiscal year 2026, including:

(A) Base tier funding for fiscal year 2026;

(B) performance tier funding calculated using funding certified performance outcomes data from fiscal year 2024 and performance outcomes for fiscal years 2025 and 2026 forecasted pursuant to §13.624 of this subchapter (relating to Forecasting Fundable Outcomes).

(2) Projected FY 2025 Settle-Up: the Coordinating Board shall add the full amount, including if such amount is a negative number, of:

(A) fiscal year 2025 performance tier funding calculated using fundable certified performance outcomes data from fiscal years 2023 and 2024 and performance outcomes for fiscal year 2025 forecasted pursuant to §13.624 of this subchapter; minus

(B) the sum of performance tier funding payments made under the fiscal year 2025 foundation payments and dynamic adjustment.

(c) Formula Funding Amounts: Spring. For the purpose of distributing state appropriations to a public junior college district in fiscal year 2026, the Coordinating Board shall distribute to each district by February 15, 2026:

(1) FY 2026 Foundation Payment: one-quarter of the foundation payment as described in (b)(1) of this subsection.

(2) FY 2026 Dynamic Adjustment: the full positive amount by which fiscal year 2026 performance tier funding of the foundation payment as described in (b)(1) of this subsection is less than a calculation of performance tier funding using:

(A) funding certified performance outcomes data from fiscal year 2024;

(B) preliminary outcomes data from fiscal year 2025;
and

(C) Performance outcomes for all other required data elements for fiscal years 2025 and 2026 forecasted pursuant to §13.624 of this subchapter.

(3) FY 2025 Settle-Up Adjustment: the full positive amount of the difference between:

(A) fiscal year 2025 performance tier funding calculated using:

(i) fundable certified performance outcomes data from fiscal years 2023 and 2024;

(ii) preliminary outcomes from fiscal year 2025; and

(iii) performance outcomes for all other elements for fiscal year 2025 forecasted pursuant to §13.624 of this subchapter; minus

(B) the sum of performance tier funding payments made under the fiscal year 2025 foundation payments, the fiscal year 2025 dynamic adjustment, and the projected fiscal year 2025 settle-up.

(d) Formula Funding Amounts: Summer. For the purpose of distributing state appropriations to a public junior college district in fiscal year 2026, the Coordinating Board shall distribute to each district by June 15, 2026, one-quarter of the FY 2026 foundation payment as described in (b)(1) of this subsection.

(e) The Commissioner of Higher Education may modify any installment under this schedule as necessary to provide an institution with the amounts to which the institution is entitled under Texas Education Code, chapters 130 and 130A, the General Appropriations Act, a supplemental appropriations act, or chapter 13 of this title (relating to Financial Planning).

§13.627. Schedule and Composition of Payments Beginning Fiscal Year 2027.

(a) Non-Formula Support Items. For the purpose of distributing state appropriations to a public junior college in a fiscal year, the Coordinating Board shall distribute the full amount of all fiscal year non-formula support items appropriated to the institution in accordance with the provisions of the General Appropriations Act in effect for the biennium by September 25 of the fiscal year, or on a date as required by the General Appropriations Act. The Coordinating Board shall recover any overallocation or adjust any installment required to comply with state law or Board rules.

(b) Formula Funding Amounts: Fall. For the purpose of distributing state appropriations to a public junior college district in a fiscal year, the Coordinating Board shall distribute to each district by October 15 of the fiscal year:

(1) Current Fiscal Year Foundation Payment: one-half of the foundation payment the Coordinating Board determines the district may be entitled to receive for the current fiscal year, consisting of base tier funding for the fiscal year and performance tier funding calculated using funding certified performance outcomes data from the fiscal year two years prior to the fiscal year and performance outcomes for the prior and current fiscal years forecasted pursuant to §13.624 of this subchapter (relating to Forecasting Fundable Outcomes).

(2) Projected Prior-Year Settle Up: the Coordinating Board shall add the full amount, including if such amount is a negative number, of:

(A) performance tier funding for the fiscal year prior to the current fiscal year calculated using:

(i) fundable certified performance outcomes data from the fiscal years three and two years prior to the current fiscal year; and

(ii) performance outcomes for the fiscal year prior to the current fiscal year forecasted pursuant to §13.624 of this subchapter; minus

(B) the sum of performance tier funding payments made under the prior fiscal year foundation payments and dynamic adjustment.

(3) Two-Years Prior Close Out: the Coordinating Board shall add the full amount, including if such amount is a negative number, of:

(A) performance tier funding for the fiscal year two years prior to the current fiscal year calculated using fundable certified performance outcomes data from the fiscal years four, three, and two years prior to the current fiscal year; minus

(B) the sum of performance tier funding payments made under the foundation payments, dynamic adjustment, projected settle-up adjustment, and settle-up adjustment for the fiscal year two years prior to the current fiscal year.

(c) Formula Funding Amounts: Spring. For the purpose of distributing state appropriations to a public junior college district in a fiscal year, the Coordinating Board shall distribute to each district by February 15 of the fiscal year:

(1) Foundation Payment: one-quarter of the foundation payment as described in subsection (b)(1) of this section.

(2) Current Year Dynamic Adjustment: the full positive amount by which performance tier funding of the foundation payment for the current fiscal year as described in subsection (b)(1) of this section is less than a calculation of performance tier funding using:

(A) fundable certified performance outcomes data from the fiscal year two years prior to the current year;

(B) preliminary outcomes data from the prior fiscal year; and

(C) performance outcomes for all other required data elements for the prior and current fiscal years forecasted pursuant to §13.624 of this subchapter.

(3) Prior Year Settle Up: the full positive amount of the difference between:

(A) performance tier funding for the prior fiscal year calculated using:

(i) fundable certified performance outcomes data from the fiscal years three and two years prior to the current fiscal year;

(ii) preliminary outcomes from the prior fiscal year; and

(iii) performance outcomes for all other elements for the prior fiscal year forecasted pursuant to §13.624 of this subchapter; minus

(B) the sum of performance tier funding payments made under the prior fiscal year foundation payments, dynamic adjustment, and projected settle-up.

(d) Formula Funding Amounts: Summer. For the purpose of distributing state appropriations to a public junior college district in a fiscal year, the Coordinating Board shall distribute to each district by June 15 of even-numbered years and, in odd-numbered years, by a date

as soon as is practicable after June 15 in accordance with the appropriations process one-quarter of the foundation payment as described in subsection (b)(1) of this section, which amount may be multiplied by a number less than one in odd-numbered years as necessary to prevent formula funding distributions to districts from exceeding state appropriations for such purpose, pursuant to the provisions of the General Appropriations Act, Texas Education Code, and all other pertinent statutes and rules.

(e) The Commissioner of Higher Education may modify any installment under this schedule as necessary to provide an institution with the amounts to which the institution is entitled under Texas Education Code, chapters 130 and 130A, the General Appropriations Act, a supplemental appropriations act, or chapter 13 of this title (relating to Financial Planning).

§13.628. Substantial Negative Impacts.

If the Commissioner of Higher Education in his or her sole discretion determines that a projected settle-up or close-out adjustment under this subchapter will have a substantial negative impact on the operations of the institution or the education of students, the Coordinating Board may correct the institution's funding by recovering payments as an over-allocation pursuant to §13.528(d)(1) or (2) of this chapter (relating to Recovery of Overallocated Funds). For the purpose of formula funding provided directly during FY 2024, the Coordinating Board will not adjust formula funding for a public junior college for a fiscal year subsequent to close out except as set out in §13.625 of this subchapter (relating to Schedule and Composition of Payments for Fiscal Year 2025) and subchapter R of this chapter (relating to State Public Junior College Finance Program Reporting, Audit, and Overalllocation).

§13.629. Formula Transition Funding.

In FY 2025, for purposes of transitioning to the new formula model, if the sum of a public junior college's Base and Performance Tier funding as calculated in §13.554 and §13.555 of this subchapter (relating to Base Tier Allotment and Performance Tier Funding, respectively) would result in the district receiving less in General Revenue formula funding than the district received through the sum of appropriations made in the core operations strategy, student success strategy, contact hour funding strategy, and, if applicable, the need-based supplement and bachelor of applied technology strategies, as provided for FY 2023 in the 2022-23 General Appropriations Act, the Coordinating Board will add transitional funding in the amount of the difference to the district's formula funding for FY 2025. This rule expires on August 31, 2025.

§13.630. Limitations on Spending.

(a) Texas Education Code, §130.003(c), establishes that state funds provided under Texas Education Code, chapters 130 and 130A, may be used exclusively for the purpose of paying salaries of the instructional and administrative forces, purchase of supplies and materials for instructional purposes, and paying the cost of audits.

(b) The General Appropriations Act limits funding for instructional and administrative forces as follows:

(1) Formula funding, including base tier, performance tier, and formula transition funds, may be used for the following elements of cost: instruction, academic support, student services, institutional support, organized activities, and staff benefits associated with salaries paid from general revenue.

(2) Non-formula support item funds may be expended for salaries, wages, travel, capital outlay and other necessary operating expenses, in addition to the elements of cost listed under subsection (b)(1) of this section.

(3) Formula and non-formula support item funding may not be used for the operation of intercollegiate athletics.

(c) The elements of cost in subsection (b) of this section are defined in the Coordinating Board's Budget Requirements and Annual Financial Reporting Requirements for Texas Public Community Colleges, also known as the AFR Manual, as published under §13.524 of this chapter (relating to Required Reporting).

(d) Institutions may expend funds as otherwise permitted by statute.

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

Filed with the Office of the Secretary of State on May 17, 2024.

TRD-202402230

Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: June 30, 2024

For further information, please call: (512) 427-6548



TITLE 22. EXAMINING BOARDS

PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

CHAPTER 153. RULES RELATING TO PROVISIONS OF THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT

22 TAC §153.241

The Texas Appraiser Licensing and Certification Board (TALCB) proposes amendments to 22 TAC §153.241, Sanctions Guidelines.

The proposed amendments to §153.241 add additional factors that may be considered in determining the disposition of a formal complaint, specifically whether an appraisal or conduct at issue was investigated by another governmental agency and the likelihood of the same or similar conduct occurring again. Additionally, the amendments allow for greater flexibility in sanctions for First Time Discipline, Level 2 violations of the Act or Statute.

Kathleen Santos, General Counsel, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for the state or units of local government as a result of enforcing or administering the proposed amendments. There is no adverse economic impact anticipated for local or state employment, rural communities, small businesses, or micro businesses as a result of implementing the proposed amendments. There is no significant economic cost anticipated for persons who are required to comply with the proposed amendments. Accordingly, no Economic Impact statement or Regulatory Flexibility Analysis is required.

Ms. Santos has also determined that for each year of the first five years the proposed amendments and rules are in effect the public benefits anticipated as a result of enforcing the proposed

amendments will be requirements that are consistent with statutes and easier to understand, apply, and process.

Growth Impact Statement:

For each year of the first five years the proposed amendments and rules are in effect the amendments and rules will not:

- create or eliminate a government program;
- require the creation of new employee positions or the elimination of existing employee positions;
- require an increase or decrease in future legislative appropriations to the agency;
- require an increase or decrease in fees paid to the agency;
- create a new regulation;
- expand, limit or repeal an existing regulation; and
- increase the number of individuals subject to the rule's applicability.

For each year of the first five years the proposed amendments are in effect, there is no anticipated impact on the state's economy.

Comments on the proposed amendments may be submitted to Kathleen Santos, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to general.counsel@talcb.texas.gov. Comments may also be submitted electronically at <https://www.talcb.texas.gov/agency-information/rules-and-laws/comment-on-proposed-rules>. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code §1103.151, which authorizes TALCB to adopt rules related to certificates and licenses that are consistent with applicable federal law and guidelines adopted by the AQB; and §1103.154, which authorizes TALCB to adopt rules relating to professional conduct.

The statute affected by these amendments is Chapter 1103, Texas Occupations Code. No other statute, code or article is affected by the proposed amendments.

§153.241. *Sanctions Guidelines.*

In determining the proper disposition of a formal complaint pending as of or filed after the effective date of this rule, and subject to the maximum penalties authorized under Texas Occupations Code §1103.552, staff, the administrative law judge in a contested case hearing, and the Board shall consider the following sanctions guidelines and list of non-exclusive factors as demonstrated by the evidence in the record of a contested case proceeding.

(1) For the purposes of these sanctions guidelines:

(A) A person will not be considered to have had a prior warning letter, contingent dismissal or discipline if that prior warning letter, contingent dismissal or discipline was issued by the Board more than seven years before the current alleged violation occurred;

(B) Prior discipline is defined as any sanction (including administrative penalty) received under a Board final or agreed order;

(C) A violation refers to a violation of any provision of the Act, Board rules or USPAP;

(D) "Minor deficiencies" is defined as violations of the Act, Board rules or USPAP which do not impact the credibility of the

appraisal assignment results, the assignment results themselves and do not impact the license holder's honesty, integrity, or trustworthiness to the Board, the license holder's clients, or intended users of the appraisal service provided;

(E) "Serious deficiencies" is defined as violations of the Act, Board rules or USPAP that:

(i) impact the credibility of the appraisal assignment results, the assignment results themselves or do impact the license holder's honesty, trustworthiness or integrity to the Board, the license holder's clients, or intended users of the appraisal service provided; or

(ii) are deficiencies done with knowledge, deliberate or willful disregard, or gross negligence that would otherwise be classified as "minor deficiencies";

(F) "Remedial measures" include, but are not limited to, training, mentorship, education, reexamination, or any combination thereof; and

(G) The terms of a contingent dismissal agreement will be in writing and agreed to by all parties. Staff may dismiss the complaint with a non-disciplinary warning upon written agreement that the Respondent will complete all remedial measures within the agreed-upon timeframe. If the Respondent fails to meet the deadlines in the agreement, the Respondent's license or certification will be automatically set to inactive status until the Respondent completes the remedial measures set forth in the agreement.

(2) List of factors to consider in determining proper disposition of a formal complaint:

(A) Whether the Respondent has previously received a warning letter or contingent dismissal and, if so, the similarity of facts or violations in that previous complaint to the facts or violations in the instant complaint matter;

(B) Whether the Respondent has previously been disciplined;

(C) If previously disciplined, the nature of the prior discipline, including:

(i) Whether prior discipline concerned the same or similar violations or facts;

(ii) The nature of the disciplinary sanctions previously imposed; and

(iii) The length of time since the prior discipline;

(D) The difficulty or complexity of the appraisal assignment(s) at issue;

(E) Whether the violations found were of a negligent, grossly negligent or a knowing or intentional nature;

(F) Whether the violations found involved a single appraisal/instance of conduct or multiple appraisals/instances of conduct;

(G) To whom were the appraisal report(s) or the conduct directed, with greater weight placed upon appraisal report(s) or conduct directed at:

(i) A financial institution or their agent, contemplating a lending decision based, in part, on the appraisal report(s) or conduct at issue;

(ii) The Board;

(iii) A matter which is actively being litigated in a state or federal court or before a regulatory body of a state or the federal government;

(iv) Another government agency or government sponsored entity, including, but not limited to, the United States Department of Veteran's Administration, the United States Department of Housing and Urban Development, the State of Texas, Fannie Mae, and Freddie Mac; or

(v) A consumer contemplating a real property transaction involving the consumer's principal residence;

(H) Whether Respondent's violations caused any harm, including financial harm, and the extent or amount of such harm;

(I) Whether Respondent acknowledged or admitted to violations and cooperated with the Board's investigation prior to any contested case hearing;

(J) The level of experience Respondent had in the appraisal profession at the time of the violations, including:

(i) The level of appraisal credential Respondent held;

(ii) The length of time Respondent had been an appraiser;

(iii) The nature and extent of any education Respondent had received related to the areas in which violations were found; and

(iv) Any other real estate or appraisal related background or experience Respondent had;

(K) Whether Respondent can improve appraisal skills and reports through the use of remedial measures;

(L) Whether the appraisal or conduct at issue was investigated by another governmental agency with jurisdiction and any action taken; and

(M) The likelihood of the same or similar conduct occurring again.

(3) The following sanctions guidelines shall be employed in conjunction with the factors listed in paragraph (2) of this rule to assist in reaching the proper disposition of a formal complaint:

(A) 1st Time Discipline Level 1--violations of the Act, Board rules, or USPAP which evidence minor deficiencies will result in one of the following outcomes:

(i) Dismissal;

(ii) Dismissal with non-disciplinary warning letter;

or

(iii) Contingent dismissal with remedial measures.

(B) 1st Time Discipline Level 2--violations of the Act, Board rules, or USPAP which evidence serious deficiencies will result in one of the following outcomes:

(i) Dismissal with non-disciplinary warning letter;

(ii) [(+)] Contingent dismissal with remedial measures; or

(iii) [(+)] A final order which imposes one or more of the following:

(I) Remedial measures;

(II) Required promulgation, adoption and implementation of written, preventative policies or procedures addressing specific areas of professional practice;

(III) A probationary period with provisions for monitoring the Respondent's practice;

(IV) Restrictions on the Respondent's ability to sponsor any appraiser trainees;

(V) Restrictions on the scope of practice the Respondent is allowed to engage in for a specified time period or until specified conditions are satisfied; or

(VI) Up to \$250 in administrative penalties per act or omission which constitutes a violation(s) of the Act, Board rules, or USPAP, not to exceed \$3,000 in the aggregate.

(C) 1st Time Discipline Level 3--violations of the Act, Board rules, or USPAP which evidence serious deficiencies and were done with knowledge, deliberately, willfully, or with gross negligence will result in a final order which imposes one or more of the following:

(i) A period of suspension;

(ii) A revocation;

(iii) Remedial measures;

(iv) Required promulgation, adoption and implementation of written, preventative policies or procedures addressing specific areas of professional practice;

(v) A probationary period with provisions for monitoring the Respondent's practice;

(vi) Restrictions on the Respondent's ability to sponsor any appraiser trainees;

(vii) Restrictions on the scope of practice the Respondent is allowed to engage in for a specified time period or until specified conditions are satisfied; or

(viii) Up to \$1,500 in administrative penalties per act or omission which constitutes a violation(s) of the Act, Board rules, or USPAP, up to the maximum \$5,000 statutory limit per complaint matter.

(D) 2nd Time Discipline Level 1--violations of the Act, Board rules, or USPAP which evidence minor deficiencies will result in one of the following outcomes:

(i) Dismissal;

(ii) Dismissal with non-disciplinary warning letter;

(iii) Contingent dismissal with remedial measures;

or

(iv) A final order which imposes one or more of the following:

(I) Remedial measures;

(II) Required promulgation, adoption and implementation of written, preventative policies or procedures addressing specific areas of professional practice;

(III) A probationary period with provisions for monitoring the Respondent's practice;

(IV) Restrictions on the Respondent's ability to sponsor any appraiser trainees;

(V) Restrictions on the scope of practice the Respondent is allowed to engage in for a specified time period or until specified conditions are satisfied; or

(VI) Up to \$250 in administrative penalties per act or omission which constitutes a violation(s) of the Act, Board rules,

or USPAP, up to the maximum \$5,000 statutory limit per complaint matter.

(E) 2nd Time Discipline Level 2--violations of the Act, Board rules, or USPAP which evidence serious deficiencies will result in a final order which imposes one or more of the following:

(i) A period of suspension;

(ii) A revocation;

(iii) Remedial measures;

(iv) Required promulgation, adoption and implementation of written, preventative policies or procedures addressing specific areas of professional practice;

(v) A probationary period with provisions for monitoring the Respondent's practice;

(vi) Restrictions on the Respondent's ability to sponsor any appraiser trainees;

(vii) Restrictions on the scope of practice the Respondent is allowed to engage in for a specified time period or until specified conditions are satisfied; or

(viii) Up to \$1,500 in administrative penalties per act or omission which constitutes a violation(s) of the Act, Board rules, or USPAP, up to the maximum \$5,000 statutory limit per complaint matter.

(F) 2nd Time Discipline Level 3--violations of the Act, Board rules, or USPAP which evidence serious deficiencies and were done with knowledge, deliberately, willfully, or with gross negligence will result in a final order which imposes one or more of the following:

(i) A period of suspension;

(ii) A revocation;

(iii) Remedial measures;

(iv) Required promulgation, adoption and implementation of written, preventative policies or procedures addressing specific areas of professional practice;

(v) A probationary period with provisions for monitoring the Respondent's practice;

(vi) Restrictions on the Respondent's ability to sponsor any appraiser trainees;

(vii) Restrictions on the scope of practice the Respondent is allowed to engage in for a specified time period or until specified conditions are satisfied; or

(viii) Up to \$1,500 in administrative penalties per act or omission which constitutes a violation(s) of the Act, Board rules, or USPAP, up to the maximum \$5,000 statutory limit per complaint matter.

(G) 3rd Time Discipline Level 1--violations of the Act, Board rules, or USPAP which evidence minor deficiencies will result in a final order which imposes one or more of the following:

(i) A period of suspension;

(ii) A revocation;

(iii) Remedial measures;

(iv) Required promulgation, adoption and implementation of written, preventative policies or procedures addressing specific areas of professional practice;

(v) A probationary period with provisions for monitoring the Respondent's practice;

(vi) Restrictions on the Respondent's ability to sponsor any appraiser trainees;

(vii) Restrictions on the scope of practice the Respondent is allowed to engage in for a specified time period or until specified conditions are satisfied; or

(viii) \$1,000 to \$1,500 in administrative penalties per act or omission which constitutes a violation(s) of the Act, Board rules, or USPAP, up to the maximum \$5,000 statutory limit per complaint matter.

(H) 3rd Time Discipline Level 2--violations of the Act, Board rules, or USPAP which evidence serious deficiencies will result in a final order which imposes one or more of the following:

(i) A period of suspension;

(ii) A revocation;

(iii) Remedial measures;

(iv) Required promulgation, adoption and implementation of written, preventative policies or procedures addressing specific areas of professional practice;

(v) A probationary period with provisions for monitoring the Respondent's practice;

(vi) Restrictions on the Respondent's ability to sponsor any appraiser trainees;

(vii) Restrictions on the scope of practice the Respondent is allowed to engage in for a specified time period or until specified conditions are satisfied; or

(viii) \$1,500 in administrative penalties per act or omission which constitutes a violation(s) of the Act, Board rules, or USPAP, up to the maximum \$5,000 statutory limit per complaint matter.

(I) 3rd Time Discipline Level 3--violations of the Act, Board Rules, or USPAP which evidence serious deficiencies and were done with knowledge, deliberately, willfully, or with gross negligence will result in a final order which imposes one or more of the following:

(i) A revocation; or

(ii) \$1,500 in administrative penalties per act or omission which constitutes a violation(s) of the Act, Board rules, or USPAP, up to the maximum \$5,000 statutory limit per complaint matter.

(J) 4th Time Discipline--violations of the Act, Board rules, or USPAP will result in a final order which imposes one or more of the following:

(i) A revocation; and

(ii) \$1,500 in administrative penalties per act or omission which constitutes a violation(s) of USPAP, Board rules, or the Act, up to the maximum \$5,000 statutory limit per complaint matter.

(K) Unlicensed appraisal activity will result in a final order which imposes a \$1,500 in administrative penalties per unlicensed appraisal activity, up to the maximum \$5,000 statutory limit per complaint matter.

(4) In addition, staff may recommend any or all of the following:

(A) reducing or increasing the recommended sanction or administrative penalty for a complaint based on documented factors that support the deviation, including but not limited to those factors articulated under paragraph (2) of this subsection;

(B) probating all or a portion of any sanction or administrative penalty for a period not to exceed five years;

(C) requiring additional reporting requirements; and

(D) such other recommendations, with documented support, as will achieve the purposes of the Act, Board rules, or USPAP.

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

Filed with the Office of the Secretary of State on May 14, 2024.

TRD-202402160

Kathleen Santos

General Counsel

Texas Appraiser Licensing and Certification Board

Earliest possible date of adoption: June 30, 2024

For further information, please call: (512) 936-3088



PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 511. ELIGIBILITY

SUBCHAPTER H. CERTIFICATION

22 TAC §511.163

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.163 concerning Board-Approved Ethics Requirement and Examination on the Rules of Professional Conduct.

Background, Justification and Summary

The Board wants a CPA to be familiar with the Board's Ethics Rules concurrent with initial licensure. With CPA candidates permitted to take the CPA exam at 120 hours, the CPE on the Ethics Rules should not be tied to a rule addressing the exam. The requirement of CPE on the Rules of Professional Conduct is being removed from this rule in order that it may be addressed in Board Rule 523.130 and initial licensure.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed rule amendment will familiarize the newly licensed CPA with the licensee's Rules of Professional Conduct upon initial licensure and assist in protecting the public.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with

the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on July 1, 2024.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§511.163. *[Board-Approved Ethics Requirement and] Examination on the Board's Rules of Professional Conduct Requirements.*

An applicant applying for the issuance of the CPA certificate must pass an examination on the board's Rules of Professional Conduct.

(1) The examination on the Rules of Professional Conduct must be completed not more than six months prior to the issuance of the CPA certificate.

(2) A grade of 85% or higher on the exam is considered passing.

~~[(a) An applicant applying for the issuance of the CPA certificate must successfully complete a board-approved four-hour ethics course of comprehensive study on the board's Rules of Professional Conduct offered through a board-approved and registered provider of CPE.]~~

~~[(b) An applicant is not required to comply with subsection (a) of this section if the applicant has completed an ethics course from a board recognized institution of higher education within two years of the date the board receives the applicant's application for issuance of the CPA certificate.]~~

~~[(c) An applicant applying for the issuance of the CPA certificate must also pass an examination on the board's Rules of Professional Conduct.]~~

~~[(1) The examination on the Rules of Professional Conduct must be completed not more than six months prior to the issuance of the CPA certificate.]~~

~~[(2) A grade of 85% on the exam is considered passing.]~~

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

Filed with the Office of the Secretary of State on May 16, 2024.

TRD-202402201

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: June 30, 2024

For further information, please call: (512) 305-7842



CHAPTER 523. CONTINUING PROFESSIONAL EDUCATION

SUBCHAPTER C. ETHICS RULES:

INDIVIDUALS AND SPONSORS

22 TAC §523.130

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.130 concerning Ethics Course Requirements.

Background, Justification and Summary

The Board wants a CPA to be familiar with the Board's Ethics Rules concurrent with initial licensure. This rule requires a licensee to take CPE on the Rules of Professional Conduct within two years of initial licensure.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed rule amendment will assure that new licensees are familiar with the Board's Ethics rules within two years of licensure and every other year thereafter.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on July 1, 2024.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board

may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§523.130. Ethics Course Requirements.

(a) ~~A licensee [An applicant for certification or registration] must complete a board-approved four CPE credit ethics course, as required by §523.131 of this chapter (relating to Board Approval of Ethics Course Content), beginning two years following the expiration of initial licensure. This four CPE credit ethics course is designed to thoroughly familiarize the licensee [applicant] with the board's Rules of Professional Conduct [no more than two years prior to submission of the application]. Proof of completion of this course must be submitted with the license renewal notice [application].~~

(b) A licensee must take ~~the~~ [a] four CPE credit ethics course required by ~~[that has been approved by the board pursuant to]~~ §523.131 of this chapter and as defined in §523.102 of this chapter (relating to CPE Purpose and Definitions) ~~[(relating to Board Approval of Ethics Course Content)]~~ every two years, and~~[-~~ The licensee] shall report completion of the course on the annual license renewal notice at least every second year.

(c) A licensee granted retired, permanent disability, or other exempt status is not required to complete the ethics course during the licensee's exempt status. If the exempt status is no longer applicable, the licensee must complete an ethics course approved by the board and report it on the annual license renewal notice.

~~[(d) A licensee must take the ethics course in a program as defined in §523.102 of this chapter (relating to CPE Purpose and Definitions).]~~

(d) ~~[(e)]~~ A licensee [person] who does not reside in the state of Texas, who has no clients within this state, and who is current with the ethics course requirements of his state of residence is not required to take the mandated ethics course [mandated]. A licensee [person] meeting these requirements may claim an exemption pursuant to §523.113 of this chapter (relating to Exemptions from CPE).

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

Filed with the Office of the Secretary of State on May 16, 2024.

TRD-202402202

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: June 30, 2024

For further information, please call: (512) 305-7842



SUBCHAPTER D. STANDARDS FOR CONTINUING PROFESSIONAL EDUCATION PROGRAMS AND RULES FOR SPONSORS

22 TAC §523.140

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.140 concerning Program Standards.

Background, Justification and Summary

A CPE self-study program must contain at least three questions for each "learning objective to help the student understand the materials studied. The rule was not intended to require three questions for each CPE credit. The rule is being revised to clarify that the questions must be tied to learning objectives.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed rule amendment will clarify that the self-study program must contain at least three questions related to learning objectives.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities, or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Ac-

countancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on July 1, 2024.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§523.140. Program Standards.

(a) Potential participants should be informed in advance of course content, learning objectives, prerequisites, and recommended credits so they can determine whether they are qualified to participate in and benefit from the program. The stated learning objectives should clearly communicate the specific areas of knowledge that will be covered. If there are no prerequisites for the course, a statement to this effect must be made.

(b) The program developer must organize the program around the stated learning objectives and must retain a copy of the final program, including electronic media, in accordance with §523.143(b) of this chapter (relating to Sponsor's Record). The final program must contain sufficient documentation to support the number of CPE credits granted. The course materials must be periodically reviewed to assure that they are accurate and consistent with currently accepted standards relating to the program's subject matter. The program developer should provide the instructor with separate materials that emphasize sections of the course that need reinforcement, if appropriate.

(c) Instructors must be qualified both with respect to program content and teaching methods used. Sponsors shall evaluate the performance of instructors at the conclusion of each program to determine their suitability for continuing to serve as instructors.

(d) All programs must provide for some means to evaluate both the competence of the instructor and the course material. Refer to §523.141 of this chapter (relating to Evaluation).

(e) Self-study programs must conform to the requirements outlined in §523.102(c)(2) of this chapter (relating to CPE Purpose and Definitions).

(1) Program must include at least three review questions for each learning objective [CPE credit, or two review questions if the

program is marketed for one-half CPE credits] to allow the participant the opportunity to understand the material. Evaluative feedback must be provided for each incorrect response.

(2) To provide evidence of satisfactory completion of the course, CPE sponsors must require participants to successfully complete a final exam with a passing grade of at least 70%. The final exam must have at least five questions for each CPE credit granted and no more than 25% of the questions be "true/false" in nature.

(3) Program or course expiration date. Course documentation must include an expiration date (the time by which the participant must complete the final exam). The expiration date should be no longer than one year from the date of purchase.

(f) Nano programs must use instructional methods that clearly define a minimum of one learning objective, guide the participant through a program of learning, and provide evidence of a participant's satisfactory completion of the program. Satisfactory completion of the program must be confirmed at the conclusion of the program by passing a final exam.

(1) To provide evidence of satisfactory completion of the course, CPE sponsors must require participants to successfully complete a final exam with a passing grade of 100 percent before issuing CPE credit for the course. The final exam may contain questions of varying format (for example, multiple choice, rank order, and matching). Only two questions must be included on the final exam. "True or false" questions are not permissible on the final exam. If the participant fails the final exam CPE credit will not be granted. The participant may re-take the program and the number of re-takes permitted is at the sponsor's discretion.

(2) Program or course expiration date. Course documentation must include an expiration date. The expiration date is no longer than one year from the date of purchase.

(3) Based on materials developed for instructional use, Nano programs must be based on materials specifically developed for instructional use and not on third-party materials. Nano learning programs requiring only the reading of general professional literature, IRS publications, or reference manuals followed by an assessment will not be acceptable.

(g) Blended programs must use instructional methods that clearly define learning objectives and guide the participant through a program of learning. Pre-program, post-program, and homework assignments should enhance the learning program experience and must relate to the defined learning objectives of the program.

(1) Blended programs include different learning or instructional methods (for example, lectures, discussion, guided practice, reading, games, case studies, and simulation); different delivery methods (group live, group Internet based, nano learning, or self study); and/or different levels of guidance (for example, individual, instructor or subject matter expert led, or group and social learning). To guide participants through the learning process, CPE program sponsors must provide clear instructions and information to participants that summarize the different components of the program and what must be completed or achieved during each component in order to qualify for CPE credits. The CPE program sponsor must document the process and components of the course progression and completion of components by the participants.

(2) To provide evidence of satisfactory completion of sections of the course that are not "live" (such as nano or self-study) CPE sponsors must require participants to successfully complete an exam with a passing grade appropriate to the delivery method (i.e. 70% for self-study, 100% for nano).

(h) Sponsors are responsible for ensuring the participants register their attendance during the program. Sponsors are responsible for assigning the appropriate number of CPE credits for participants, including reduced CPE credits for those participants who arrive late or leave early. Refer to §523.142 of this chapter (relating to Program Time Credit Measurement for Sponsors).

(i) Sponsors must comply with all CPE rules including §523.143 of this chapter.

(j) Sponsors awarding CPE credit for a board authorized ethics course defined in §523.131 of this chapter (relating to Board Approval of Ethics Course Content) must do so through a board authorized instructor as defined in §523.132 of this chapter (relating to Board Authorized Ethics Instructors).

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

Filed with the Office of the Secretary of State on May 16, 2024.

TRD-202402203

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: June 30, 2024

For further information, please call: (512) 305-7842



TITLE 25. HEALTH SERVICES

PART 11. CANCER PREVENTION AND RESEARCH INSTITUTE OF TEXAS

CHAPTER 701. POLICIES AND PROCEDURES

25 TAC §701.11

The Cancer Prevention and Research Institute of Texas ("CPRIT" or "the Institute") proposes amending 25 Texas Administrative Code §701.11(5) by removing the hard copy option for the Texas Cancer Plan.

Background and Justification

Texas Health & Safety Code Chapter 102 charges CPRIT with the responsibility of facilitating the development of the Texas Cancer Plan, which aims to reduce the cancer burden across the state to improve the lives of Texans. CPRIT maintains a link to a portable document file (PDF) of the most recent Texas Cancer Plan on its website that is available to the public at any time. Although a member of the public may request that CPRIT provide the requester with a printed copy of the Texas Cancer Plan, CPRIT has received no such requests. CPRIT plans to present the next version of the Texas Cancer Plan as a fully online, dynamic resource available to the public. The proposed amendment removes the requirement that CPRIT provide a hard copy of the Texas Cancer Plan.

Fiscal Note

Kristen Pauling Doyle, Deputy Executive Officer and General Counsel for the Cancer Prevention and Research Institute of Texas, has determined that for the first five-year period the rule change is in effect, there will be no foreseeable implications relating to costs or revenues for state or local government due to enforcing or administering the rules.

Public Benefit and Costs

Ms. Doyle has determined that for each year of the first five years the rule change is in effect the public benefit anticipated due to enforcing the rule will be clarifying grantee reporting obligations and consequences.

Small Business, Micro-Business, and Rural Communities Impact Analysis

Ms. Doyle has determined that the rule change will not affect small businesses, micro businesses, or rural communities.

Government Growth Impact Statement

The Institute, in accordance with 34 Texas Administrative Code §11.1, has determined that during the first five years that the proposed rule change will be in effect:

- (1) the proposed rule change will not create or eliminate a government program;
- (2) implementation of the proposed rule change will not affect the number of employee positions;
- (3) implementation of the proposed rule change will not require an increase or decrease in future legislative appropriations;
- (4) the proposed rule change will not affect fees paid to the agency;
- (5) the proposed rule change will not create new rule;
- (6) the proposed rule change will not expand existing rule;
- (7) the proposed rule change will not change the number of individuals subject to the rule; and
- (8) The rule change is unlikely to have an impact on the state's economy.

Submit written comments on the proposed rule changes to Ms. Kristen Pauling Doyle, General Counsel, Cancer Prevention and Research Institute of Texas, P.O. Box 12097, Austin, Texas 78711, no later than June 1, 2024. The Institute asks parties filing comments to indicate whether they support the rule revision proposed by the Institute and, if the party requests a change, to provide specific text for the proposed change. Parties may submit comments electronically to kdoyle@cprit.texas.gov or by facsimile transmission to (512) 475-2563.

Statutory Authority

The Institute proposes the rule change 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. Ms. Doyle has reviewed the proposed amendment and certifies the proposal to be within the Institute's authority to adopt.

There is no other statute, article, or code affected by these rules.

§701.11. *Texas Cancer Plan.*

The Institute shall develop, implement, continually monitor, and revise the Texas Cancer Plan as necessary.

- (1) The intent of the Texas Cancer Plan is to reduce the cancer burden across the state and improve the lives of Texans by providing a coordinated, prioritized, and actionable framework that will help guide statewide efforts to fight the human and economic burden of cancer in Texas.

(2) Activities undertaken by the Institute to monitor the Texas Cancer Plan will be described in the Annual Public Report required by Texas Health and Safety Code §102.052.

(3) The Institute will periodically update the Texas Cancer Plan by issuing a revised version of the Texas Cancer Plan every seven (7) years, unless a different timeline for a revised version of the Texas Cancer Plan is approved by a simple majority of the Oversight Committee.

(4) The Institute may solicit input from public or private institutions, government organizations, non-profit organizations, other public entities, private companies, and individuals affected by cancer to assist the Institute in monitoring, implementing, and revising the Texas Cancer Plan.

(5) The most recent version of the Texas Cancer Plan shall be posted on the Institute's Internet website. [A hard copy of the Texas Cancer Plan may be requested by contacting the Institute directly.]

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

Filed with the Office of the Secretary of State on May 20, 2024.

TRD-202402246

Heidi McConnell

Chief Operating Officer

Cancer Prevention and Research Institute of Texas

Earliest possible date of adoption: June 30, 2024

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



TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 9. TITLE INSURANCE

The Texas Department of Insurance (TDI) proposes amendments to 28 TAC §9.1 and §9.401, concerning the *Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas* (Basic Manual) and the *Texas Title Insurance Statistical Plan* (Statistical Plan). On September 1, 2023, the Texas Title Land Association (TLTA) submitted to TDI proposed new and amended Basic Manual rules and items. The commissioner of insurance considered the proposed items submitted by the title industry and TDI staff on November 15, 2023, at the Texas Title Insurance Public Hearing, Docket No. 2841. The commissioner called the hearing under Insurance Code §2703.202 and §2703.206.

On December 21, 2023, the commissioner issued Commissioner's Order No. 2023-8429, approving the proposed new and amended items submitted by TLTA and TDI, with changes and corrections to some of the items, as noted in the order. The order and all the proposed items, with their explanations and detailed justifications, can be viewed on www.tdi.texas.gov/rules/2023/exrules/html.

EXPLANATION. The proposed new and amended rule items are identified by the item numbers used for the November 15, 2023, hearing submissions, except for "2023" preceding all the item numbers. This was added by TDI after the hearing for the exhibits referenced in this proposal. This proposal is necessary to:

- adopt new rules, forms, and rates;
- modify or replace existing rules and forms;
- facilitate the administration and regulation of title insurance; and
- update, correct, clarify, or harmonize title insurance rules and forms.

Details for the proposed new and amended items are provided in this proposal. In some of these items, TDI made substantive and nonsubstantive changes to the original submissions. The description of each item includes a brief explanation of any substantive changes.

At the hearing on November 15, 2023, the petitioners withdrew Items 2023-15, 2023-17, and 2023-20 from consideration. The petitioners also withdrew Items 2023-8, 2023-10, 2023-12, 2023-14, and 2023-19 and replaced them with amended versions of those submissions, labeling them as 2023-A, 2023-B, 2023-C, 2023-D, and 2023-E, respectively.

The proposed amendments to §9.1 and §9.401 and the proposed new and amended rule items in the Basic Manual and Statistical Plan are described in the following paragraphs.

Section 9.1. Basic Manual of Rules, Rates, and Forms for the Writing of Title Insurance in the State of Texas. Amendments to §9.1 propose to adopt by reference the version of the Basic Manual effective on November 1, 2024. The section is also amended to remove text providing for the Basic Manual to be available via mail and email because it is accessible on TDI's website.

Section 9.401. Texas Title Insurance Statistical Plan. Amendments to §9.401 propose to adopt by reference the version of the Statistical Plan effective January 1, 2025. The section is also amended to update the mailing address from which the Statistical Plan is available.

Item 2023-1. TDI proposes to amend Rate Rule R-11.c, affecting the following Basic Manual items:

1. Form T-3 (Assignment of Mortgage Endorsement) - TDI proposes to increase the premium to the minimum Basic Premium Rate plus \$100 for each additional full or partial 12-month period after the first anniversary of the initial policy date. Currently the premium is the minimum Basic Premium Rate.
2. Form T-38 (Partial Release, Release of Additional Collateral, Modification Agreement, Reinstatement Agreement, or Release from Personal Liability Endorsement) - TDI proposes to increase the premium to the minimum Basic Premium Rate plus \$25 per year between the issuance of the endorsement and the policy. Currently, the premium is \$100 plus \$10 per year between the issuance of the endorsement and the policy.
3. Form T-3 (Down Date Endorsement) - TDI proposes to increase the premium from \$50 to \$100 for nonresidential construction projects. The premium remains \$50 for residential construction projects.

TDI also makes nonsubstantive edits that change the lettering convention on the subsections from lowercase to uppercase and plain language edits.

Item 2023-2. TDI proposes to amend Rate Rule R-15.b to increase the premium for the Form T-3 "down date endorsement" for Owner's Policies from \$50 to \$100 for nonresidential construction projects. The premium remains \$50 for residential construction projects.

Item 2023-3. TDI proposes to amend Rate Rule R-30 to increase the premium for Access Endorsements (Form T-23) from \$100 for all Access Endorsements issued under a policy to \$100 for each Access Endorsement issued under a policy. TDI also makes nonsubstantive plain language edits.

Item 2023-4. TDI proposes to amend Form T-1R, Residential Owner's Policy of Title Insurance One-to-Four Family Residences, to remove the parenthetical "(Applies to Owner's Policy only)" in Schedule B, Item 3 of the form.

Item 2023-5. TDI proposes to amend Form T-16, Loan Policy Aggregation Endorsement, to make changes to conform more closely to the American Land Title Association (ALTA) form used in other states. TDI also makes nonsubstantive plain language edits, renumbers the subsections, and restructures the form text for greater clarity and easier reading.

Item 2023-6. TDI proposes to amend Forms T-19, T-19.1, T-19.2, and T-19.3, which are a series of endorsements that include coverage for damage to improvements because of mineral extraction or development. The proposed amendments make coverage across the forms more consistent and update Forms T-19.2 and T-19.3 to conform with their model form equivalents from ALTA.

Item 2023-7. TDI proposes to amend Forms T-1 and T-2 to clarify provisions related to survey coverage.

Item 2023-9. TDI proposes to amend subsection C of Procedural Rule P-20 to allow title insurers to specify for which year the policy insures that taxes are not yet due and payable.

Item 2023-11. TDI proposes to amend Procedural Rule P-57 to allow for more legal entities used in estate planning to be an additional insured on the Additional Insured Endorsement (Form T-26) and to allow the endorsement to be added up to 90 days after title is conveyed to the additional insured.

Item 2023-13. TDI proposes to amend Procedural Rule P-2 and create a new Form T-47.1 to allow for an unsworn declaration to be used to affirm that a property is essentially unchanged since a previous survey was issued. New Form T-47.1 can be used instead of the Form T-47, Survey Affidavit. Form T-47 will still be available. TDI proposes to amend Form T-47 to allow for a single declarant and makes nonsubstantive plain language updates.

Item 2023-16. TDI proposes to amend Procedural Rule P-9.b.8, Rate Rule R-11.f, and Form T-35 to clarify that the endorsement covers only revolving credit arrangements for construction projects, not other kinds of future advances.

Item 2023-18. TDI proposes a new endorsement, Energy Project - Minerals and Surface Damage Endorsement (Form T-19.4), for surface damage coverage for severable improvements that would not be insured under the other forms that cover surface damage related to mineral extraction (Forms T-19, T-19.1, T-19.2, and T-19.3). TDI also proposes new Procedural Rule P-50.2 to govern use of the new endorsement, and new Rate Rule R-29.2 to set a premium of 5% of the Basic Premium Rate. The endorsement will only be used if it is issued simultaneously with an energy project endorsement, as described in Item 2023-B.

Item 2023-21. TDI proposes to amend Internal Control No. 5 to explicitly allow for electronic signatures on escrow checks.

Item 2023-22. TDI proposes to update Form PC-150 to align with the Texas State Board of Public Accountancy standards.

Item 2023-23. TDI proposes to amend Form T-11 to correct a clerical error on the form where the last item on a numbered list did not have its corresponding number.

Item 2023-24. TDI proposes to amend Form PC-417 to update TDI's mailing address on the form.

Item 2023-25. TDI proposes to amend Licensing Forms FINT 08, FINT 09, FINT 10, FINT 129, and FINT 143 to remove the notarization requirement and replace it with an unsworn declaration.

Item 2023-26. TDI proposes to amend the Statistical Plan to update codes related to Rate Rule R-8 so that the plan matches the transaction descriptions that changed when Rate Rule R-8 was amended in 2019. TDI proposes to further amend the Statistical Plan to add codes that match the rate changes and new endorsements in Items 2023-1, 2023-18, 2023-B, and 2023-C. TDI also proposes to amend descriptions, where appropriate, for clarification and consistency of presentation. TDI proposes several nonsubstantive style and formatting changes to reflect current TDI style preferences. These include changing the font to Segoe UI, increasing the type size to 12 point, and improving text alignment and table formats. Item 2023-26 combines Items 26 and 27 from Commissioner's Order No. 2023-8429 for more efficiency since both items addressed changes to the Statistical Plan.

Item 2023-27. TDI proposes to update TDI's mailing address, email address, and physical address where they are listed in the Basic Manual to reflect TDI's move from its previous location in the William P. Hobby Building at 333 Guadalupe Street, Austin, Texas 78701, to the Barbara Jordan State Office Building at 1601 Congress Avenue, Austin, Texas 78701, and also added TDI's Title Examinations email address as another way to communicate with TDI. These changes to the Basic Manual were not proposed at the hearing but are nonsubstantive and necessary to include in the proposal. This item changes TDI's address in the following places in the Basic Manual:

- Section V, Exhibit & Forms, Report forms for Audit of Trust Funds (TDI Title Forms PC 150)

- Section VI, Administration Rules, Rule D-1: Requirements for Ceasing Operations by Agents and Direct Operations, Section I, A

- Section VI, Administration Rules, Rule S1: Minimum Capitalization Standards for Title Agents Pursuant to §2651.012 and Certification and Procedure to Determine Value of Assets Pursuant to §2651.158, Section III, C, D, and E

- Section VI, Administration Rules, Rule S.4: Title Company Requirements, Procedures, and Forms for Providing Privileged Title Agent Financial Solvency Information to the Department Pursuant to §2651.011, # A - 2 and 3, # B - 1 and 2

- Section VI, Administration Rules, Rule S.5: Filing of Title Agent's Quarterly Withholding Tax Report, Section III and Section IV

- Section VI, Administration Rules, Rule S.7: Surety Bond for Title Agents to Comply with Minimum Capitalization Standards, Section I, # E

Item 2023-A. TDI proposes to amend Form T-50, the Insured Closing Service Letter, to conform more closely to recent changes in ALTA's model Closing Protection Letter, including the addition of language that excludes computer-related fraud. TDI makes nonsubstantive changes to update the formatting to

TDI style, including the use of 12-point Segoe UI font, plainer language for the letter's contents, consistently numbered and lettered paragraphs, and clearer organization of the information.

Item 2023-B. TDI proposes to add six new endorsements that are specifically tailored for different scenarios involving coverage of severable improvements in connection with electrical energy projects: Forms T-55, T-55.1, T-55.2, T-55.3, T-55.4, and T-55.5. TDI also proposes amendments to Procedural Rule P-72 to govern use of the new endorsements and a new rate rule that will charge 5% of the Basic Premium Rate for each endorsement (Rate Rule R-37). Amended Procedural Rule P-72 will also govern the use of an existing severable improvements endorsement form (Form T-54), and new Rate Rule R-37 will establish a charge of 5% of the Basic Premium Rate for the endorsement. TDI makes nonsubstantive changes to update the formatting to TDI style, including changing the font to 12-point Segoe UI, plainer language for the form contents where possible, consistently numbered and lettered paragraphs, and a clearer organization of the information.

Item 2023-C. TDI proposes to amend Procedural Rule P-1.u. to broaden the description of residential real property. The amendments will allow immediately contemplated improvements to be considered residential properties on currently unimproved land. The amendments will also loosen the acreage restrictions, including removing the agricultural production requirement for large residential properties between 10 and 200 acres. TDI also proposes to amend Rate Rule R-16 by allowing a 5% survey coverage rate to be applied to residential property when an Owner's Policy (Form T-1) is issued, not just when a Residential Owner Policy (Form T-1R) is issued. TDI makes nonsubstantive changes to update the formatting to TDI style, including to the use of 12-point Segoe UI font, plainer language for the form contents where possible, consistently numbered and lettered paragraphs, and a clearer organization of the information.

Item 2023-D. TDI proposes to amend subparagraph 2.b of the Equity Loan Mortgage Endorsement (Form T-42) by deleting the existing language and inserting a statement that the subparagraph is intentionally deleted because of an amendment to the Texas Constitution. The Texas Constitution amendment made the subparagraph obsolete.

Item 2023-E. TDI proposes to amend subsections B, C, D, and F of Rate Rule R-5 (Simultaneous Issue of Owner's Policy and Loan Policy). The amendments to subsections B, C, and D clarify that the simultaneous issue discount is available in combination with other applicable rate discounts. The amendments to subsection F lower the Owner's Policy amount threshold for that subsection from \$5 million to \$1 million. They also restrict the subsection to nonresidential property transactions and qualify that the subsequent Loan Policy must be issued by the same company that issued the Owner's Policy. Finally, the proposed amendments include nonsubstantive editorial and formatting changes to conform the Basic Manual items to the TDI style and to improve clarity. These changes update the formatting to TDI style, including the use of 12-point Segoe UI font, plainer language for the form contents where possible, consistently numbered and lettered paragraphs, and a clearer organization of the information.

TDI received comments at the public hearing on November 15, 2023, and received comments on TLTA's formal petition, which was posted on TDI's website on September 15, 2023. The comments included TLTA proposing revisions to the exhibits in its for-

mal petition, and supportive comments from other stakeholders. TDI considered these comments when drafting this proposal.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. David Muckerheide, assistant director of the Property and Casualty Division, has determined that during each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the amendments, other than those imposed by the statute. Mr. Muckerheide made this determination because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments.

Mr. Muckerheide does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendments are in effect, Mr. Muckerheide expects that administering them will have the public benefit of ensuring that TDI's rules conform to and support the purposes of the Title Insurance Act by adopting by reference updated versions of the Basic Manual and Statistical Plan, which will better protect consumers and purchasers of title insurance policies and provide for adequate and reasonable rates of return for title insurance companies and agents. Some of the revisions to the Basic Manual will also have public benefits of (1) making insuring forms easier to understand and reducing uncertainty, (2) making new title insurance coverage available, (3) supporting the availability and flexibility of existing title insurance coverage, and (4) reducing the administrative burden of some underwriting and regulatory processes.

Mr. Muckerheide expects that the proposed adoption by reference of the revised Basic Manual will not impose costs of compliance for title agents and underwriters. The primary costs attributable to this proposal are the costs of updating the amended forms and adding new forms for consistency with the revised Basic Manual. In Texas, title forms are promulgated, which means all title agents and underwriters must use the same forms. Title agents and underwriters typically have subscriptions with software vendors whose services include providing Basic Manual forms; these vendors make any necessary form updates and additions as well as associated data capture for Statistical Plan reporting. Vendors typically do not charge extra for these updates and additions. The services are included in the fee that title agents and underwriters pay to vendors.

The other aspect of this proposal includes adoption by reference of new or amended rate rules and procedural rules. Again, software vendors will absorb some or all of the costs associated with these changes as part of the services ordinarily included in their subscriptions at no extra charge. Any changes in underwriting labor that may be incidental to the new or amended rate rules and procedural rules will be offset, at least to some extent, by the proposed rate rule items that increase rates in some cases or introduce charges for new endorsements. Other changes include removing notarization requirements on licensing forms, removing notarization requirements for survey coverage by allowing use of an unsworn declaration rather than an affidavit, and allowing escrow checks to be signed electronically. These changes should reduce time and cost expenditures for licensees.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the proposed adop-

tion by reference of the revised Basic Manual and Statistical Plan will not have an adverse economic effect on small or micro businesses, or on rural communities. As described in the preceding Public Benefit and Cost Note section, the changes are unlikely to impose an actual cost on title agents or underwriters, and this includes any that are small or micro businesses. Further, they do not create requirements applicable to rural communities. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that this proposal is unlikely to impose a cost on regulated persons. Even if the proposal were to impose such a cost, no additional rule amendments are required under Government Code §2001.0045 because the sections as proposed and the changes to the Basic Manual and Statistical Plan are necessary to implement legislation. The proposed rule implements Insurance Code Chapters 2551, 2651, 2652, and 2703. Under the Title Insurance Act, the commissioner is responsible for and required to promulgate title insurance rates and forms, as well as adopt necessary rules governing their use. If any changes impose additional costs, such as implementation costs, it is reasonable for TDI to apply the implementation exception in Government Code §2001.045 to the ongoing concern of promulgating rates and forms and regulating the business of title insurance, as required by the Legislature.

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years that the proposed amendments and the Basic Manual's new and amended rules are in effect, the proposed rule:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will not create a new regulation;
- will expand, limit, or repeal an existing regulation;
- will not increase or decrease the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., central time, on July 1, 2024. The full text of the adoption-by-reference materials for 28 TAC §9.1 and §9.401 can be viewed at www.tdi.texas.gov/rules/2023/exrules.html and is available for review in the Office of the Chief Clerk. Send your comments to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

To request a public hearing on the proposal, submit a request before the end of the comment period to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030. The request for public hearing must be separate from any comments and received by TDI no later than 5:00 p.m., central time, on July 1, 2024. If a public hearing is held, TDI will consider written and oral comments presented at the hearing.

SUBCHAPTER A. BASIC MANUAL OF RULES, RATES AND FORMS FOR THE WRITING OF TITLE INSURANCE IN THE STATE OF TEXAS

28 TAC §9.1

STATUTORY AUTHORITY. TDI proposes amendments to §9.1 under Insurance Code §§2551.003, 2651.002, 2651.007, 2652.051, 2703.054, 2703.101, 2703.151, 2703.208, and 36.001.

Insurance Code §2551.003 authorizes the commissioner to adopt and enforce rules that prescribe underwriting standards and practices, that define risks, and that the commissioner determines are necessary to accomplish the purposes of the Title Insurance Act.

Insurance Code §2651.002 requires that a title agent must file an application for an agent's license on forms provided by TDI.

Insurance Code §2651.007 requires that TDI prescribe title agent licensing renewal forms.

Insurance Code §2652.051 requires that an escrow officer file an application for an escrow officer's license on forms provided by TDI.

Insurance Code §2703.054 authorizes the commissioner to amend owner title insurance policy language and endorsements to implement Insurance Code Chapter 2703, Subchapter A.

Insurance Code §2703.101 requires the commissioner to prescribe an owner title policy form to be used in connection with a transaction involving residential real property in this state.

Insurance Code §2703.151 requires the commissioner to fix and promulgate premiums rates charged by title insurance companies and agents.

Insurance Code §2703.208 provides that any addition or amendment to the Basic Manual may be proposed and adopted by reference by publishing notice in the *Texas Register*.

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.

CROSS-REFERENCE TO STATUTE. Section 9.1 implements Insurance Code §§2551.003, 2703.054, 2703.101, and 2703.151.

§9.1. Basic Manual of Rules, Rates, and Forms for the Writing of Title Insurance in the State of Texas.

The Texas Department of Insurance adopts by reference the *Basic Manual of Rules, Rates, and Forms for the Writing of Title Insurance in the State of Texas* (Basic Manual) as amended, effective November 1, 2024 [February 1, 2021]. The Basic Manual is available [from the Texas Department of Insurance, Mail Code 104-PC, P.O. Box 149104, Austin, TX 78711-2040. The Basic Manual is also avail-

able] on the TDI website at www.tdi.texas.gov [; and by email from ChiefClerk@tdi.texas.gov].

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

Filed with the Office of the Secretary of State on May 14, 2024.

TRD-202402170

Jessica Barta

General Counsel

Texas Department of Insurance

Earliest possible date of adoption: June 30, 2024

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



SUBCHAPTER C. TEXAS TITLE INSURANCE STATISTICAL PLAN

28 TAC §9.401

STATUTORY AUTHORITY. TDI proposes amendments to §9.401 under Insurance Code §§2551.003, 2703.151, 2703.153, 2703.208, and 36.001.

Insurance Code §2551.003 authorizes the commissioner to adopt and enforce rules that prescribe underwriting standards and practices, that define risks, and that the commissioner determines are necessary to accomplish the purposes of the Title Insurance Act.

Insurance Code §2703.151 requires the commissioner to fix and promulgate premiums rates charged by title insurance companies and agents.

Insurance Code §2703.153 requires the commissioner to develop and maintain a statistical report for the use of fixing and promulgating premium rates. The commissioner is required to evaluate the statistical report not less than every five years to see whether changes are required and amend it as necessary.

Insurance Code §2703.208 provides that any addition or amendment to the Basic Manual may be proposed and adopted by reference by publishing notice in the *Texas Register*.

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.

CROSS-REFERENCE TO STATUTE. Section 9.401 implements Insurance Code §2703.153.

§9.401. *Texas Title Insurance Statistical Plan.*

The Texas Department of Insurance adopts by reference the rules in the *Texas Title Insurance Statistical Plan* [Texas Title Insurance Statistical Plan] as amended effective January 1, 2025 [April 1, 2020]. This document is published by and is available from the Texas Department of Insurance, MC: PC-ACT, [Mail Code 105-5D,] P.O. Box 12030, [149014,] Austin, Texas 78711-2030 [78714-9104]. This document is also available on the TDI website at www.tdi.texas.gov.

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

Filed with the Office of the Secretary of State on May 14, 2024.

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Jessica Barta

General Counsel

Texas Department of Insurance

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



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

CHAPTER 127. DESIGNATED DOCTOR PROCEDURES AND REQUIREMENTS

SUBCHAPTER A. DESIGNATED DOCTOR SCHEDULING AND EXAMINATIONS

28 TAC §127.1, §127.25

INTRODUCTION. The Texas Department of Insurance, Division of Workers' Compensation (DWC) proposes to amend 28 TAC Chapter 127, concerning designated doctor (DD) procedures and requirements. DWC proposes amending §127.1, concerning DD examination requests and §127.25, concerning failure to attend a DD examination. Section 127.1 and §127.25 implement House Bill 2468, 88th Legislature, Regular Session (2023), which amended Labor Code §408.0041 and added Labor Code §408.1615.

EXPLANATION. The amendments to 28 TAC §127.1 and §127.25 are necessary to implement HB 2468. HB 2468 amended Labor Code §408.0041 to include individuals receiving lifetime income benefits under new Labor Code §408.1615. Section 408.1615 allows insurance carriers to suspend benefits if the first responder does not submit to a DD examination as required by Labor Code §§408.0041(a), 408.0041(f), or 408.1615(h). DWC proposes to amend 28 TAC §127.1 and §127.5 to reflect these statutory changes.

In addition, the proposed amendments include nonsubstantive editorial and formatting changes to conform the sections to the agency's current style and to improve the rule's clarity.

Section 127.1 concerns requesting DD examinations. The injured employee or an insurance carrier may ask DWC to order, or DWC on its own motion may order, an examination by a DD to resolve questions about the employee's injury. Section 127.1(d)(2) states that DWC will deny a request for a DD examination under §127.1 if the request would require a DD examination that violates certain statutes. The proposed amendment includes a reference to new Labor Code §408.1615 as one of these statutes because HB 2468 amended §408.0041 to include individuals receiving lifetime income benefits under §408.1615.

Section 127.25 concerns the suspension, reinitiation, and reinstatement of benefits when an injured employee fails to attend a DD examination. Amending §127.25 is necessary to implement HB 2468. HB 2468 amended Labor Code §408.0041 to include individuals receiving lifetime income benefits under new Labor Code §408.1615. The amendments to §127.25 allow for the suspension of lifetime benefits received under §408.1615 and for the reinstatement of those benefits after completing a missed DD examination.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Deputy Commissioner for Health & Safety Mary Landrum has determined that during each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the sections, other than that imposed by the statute. This determination was made because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments.

Deputy Commissioner Landrum does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendments are in effect, Deputy Commissioner Landrum expects that enforcing and administering the proposed amendments will have the public benefit of ensuring that DWC's rules conform to Labor Code §§408.0041 and 408.1615.

Deputy Commissioner Landrum expects that the proposed amendments will not increase the cost to comply with Labor Code §§408.0041 and 408.1615 because they do not impose requirements beyond those in the statutes. Labor Code §408.0041 requires an injured employee, under certain circumstances, to attend a DD examination to resolve questions about the injury. Labor Code §408.1615 requires the commissioner to adopt rules establishing procedures for the suspension and reinstatement of lifetime income benefits under §408.1615. As a result, the cost associated with including in the rule those individuals receiving lifetime income benefits under §408.1615 does not result from the enforcement or administration of the proposed amendments.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. DWC has determined that the proposed amendments will not have an adverse economic effect or a disproportionate economic impact on small or micro businesses, or on rural communities. The amendments implement HB 2468 by including individuals receiving lifetime income benefits under Labor Code §408.1615 into existing rules. As a result, and in accordance with Government Code §2006.002(c), DWC is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. DWC has determined that this proposal does not impose a possible cost on regulated persons. Also, no additional rule amendments are required under Government Code §2001.0045 because the proposed amendments are necessary to implement legislation. The proposed rule implements Labor Code §§408.0041 and 408.1615.

GOVERNMENT GROWTH IMPACT STATEMENT. DWC has determined that for each year of the first five years that the proposed amendments are in effect, the proposed rule:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will not create a new regulation;

- will expand, limit, or repeal an existing regulation;
- will increase or decrease the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

DWC made these determinations because the proposed amendments expand the existing regulation in Chapter 127 to apply to individuals receiving lifetime income benefits and increase the number of individuals subject to the rule. These amendments are required to implement the changes to Labor Code §§408.0041 and 408.1615 by HB 2468.

TAKINGS IMPACT ASSESSMENT. DWC has determined that no private real property interests are affected by this proposal, and this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. DWC will consider any written comments on the proposal that DWC receives no later than 5:00 p.m., Central time, on July 1, 2024. Send your comments to RuleComments@tdi.texas.gov; or to Texas Department of Insurance, Division of Workers' Compensation, Legal Services, MC-LS, P.O. Box 12050, Austin, Texas 78711-2050.

DWC will also consider written and oral comments on the proposal at a public hearing at 10:00 a.m., Central time, on June 25, 2024. The hearing will take place remotely. DWC will publish details of how to view and participate in the hearing on the agency website at www.tdi.texas.gov/alert/event/index.html.

STATUTORY AUTHORITY. DWC proposes amendments to §127.1 and §127.25 under Labor Code §§408.0041, 408.1615, 402.00111, 402.00116, and 402.061.

Labor Code §408.0041 provides that the commissioner may order a DD examination to resolve questions about an individual's injuries. It also provides that an insurance carrier may suspend benefits for a period in which the individual does not attend the required DD examination, and provides for when the insurance carrier must reinstate benefits.

Labor Code §408.1615 provides lifetime income benefits for certain first responders who sustain a serious bodily injury, other than an injury described by §408.161, in the course and scope of the employee's employment or volunteer service as a first responder that renders the employee permanently unemployable.

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.

CROSS-REFERENCE TO STATUTE. Section 127.1 and §127.25 implement Labor Code §§408.0041 and 408.1615. Labor Code §408.0041 was enacted by HB 2600, 77th Legislature, Regular Session (2001) and amended by HB 7, 79th Legislature, Regular Session (2005); SB 1169, 80th Legislature,

Regular Session (2007); HB 2004, 80th Legislature, Regular Session (2007); HB 2605, 82nd Legislature, Regular Session (2011); and HB 2468, 88th Legislature, Regular Session (2023). Labor Code §408.1615 was enacted by HB 2468, 88th Legislature, Regular Session (2023).

§127.1. Requesting Designated Doctor Examinations.

(a) - (c) (No change.)

(d) Denial of a request. The division will determine whether good cause exists on a case-by-case basis. The division will deny a request for a designated doctor examination and provide a written explanation for the denial to the requester if:

(1) the request does not comply with any of the requirements of subsection (b) or (c) of this section;

(2) the request would require the division to schedule an examination that violates Labor Code §§408.0041, 408.123, [or] 408.151, or 408.1615;

(3) there is an unresolved dispute about compensability reported under §124.2 of this title (relating to Insurance Carrier [Reporting and] Notification Requirements); or

(4) the request lacks any legal or factual basis that would reasonably merit approval.

(e) - (f) (No change.)

§127.25. Failure to Attend a Designated Doctor Examination.

(a) Suspension of benefits. An insurance carrier may suspend temporary income benefits (TIBs), or lifetime income benefits under §408.1615, if an injured employee fails, without good cause, to attend a designated doctor examination or a referral examination under §127.10(c) of this title.

(b) - (d) (No change.)

(e) Reinitiation of TIBs [benefits]. The insurance carrier must reinitiate [reinstate] TIBs effective on the date the injured employee submitted to the rescheduled examination under subsection (c) of this section or the date the examination was scheduled at the injured employee's request under subsection (d) of this section, unless the designated doctor's report indicates that the injured employee has reached MMI or is otherwise not eligible for income benefits. The reinitiation of TIBs must occur no later than the seventh day following:

(1) the date the insurance carrier was notified that the injured employee submitted to the examination; or

(2) the date the insurance carrier was notified that the division found the injured employee had good cause for not attending the examination.

(f) Reinstatement of lifetime income benefits. The insurance carrier must reinstate lifetime income benefits under §408.1615 effective on the date the injured employee submitted to the rescheduled examination under subsection (c) of this section, or the date the examination was scheduled at the injured employee's request under subsection (d) of this section, unless the designated doctor's report indicates that the injured employee is no longer eligible for lifetime income benefits. The reinstatement of lifetime income benefits must occur no later than the seventh day following:

(1) the date the insurance carrier was notified that the injured employee submitted to the examination; or

(2) the date the insurance carrier was notified that the division found the injured employee had good cause for not attending the examination.

(g) [(f)] Benefits during suspension. An injured employee is not entitled to TIBs or lifetime income benefits under §408.1615 during the period when the insurance carrier suspended benefits under this section unless the injured employee later submits to the examination, and:

(1) the division finds that the injured employee had good cause for not attending the examination; or

(2) the insurance carrier determines that the injured employee had good cause for not attending the examination.

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

Filed with the Office of the Secretary of State on May 17, 2024.

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Kara Mace

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

Earliest possible date of adoption: June 30, 2024

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



CHAPTER 131. BENEFITS--LIFETIME INCOME BENEFITS

INTRODUCTION. The Texas Department of Insurance, Division of Workers' Compensation (DWC) proposes to amend 28 TAC Chapter 131, concerning lifetime income benefits. DWC proposes amending §131.1, concerning the initiation of lifetime income benefits, and adding new §§131.10, 131.11, 131.12, 131.13, and 131.14, concerning lifetime income benefits for first responders under Texas Labor Code §408.1615. The proposed amendments and new sections will restructure Chapter 131 into two subchapters. New Subchapter A will include the existing sections of Chapter 131, which are §§131.1, 131.2, 131.3, and 131.4. New Subchapter B will include the new sections of Chapter 131, which are §§131.10, 131.11, 131.12, 131.13, and 131.14. Subchapter B will apply to first responders receiving benefits under §408.1615. The amendments and new sections implement House Bill (HB) 2468, 88th Legislature, Regular Session (2023), which amended Labor Code §408.0041 and enacted Labor Code §408.1615. Section 131.1 implements Labor Code §§408.0041, 408.161 and 408.1615. Sections 131.10, 131.11, 131.12, 131.13, and 131.14 implement Labor Code §408.1615.

EXPLANATION. The amendments to §131.1 and new §§131.10, 131.11, 131.12, 131.13, and 131.14 are necessary to implement HB 2468. HB 2468 enacted Labor Code §408.1615, which allows certain first responders to receive lifetime income benefits.

The proposed amendments and new sections add definitions and create procedures for a first responder's annual certification to the insurance carrier, for the suspension and reinstatement of lifetime income benefits, and for the dispute of a first responder's continuing entitlement to lifetime income benefits.

The proposed amendments and new sections also include non-substantive editorial and formatting changes to conform the sections to the agency's current style and to improve the rule's clarity.

Section 131.1 concerns the initiation of lifetime income benefits by the insurance carrier or at the request of the employee, and provides for the approval or denial of those benefits. Amending §131.1 is necessary to implement Labor Code §408.1615, which makes certain first responders eligible for lifetime income benefits. The amendments add a reference to Labor Code §408.1615 under §131.1 to include individuals who are eligible to receive lifetime income benefits under §408.1615.

Section 131.10 concerns definitions in new Labor Code §408.1615. New §131.10 is necessary to add these definitions for the rule's clarity.

Section 131.11 concerns applicability for new Subchapter B. New §131.11 is necessary to implement Labor Code §408.1615, which created lifetime income benefits for certain first responders. Section 131.11 lists who may be entitled to these benefits under §408.1615.

Section 131.12 concerns a first responder's annual certification to the insurance carrier as required by Labor Code §408.1615. New §131.12 is necessary to implement §408.1615 by listing the content, method, and timing of the certification. To help first responders comply with the certification submission required under §408.1615, new §131.12 requires insurance carriers to provide notice to those receiving benefits under §408.1615 by sending a certification to complete 30 days before the certification is due, which includes the anniversary date benefits began to accrue.

Section 131.13 concerns the suspension and reinstatement of lifetime income benefits for first responders under Labor Code §408.1615. New §131.13 is necessary to implement Labor Code §408.1615, which states when an insurance carrier can suspend a first responder's lifetime income benefits under that section and when an insurance carrier must reinstate those benefits. Section 408.1615(i) requires the commissioner, by rule, to ensure that an employee receives reasonable notice of the insurance carrier's basis for the suspension and is provided a reasonable opportunity to complete the annual certification or otherwise respond to the notice. DWC interprets a reasonable opportunity as being 20 days. As a result, new §131.13 requires the insurance carrier to give the first responder a plain-language notice of the basis for the suspension, and requires the first responder to respond to the notice within 20 days of receiving it. In addition, new §131.13 states that if the suspension is due to a missing annual certification, the insurance carrier must reinstate benefits within seven days of receiving the certification. It also states that if the suspension is due to failure to attend a designated doctor examination, the insurance carrier must follow §127.25 of this title for suspension and reinstatement of the first responder's benefits. If the first responder believes that the insurance carrier's assertion that the first responder was employed is not correct, then the first responder would request dispute resolution under Chapters 140 - 144 and 147 of this title (relating to Dispute Resolution). If the suspension is due to employment in any capacity, new §131.13 requires the first responder to submit a new request for lifetime income benefits under §131.1. Finally, new §131.13 clarifies that if the insurance carrier suspends or reinstates benefits under §131.13, the insurance carrier must comply with the electronic notification requirements to DWC in §124.2 and Chapter 124, Subchapter B (relating to Insurance Carrier Claim Electronic Data Interchange Reporting to the Division).

Section 131.14 provides for the dispute of a first responder's continuing entitlement to lifetime income benefits. New §131.14 is necessary to implement Labor Code §408.1615, which al-

lows an insurance carrier to review a first responder's continuing entitlement to the lifetime income benefits more than once in a five-year period if the insurance carrier provides evidence to DWC that the first responder's annual certification is not accurate, and the commissioner finds that the evidence is sufficient. If the evidence is sufficient, the insurance carrier must request a designated doctor (DD) exam to determine whether the first responder remains eligible to receive lifetime income benefits under §408.1615. New §131.14 provides procedures for this process. Once DWC receives the evidence from an insurance carrier, DWC will issue an order stating whether the insurance carrier is entitled to require the first responder to submit to a DD examination under §408.1615(h). If a DD exam is completed, the parties may dispute the DD's opinion on the first responder's continuing entitlement to lifetime income benefits through DWC's dispute resolution process.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Deputy Commissioner for Hearings Allen Craddock has determined that during each year of the first five years the proposed amendments and new sections are in effect, there will be minimal fiscal impact on state and local governments as a result of enforcing or administering the sections, other than that imposed by the statute. This determination was made because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments.

Deputy Commissioner Craddock does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendments and new sections are in effect, Deputy Commissioner Craddock expects that enforcing and administering the proposed amendments and sections will have the public benefit of ensuring that DWC's rules conform to Labor Code §§408.0041, 408.161 and 408.1615.

Deputy Commissioner Craddock also expects that the proposed amendments and new sections will impose an economic cost on persons required to comply with the rule. Section 131.12 requires insurance carriers to provide notice to first responders receiving lifetime income benefits under Labor Code §408.1615 by sending the first responder the annual certification to complete 30 days before the certification is due and including the anniversary date the first responder's benefits began to accrue. Labor Code §408.1615 requires first responders receiving lifetime income benefits under the section to annually submit to the insurance carrier a certification stating they have not worked in any capacity during the preceding year.

Based on dispute data from years 2017 - 2023, DWC anticipates that, each year, there will be about 10 first responders who will be entitled to lifetime income benefits under §408.1615. DWC estimates that the cost for insurance carriers to send one certification to a first responder to be \$0.68 for postage and about \$0.50 for the cost to print the certification and pay for the envelope. As a result, the total cost to comply with this requirement would be \$1.18 for each certification sent. With DWC's estimated number of first responders receiving lifetime income benefits under §408.1615 to be 10 individuals, the annual total cost to comply with the rule would be \$11.80 for all insurance carriers combined.

First responders receiving lifetime income benefits under §408.1615 have been severely injured, and requiring insurance

carriers to send the annual certification to complete to the first responder along with their accrual date will make it easier for the first responder to comply with the statutory requirement to submit the certification. DWC finds that the benefit of helping severely injured first responders submit the annual certification to complete required under §408.1615 outweighs the minimal cost to insurance carriers to provide notice and the certification to these first responders.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. DWC has determined that the proposed amendments and new sections may have an adverse economic effect or a disproportionate economic impact on small or micro businesses, or on rural communities. The cost analysis in the Public Benefit and Cost Note section of this proposal also applies to these small and micro businesses and rural communities. Most of the potential cost from these rules impacts insurance carriers. DWC identified 145 insurance carriers that had more than \$0 but less than \$6 million total direct written premium nationally for workers' compensation insurance. These insurance carriers writing workers' compensation insurance in Texas meet the definition of a small business under Government Code §2006.001(2)(C). As a result, DWC estimates that the changes may affect 145 small or micro businesses.

In addition, most rural political subdivisions self-insure their workers' compensation responsibilities individually or as part of a pool, so their impacts and benefits will be similar to the insurance carriers. The data readily available from the Texas Demographic Center and the United States Census Bureau divides the Texas population into "places" and counties. For census purposes, "place" includes census designated places, consolidated cities, and incorporated places. There are often multiple places in a county, and some places span multiple counties, so the reports DWC collects from political subdivisions that self-insure their workers' compensation liabilities may include places that span different counties. As a result, to get the best estimate of affected rural communities, DWC looked at the Texas Demographic Center's January 2023 estimated county populations. Government Code Chapter 487 defines "rural county" at various population levels, ranging from a maximum population of 125,000 to 150,000. But Government Code Chapter 490G defines "rural county" in part as a county with a population of less than 60,000. Insurance Code Chapter 845 defines "rural area" as a county with a population of 50,000 or less. Using the most inclusive definition, of the 254 Texas counties, 222 have a population of less than 150,000, and all of those contain one or more self-insuring political subdivisions. As a result, DWC estimates that the changes may affect 222 rural counties on some level.

The primary objectives of this proposal are to implement new Labor Code §408.1615, which provides lifetime income benefits to certain severely injured first responders, and to make the process easier for these first responders. Requiring insurance carriers to send the annual certification to complete helps reduce the burden from first responders to remember to submit their certification and reminds them of their accrual date. DWC considered the following alternatives to minimize any adverse impact on small and micro businesses and rural communities while accomplishing the proposal's objectives:

(1) Not proposing the requirement. DWC considered not proposing the changes but rejected that option. As stated in the cost note, the individuals receiving lifetime income benefits under Labor Code §408.1615 have been severely injured, and requiring

insurance carriers to send the annual certification to complete to the first responder along with their accrual date will help first responders comply with §408.1615. Requiring insurance carriers to notify and send the first responder their annual certification to complete makes the process less difficult for these severely injured first responders to retain the benefits they are entitled to. For this reason, not proposing the changes is not a viable option.

(2) Proposing a different requirement for small and micro businesses or rural communities. The proposed rule requires insurance carriers to send notice and the annual certification to complete to the first responder 30 days before the certification is due. The only alternatives are to not require insurance carriers to send notice and the certification to the first responder, or to adjust the timeframe. Given the number of insurance carriers writing workers' compensation policies in Texas that qualify as small businesses based on their premium volume, proposing a different requirement for small and micro businesses or rural communities would mean the different requirement would likely affect a large percentage of first responders. If DWC were to not require small or micro businesses or rural communities to send a first responder the annual certification to complete, the first responders affected by that would not have the same assistance as those in other areas. If DWC were to adopt a different timeframe for small and micro businesses or rural communities, it would not substantially lower the cost of compliance, and receiving the form too early or too late for an annual certification might make it more difficult for injured first responders to comply with the requirement. As stated in option one, requiring insurance carriers to notify and send the first responder their annual certification to complete makes the process less difficult for these severely injured first responders to retain the benefits they are entitled to. For this reason, proposing a different requirement is not a viable option.

(3) Exempting small or micro businesses or rural communities from the proposed requirement. DWC considered exempting small or micro businesses or rural communities from all or part of the rules but rejected that option. Like the second option, exempting small and micro businesses or rural communities from the proposed rule would likely affect a large percentage of first responders. If DWC were to not require small or micro businesses or rural communities to send a first responder the annual certification to complete, the first responders affected by that would not have the same assistance as those in other areas. As stated in options one and two, requiring insurance carriers to notify and send the first responder their annual certification to complete makes the process less difficult for these severely injured first responders to retain the benefits they are entitled to. For this reason, exempting small and micro businesses or rural communities from the proposed requirement is not a viable option.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. DWC has determined that this proposal does impose a possible cost on regulated persons. However, the cost for insurance carriers to send a certification to complete each year to first responders receiving lifetime income benefits under Labor Code §408.1615 is minimal, and necessary to implement Labor Code §§408.0041 and 408.1615, as amended and added by HB 2468. As a result, no additional rule amendments are required under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT. DWC has determined that for each year of the first five years that the proposed amendments and new sections are in effect, the proposed rule:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will create a new regulation;
- will expand, limit, or repeal an existing regulation;
- will increase or decrease the number of individuals subject to the rule's applicability; or
- will not positively or adversely affect the Texas economy.

DWC made these determinations because the proposal adds new sections, amends existing sections, and changes the people the sections affect. However, these changes are necessary to implement Labor Code §§408.0041 and 408.1615, as amended by HB 2468. HB 2468 expanded the types of injured employees that qualify for lifetime income benefits and created a special category and specific requirements for first responders with specific types of injuries.

TAKINGS IMPACT ASSESSMENT. DWC has determined that no private real property interests are affected by this proposal, and this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. DWC will consider any written comments on the proposal that DWC receives no later than 5:00 p.m., Central time, on July 1, 2024. Send your comments to RuleComments@tdi.texas.gov; or to Texas Department of Insurance, Division of Workers' Compensation, Legal Services, MC-LS, P.O. Box 12050, Austin, Texas 78711-2050.

DWC will also consider written and oral comments on the proposal at a public hearing at 10:00 a.m., Central time, on June 25, 2024. The hearing will take place remotely. DWC will publish details of how to view and participate in the hearing on the agency website at www.tdi.texas.gov/alert/event/index.html.

SUBCHAPTER A. GENERAL PROVISIONS

28 TAC §131.1

STATUTORY AUTHORITY. DWC proposes creating Subchapter A, Chapter 131; amendments to §131.1; and locating §§131.1, 131.2, 131.3, and 131.4 in new Subchapter A under Labor Code §§408.0041, 408.161, 408.1615, 402.00111, 402.00116, and 402.061.

Labor Code §408.0041 provides that the commissioner may order a DD exam to resolve questions about an individual's injuries. It also provides that an insurance carrier may suspend benefits for a period in which the individual does not attend the required DD exam, and provides for when the insurance carrier must reinstate benefits.

Labor Code §408.161 provides lifetime income benefits for certain injuries.

Labor Code §408.1615 provides lifetime income benefits for certain first responders who sustain a serious bodily injury, other

than an injury described by §408.161, in the course and scope of the employee's employment or volunteer service as a first responder that renders the employee permanently unemployable.

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.

CROSS-REFERENCE TO STATUTE. Section 131.1 implements Labor Code §§408.0041, 408.161, and 408.1615. Labor Code §408.0041 was enacted by HB 2600, 77th Legislature, Regular Session (2001) and amended by HB 7, 79th Legislature, Regular Session (2005); Senate Bill (SB) 1169, 80th Legislature, Regular Session (2007); HB 2004, 80th Legislature, Regular Session (2007); HB 2605, 82nd Legislature, Regular Session (2011); and HB 2468, 88th Legislature, Regular Session (2023). Labor Code §408.161 was enacted by HB 752, 73rd Legislature, Regular Session (1993) and amended by HB 3196, 75th Legislature, Regular Session (1997); HB 2510, 76th Legislature, Regular Session (1999); HB 2600, 77th Legislature, Regular Session (2001); HB 7, 79th Legislature, Regular Session (2005); and HB 2468, 88th Legislature, Regular Session (2023). Labor Code §408.1615 was enacted by HB 2468, 88th Legislature, Regular Session (2023).

§131.1. Initiation of Lifetime Income Benefits; Notice of Denial.

(a) The insurance carrier must [shall] initiate the payment of lifetime income benefits without a final decision, order, or other action of the commissioner if an injured employee meets the eligibility criteria for lifetime income benefits listed under Labor Code §408.161 or §408.1615 as a result of the compensable injury.

(b) An injured employee may submit a written request for lifetime income benefits to the insurance carrier. The insurance carrier must [shall] either initiate lifetime income benefits or deny the injured employee's eligibility for lifetime income benefits considering all of the eligibility criteria listed under Labor Code §408.161 or §408.1615 within 60 days of receiving ~~from the receipt of~~ the injured employee's written request. An insurance carrier's failure to respond to the request for lifetime income benefits within the timeframes described in this subsection does not constitute a waiver of the insurance carrier's right to dispute the injured employee's eligibility for lifetime income benefits.

(c) The insurance carrier must [shall] make the first payment of lifetime income benefits on or before the 15th day after the date the insurance carrier reasonably believes that the injured employee is eligible for lifetime income benefits as a result of the compensable injury. The initiation of lifetime income benefits without a final decision, order, or other action of the commissioner does not waive the insurance carrier's right to contest the compensability of the injury under [in accordance with] Labor Code §409.021(c).

(d) If the injured employee submits a written request for lifetime income benefits, and the insurance carrier denies that the injured employee is eligible for lifetime income benefits, the insurance carrier must [shall] deny eligibility by sending a plain-language [plain language] notice of denial of eligibility to the division, the injured employee, and the injured employee's representative, if any, in the form

and manner prescribed by the division up to the 60th day after it receives [receipt of] the written request. The notice of denial of eligibility must [shall] include:

(1) a full and complete statement describing the insurance carrier's reasons for denial. The statement must contain sufficient claim-specific substantive information to enable the injured employee to understand the insurance carrier's position or action taken under the claim. A generic statement that simply states the insurance carrier's position with phrases such as "not part of compensable injury," "not meeting criteria," "liability is in question," "under investigation," "eligibility questioned," or other similar phrases with no further description of the factual basis for the denial does not satisfy the requirements of paragraph (1) of this subsection;

(2) contact information, including the adjuster's name, toll-free telephone and fax numbers, and email address; and

(3) a statement informing the injured employee of his or her right to request a benefit review conference to resolve the dispute.

(e) An injured employee may contest the insurance carrier's denial of eligibility for lifetime income benefits or failure to respond to the written request for lifetime income benefits by requesting dispute resolution [a benefit review conference] as provided by Chapters 141 - 144 and 147 [Chapter 141] of this title (relating to Dispute Resolution) [~~(relating to Dispute Resolution--Benefit Review Conference)~~].

(f) Nothing in this section is intended to limit an [any] insurance carrier's duty to initiate payment of lifetime income benefits before the time limit established in subsection (c) of this section.

~~[(g) Effective date. This section is effective on June 1, 2015].~~

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

Filed with the Office of the Secretary of State on May 17, 2024.

TRD-202402237

Kara Mace

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

Earliest possible date of adoption: June 30, 2024

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



SUBCHAPTER B. LIFETIME INCOME BENEFITS--CERTAIN FIRST RESPONDERS.

28 TAC §§131.10 - 131.14

STATUTORY AUTHORITY. DWC proposes new §§131.10, 131.11, 131.12, 131.13, and 131.14 under Labor Code §§408.0041, 408.1615, 402.00111, 402.00116, and 402.061.

Labor Code §408.0041 provides that the commissioner may order a DD exam to resolve questions about an individual's injuries. It also provides that an insurance carrier may suspend benefits for a period in which the individual does not attend the required DD exam, and provides for when the insurance carrier must reinstate benefits.

Labor Code §408.1615 provides lifetime income benefits for certain first responders who sustain a serious bodily injury, other than an injury described by §408.161, in the course and scope of the employee's employment or volunteer service as a first responder that renders the employee permanently unemployable.

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.

CROSS-REFERENCE TO STATUTE. Section 131.1 implements Labor Code §§408.0041 and 408.1615. Labor Code §408.0041 was enacted by HB 2600, 77th Legislature, Regular Session (2001) and amended by HB 7, 79th Legislature, Regular Session (2005); SB 1169, 80th Legislature, Regular Session (2007); HB 2004, 80th Legislature, Regular Session (2007); HB 2605, 82nd Legislature, Regular Session (2011); and HB 2468, 88th Legislature, Regular Session (2023). Labor Code §408.1615 was enacted by HB 2468, 88th Legislature, Regular Session (2023).

§131.10. Definitions.

In Subchapter B of this chapter:

(1) "First responders" means "first responders" as defined in Labor Code §408.1615.

(2) "Serious bodily injury" means "serious bodily injury" as defined in Penal Code §1.07.

§131.11. Applicability.

This subchapter applies to a first responder who sustains a serious bodily injury:

(1) that is an injury described under Labor Code §408.1615;

(2) in the course and scope of the first responder's employment or volunteer service as a first responder; and

(3) that renders the first responder permanently unemployable.

§131.12. First Responder's Annual Certification to Insurance Carrier.

(a) Requirement. A first responder receiving lifetime income benefits under §408.1615 must file a certification with the insurance carrier annually.

(b) Content. The certification must state that the first responder was not employed in any capacity during the preceding year.

(c) Method and Timing. The first responder must submit the certification to the insurance carrier in the form and manner prescribed by the division:

(1) by first class mail, by personal delivery, or electronically; and

(2) no later than 30 days after the anniversary of the date the first responder's lifetime income benefits began to accrue.

(d) Notice. Every year, 30 days before the first responder's annual certification is due, an insurance carrier must send the annual certification to complete to the first responder and include the anniversary date the first responder's lifetime income benefits began to accrue.

§131.13. Suspension and Reinstatement of Lifetime Income Benefits.

(a) An insurance carrier may suspend the payment of lifetime income benefits to a first responder during and for a period in which:

(1) The first responder fails to complete the annual certification as required by §408.1615(e).

(2) The first responder, without good cause, fails to attend a designated doctor examination as required by §408.0041(j).

(3) The first responder is employed in any capacity.

(4) A designated doctor's report indicates that the first responder is no longer entitled to lifetime income benefits as provided in §408.0041(k-1).

(b) Before an insurance carrier may suspend lifetime income benefits under this section, the insurance carrier must send a plain-language notice to the first responder that explains the basis for the suspension.

(1) Within 20 days of receiving this notice, the first responder must respond to the insurance carrier's notice by:

(A) submitting the annual certification to the insurance carrier;

(B) notifying the insurance carrier of an examination under §127.25 of this title (relating to Failure to Attend a Designated Doctor Examination); or

(C) requesting dispute resolution under Chapters 140 - 144 and 147 of this title (relating to Dispute Resolution).

(2) If the first responder does not respond within 20 days of receiving this notice, the insurance carrier may suspend the first responder's benefits.

(c) If an insurance carrier suspends benefits under subsection (a)(1) of this section, the insurance carrier must reinstate benefits effective on the date the insurance carrier receives the first responder's annual certification. The reinstatement of benefits must occur no later than the seventh day following the date the insurance carrier receives the annual certification.

(d) If an insurance carrier suspends benefits under subsection (a)(2) of this section (failure to attend a designated doctor examination), the insurance carrier must follow §127.25 of this title for suspension and reinstatement of the first responder's benefits.

(e) If an insurance carrier suspends benefits under subsection (a)(3) of this section (employment in any capacity), the first responder must submit a new request for lifetime income benefits under §131.1 of this chapter (relating to Initiation of Lifetime Income Benefits; Notice of Denial).

(f) If the insurance carrier suspends or reinstates benefits under this section, the insurance carrier must also comply with the electronic notification requirements to DWC in §124.2 and Chapter 124, Subchapter B (relating to Insurance Carrier Claim Electronic Data Interchange Reporting to the Division).

§131.14. Dispute of Continuing Entitlement of Lifetime Income Benefits.

(a) If the insurance carrier disputes the accuracy of the first responder's annual certification under Labor Code §408.1615(g), the insurance carrier must provide a copy of the annual certification along with supporting evidence to the division and to the first responder.

(b) Upon receipt of the information in subsection (a) of this section, the division will issue an order stating whether the insurance carrier is entitled to an examination under Labor Code §408.1615(h).

(c) The parties may dispute the determination of the division through the dispute resolution processes outlined in Chapters 140 - 144 and 147 of this title (relating to Dispute Resolution).

(d) After receiving the designated doctor's report under Labor Code §408.1615(h), a party may dispute the designated doctor's opinion on continuing entitlement to lifetime income benefits through the dispute resolution processes outlined in Chapters 140 - 144 and 147 of this title.

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

Filed with the Office of the Secretary of State on May 17, 2024.

TRD-202402238

Kara Mace

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

Earliest possible date of adoption: June 30, 2024

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



TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 9. PROPERTY TAX ADMINISTRATION

SUBCHAPTER O. TEXAS JOBS, ENERGY, TECHNOLOGY AND INNOVATION PROGRAM

34 TAC §9.5004, §9.5013

The Comptroller of Public Accounts proposes amendments to §9.5004, concerning application process, and proposes new §9.5013, concerning hearings. This proposal implements aspects of the Texas Jobs, Energy, Technology and Innovation Act ("Act") set forth in Government Code, Subchapter T, Chapter 403, which was enacted by House Bill 5, 88th Legislature, 2023.

The proposed amendment to §9.5004 deletes subsection (e) to permit the information described by Government Code, §403.622(a) to be posted on the comptroller's website before a determination on administrative completeness. The subsequent paragraphs are relettered accordingly.

New §9.5013 outlines the applicable hearing procedures under the Act.

Brad Reynolds, Chief Revenue Estimator, has determined that during the first five years that the proposed new rule and amended rule are in effect, the rules: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy.

Mr. Reynolds also has determined that the proposed new rule and amended rule would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed new rule and amended rule would benefit the public by conforming the rule to current statute and improving the clarity and implementation of the section. There would be no significant

anticipated economic cost to the public. The proposed new rule and amended rule would have no fiscal impact on small businesses or rural communities.

You may submit comments on the proposal to John Villarreal, Manager, Economic Development & Local Government at John.Villarreal@cpa.texas.gov or at P.O. Box 13528, Austin, Texas 78711-3528. The comptroller must receive your comments no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The new section and amendments are proposed under Government Code, §403.623, which permits the comptroller to adopt rules regarding the Texas Jobs, Energy, Technology and Innovation Act as necessary to implement that chapter.

The new section and amendments implement Government Code, Chapter 403.

§9.5004. Application Process.

(a) An applicant must submit an application for a limitation on taxable value of eligible property in the form and manner prescribed by the comptroller. The comptroller may require applications to be submitted electronically.

(b) After the eligibility of the applicant is assessed in §9.5001 of this chapter, the comptroller shall review an application to determine if it is administratively complete. An application is considered administratively complete when it includes all the information requested by the comptroller.

(c) The comptroller shall provide notice of an administratively complete application to the applicant, the governor and the applicable school district. The comptroller may provide notice electronically.

(d) If an application is not administratively complete, the comptroller may require an applicant to submit the necessary information by a deadline.

~~(e) The comptroller shall publish on its website information from each application including maps, economic benefit statement and any amendments within 10 business days of receiving an administratively complete application.~~

(e) [(f)] To assess whether a project proposed in an application is an eligible project, the comptroller must find that:

- (1) an applicant satisfies the application requirements;
- (2) the proposed project meets the definition of eligible project in §9.5000 of this title and Government Code, §403.602(8); and
- (3) The applicant is willing to agree and accept the terms described in Government Code, §403.604, and the agreement terms.

(f) [(g)] To assess whether an agreement is a compelling factor and whether the applicant would make the proposed investment in the absence of the agreement under Government Code, §403.609(b)(3), the comptroller may consider:

- (1) any public documents and statements relating to the applicant, the proposed project or the proposed eligible property that is subject to the application;
- (2) official statements by the applicant, government officials or industry officials concerning the proposed project;
- (3) alternative sites and prospects explored including any specific incentive information;
- (4) any information concerning the proposed project's impact on the Texas economy;

(5) previous applications for and subsequent granting of economic development incentives;

(6) documents pertaining to the proposed project's financials, real estate transactions, utilities, infrastructure, transportation, regulatory environment, permits, workforce, marketing, existing facilities, nature of market conditions, and raw materials that demonstrate whether the incentive is a compelling factor in a competitive site selection process to locate the proposed project in Texas; and

(7) any other information that may aid the comptroller in its determination.

(g) [(h)] Upon request, the comptroller may require that an applicant provides additional documents to demonstrate a compelling factor in a competitive site selection process to locate the proposed project in Texas. Failure to provide these documents may result in the comptroller being unable to make a recommendation under Government Code, §403.609.

(h) [(i)] Within 60 days of an application being deemed complete, the comptroller shall examine and determine whether the application should be recommended or not recommended for approval based on the criteria in Government Code, §403.609(b).

(i) [(j)] The comptroller shall provide written notice of action under Government Code, §403.609(a), to the applicant, the governor and the applicable school district.

(1) The notice shall indicate the comptroller's recommendation either for approval or non-approval of the application along with a copy of the application, and all documents or information relied upon to make the findings prescribed by Government Code, §403.609(b).

(2) A recommendation for approval shall specify a performance bond amount that is 10% of the estimated gross tax benefit to the applicant.

(j) [(k)] An applicant may submit an amended or supplemental application to the comptroller at any time after the submission of the original application. If an applicant modifies an application recommended by the comptroller prior to the execution of the agreement, the applicant must submit said modifications to the comptroller to make a recommendation pursuant to Government Code, §403.609, before the agreement can be executed.

§9.5013. Hearings.

The comptroller's rules of practice and procedure, set forth in Chapter 1, Subchapter A, Division 1 of this title, apply to contested case proceedings under Government Code, §403.614(e).

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

Filed with the Office of the Secretary of State on May 17, 2024.

TRD-202402216

Don Neal

General Counsel, Operations and Support Legal Services

Comptroller of Public Accounts

Earliest possible date of adoption: June 30, 2024

For further information, please call: (512) 475-2220



**PART 3. TEACHER RETIREMENT
SYSTEM OF TEXAS**

CHAPTER 41. HEALTH CARE AND INSURANCE PROGRAMS

SUBCHAPTER A. RETIREE HEALTH CARE BENEFITS (TRS-CARE)

34 TAC §41.17

The Board of Trustees of the Teacher Retirement System of Texas (TRS) proposes new §41.17 (relating to Limited-time Enrollment Opportunity for Medicare-eligible Retirees) under Subchapter A (relating to Retiree Health Care Benefits (TRS-CARE)) of Chapter 41 in Part 3 of Title 34 of the Texas Administrative Code.

BACKGROUND AND PURPOSE

The trust fund of the Texas Public School Retired Employees Group Benefits Program ("TRS-Care"), administered under Chapter 1575 of the Insurance Code, has experienced growth in recent years stemming from federal changes to Medicare, TRS' improved contracts with Medicare Advantage and Part D drug benefits, and other factors.

TRS received correspondence from legislative leadership directing TRS to use the growth in the TRS-Care fund to reduce premiums and allow for a one-time enrollment opportunity for eligible TRS-Care Medicare Advantage participants. TRS will be evaluating how to use the fund balance to accomplish these goals while maintaining the fund's long-term stability.

TRS is proposing this new §41.17 to provide a limited-time enrollment opportunity for unenrolled retirees, dependents, surviving spouses, and surviving dependent children in anticipation of the upcoming TRS-Care open enrollment period (which begins on October 1, 2024) and the reduced premiums that would take effect on the next plan year, which begins January 1, 2025.

Proposed new §41.17 implements the details of this limited-time enrollment opportunity, specifying who is eligible, when eligible individuals may enroll, and when coverage will be effective. Eligible retirees, dependents, surviving spouses, and surviving dependent children will be eligible to enroll beginning October 1, 2024, through March 31, 2026.

FISCAL NOTE

Don Green, TRS Chief Financial Officer, has determined that for each year of the first five years the proposed new rule will be in effect, there will be no foreseeable fiscal implications for state or local governments as a result of administering the proposed new rule. While opening the enrollment for otherwise eligible retirees, dependents, surviving spouses, and surviving dependent children increases the risk to the TRS-Care trust fund, that risk increase is offset by the premiums that new and existing enrollees will be paying for their coverage and other sources of income of the trust fund. Because health benefit plans are inherently risk-based businesses, this limited-time enrollment opportunity does not pose a risk to the trust fund that is atypical for its nature.

PUBLIC COST/BENEFIT

For each year of the first five years the proposed new rule will be in effect, Mr. Green has also determined that the public benefit anticipated as a result of adopting the new rule will be to provide guidance with respect to how the limited-time enrollment opportunity will be implemented. Mr. Green has also determined that there is no economic cost to entities required to comply with the

proposed new rule. Further, Mr. Green has determined participants will incur a cost through the payment of premiums only if they choose to take advantage of this opportunity and enroll.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

TRS has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed new rule. Therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under Government Code §2006.002.

LOCAL EMPLOYMENT IMPACT STATEMENT

TRS has determined that there will be no effect on local employment because of the proposed new rule. Therefore, no local employment impact statement is required under Government Code §2001.022.

GOVERNMENT GROWTH IMPACT STATEMENT

TRS has determined that for the first five years the proposed new rule is in effect, the proposed new rule will not create or eliminate any TRS programs; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to TRS; will not eliminate any fees currently paid to TRS; will not expand, limit, or repeal an existing regulation; will not increase or decrease the number of individuals subject to the rule's applicability; and will not affect the state's economy.

This proposal creates a new regulation. Proposed §41.17 is a new rule through which TRS, as trustee of the Texas Public School Retired Employees Group Benefits Act created under Chapter 1575 of the Insurance Code, will provide a limited-time enrollment opportunity for eligible retirees, dependents, surviving spouses, and surviving dependent children that did not enroll when they had the opportunity to do so.

TAKINGS IMPACT ASSESSMENT

TRS has determined that there are no private real property interests affected by the proposed new rule; therefore, a takings impact assessment is not required under Government Code §2007.043.

COSTS TO REGULATED PERSONS

TRS has determined that Government Code §2001.0045 does not apply to the proposed new rule because it does not impose a cost on regulated persons.

COMMENTS

Comments may be submitted in writing to Brian Guthrie, TRS Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register*.

STATUTORY AUTHORITY

The new rule is being proposed under the authority of Chapter 1575, Insurance Code, which establishes the Texas Public School Retired Employees Group Benefits Act (TRS-Care), §1575.052, which allows the trustee to adopt rules, plans, procedures, and orders reasonably necessary to implement Chapter 1575, including periods of enrollment and selection of coverage and procedures for enrolling and exercising options under the group program; Chapter 825 of the Government Code, which governs the administration of TRS; and Government Code

§825.102, which authorizes the Board of Trustees to adopt rules for the transaction of the business of the Board.

CROSS-REFERENCE TO STATUTE

The proposed new rule affects Chapter 1575, Insurance Code, which establishes the Texas Public School Retired Employees Group Benefits Program (TRS-Care), §1575.052, which allows the trustee to adopt rules, plans, procedures, and orders for periods of enrollment and selection of coverage and procedures for enrolling and exercising options under the group program.

§41.17. Limited-time Enrollment Opportunity for Medicare-eligible Retirees.

(a) Eligibility.

(1) Retiree. A retiree who is eligible to enroll in the Medicare Advantage plan offered under TRS-Care in accordance with Section 1575.1582(b), Insurance Code (hereinafter referred to as "MA plan") and who is not currently enrolled in the MA plan, may enroll in the MA plan if the retiree applies for enrollment during the limited-time enrollment period. For the purpose of this section, the limited-time enrollment period is the period that begins on October 1, 2024, and extends through March 31, 2026.

(2) Surviving spouses or surviving dependent children. If a retiree has passed away, the retiree's surviving spouse or the retiree's surviving dependent child may enroll under this section, as long as:

(A) The surviving spouse or surviving dependent child qualifies as such under Section 1575.003, Insurance Code, and

(B) The surviving spouse or surviving dependent child is eligible for Medicare and is eligible to enroll in the MA plan offered under TRS-Care in accordance with Section 1575.1582(b), Insurance Code.

(3) Dependents. If the retiree's or surviving spouse's application to enroll under this section is approved, the retiree or surviving spouse may also enroll any eligible dependents.

(4) Single enrollment opportunity. A retiree, surviving spouse, or surviving dependent child may only enroll one time during the limited-time enrollment period.

(b) Effective Date of Coverage.

(1) January 1, 2025. For those applications received and approved before January 1, 2025, coverage shall be effective on January 1, 2025.

(2) After January 1, 2025. For those applications received after January 1, 2025, the effective date of coverage shall be the first day of the month after TRS receives and approves the request to enroll.

(3) Range. In no event shall the effective date be prior to January 1, 2025, or after April 1, 2026.

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

Filed with the Office of the Secretary of State on May 17, 2024.

TRD-202402213

Don Green

Chief Financial Officer

Teacher Retirement System of Texas

Earliest possible date of adoption: June 30, 2024

For further information, please call: (512) 542-3528



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 5. TEXAS VETERANS LAND BOARD

CHAPTER 175. GENERAL RULES OF THE VETERANS LAND BOARD

SUBCHAPTER A. GENERAL RULES AND CONTRACTING FINANCING

40 TAC §175.2

The Texas Veterans Land Board (Board) proposes amendments to 40 Texas Administrative Code §175.2, concerning Loan Eligibility Requirements. The proposed amendments add a subsection that allows veterans eligible to participate in the Veterans' Land Program (Program) who are spouses to apply for a Program loan jointly for a single tract of land.

At its special called meeting on April 30, 2024, the Board unanimously approved a recommendation from its staff to incorporate the proposed amendments in §175.2. In reviewing Program eligibility requirements, Board staff determined that allowing otherwise Program-eligible veterans who are spouses the option of combining their loan amounts to purchase a single tract of land to be a benefit to the state's veteran community.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT: Mr. Raul Gonzales, Deputy Director for the Board's Land and Housing Program, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for the state or local governments as a result of the proposed amendments.

PUBLIC BENEFITS AND PROBABLE ECONOMIC COSTS: Mr. Gonzales has determined that for each year of the first five years the proposed amendments are in effect, there will be no economic effect on businesses or individuals. The public benefit will be the increase in benefits available to the state's veterans.

LOCAL EMPLOYMENT IMPACT STATEMENT: Mr. Gonzales has determined that the proposed amendments will not affect a local economy, so the Board is not required to prepare a local employment impact statement under Texas Government Code, §2001.022.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES: The Board has determined there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed amendments, therefore preparation of an economic impact statement and a regulatory flexibility analysis, as detailed under Texas Government Code, §2006.002, is not required.

GOVERNMENT GROWTH IMPACT STATEMENT: Pursuant to Texas Government Code, §2001.0221, Mr. Gonzales provides the following Government Growth Impact Statement for the proposed amendments. For each year of the first five years the proposed amendments will be in effect, the Board has determined the following:

(1) the proposed amendments will not create or eliminate a government program;

(2) implementation of the proposed amendments will not require the creation or elimination of existing employee positions;

(3) implementation of the proposed amendments will not require an increase or decrease in future legislative appropriations to the Board;

(4) the proposed amendments will not require an increase or decrease in fees paid to the Board;

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

(6) the proposed amendments will not expand, limit, or repeal an existing regulation;

(7) the proposed amendments will not increase or decrease the number of individuals subject to the rules; and

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

PUBLIC COMMENT REQUEST: Written comments on the proposed amendments may be submitted by mail to Mr. Walter Talley, *Texas Register* Liaison, Texas General Land Office, P.O. Box 12873, Austin, Texas 78711, facsimile number (512) 463-6311 or email to walter.talley@glo.texas.gov. Written comments must be received no later than 5:00 p.m., thirty (30) days from the date of publication of the proposed amendments in the *Texas Register*.

The amendments are proposed under Section 161.001 of the Texas Natural Resources Code, which allows the Board by rule to change the definition of "veteran" as necessary or appropriate to protect the best interests of the Veterans' Land Program. The Code affected by this proposal is Chapter 161 of the Texas Natural Resources Code.

§175.2. *Loan Eligibility Requirements*

(a) - (f) (No change.)

(g) If both spouses are individually eligible to participate in the program, nothing herein shall be construed to prohibit them from applying for a loan to jointly purchase the same tract of land. The Board

may make a loan for the purchase of the same tract of land by two veterans who are spouses, but only if both spouses together satisfy the loan qualification requirements of the program. The total amount of this loan shall not exceed the maximum amount allowable for this type of loan.

(h) [(g)] Any requirement of this section, or of any section within this chapter, which is not otherwise required by the constitution or statutes of this state, may be waived on a case by case basis by the Veterans Land Board. Any waiver request must be in writing and must describe the circumstances surrounding the request, including all of the reasons why the waiver is requested.

(i) [(h)] For purposes of this section, a person who has been discharged from the branch of the service in which the person served or from the reserve or National Guard is considered not to have been dishonorably discharged if the person:

(1) received an honorable discharge;

(2) received a discharge under honorable conditions; or

(3) received a discharge and provides evidence from the United States Department of Veterans Affairs, its successor, or other competent authority that indicates that the character of the person's duty has been determined to be other than dishonorable.

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

Filed with the Office of the Secretary of State on May 14, 2024.

TRD-202402155

Mark Havens

Chief Clerk

Texas Veterans Land Board

Earliest possible date of adoption: June 30, 2024

For further information, please call: (512) 475-1859

