

ADOPTED RULES

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

TITLE 10. COMMUNITY DEVELOPMENT

PART 5. OFFICE OF THE GOVERNOR, ECONOMIC DEVELOPMENT AND TOURISM OFFICE

CHAPTER 190. GOVERNOR'S UNIVERSITY RESEARCH INITIATIVE GRANT PROGRAM SUBCHAPTER A. DEFINITIONS AND GENERAL PROVISIONS

10 TAC §190.1

The Office of the Governor ("OOG") adopts an amendment to 10 TAC §190.1, concerning Definitions. The rule is adopted without changes to the proposed text as published in the April 19, 2024, issue of the *Texas Register* (49 TexReg 2378) and will not be republished. The adopted amendment lists the additional types of national academic recognitions that are considered to be highly prestigious for purposes of determining who qualifies as a "distinguished researcher," rather than cross-reference the list of such recognitions that previously existed in a rule adopted by the Texas Higher Education Coordinating Board but has since been repealed.

REASONED JUSTIFICATION OF ADOPTED AMENDMENTS

The adopted amendment to §190.1 lists the types of national academic recognitions that are considered to be highly prestigious for purposes of determining who qualifies as a "distinguished researcher" for purposes of chapter 62, subchapter H, Tex. Educ. Code.

SUMMARY OF COMMENTS AND AGENCY RESPONSE:

The OOG received no comments in response to this rulemaking.

TAKINGS IMPACT ASSESSMENT

The OOG has determined that no private real property interests are affected by the adopted rules and the rules do not restrict, limit, or impose a burden on an owner's rights to the owner's private real property that would otherwise exist in the absence of government action. As a result, the adopted amendments do not constitute a taking or require a takings impact assessment under Government Code §2007.043.

STATUTORY AUTHORITY

The amendments are adopted under section 62.162 of the Texas Education Code, which authorizes the Texas Economic Development and Tourism Office, in consultation with the Texas Higher Education Coordinating Board, to adopt rules necessary to administer GURI.

CROSS REFERENCE TO STATUTE

Chapter 62 of the Texas Education Code.

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

Filed with the Office of the Secretary of State on May 21, 2024.

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TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 77. SERVICE CONTRACT PROVIDERS AND ADMINISTRATORS

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 77, §§77.40 - 77.42 and 77.70, and the repeal of §77.93, regarding the Service Contract Providers and Administrators program, without changes to the proposed text as published in the February 23, 2024, issue of the *Texas Register* (49 TexReg 947). These rules will not be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 77, implement Texas Occupations Code, Chapter 1304, the Service Contract Regulatory Act.

The adopted rules implement House Bill (HB) 1560, 87th Legislature, Regular Session (2021), which repealed the former Residential Service Company Act (Occupations Code, Chapter 1303), and amended Chapter 1304 to include residential service contracts as a type of service contract under the regulatory authority of the Texas Department of Licensing and Regulation (Department). The adopted rules additionally clarify the Department's interpretation of the financial security requirements of Chapter 1304 and correct an obsolete statutory reference in the rules.

Under the Service Contract Regulatory Act, to obtain or renew a registration, providers must demonstrate the ability to meet their financial obligations to service contract holders. In general, Oc-

cupations Code §1304.151 requires providers to satisfy one of three financial requirements: insuring their contracts under a reimbursement insurance policy, maintaining a funded reserve account and security deposit, or meeting net worth requirements. If a provider uses a reimbursement insurance policy, Occupations Code §1304.152 requires the policy to meet certain financial requirements.

HB 1560 enacted Occupations Code §1304.157, which provides that residential service contract providers may meet the financial security requirements of Chapter 1304 by using a reimbursement insurance policy issued by a captive insurance company and maintaining a funded reserve. In this scenario, §1304.157 exempts the policy from the financial requirements of §1304.152 and prescribes a formula for determining the minimum funded reserve for these providers, which differs from the formula provided in §1304.151 for other providers. The adopted rules are necessary to clarify that residential service contract providers electing to financially qualify using an insurance policy from a captive insurance company must also maintain the funded reserve as provided in §1304.157(c).

Occupations Code §1304.157 also requires residential service contracts to include a certain disclosure statement if the seller of the contract is not employed by a registered provider or administrator. Although this disclosure statement generally mirrors that required by the rule at 16 TAC §77.93, the rule contains obsolete references to the repealed Residential Service Company Act. The adopted rules are necessary to resolve this discrepancy, and do so by repealing §77.93 and adding a reference to the statutorily required disclosure statement in the rules at §77.70(d), which concerns the disclosure responsibilities of providers and administrators.

Under Occupations Code §1304.151(a)(2), one of the methods by which providers may meet the Act's financial security requirements is by both maintaining a funded reserve account and placing in trust a security deposit. For providers electing this option, the amount of the required deposit varies under subsections (b) through (b-4) depending on the type of service contract sold, and in the case of motor vehicle dealers, gross revenue generated the preceding year. For residential service contract providers, the minimum deposit is \$25,000.

The formula for determining the required balance in the funded reserve account is stated in Occupations Code §1304.151(b). This formula was amended by House Bill (HB) 4316, 88th Legislature, Regular Session, effective September 1, 2023, and is now computed by subtracting the amount of any claims paid from the product of 40 percent and the gross consideration the provider received from consumers from the sale of all service contracts issued and outstanding in this state.

Because the statutory formula does not contain a floor, a problem arises of whether the Department must grant a registration when a provider elects this financial security option but, due to the amount of claims paid relative to revenue from contracts sold, the statutory formula does not appear to require either a positive balance or an amount that establishes to the Department's satisfaction the provider's ability to meet its obligations. Under subsection (e), the executive director is generally not permitted to impose additional financial security requirements beyond those set forth in §1304.151. Under §1304.1025(b), however, the executive director may not issue or renew a registration unless a provider demonstrates to the executive director's satisfaction an ability to meet its obligations under service contracts and the Act.

The adopted rules clarify the Department's interpretation that, where a provider elects to establish financial security under §1304.151(a)(2), and the amount of security deposit and funded reserve balance are insufficient to evidence that the provider can meet its obligations under service contracts and the Act, the Department has the authority to deny or refuse to renew a registration, or to require the provider to establish financial security under another of the authorized methods.

SECTION-BY-SECTION SUMMARY

The adopted rules amend §77.40, Financial Security--General Requirements. The adopted rules amend subsection (b) to remove unnecessary language. The adopted rules also insert a new subsection (c) to describe the method of financial security provided by Occupations Code §1304.157(c), under which residential service contract providers may insure contracts under a reimbursement insurance policy issued by a captive insurance company if they also maintain a required funded reserve account. The subsections that follow the insertion are re-lettered.

The adopted rules amend §77.41, Financial Security--Reimbursement Insurance Policy. The adopted rules insert language in subsection (c) to clarify that a residential service contract provider who elects to insure its contracts under a reimbursement insurance policy issued by a captive insurance company must also maintain a funded reserve account.

The adopted rules amend §77.42, Financial Security--Funded Reserve Account and Security Deposit. The adopted rules insert a new subsection (f) to include language clarifying that where a provider elects to establish financial security under Occupations Code §1304.151(a)(2) and the amount of security deposit and funded reserve balance are insufficient to evidence that the provider can meet its obligations, the Department has the authority to deny or refuse to renew a registration, or to require the provider to establish financial security under another of the authorized methods.

The adopted rules amend §77.70, Responsibilities of Providers and Administrators. The adopted rules insert into subsection (d)(1) a necessary reference to Occupations Code §1304.157.

Lastly, the adopted rules repeal §77.93, Disclosures, in its entirety.

PUBLIC COMMENTS

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the February 23, 2024, issue of the *Texas Register* (49 TexReg 947). The public comment period closed on March 25, 2024. The Department did not receive any comments from interested parties on the proposed rules.

COMMISSION ACTION

At its meeting on May 21, 2024, the Commission adopted the proposed rules as published in the *Texas Register*.

16 TAC §§77.40 - 77.42, 77.70

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and 1304, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51 and 1304. No other statutes, articles, or codes are affected by the adopted rules.

The legislation that enacted the statutory authority under which the adopted rules are proposed to be adopted is House Bill 1560, 87th Legislature, Regular Session (2021) and House Bill 4316, 88th Legislature, Regular Session (2023).

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

Filed with the Office of the Secretary of State on May 24, 2024.

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Doug Jennings

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16 TAC §77.93

STATUTORY AUTHORITY

The adopted repeal is repealed under Texas Occupations Code, Chapters 51 and 1304, which authorize the Texas Commission of Licensing and Regulation, the department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the department.

The statutory provisions affected by the adopted repeals are those set forth in Texas Occupations Code, Chapters 51 and 1304. No other statutes, articles, or codes are affected by the adopted repeals.

The legislation that enacted the statutory authority under which the adopted rules are proposed to be adopted is House Bill 1560, 87th Legislature, Regular Session (2021) and House Bill 4316, 88th Legislature, Regular Session (2023).

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

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 109. BUDGETING, ACCOUNTING, AND AUDITING

SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING FINANCIAL ACCOUNTABILITY

19 TAC §109.1001

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figures in 19 TAC §109.1001 are not included in the print version of the Texas Register. The figures are available in the on-line version of the June 7, 2024, issue of the Texas Register.)

The Texas Education Agency (TEA) adopts an amendment to §109.1001, concerning financial accountability ratings. The amendment is adopted with changes to the proposed text as published in the February 23, 2024 issue of the *Texas Register* (49 TexReg 958) and will be republished. The adopted amendment updates financial accountability rating information and rating worksheets for school districts and open-enrollment charter schools.

REASONED JUSTIFICATION: Section 109.1001 includes the financial accountability rating system and rating worksheets that explain the indicators that TEA will analyze to assign financial accountability ratings for school districts and open-enrollment charter schools. The rule also specifies the minimum financial accountability rating information that a school district or an open-enrollment charter school is to report to parents and taxpayers in the district.

The adopted amendment clarifies the financial accountability rating indicators terminology used to determine each school district's and charter school's rating for the 2023-2024 rating year and subsequent years. The adopted amendment also includes some pandemic-related adjustments applicable to 2023 data, as required by Texas Education Code (TEC), §39.087, as that section existed before expiration on September 1, 2023, to the Financial Integrity Rating System of Texas (FIRST) based on TEC, §39.082(b) and (d), which require that the FIRST system include uniform indicators that measure the financial management performance and future financial solvency of a school district or open-enrollment charter school.

19 TAC §109.1001(e)(8)

Adopted new subsection (e)(8) is added, including new Figure: 19 TAC §109.1001(e)(8) that clarifies terminology and calculations for School FIRST indicators for rating year 2023-2024 and beyond. The new worksheet differs from the previous year's worksheet as follows.

A new Indicator 21 has been added to read, "Did the school district receive an adjusted repayment schedule for more than one fiscal year for an over-allocation of Foundation School Program (FSP) funds because of a financial hardship?"

In response to public comment, the proposed changes for Indicator 13 have been moved at adoption to new §109.1001(e)(9) and are effective for the 2025-2026 rating year.

19 TAC §109.1001(e)(9)

In response to public comment requesting a delay in the implementation of Indicator 13 as proposed in Figure: 19 TAC §109.1001(e)(8), new subsection (e)(9) has been added at adoption to include new Figure: 19 TAC §109.1001(e)(9). The new figure allows Indicator 13 as proposed to become effective sub-

sequent to the 2024-2025 rating year. The new worksheet differs from the previous year's worksheet as follows.

Effective for the 2025-2026 rating year, the calculation for Indicator 13 is revised to compare administrative costs to total costs instead of instructional costs. The thresholds for Indicator 13 are adjusted to reflect the revised administrative cost ratio calculation so that school districts with lower administrative costs ratios, which suggest they are effectively managing their administrative expenses, receive the maximum points for this indicator.

19 TAC §109.1001(f)(8)

Adopted new subsection (f)(8) is added, including new Figure: 19 TAC §109.1001(f)(8) that clarifies terminology and calculations for Charter FIRST indicators for rating year 2023-2024 and beyond. The new worksheet differs from the previous year's worksheet as follows.

A new Indicator 21 has been added to read, "Did the charter school receive an adjusted repayment schedule for more than one fiscal year for an over-allocation of Foundation School Program (FSP) funds because of a financial hardship?"

In response to public comment, the proposed changes for Indicator 14 have been moved at adoption to new §109.1001(f)(9) and are effective for the 2025-2026 rating year.

19 TAC §109.1001(f)(9)

In response to public comment requesting a delay in the implementation of Indicator 14 as proposed in Figure: 19 TAC §109.1001(f)(8), new subsection (f)(9) has been added at adoption to include new Figure: 19 TAC §109.1001(f)(9). The new figure allows Indicator 14 as proposed to become effective subsequent to the 2024-2025 rating year. The new worksheet differs from the previous year's worksheet as follows.

Effective for the 2025-2026 rating year, the calculation for Indicator 14 is revised to compare administrative costs to total costs instead of instructional costs. The thresholds for Indicator 14 are adjusted to reflect the revised administrative cost ratio calculation so that charter schools with lower administrative costs ratios, which suggests they are effectively managing their administrative expenses, receive the maximum points for this indicator.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began February 23, 2024, and ended March 25, 2024. Following is a summary of the public comments received and agency responses.

School FIRST Indicators 8 and 13

Comment: Concerning proposed Figure: 19 TAC §109.1001(e)(8), a school district administrator, the Texas Association of School Business Officials (TASBO), and the Texas School Coalition recommended that no changes be made to the 2023-2024 School FIRST ratings that rely on fiscal year 2023 data because school districts and charter schools do not have an opportunity to adjust their spending to meet the accountability targets. The school district administrator and TASBO further stated that new indicators should not take effect until the 2025-2026 ratings based on fiscal year 2025 data. They also recommended that recapture amounts be removed from revenue and expenditures for FIRST Indicators 8 and 13.

Response: The agency agrees that Indicator 13 should not take effect for the 2023-2024 rating year and has modified Figure: 19 TAC §109.1001(e)(8) at adoption to reflect the calculation and thresholds for School FIRST Indicator 13 as they existed for rat-

ing year 2022-2023. New Figure: 19 TAC §109.1001(e)(9) was added at adoption to make the proposed administrative cost ratio calculation and thresholds effective for the 2025-2026 rating year.

The agency disagrees with removing recapture amounts from revenue and expenditures for the 2023-2024 School FIRST rating year. School districts that have local revenue in excess of entitlement are legally obligated to reduce their level under TEC, Chapter 49, and one option is through making recapture payments. The agency agrees to analyze indicators for possible adjustments in future rating years.

School FIRST Indicator 10

Comment: Concerning proposed Figure: 19 TAC §109.1001(e)(8), a school district administrator proposed that School FIRST Indicator 10 be updated to reflect districts that have Chapter 313 agreements because the revenue from these agreements fluctuate and is not guaranteed.

Response: The agency disagrees with adjusting School FIRST Indicator 10 to exclude revenue from Chapter 313 agreements because it is an operational decision by school districts to enter into Chapter 313 agreements, and school districts may appeal Indicator 10 if they consider the result to be adverse. However, the agency will not evaluate School FIRST Indicator 10 for the 2023-2024 rating year, and all school districts will receive the maximum points for the indicator.

Administrative Cost Ratio Calculation (School FIRST Indicator 13 and Charter FIRST Indicator 14)

Comment: Concerning proposed Figure: 19 TAC §109.1001(f)(8), a charter school administrator requested a gradual transition to the proposed thresholds for the administrative cost ratio in Charter FIRST Indicator 14 because schools may need more time to adjust their administrative offices.

Response: The agency agrees to a transition for the proposed thresholds for the revised administrative cost ratio calculation. The agency has modified proposed Figure: 19 TAC §109.1001(e)(8) and Figure: 19 TAC §109.1001(f)(8) at adoption to reflect the calculation and thresholds for School FIRST Indicator 13 and Charter FIRST Indicator 14 as they existed for rating year 2022-2023. New Figure: 19 TAC §109.1001(e)(9) and Figure: 19 TAC §109.1001(f)(9) were added at adoption to make the revised administrative cost ratio calculation and thresholds effective for the 2025-2026 rating year.

Foundation School Program Repayment Plan (School FIRST and Charter FIRST Indicator 21)

Comment: Concerning proposed Figure: 19 TAC §109.1001(e)(8), a school district administrator stated that proposed School FIRST Indicator 21 is an unfair and inaccurate way to assess the financial condition of a school district that is repaying an over-allocation of Foundation School Program funds and that a school district's ability to secure a bond guarantee from the Permanent School Fund could be impacted by a reduced School FIRST rating. The school district administrator suggested that a ceiling of 89 points or B = Above Standard Achievement rating, instead of the proposed 70 points or C = Meets Standard Achievement rating, be used for School FIRST Indicator 21 if the agency proceeds with the implementation of the indicator. The school district administrator recommended that the rule be effective no earlier than the 2025-2026 School FIRST rating year because making

Indicator 21 effective retroactively to the 2023-2024 rating year changes the rules of accountability after the school year is over.

Response: The agency disagrees that School FIRST and Charter FIRST Indicator 21 is a not a fair way to assess the financial condition of a school district or that the ceiling should be 89 points or a B = Above Standard Achievement instead of 70 points or a C = Meets Standard Achievement rating. The agency considers whether a school district or charter school received a passed or failed School FIRST rating, not the numerical score, in its determination for approval or disapproval for the Bond Guarantee Program to guarantee bonds. The agency has maintained language as proposed concerning School FIRST and Charter FIRST Indicator 21, making the indicator effective for the 2023-2024 rating year.

Charter FIRST Indicator 1

Comment: Concerning proposed Figure: 19 TAC §109.1001(f)(8), a governmental charter school administrator suggested that Charter FIRST Indicator 1 be a ceiling indicator instead of a critical indicator.

Response: The agency disagrees that Charter FIRST Indicator 1 should be a ceiling indicator. Language in 19 TAC §109.1001(n)(9) allows the commissioner of education to adjust the overall score and rating to a passing score and rating upon appeal of Indicator 1 if the certificate of the board and the audit opinion letter from the external auditor for the charter school's annual financial and compliance report (AFR) were signed on or before the due date of the AFR as required in TEC, §44.008.

Charter FIRST Indicators 5 and 6

Comment: Concerning proposed Figure: 19 TAC §109.1001(f)(8), a governmental charter school administrator suggested that Charter FIRST Indicators 5 and 6 be revised to exclude the effect of other post-employment benefits (OPEB) and net pension liabilities (NPL) since these amounts are based on actuarial estimates that can have a significant impact on net position. The charter school administrator also suggested that these indicators be revised to exclude the effect of deferred inflows or outflows of resources related to pension plans on total net assets. The charter school administrator further stated that when OPEB, NPL, and deferred inflows and outflows of resources are included in these indicators, the year-over-year changes in net position are less meaningful.

Response: The agency disagrees that the calculation for Charter FIRST Indicator 5 for charter schools should exclude the effect of deferred inflows and outflows of resources related to pension plans. The calculation includes the addition of pension expense, OPEB, and NPL to total net position to exclude their effect in the calculation for Indicator 5; however, deferred outflows and deferred inflows of resources related to pensions are the portions of the effects not recognized in pension expense.

The agency disagrees that the calculation for Charter FIRST Indicator 6 should exclude the effect of OPEB and NPL and the effect of deferred inflows and outflows of resources related to pension plans on total net assets. Indicator 6 is a calculation of the average change in total net assets over three years, not a single year, so the impact of OPEB, NPL, and the effect of deferred inflows or outflows of resources related to pension plans are comparable per year.

Charter FIRST Indicator 8

Comment: Concerning proposed Figure: 19 TAC §109.1001(f)(8), a consultant for charter schools requested that the Texas Education Agency evaluate Charter FIRST Indicator 8 for possible rating changes and possibly waive the indicator for the 2023-2024 rating year because the implementation of Financial Accounting Standards Board (FASB) Accounting Standards Update (ASU) Topic 842 for leases is affecting the score for Indicator 8 negatively for some charter schools. The consultant stated that ASU-842 requires the creation of a right-of-use asset and a liability on the lessee's balance sheet for all leases.

Response: The agency agrees that FASB ASU-842 impacts the reporting of assets and liabilities in the Statement of Financial Position because ASU-842 requires a lessee to recognize a right-of-use asset and a lease liability for leases but disagrees with adjusting the determination of points for Indicator 8 for the 2023-2024 rating year because the results of the calculation closely align with the results of prior years. The agency will continue to analyze Indicator 8 for possible adjustments in future rating years.

Charter FIRST Indicator 10

Comment: Concerning proposed Figure: 19 TAC §109.1001(f)(8), a governmental charter school administrator suggested that Charter FIRST Indicator 10 be revised to allow a 15% variance when comparing budgeted revenues to actual revenues for the last three fiscal years to allow for fluctuations for smaller schools serving students in correctional facilities or residential treatment centers that do not have control over which students enroll.

Response: The agency disagrees that Charter FIRST Indicator 10 should be revised to allow for a 15% variance because a variance of 10% encourages accuracy and due diligence in budgeting and demonstrates a charter school has given thoughtful consideration to managing its finances. Generally, acceptable variances for school budgets are 5% to 10%, and about 75% of Texas charter schools averaged less than a 10% variance between budgeted and actual revenues over three years. The agency recognizes that there may be challenges with budgeting revenues for certain charter schools with student enrollment that is based on circumstances outside of the control of the charter school. Charter FIRST Indicator 10 will not be evaluated for Charter FIRST rating year 2023-2024, and all charter schools will receive the maximum of 10 points for Indicator 10 for rating year 2023-2024.

Charter FIRST Indicator 13

Comment: Concerning proposed Figure: 19 TAC §109.1001(f)(8), a governmental charter school administrator commented that Charter FIRST Indicator 13 appears to measure the impact of long-term debt on a school's operations and that the indicator should be revised to divide long-term indebtedness (bonds and loans), excluding OPEB and NPL, by total assets to determine a ratio. Additionally, the administrator provided a point scale for the ratio and added that a charter school should automatically pass Indicator 13 if the charter school's change of students in membership over five years is 7% or more.

Response: The agency disagrees that Charter FIRST Indicator 13 should be revised to divide long-term indebtedness, excluding OPEB and NPL, by total assets. The calculation for Indicator 11 for Charter FIRST already determines the long-term liabilities to total assets ratio with the point scale that was suggested by

the administrator and allows a charter school to automatically pass the indicator if the charter school's change of students in membership over five years is 7% or more.

Charter FIRST Indicator 16

Comment: Concerning proposed Figure: 19 TAC §109.1001(f)(8), a consultant for charter schools requested that the agency adopt a larger scale to establish a "Competency rate of a Charter's actual average daily attendance (ADA)" for Charter FIRST Indicator 16 since it is difficult to estimate a fair (close) enrollment and ADA number. The consultant requested the agency to allow for a scaled range with the measurement based on enrollment size to provide some relief to charter schools.

Response: The agency disagrees with the suggested rule change. Charter schools submit ADA estimates during the summer of the start of each school year, unlike school districts that submit projections biannually, so charter school estimates should be more reflective of environmental conditions. However, the agency agrees that there may be challenges with estimating ADA for certain charter schools. Charter FIRST Indicator 16 will not be evaluated for rating year 2023-2024, and all charter schools will receive the maximum of 5 points for Indicator 16 for rating year 2023-2024.

Comment: Concerning proposed Figure: 19 TAC §109.1001(f)(8), a governmental charter school administrator suggested that Charter FIRST Indicator 16 be revised to allow wider fluctuations in enrollment and attendance impacting schools with a smaller number of students.

Response: The agency disagrees with the suggested rule change. Charter schools submit ADA estimates during the summer of the start of each school year, unlike school districts that submit projections biannually, so charter school estimates should be more reflective of environmental conditions. However, the agency agrees that there may be challenges with estimating ADA for certain charter schools. Charter FIRST Indicator 16 will not be evaluated for rating year 2023-2024, and all charter schools will receive the maximum of 5 points for Indicator 16 for rating year 2023-2024.

Charter FIRST Indicator 17

Comment: Concerning proposed Figure: 19 TAC §109.1001(f)(8), a governmental charter school administrator suggested that Charter FIRST Indicator 17 be clarified to state the data in the Public Education Information Management System (PEIMS) should be within 3% of all expenses in the financial audit report that are reported in the Statement of Revenues, Expenditures, and Changes in Fund Balance (i.e., on a modified accrual basis) for governmental charter schools.

Response: The agency agrees that the source of data used in the calculation for Charter FIRST Indicator 17 for governmental charter schools should be clarified. At a later date, the agency intends to provide clarification on the sources of data used for governmental charter schools. The agency disagrees with making the suggested change to the rule at this time because TEA staff needs time to update documents to reflect sources for all indicators for governmental charter schools.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code, §12.104, which subjects open-enrollment charter schools to the prohibitions, restrictions, or requirements relating to public school accountability and special investigations under TEC, Chapter 39, Subchapters A, B, C, D, F, G,

and J, and TEC, Chapter 39A; §39.082, which requires the commissioner to develop and implement a financial accountability rating system for public schools and establishes certain minimum requirements for the system, including an appeals process; §39.083, which requires the commissioner to include in the financial accountability system procedures for public schools to report and receive public comment on an annual financial management report; §39.085, which requires the commissioner to adopt rules to implement TEC, Chapter 39, Subchapter D, which addresses financial accountability for public schools; §39.087, as added by House Bill 1525, 87th Texas Legislature, Regular Session, 2021, and as that section existed before expiration on September 1, 2023, which required the commissioner to adjust the financial accountability rating system under TEC, §39.082, to account for the impact of financial practices necessary as a response to the coronavirus disease (COVID-19) pandemic, including adjustments required to account for federal funding and funding adjustments under TEC, Chapter 48, Subchapter F; and §39.151, which requires the commissioner to provide a process by which a school district or an open-enrollment charter school can challenge an agency decision related to academic or financial accountability under TEC, Chapter 39, including a determination of consecutive school years of unacceptable performance ratings. This process must include a committee to make recommendations to the commissioner. These provisions collectively authorize and require the commissioner to adopt the financial accountability system rules, which implement each requirement of statute applicable to school districts and open-enrollment charter schools.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§12.104; 39.082; 39.083; 39.085; 39.087, as added by House Bill 1525, 87th Texas Legislature, Regular Session, 2021, and as that section existed before expiration on September 1, 2023; and 39.151.

§109.1001. Financial Accountability Ratings.

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

(1) **Annual Financial Report (AFR)**--The audited annual report required by the Texas Education Code (TEC), §44.008, that is due to the Texas Education Agency (TEA) by no later than 150 days after the close of a school district's or an open-enrollment charter school's fiscal year.

(2) **Ceiling indicator**--An upper limit (the maximum score) at which a score from a standard limit of a specific indicator will result regardless of overall points.

(3) **Debt**--An amount of money owed to a person, bank, company, or other organization.

(4) **Electronic submission**--The TEA electronic data feed format required for use by school districts, open-enrollment charter schools, and regional education service centers (ESCs).

(5) **Financial Integrity Rating System of Texas (FIRST)**--The financial accountability rating system administered by the TEA in accordance with the TEC, §39.082 and §39.085. The system provides additional transparency to public education finance and meaningful financial oversight and improvement for school districts (School FIRST) and open-enrollment charter schools and charter schools operated by a public institution of higher education under TEC, Chapter 12, Subchapters D and E (Charter FIRST).

(6) Fiscal year--The fiscal year of a school district or an open-enrollment charter school, which begins on July 1 or September 1 of each year, as determined by the board of trustees of the district or the governing body of the charter holder in accordance with the TEC, §44.0011.

(7) Foundation School Program (FSP)--The program established under the TEC, Chapters 41, 42, and 46, or any successor program of state-appropriated funding for school districts in this state.

(8) Open-enrollment charter school--A charter school authorized by the commissioner of education under TEC, Chapter 12, Subchapter D.

(9) Public institution of higher education (IHE)--A public college or university eligible to operate a school district; an open-enrollment charter school; or a TEC, Chapter 12, Subchapter E, charter school authorized by the commissioner.

(10) Summary of Finances (SOF) report--The document of record for FSP allocations. An SOF report is produced for each school district and open-enrollment charter school by the TEA division responsible for state funding that describes the school district's or open-enrollment charter school's funding elements and FSP state aid.

(11) Texas Student Data System Public Education Information Management System (TSDS PEIMS)--The system that school districts and open-enrollment charter schools use to load, validate, and submit their data to the TEA.

(12) Warrant hold--The process by which state payments issued to payees indebted to the state, or payees with a tax delinquency, are held by the Texas Comptroller of Public Accounts until the debt is satisfied in accordance with the Texas Government Code, §403.055.

(b) The TEA will assign a financial accountability rating to each school district, open-enrollment charter school, and charter school operated by a public IHE under TEC, Chapter 12, Subchapters D and E, as required by the TEC, §39.082.

(c) The commissioner will evaluate the rating system every three years as required by the TEC, §39.082, and may modify the system in order to improve the effectiveness of the rating system. If the rating system has been modified, the TEA will communicate changes to ratings criteria and their effective dates to school districts, open-enrollment charter schools, and charter schools operated by public IHEs.

(d) The TEA will use the following sources of data in calculating the financial accountability indicators for school districts, open-enrollment charter schools, and charter schools operated by public IHEs.

(1) AFR. For each school district, open-enrollment charter school, and charter school operated by a public IHE, the TEA will use audited financial data in the district's or charter's AFR. The AFR, submitted as an electronic submission through the TEA website, must include data required in the Financial Accountability System Resource Guide (FASRG) adopted under §109.41 of this title (relating to Financial Accountability System Resource Guide).

(2) TSDS PEIMS. The TEA will use TSDS PEIMS data submitted by the school district, open-enrollment charter school, or charter school operated by a public IHE in the calculation of the financial accountability indicators.

(3) Warrant holds. The TEA will use warrant holds as reported by the Texas Comptroller of Public Accounts in the calculation of the financial accountability indicators.

(4) FSP. The TEA will use the average daily attendance (ADA) information used for FSP funding purposes for the school dis-

trict, open-enrollment charter school, or charter school operated by a public IHE in the calculation of the financial accountability indicators.

(e) The TEA will base the financial accountability rating of a school district on its overall performance on the financial measurements, ratios, and other indicators established by the commissioner, as shown in the figures provided in this subsection. Financial accountability ratings for a rating year are based on the data from the immediate prior fiscal year.

(1) The financial accountability rating indicators for rating year 2014-2015 are based on fiscal year 2014 financial data and are provided in the figure in this paragraph entitled "School FIRST - Rating Worksheet Dated August 2015 for rating year 2014-2015." Figure: 19 TAC §109.1001(e)(1) (No change.)

(2) The financial accountability rating indicators for rating year 2015-2016 are based on fiscal year 2015 financial data and are provided in the figure in this paragraph entitled "School FIRST - Rating Worksheet Dated August 2015 for rating year 2015-2016." Figure: 19 TAC §109.1001(e)(2) (No change.)

(3) The financial accountability rating indicators for rating year 2016-2017 are based on fiscal year 2016 financial data and are provided in the figure in this paragraph entitled "School FIRST - Rating Worksheet Dated December 2016 for rating year 2016-2017." Figure: 19 TAC §109.1001(e)(3) (No change.)

(4) The financial accountability rating indicators for rating years 2017-2018, 2018-2019, and 2019-2020 are based on financial data from fiscal years 2017, 2018, and 2019, respectively, and are provided in the figure in this paragraph entitled "School FIRST - Rating Worksheet Dated April 2020 for rating years 2017-2018 through 2019-2020." The financial accountability rating indicators for rating years 2017-2018, 2018-2019, and 2019-2020 will use the same calculations and scoring method provided in the figure in this paragraph. Figure: 19 TAC §109.1001(e)(4) (No change.)

(5) The financial accountability rating indicators for rating year 2020-2021 are based on fiscal year 2020 financial data and are provided in the figure in this paragraph entitled "School FIRST - Rating Worksheet Dated October 2021 for rating year 2020-2021." The financial accountability rating indicators for rating years after 2020-2021 will use the same calculations and scoring method provided in the figure in this paragraph. Figure: 19 TAC §109.1001(e)(5) (No change.)

(6) The financial accountability rating indicators for rating year 2021-2022 are based on fiscal year 2021 financial data and are provided in the figure in this paragraph entitled "School FIRST - Rating Worksheet Dated October 2021 for rating year 2021-2022." The financial accountability rating indicators for rating years after 2021-2022 will use the same calculations and scoring method provided in the figure in this paragraph. Figure: 19 TAC §109.1001(e)(6) (No change.)

(7) The financial accountability rating indicators for rating year 2022-2023 are based on fiscal year 2022 financial data and are provided in the figure in this paragraph entitled "School FIRST - Rating Worksheet Dated June 2023 for rating year 2022-2023." The financial accountability rating indicators for rating years after 2022-2023 will use the same calculations and scoring method provided in the figure in this paragraph. Figure: 19 TAC §109.1001(e)(7) (No change.)

(8) The financial accountability rating indicators for rating year 2023-2024 are based on fiscal year 2023 financial data and are provided in the figure in this paragraph entitled "School FIRST - Rating Worksheet Dated June 2024 for Rating Years 2023-2024+." The finan-

cial accountability rating indicators for rating years after 2023-2024 will use the same calculations and scoring method provided in the figure in this paragraph.

Figure: 19 TAC §109.1001(e)(8)

(9) The financial accountability rating indicators for rating year 2025-2026 are based on fiscal year 2025 financial data and are provided in the figure in this paragraph entitled "School FIRST - Rating Worksheet Dated June 2024 for Rating Years 2025-2026+." The financial accountability rating indicators for rating years after 2025-2026 will use the same calculations and scoring method provided in the figure in this paragraph.

Figure: 19 TAC §109.1001(e)(9)

(10) The specific calculations and scoring methods used in the financial accountability rating worksheets for school districts for rating years prior to 2014-2015 remain in effect for all purposes with respect to those rating years.

(f) The TEA will base the financial accountability rating of an open-enrollment charter school on its overall performance on the financial measurements, ratios, and other indicators established by the commissioner, as shown in the figures provided in this subsection. Financial accountability ratings for a rating year are based on the data from the immediate prior fiscal year.

(1) The financial accountability rating indicators for rating year 2014-2015 are based on fiscal year 2014 financial data and are provided in the figure in this paragraph entitled "Charter FIRST - Rating Worksheet Dated August 2015 for rating year 2014-2015."

Figure: 19 TAC §109.1001(f)(1) (No change.)

(2) The financial accountability rating indicators for rating year 2015-2016 are based on fiscal year 2015 financial data and are provided in the figure in this paragraph entitled "Charter FIRST - Rating Worksheet Dated August 2015 for rating year 2015-2016."

Figure: 19 TAC §109.1001(f)(2) (No change.)

(3) The financial accountability rating indicators for rating year 2016-2017 are based on fiscal year 2016 financial data and are provided in the figure in this paragraph entitled "Charter FIRST - Rating Worksheet Dated August 2015 for rating year 2016-2017."

Figure: 19 TAC §109.1001(f)(3) (No change.)

(4) The financial accountability rating indicators for rating years 2017-2018, 2018-2019, and 2019-2020 are based on financial data from fiscal years 2017, 2018, and 2019, respectively, and are provided in the figure in this paragraph entitled "Charter FIRST - Rating Worksheet Dated April 2020 for rating year 2017-2018." The financial accountability rating indicators for rating years 2017-2018, 2018-2019, and 2019-2020 will use the same calculations and scoring method provided in the figure in this paragraph.

Figure: 19 TAC §109.1001(f)(4) (No change.)

(5) The financial accountability rating indicators for rating year 2020-2021 are based on fiscal year 2020 financial data and are provided in the figure in this paragraph entitled "Charter FIRST - Rating Worksheet Dated October 2021 for rating year 2020-2021." The financial accountability rating indicators for rating years after 2020-2021 will use the same calculations and scoring method provided in the figure in this paragraph.

Figure: 19 TAC §109.1001(f)(5) (No change.)

(6) The financial accountability rating indicators for rating year 2021-2022 are based on fiscal year 2021 financial data and are provided in the figure in this paragraph entitled "Charter FIRST - Rating Worksheet Dated October 2021 for rating year 2021-2022." The financial accountability rating indicators for rating years after 2021-2022

will use the same calculations and scoring method provided in the figure in this paragraph.

Figure: 19 TAC §109.1001(f)(6) (No change.)

(7) The financial accountability rating indicators for rating year 2022-2023 are based on fiscal year 2022 financial data and are provided in the figure in this paragraph entitled "Charter FIRST - Rating Worksheet Dated June 2023 for rating year 2022-2023." The financial accountability rating indicators for rating years after 2022-2023 will use the same calculations and scoring method provided in the figure in this paragraph.

Figure: 19 TAC §109.1001(f)(7) (No change.)

(8) The financial accountability rating indicators for rating year 2023-2024 are based on fiscal year 2022 financial data and are provided in the figure in this paragraph entitled "Charter FIRST - Rating Worksheet Dated June 2024 for Rating Years 2023-2024+." The financial accountability rating indicators for rating years after 2023-2024 will use the same calculations and scoring method provided in the figure in this paragraph.

Figure: 19 TAC §109.1001(f)(8)

(9) The financial accountability rating indicators for rating year 2025-2026 are based on fiscal year 2025 financial data and are provided in the figure in this paragraph entitled "Charter FIRST - Rating Worksheet Dated June 2024 for Rating Years 2025-2026+." The financial accountability rating indicators for rating years after 2025-2026 will use the same calculations and scoring method provided in the figure in this paragraph.

Figure: 19 TAC §109.1001(f)(9)

(10) The specific calculations and scoring methods used in the financial accountability rating worksheets for open-enrollment charter schools for rating years prior to 2014-2015 remain in effect for all purposes with respect to those rating years.

(g) The TEA will base the financial accountability rating of a charter school operated by a public IHE on its overall performance on the financial measurements, ratios, and other indicators established by the commissioner, as shown in the figures provided in this subsection. Financial accountability ratings for a rating year are based on the data from the immediate prior fiscal year.

(1) The financial accountability rating indicators for rating year 2016-2017 are based on fiscal year 2016 financial data and are provided in the figure in this paragraph entitled "IHE Charter FIRST - Rating Worksheet Dated June 2019 for rating years 2016-2017 through 2019-2020." The financial accountability rating indicators for rating years 2016-2017 through 2019-2020 will use the same calculations and scoring method provided in the figure in this paragraph.

Figure: 19 TAC §109.1001(g)(1) (No change.)

(2) The financial accountability rating indicators for rating year 2020-2021 are based on fiscal year 2020 financial data and are provided in the figure in this paragraph entitled "IHE Charter FIRST - Rating Worksheet Dated June 2019 for rating year 2020-2021." The financial accountability rating indicators for rating years after 2020-2021 will use the same calculations and scoring method provided in the figure in this paragraph.

Figure: 19 TAC §109.1001(g)(2) (No change.)

(h) The types of financial accountability ratings that school districts or open-enrollment charter schools may receive for the rating year 2014-2015 are as follows.

(1) P for pass. This rating applies only to the financial accountability rating for rating year 2014-2015 based on fiscal year 2014 financial data. In accordance with the procedures established in this section, a school district or an open-enrollment charter school will re-

ceive a P rating if it scores within the applicable range established by the commissioner for a P rating.

(2) F for substandard achievement. This rating applies to the financial accountability rating for rating year 2014-2015 based on fiscal year 2014 financial data. In accordance with the procedures established in this section, a school district or an open-enrollment charter school will receive an F rating if it scores within the applicable range established by the commissioner for an F rating.

(i) The types of financial accountability ratings that school districts or open-enrollment charter schools may receive for the rating year 2015-2016 and all subsequent rating years are as follows.

(1) A for superior achievement. Beginning with the financial accountability rating for rating year 2015-2016 and all subsequent rating years, in accordance with the procedures established in this section, a school district or an open-enrollment charter school will receive an A rating if it scores within the applicable range established by the commissioner for an A rating.

(2) B for above standard achievement. Beginning with the financial accountability rating for rating year 2015-2016 and all subsequent rating years, in accordance with the procedures established in this section, a school district or an open-enrollment charter school will receive a B rating if it scores within the applicable range established by the commissioner for a B rating.

(3) C for standard achievement. Beginning with the financial accountability rating for rating year 2015-2016 and all subsequent rating years, in accordance with the procedures established in this section, a school district or an open-enrollment charter school will receive a C rating if it scores within the applicable range established by the commissioner for a C rating.

(4) F for substandard achievement. Beginning with the financial accountability rating for rating year 2015-2016 and all subsequent rating years, in accordance with the procedures established in this section, a school district or an open-enrollment charter school will receive an F rating if it scores within the applicable range established by the commissioner for an F rating.

(5) No Rating. Beginning with the financial accountability rating for rating year 2016-2017 and all subsequent rating years, in accordance with the procedures established in this section, a school district receiving territory due to an annexation order by the commissioner under the TEC, §13.054, or consolidation under the TEC, Chapter 49, Subchapter H, will not receive a rating for two consecutive rating years beginning with the rating year that is based on financial data from the fiscal year in which the order of annexation becomes effective. After the second rating year, the receiving district will be subject to the financial accountability rating system established by the commissioner in this section.

(j) The types of financial accountability ratings that charter schools operated by public IHEs may receive for the rating year 2016-2017 and all subsequent rating years are as follows.

(1) P for pass. Beginning with the financial accountability rating for rating year 2016-2017 and all subsequent rating years, in accordance with the procedures established in this section, a charter school operated by a public IHE will receive a P rating if it scores within the applicable range established by the commissioner for a P rating.

(2) F for substandard achievement. Beginning with the financial accountability rating for rating year 2016-2017 and all subsequent rating years, in accordance with the procedures established in this section, a charter school operated by a public IHE will receive an

F rating if it scores within the applicable range established by the commissioner for an F rating.

(k) The commissioner may lower a financial accountability rating based on the findings of an action conducted under the TEC, Chapter 39 or 39A, or change a financial accountability rating in cases of disaster, flood, extreme weather conditions, fuel curtailment, or another calamity.

(l) A financial accountability rating remains in effect until replaced by a subsequent financial accountability rating.

(m) The TEA will issue a preliminary financial accountability rating to a school district, an open-enrollment charter school, or a charter school operated by a public IHE on or before August 8 of each year. The TEA will base the financial accountability rating for a rating year on the data from the fiscal year preceding the rating year.

(1) The TEA will not delay the issuance of the preliminary or final rating if a school district, an open-enrollment charter school, or a charter school operated by a public IHE fails to meet the statutory deadline under the TEC, §44.008, for submitting the AFR. Instead, the school district, open-enrollment charter school, or charter school operated by a public IHE will receive an F rating for substandard achievement.

(2) If the TEA receives an appeal of a preliminary rating, described by subsection (n) of this section, the TEA will issue a final rating to the school district, open-enrollment charter school, or charter school operated by a public IHE no later than 60 days after the deadline for submitting appeals.

(3) If the TEA does not receive an appeal of a preliminary rating, described by subsection (n) of this section, the preliminary rating automatically becomes a final rating 31 days after issuance of the preliminary rating.

(n) A school district, an open-enrollment charter school, or a charter school operated by a public IHE may appeal its preliminary financial accountability rating through the following appeals process.

(1) The TEA division responsible for financial accountability must receive a written appeal no later than 30 days after the TEA's release of the preliminary rating. The appeal must include adequate evidence and additional information that supports the position of the school district, open-enrollment charter school, or charter school operated by a public IHE. Appeals received 31 days or more after TEA issues a preliminary rating will not be considered.

(2) A data error attributable to the TEA is a basis for an appeal. If a preliminary rating contains a data error attributable to the TEA, a school district or an open-enrollment charter school may submit a written appeal requesting a review of the preliminary rating.

(3) A school district, an open-enrollment charter school, or a charter school operated by a public IHE may appeal any other adverse issue it identifies in the preliminary rating.

(4) The TEA will only consider appeals that would result in a change of the preliminary rating.

(5) The TEA division responsible for financial accountability will select an external review panel to independently oversee the appeals process.

(6) The TEA division responsible for financial accountability will submit the information provided by the school district, open-enrollment charter school, or charter school operated by a public IHE to the external review panel members for review.

(7) Each external review panel member will examine the appeal and supporting documentation and will submit his or her recommendation to the TEA division responsible for financial accountability.

(8) The TEA division responsible for financial accountability will compile the recommendations and forward them to the commissioner.

(9) The commissioner will make a final ratings decision.

(A) The commissioner may adjust a score for an indicator or the overall score upon appeal of the indicator(s) by the school district, open-enrollment charter school, or charter school operated by a public IHE.

(B) Upon appeal of the indicator for the timely submission of a complete AFR, the commissioner may adjust the overall score and rating as described in clauses (i)-(iii) of this subparagraph if the certificate of the board and the audit opinion letter from the external auditor for the school district's or charter school's AFR were signed on or before the due date of the AFR as required in TEC, §44.008.

(i) For a school district or charter school that has a failed preliminary FIRST rating with 85 to 100 points, deduct 15 points from the total points for an overall passing score if no other critical indicators were failed.

(ii) For a school district or charter school that has a failed preliminary FIRST rating with 70 to 84 points, adjust the overall score to 70 points for an overall passing score if no other critical indicators were failed.

(iii) For a school district or charter school that has a failed preliminary FIRST rating with total points less than the threshold for an overall passing score and/or the school district or charter school failed any other critical indicators, no adjustment to the points will be made for the overall score.

(o) A final rating issued by the TEA under this section may not be appealed under the TEC, §7.057, or any other law or rule.

(p) A financial accountability rating by a voluntary association is a local option of the school district, open-enrollment charter school, or charter school operated by a public IHE, but it does not substitute for a financial accountability rating by the TEA.

(q) Each school district, open-enrollment charter school, and charter school operated by a public IHE is required to report information and financial accountability ratings to parents, taxpayers, and other stakeholders by implementing the following reporting procedures.

(1) Each school district, open-enrollment charter school, and charter school operated by a public IHE must prepare and distribute an annual financial management report in accordance with this subsection.

(2) Each school district, open-enrollment charter school, and charter school operated by a public IHE must provide the public with an opportunity to comment on the report at a public hearing.

(3) The annual financial management report for a school district, an open-enrollment charter school, or a charter school operated by a public IHE must include:

(A) a description of its financial management performance based on a comparison, provided by the TEA, of its performance on the indicators established by the commissioner and reflected in this section. The report will contain information that discloses:

(i) state-established standards; and

(ii) the financial management performance of the school district, open-enrollment charter school, or charter school operated by a public IHE under each indicator for the current and previous year's financial accountability ratings;

(B) any descriptive information required by the commissioner, including:

(i) a copy of the superintendent's current employment contract or other written documentation of employment if no contract exists. This must disclose all compensation and benefits paid to the superintendent. The school district, open-enrollment charter school, or charter school operated by a public IHE may publish the superintendent's employment contract on its website instead of publishing it in the annual financial management report;

(ii) a summary schedule for the fiscal year (12-month period) of expenditures paid on behalf of the superintendent and each board member and total reimbursements received by the superintendent and each board member. This includes transactions on the credit card(s), debit card(s), stored-value card(s), and any other similar instrument(s) of the school district, open-enrollment charter school, or charter school operated by a public IHE to cover expenses incurred by the superintendent and each board member. The summary schedule must separately report reimbursements for meals, lodging, transportation, motor fuel, and other items. The summary schedule of total reimbursements should not include reimbursements for supplies and materials that were purchased for the operation of the school district, open-enrollment charter school, or charter school operated by a public IHE;

(iii) a summary schedule for the fiscal year of the dollar amount of compensation and fees received by the superintendent from an outside school district, open-enrollment charter school, charter school operated by a public IHE, or any other outside entity in exchange for professional consulting or other personal services. The schedule must separately report the amount received from each entity;

(iv) a summary schedule for the fiscal year of the total dollar amount of gifts that had a total economic value of \$250 or more received by the executive officers and board members. This reporting requirement applies only to gifts received by the executive officers and board members (and their immediate family as described by Government Code, Chapter 573, Subchapter B, Relationships by Consanguinity or by Affinity) of the school district, open-enrollment charter school (or charter holder), or charter school operated by a public IHE (or charter holder) from an outside entity that received payments from the school district, open-enrollment charter school (or charter holder), or charter school operated by a public IHE (or charter holder) in the prior fiscal year and to gifts from competing vendors that were not awarded contracts in the prior fiscal year. This reporting requirement does not apply to reimbursement by an outside entity for travel-related expenses when the purpose of the travel was to investigate matters directly related to an executive officer's or board member's duties or to investigate matters related to attendance at education-related conferences and seminars with the primary purpose of providing continuing education (this exclusion does not apply to trips for entertainment purposes or pleasure trips). This reporting requirement excludes an individual gift or a series of gifts from a single outside entity that had a total economic value of less than \$250 per executive officer or board member; and

(v) a summary schedule for the fiscal year of the dollar amount received by board members for the total amount of business transactions with the school district, open-enrollment charter school (or charter holder), or charter school operated by a public IHE (or charter holder). This reporting requirement is not to duplicate the items dis-

closed in the summary schedule of reimbursements received by board members; and

(C) any other information the board of trustees of the school district, open-enrollment charter school, or charter school operated by a public IHE determines to be useful.

(4) The board of trustees of each school district, open-enrollment charter school, or charter school operated by a public IHE must hold a public hearing on the annual financial management report within two months after receiving a final financial accountability rating. The public hearing must be held at a location in the facilities of the school district, open-enrollment charter school, or charter school operated by a public IHE. The board must give notice of the hearing to owners of real estate property in the geographic boundaries of the school district, open-enrollment charter school, or charter school operated by a public IHE and to parents of school district, open-enrollment charter school, or charter school operated by a public IHE students. In addition to other notice required by law, the board must provide notice of the hearing:

(A) to a newspaper of general circulation in the geographic boundaries of the school district, each campus of an open-enrollment charter school, or each campus of a charter school operated by a public IHE in one posting prior to holding the public meeting, providing the time and place of the hearing. The notice in the newspaper may not be earlier than 30 days or later than 10 days before the date of the hearing. If no newspaper is published in the county in which the district's central administration office is located or within the geographic boundaries of an open-enrollment charter school's campus or campus of a charter school operated by a public IHE, then the board must publish the notice in the county nearest to the county seat of the county in which the district's central administration office is located or in which the campus of the open-enrollment charter school or the campus of a charter school operated by a public IHE is located; and

(B) through electronic mail to the mass communication media serving the school district, open-enrollment charter school, or charter school operated by a public IHE, including, but not limited to, radio and television.

(5) At the hearing, the school district, open-enrollment charter school, or charter school operated by a public IHE must provide the annual financial management report to the attending parents and taxpayers.

(6) The school district, open-enrollment charter school, or charter school operated by a public IHE must retain the annual financial management report for at least three years after the public hearing and make it available to parents and taxpayers upon request.

(7) Each school district, open-enrollment charter school, or charter school operated by a public IHE that received an F rating must file a corrective action plan with the TEA, prepared in accordance with instructions from the commissioner, within one month after the public hearing of the school district, open-enrollment charter school, or charter school operated by a public IHE. The commissioner may require certain information in the corrective action plan to address the factor(s) that may have contributed to the F rating for a school district, open-enrollment charter school, or charter school operated by a public IHE.

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

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Director, Rulemaking

Texas Education Agency

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



TITLE 22. EXAMINING BOARDS

PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 291. PHARMACIES

SUBCHAPTER A. ALL CLASSES OF PHARMACIES

22 TAC §291.12

The Texas State Board of Pharmacy adopts new rule §291.12, concerning Delivery of Prescription Drugs. The new rule is adopted with changes to the proposed text as published in the March 22, 2024, issue of the *Texas Register* (49 TexReg 1852). The rule will be republished.

The new rule specifies requirements for the delivery of prescription drugs to a patient or patient's agent.

The Board received comments from the Texas Federation of Drug Stores and Jeenu Philip, R.Ph., with Walgreen Co. suggesting the removal of the requirement for pharmacies to maintain records of patient complaints regarding compromised deliveries.

The Board received comments from Lauren Paul, PharmD, with CVS Health expressing concern that the proposed rule does not address distribution from drug manufacturers and wholesalers and suggesting changes to the temperature requirements for delivery by pharmacy employee or same-day courier service.

The Board received comments from Anne Titus Hilby, Deputy General Counsel, with Zipline International Inc. in support of the proposed rule.

The Board received comments from the Pharmaceutical Care Management Association expressing concern about the economic impact of the proposed rule and the lack of a definition for the term "temperature range" and suggesting changes to the general requirements for delivery by common carrier and the counseling information, notification, and compromised delivery requirements for all deliveries.

The Board received comments from A.J. Day, PharmD, with PCCA suggesting clarification of the packaging requirements for delivery by common carrier and the temperature requirements for delivery by pharmacy employee or same-day courier service and suggesting a grammatical correction to the compromised delivery requirements for all deliveries.

The Board received comments from Austin Compounding Pharmacy in support of the proposed rule, expressing concern that certain requirements are vague, and suggesting the notification of delivery requirement for delivery by pharmacy employee or same-day courier service be limited to "through reasonable means."

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

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

§291.12. *Delivery of Prescription Drugs.*

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

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

(1) **Standards.** The pharmacy shall ensure that all prescription drugs are delivered to the patient or patient's agent in accordance with nationally recognized standards, such as those of the manufacturer or the United States Pharmacopeia.

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

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

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

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

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

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

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

(2) **Temperature.** The prescription drug shall be maintained within the temperature range allowed by the United States

Pharmacopeia or recommended by the manufacturer until the delivery has been received by the patient or patient's agent.

(d) **All deliveries.** A pharmacy that delivers prescription drugs by common carrier or by pharmacy employee or by a common carrier providing a same-day courier service shall also comply with the following:

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

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

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

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

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

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

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

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

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SUBCHAPTER G. SERVICES PROVIDED BY PHARMACIES

22 TAC §291.131

The Texas State Board of Pharmacy adopts amendments to §291.131, concerning Pharmacies Compounding Non-Sterile Preparations. These amendments are adopted with changes to the proposed text as published in the March 22, 2024, issue of the *Texas Register* (49 TexReg 1854). The rule will be republished.

The amendments update the personnel, environment, labeling, compounding process, quality assurance, and recordkeeping requirements for pharmacies compounding non-sterile preparations.

The Board received comments from A.J. Day, PharmD, with PCCA suggesting changes to specific definitions, personnel requirements, operational standards, and recordkeeping

requirements, and clarifying certain continuing education, equipment, labeling, component, quality assurance, and quality control requirements,

The Board received comments from Austin Compounding Pharmacy in support of the amendments and expressing concern the requirement that a master formulation record "shall be developed and approved by a pharmacist" may exclude qualified and experienced non-pharmacist staff from supporting formulation development, and suggesting the requirement be changed to require only that a pharmacist be responsible for final approval of the formulation.

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

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

§291.131. *Pharmacies Compounding Non-Sterile Preparations.*

(a) Purpose. Pharmacies compounding non-sterile preparations, prepackaging pharmaceutical products, and distributing those products shall comply with all requirements for their specific license classification and this section. The purpose of this section is to provide standards for the:

(1) compounding of non-sterile preparations pursuant to a prescription or medication order for a patient from a practitioner in Class A (Community), Class C (Institutional), and Class E (Non-resident) pharmacies;

(2) compounding, dispensing, and delivery of a reasonable quantity of a compounded non-sterile preparation in a Class A (Community), Class C (Institutional), and Class E (Non-resident) pharmacy to a practitioner's office for office use by the practitioner;

(3) compounding and distribution of compounded non-sterile preparations by a Class A (Community) pharmacy for a Class C (Institutional) pharmacy; and

(4) compounding of non-sterile preparations by a Class C (Institutional) pharmacy and the distribution of the compounded preparations to other Class C (Institutional) pharmacies under common ownership.

(b) Definitions. In addition to the definitions for specific license classifications, the following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Active pharmaceutical ingredient--Any substance intended to be used in the compounding of a preparation, thereby becoming the active ingredient in that preparation and furnishing pharmacological activity or other direct effect in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals or affecting the structure and function of the body.

(2) Beyond-use date--The date or time after which the compounded non-sterile preparation shall not be stored or transported or begin to be administered to a patient. The beyond-use date is determined from the date or time when the preparation was compounded.

(3) Cleaning--The process of removing soil (e.g., organic and inorganic material) from objects and surfaces, normally accom-

plished by manually or mechanically using water with detergents or enzymatic products.

(4) Component--Any ingredient intended for use in the compounding of a drug preparation, including those that may not appear in such preparation.

(5) Compounding--The preparation, mixing, assembling, packaging, or labeling of a drug or device:

(A) as the result of a practitioner's prescription drug or medication order, based on the practitioner-patient-pharmacist relationship in the course of professional practice;

(B) for administration to a patient by a practitioner as the result of a practitioner's initiative based on the practitioner-patient-pharmacist relationship in the course of professional practice;

(C) in anticipation of prescription drug or medication orders based on routine, regularly observed prescribing patterns; or

(D) for or as an incident to research, teaching, or chemical analysis and not for sale or dispensing, except as allowed under §562.154 or Chapter 563 of the Occupations Code.

(6) Containment primary engineering control--A ventilated device designed and operated to minimize worker and environmental exposures to airborne contaminants through the full or partial enclosure of a potential contaminant source, the use of airflow capture velocities to trap and remove airborne contaminants near their point of generation, the use of air pressure relationships that define the direction of airflow into the cabinet, and the use of high-efficiency particulate air (HEPA) filtration on all potentially contaminated exhaust streams. Examples of containment primary engineering control include containment ventilated enclosures, biological safety cabinets, and compounding aseptic containment isolators.

(7) Controlled room temperature--The temperature maintained thermostatically that encompasses the usual and customary working environment of 20 - 25 degrees C (68 - 77 degrees F).

(8) Designated person(s)--One or more individuals assigned by the pharmacist-in-charge or the pharmacist-in-charge's designee to be responsible and accountable for the performance and operation of the facility and personnel as related to the preparation of compounded non-sterile preparations.

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

(10) Reasonable quantity--An amount of a compounded drug that:

(A) does not exceed the amount a practitioner anticipates may be used in the practitioner's office or facility before the beyond use date of the drug;

(B) is reasonable considering the intended use of the compounded drug and the nature of the practitioner's practice; and

(C) for any practitioner and all practitioners as a whole, is not greater than an amount the pharmacy is capable of compounding in compliance with pharmaceutical standards for identity, strength, quality, and purity of the compounded drug that are consistent with United States Pharmacopoeia guidelines and accreditation practices.

(11) Refrigerator--A cold place in which the temperature is controlled between 2 - 8 degrees C (36 - 46 degrees F).

(12) Sanitizing--A process for reducing on inanimate surfaces the number of all forms of microbial life including fungi, viruses, and bacteria using an appropriate agent.

(13) SOPs--Standard operating procedures.

(14) USP/NF--The current edition of the United States Pharmacopeia/National Formulary.

(15) Water activity--A measure of the fraction of total water that is unbound and freely available to participate in chemical, biochemical, or physiochemical reactions or provide an environment that can support microbial growth.

(c) Personnel. All personnel who compound or have direct oversight of compounding non-sterile preparations shall be initially trained and qualified by demonstrating knowledge and competency in the areas outlined in paragraph (5)(C) of this subsection.

(1) Pharmacist-in-charge. In addition to the responsibilities for the specific class of pharmacy, the pharmacist-in-charge shall have the responsibility for, at a minimum, the following concerning non-sterile compounding:

(A) determining that all personnel involved in non-sterile compounding possess the education, training, and proficiency necessary to properly and safely perform compounding duties undertaken or supervised;

(B) determining that all personnel involved in non-sterile compounding obtain continuing education appropriate for the type of compounding done by the personnel;

(C) assuring that the equipment used in compounding is properly maintained;

(D) maintaining an appropriate environment in areas where non-sterile compounding occurs; and

(E) assuring that effective quality control procedures are developed and followed.

(2) Designated person(s). The pharmacist-in-charge or the pharmacist-in-charge's designee shall designate one or more individuals to be responsible and accountable for the performance and operation of the facility and personnel for the preparation of compounded non-sterile preparations. The designated person(s) shall be identified in the facility's SOPs. If the compounding facility has only one person responsible for all compounding in the facility, then that person is the designated person.

(3) Pharmacists. Special requirements for non-sterile compounding.

(A) All pharmacists engaged in compounding shall:

(i) possess the education, training, and proficiency necessary to properly and safely perform compounding duties undertaken or supervised; and

(ii) obtain continuing education appropriate for the type of compounding undertaken or supervised by the pharmacist.

(B) A pharmacist shall inspect and approve all components, including consideration of all physical and chemical properties of the components, drug product containers, closures, labeling, and any other materials involved in the compounding process.

(C) A pharmacist shall review all compounding records for accuracy and conduct in-process and final checks to ensure that errors have not occurred in the compounding process.

(D) A pharmacist is responsible for the proper maintenance, cleanliness, and use of all equipment used in the compounding process.

(4) Pharmacy technicians and pharmacy technician trainees. All pharmacy technicians and pharmacy technician trainees engaged in non-sterile compounding shall:

(A) possess the education, training, and proficiency necessary to properly and safely perform compounding duties undertaken;

(B) obtain continuing education appropriate for the type of compounding done by the pharmacy technician or pharmacy technician trainee; and

(C) perform compounding duties under the direct supervision of and responsible to a pharmacist.

(5) Training.

(A) All training activities shall be documented and covered by appropriate SOPs as outlined in subsection (d)(8)(A) of this section.

(B) All personnel involved in non-sterile compounding shall be well trained and must participate in continuing relevant training programs.

(C) Training shall include instruction, experience, and demonstrated proficiency in the following areas:

(i) hand hygiene;

(ii) garbing;

(iii) cleaning and sanitizing;

(iv) handling and transporting components and compounded non-sterile preparations;

(v) measuring and mixing;

(vi) proper use of equipment and devices selected to compound non-sterile preparations; and

(vii) documentation of the compounding process (e.g., Master Formulation Records and Compounding Records).

(d) Operational Standards.

(1) General requirements.

(A) Non-sterile drug preparations may be compounded in licensed pharmacies:

(i) upon presentation of a practitioner's prescription drug or medication order based on a valid pharmacist/patient/prescriber relationship;

(ii) in anticipation of future prescription drug or medication orders based on routine, regularly observed prescribing patterns; or

(iii) in reasonable quantities for office use by a practitioner and for use by a veterinarian.

(B) Non-sterile compounding in anticipation of future prescription drug or medication orders must be based upon a history of receiving valid prescriptions issued within an established pharmacist/patient/prescriber relationship, provided that in the pharmacist's professional judgment the quantity prepared is stable for the anticipated shelf time.

(i) The pharmacist's professional judgment shall be based on the criteria used to determine a beyond-use date outlined in paragraph (5)(C) of this subsection.

(ii) Documentation of the criteria used to determine the stability for the anticipated shelf time must be maintained and be available for inspection.

(iii) Any preparation compounded in anticipation of future prescription drug or medication orders shall be labeled. Such label shall contain:

(I) name and strength of the compounded preparation or list of the active ingredients and strengths;

(II) facility's lot number;

(III) beyond-use date as determined by the pharmacist using appropriate documented criteria as outlined in paragraph (5)(C) of this subsection; and

(IV) quantity or amount in the container.

(C) Commercially available products may be compounded for dispensing to individual patients provided the following conditions are met:

(i) the commercial product is not reasonably available from normal distribution channels in a timely manner to meet patient's needs;

(ii) the pharmacy maintains documentation that the product is not reasonably available due to a drug shortage or unavailability from the manufacturer; and

(iii) the prescribing practitioner has requested that the drug be compounded as described in subparagraph (D) of this paragraph.

(D) A pharmacy may not compound preparations that are essentially copies of commercially available products (e.g., the preparation is dispensed in a strength that is only slightly different from a commercially available product) unless the prescribing practitioner specifically orders the strength or dosage form and specifies why the patient needs the particular strength or dosage form of the preparation. The prescribing practitioner shall provide documentation of a patient specific medical need and the preparation produces a clinically significant therapeutic response (e.g., the physician requests an alternate product due to hypersensitivity to excipients or preservative in the FDA-approved product, or the physician requests an effective alternate dosage form) or if the drug product is not commercially available. The unavailability of such drug product must be documented prior to compounding. The methodology for documenting unavailability includes maintaining a copy of the wholesaler's notification showing back-ordered, discontinued, or out-of-stock items. This documentation must be available in hard-copy or electronic format for inspection by the board.

(E) A pharmacy may enter into an agreement to compound and dispense prescription/medication orders for another pharmacy provided the pharmacy complies with the provisions of §291.125 of this title (relating to Centralized Prescription Dispensing).

(F) Compounding pharmacies/pharmacists may advertise and promote the fact that they provide non-sterile prescription compounding services, which may include specific drug products and classes of drugs.

(G) A pharmacy may not compound veterinary preparations for use in food producing animals except in accordance with federal guidelines.

(H) A pharmacist may add flavoring to a prescription at the request of a patient, the patient's agent, or the prescriber. The pharmacist shall label the flavored prescription with a beyond-use-date that shall be no longer than fourteen days if stored in a refrigerator unless otherwise documented. Documentation of beyond-use-dates longer than fourteen days shall be maintained by the pharmacy electronically or manually and made available to agents of the board on request. A pharmacist may not add flavoring to an over-the-counter product at the request of a patient or patient's agent unless the pharmacist obtains a prescription for the over-the-counter product from the patient's practitioner.

(2) Library. In addition to the library requirements of the pharmacy's specific license classification, a pharmacy shall maintain a current copy, in hard-copy or electronic format, of Chapter 795 of the USP/NF concerning Pharmacy Compounding Non-Sterile Preparations.

(3) Environment.

(A) Pharmacies engaging in compounding shall have a designated and adequate area for the safe and orderly compounding of non-sterile preparations, including the placement of equipment and materials.

(B) Only personnel authorized by the responsible pharmacist shall be in the immediate vicinity of a drug compounding operation.

(C) A sink with hot and cold running water, exclusive of rest room facilities, shall be accessible to the compounding areas and be maintained in a sanitary condition. Supplies necessary for adequate washing shall be accessible in the immediate area of the sink and include:

(i) soap or detergent; and

(ii) air-driers or single-use towels.

(D) Appropriate measures shall be used to prevent cross-contamination between compounding non-sterile preparations, including dedication of equipment for such operations or the meticulous cleaning of contaminated equipment prior to its use for the preparation of subsequent compounds.

(E) Cleaning and sanitizing of surfaces in the non-sterile compounding area(s) shall occur on a regular basis as defined in appropriate SOPs as outlined in paragraph (8)(A) of this subsection.

(4) Equipment and Supplies.

(A) If the pharmacy engages in compounding non-sterile preparations that require weighing a component of the preparation, the pharmacy shall have a Class A prescription balance, or analytical balance and weights which shall be calibrated and have the accuracy of the balance verified by the pharmacy at least every 12 months as specified in the pharmacy's SOPs. The pharmacy shall document the calibration and verification.

(B) The pharmacy shall have equipment and utensils necessary for the proper compounding of prescription drug or medication orders. Such equipment and utensils used in the compounding process shall be:

(i) of appropriate design and capacity, and be operated within designed operational limits;

(ii) of suitable composition so that surfaces that contact components, in-process material, or drug products shall not be reactive, additive, or absorptive so as to alter the safety, identity, strength, quality, or purity of the drug product beyond the desired result;

(iii) cleaned and sanitized immediately prior to and after each use; and

(iv) routinely inspected, calibrated (if necessary), or checked to ensure proper performance.

(C) Weighing, measuring, or otherwise manipulating components that could generate airborne chemical particles (e.g., active pharmaceutical ingredients, added substances, and conventionally manufactured products) shall be evaluated to determine if these activities must be performed in a containment primary engineering control to reduce the potential exposure to personnel or contamination of the facility or compounded non-sterile preparations. The process evaluation shall be carried out in accordance with the facility's SOPs, and the assessment shall be documented.

(D) If a containment ventilated enclosure or biological safety cabinet is used, it shall be certified at least every 12 months or according to manufacturer specifications.

(5) Labeling. In addition to the labeling requirements of the pharmacy's specific license classification, the label dispensed or distributed pursuant to a prescription drug or medication order shall contain the following.

(A) The generic name(s) or the official name(s) of the principal active ingredient(s) of the compounded preparation.

(B) A statement that the preparation has been compounded by the pharmacy. (An auxiliary label may be used on the container to meet this requirement).

(C) A beyond-use date after which the compounded preparation should not be used. The beyond-use date shall be determined as outlined in Chapter 795 of the USP/NF concerning Pharmacy Compounding Non-Sterile Preparations including the following:

(i) The pharmacist shall consider:

(I) physical and chemical properties of active ingredients;

(II) use of preservatives and/or stabilizing agents;

(III) dosage form;

(IV) storage containers and conditions; and

(V) scientific, laboratory, or reference data from a peer reviewed source and retained in the pharmacy. The reference data should follow the same preparation instructions for combining components and packaged in a container with similar properties.

(ii) In the absence of stability information applicable for a specific drug or preparation, the following maximum beyond-use dates are to be used when the compounded preparation is packaged in tight, light-resistant containers.

(I) Aqueous dosage forms. An aqueous preparation is one that has a water activity equal to or greater than 0.6 (e.g., emulsions, gels, creams, solutions, sprays, or suspensions).

(-a-) Nonpreserved aqueous dosage forms: Not later than 14 days when stored in a refrigerator.

(-b-) Preserved aqueous dosage forms: Not later than 35 days when stored at controlled room temperature or in a refrigerator.

(II) Nonaqueous dosage forms. A nonaqueous dosage form is one that has a water activity less than 0.6.

(-a-) Nonaqueous oral liquids: Not later than 90 days when stored at controlled room temperature or in a refrigerator.

(-b-) Other nonaqueous dosage forms: Not later than 180 days when stored at controlled room temperature or refrigerator. Other nonaqueous dosage forms that have a water activity of less than 0.6 (e.g., capsules, tablets, granules, powders, nonaqueous topicals, suppositories, and troches or lozenges).

(iii) Compounded non-sterile preparations requiring shorter beyond-use dates. The beyond-use dates in subclauses (I) and (II) of clause (ii) are the beyond-use dates for compounded nonsterile preparations in the absence of specific stability information. However, the designated person(s) shall still perform due diligence to determine if there is existing stability data that would require a shorter beyond-use date.

(I) The beyond-use date of the compounded non-sterile preparation shall not exceed the shortest remaining expiration date of any of the commercially available starting components.

(II) For compounded non-sterile preparations prepared from one or more compounded components, the beyond-use date generally shall not exceed the shortest beyond-use date of any of the individual compounded components. However, there may be acceptable instances when the beyond-use date of the final compounded non-sterile preparation exceeds the beyond-use date assigned to compounded components (e.g., pH-altering solutions). If the assigned beyond-use date of the final compounded non-sterile preparation exceeds the beyond-use date of the compounded components, the physical, chemical, and microbiological quality of the final compounded non-sterile preparation shall not be negatively impacted.

(iv) Extending beyond-use dates for compounded non-sterile preparations. Beyond-use date limits may be exceeded when supported by valid scientific stability information for the specific compounded preparation.

(I) Compounded non-sterile preparations with a USP/NF monograph. When compounding from a USP/NF compounded preparation monograph for the compounded non-sterile preparation, the beyond-use date shall not exceed the beyond-use date specified in the monograph.

(II) Compounded non-sterile preparations with stability information. If there is a stability study using a stability-indicating analytical method for the active pharmaceutical ingredient(s), compounded non-sterile preparation formulation, and material of composition of the container closure that will be used, then the beyond-use date indicated by the study may be used in lieu of the beyond-use date specified in subclauses (I) and (II) of clause (ii) for aqueous and nonaqueous dosage forms, up to a maximum of 180 days.

(III) If the beyond-use date of the compounded non-sterile preparation is extended beyond the beyond-use date specified in subclauses (I) and (II) of clause (ii), an aqueous compounded non-sterile preparation must pass antimicrobial effectiveness testing.

(-a-) The designated person(s) may rely on antimicrobial effectiveness testing that is conducted, or contracted for, once for each formulation in the particular container closure system, including materials of composition or the container closure system, in which it will be packaged.

(-b-) Alternatively, the designated person(s) may rely on antimicrobial effectiveness testing results provided by an FDA-registered facility or published in peer-reviewed literature as long as the compounded non-sterile preparation formulation, including any preservative, and container closure materials of composition are the same as those tested, unless a bracketing study is performed.

(-c-) When a bracketing study is performed, antimicrobial effectiveness testing may be performed on a low concentration and on a high concentration of the active ingredient in the formu-

lation to establish preservative effectiveness across various strengths of the same formulation (e.g., bracketing). The concentration of all other ingredients, including preservatives, must fall within the bracketed range.

(6) Written drug information. Written information about the compounded preparation or its major active ingredient(s) shall be given to the patient at the time of dispensing. A statement which indicates that the preparation was compounded by the pharmacy must be included in this written information. If there is no written information available, the patient should be advised that the drug has been compounded and how to contact a pharmacist, and if appropriate the prescriber, concerning the drug.

(7) Drugs, components, and materials used in non-sterile compounding.

(A) Drugs used in non-sterile compounding shall be USP/NF grade substances manufactured in an FDA-registered facility.

(B) If USP/NF grade substances are not available, or when food, cosmetics, or other substances are or must be used, the substance shall be of a chemical grade in one of the following categories:

- (i) Chemically Pure (CP);
- (ii) Analytical Reagent (AR); or
- (iii) American Chemical Society (ACS); or
- (iv) Food Chemical Codex; or

(C) If a drug, component, or material is not purchased from an FDA-registered facility, the pharmacist shall establish purity and stability by obtaining a Certificate of Analysis from the supplier and the pharmacist shall compare the monograph of drugs in a similar class to the Certificate of Analysis.

(D) A manufactured drug product may be a source of active ingredient. Only manufactured drugs from containers labeled with a batch control number and a future expiration date are acceptable as a potential source of active ingredients. When compounding with manufactured drug products, the pharmacist must consider all ingredients present in the drug product relative to the intended use of the compounded preparation.

(E) All components shall be stored in properly labeled containers in a clean, dry area, under proper temperatures.

(F) Drug product containers and closures shall not be reactive, additive, or absorptive so as to alter the safety, identity, strength, quality, or purity of the compounded drug product beyond the desired result.

(G) Components, drug product containers, and closures shall be rotated so that the oldest stock is used first.

(H) Container closure systems shall provide adequate protection against foreseeable external factors in storage and use that can cause deterioration or contamination of the compounded drug product.

(I) A pharmacy may not compound a preparation that contains ingredients appearing on a federal Food and Drug Administration list of drug products withdrawn or removed from the market for safety reasons.

(8) Compounding process.

(A) All significant procedures performed in the compounding area shall be covered by written SOPs designed to ensure accountability, accuracy, quality, safety, and uniformity in the compounding process. At a minimum, SOPs shall be developed for:

- (i) the facility;
- (ii) equipment;
- (iii) personnel;
- (iv) preparation evaluation;
- (v) quality assurance;
- (vi) preparation recall;
- (vii) packaging;
- (viii) storage of compounded preparations;
- (ix) hand hygiene and garbing; and
- (x) cleaning and sanitizing.

(B) Any compounded preparation with an official monograph in the USP/NF shall be compounded, labeled, and packaged in conformity with the USP/NF monograph for the drug.

(C) Any person with a communicable illness or open lesion that may adversely affect the safety or quality of a drug product being compounded shall report these conditions to the designated person(s). The designated person(s) shall determine whether the person must be excluded from compounding areas until the person's conditions have resolved.

(D) Personnel engaged in the compounding of drug preparations shall perform proper hand hygiene prior to engaging in compounding activities. Proper hand hygiene shall be defined in appropriate SOPs as outlined in subparagraph (A) of this paragraph and appropriate for prevention of preparation and facility contamination.

(E) Garbing requirements and the frequency of changing garb shall be determined by the pharmacy and documented in appropriate SOPs as outlined in subparagraph (A) of this paragraph. The garbing requirements under the pharmacy's SOPs must be appropriate for the type of compounding performed. Gloves shall be worn for the prevention of preparation and facility contamination.

(F) At each step of the compounding process, the pharmacist shall ensure that components used in compounding are accurately weighed, measured, or subdivided as appropriate to conform to the formula being prepared.

(9) Quality Assurance.

(A) Initial formula validation. Prior to routine compounding of a non-sterile preparation, a pharmacy shall conduct an evaluation that shows that the pharmacy is capable of compounding a product that contains the stated amount of active ingredient(s).

(B) Finished preparation checks. The prescription drug and medication orders, written compounding procedure, preparation records, and expended materials used to make compounded non-sterile preparations shall be inspected for accuracy of correct identities and amounts of ingredients, packaging, labeling, and expected physical appearance and properties before the non-sterile preparations are dispensed.

(10) Quality Control.

(A) The pharmacy shall follow established quality control procedures to monitor the quality of compounded drug preparations for uniformity and consistency such as capsule weight variations, adequacy of mixing, clarity, or pH of solutions. When developing these procedures, pharmacy personnel shall consider the provisions of Chapter 795, concerning Pharmacy Compounding Non-Sterile Preparations, Chapter 1075, concerning Good Compounding Practices, and Chapter 1160, concerning Pharmaceutical Calculations in Prescription Com-

pounding contained in the current USP/NF. Such procedures shall be documented and be available for inspection.

(B) Compounding procedures that are routinely performed, including batch compounding, shall be completed and verified according to written procedures. The act of verification of a compounding procedure involves checking to ensure that calculations, weighing and measuring, order of mixing, and compounding techniques were appropriate and accurately performed.

(C) Unless otherwise indicated or appropriate, compounded preparations are to be prepared to ensure that each preparation shall contain not less than 90.0 percent and not more than 110.0 percent of the theoretically calculated and labeled quantity of active ingredient per unit weight or volume and not less than 90.0 percent and not more than 110.0 percent of the theoretically calculated weight or volume per unit of the preparation.

(e) Records.

(1) Maintenance of records. Every record required by this section shall be:

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

(B) supplied by the pharmacy within 72 hours, if requested by an authorized agent of the Texas State Board of Pharmacy. If the pharmacy maintains the records in an electronic format, the requested records must be provided in an electronic format. Failure to provide the records set out in this section, either on site or within 72 hours, constitutes prima facie evidence of failure to keep and maintain records in violation of the Act.

(C) Documentation of the performance of quality control procedures is not required if the compounding process is done pursuant to a patient specific order and involves the mixing of two or more commercially available oral liquids or commercially available preparations when the final product is intended for external use.

(2) Master Formulation Record and Compounding Record.

(A) Master Formulation Record. A master formulation record shall be developed and approved by a pharmacist for all compounded preparations. Once approved, a duplicate of the master formulation record shall be used as the compound record each time the compound is prepared and on which all documentation for that compound occurs. The master formulation record shall contain at a minimum:

- (i) the formula;
- (ii) the components;
- (iii) the compounding directions;
- (iv) evaluation and testing requirements;
- (v) specific equipment used during preparation;
- (vi) storage requirements;
- (vii) a reference to the location of the following documentation which may be maintained with other records, such as quality control records:

(I) the criteria used to determine the beyond-use date; and

(II) documentation of performance of quality control procedures, including, but not limited to, expected physical appearance of the final product.

(B) Compounding Record. The record for each preparation shall document the following:

- (i) identity of all components and their corresponding amounts, concentrations, or volumes;
- (ii) lot number and expiration date of each component;
- (iii) component manufacturer/distributor or suitable identifying number;
- (iv) container specifications;
- (v) unique lot or control number;
- (vi) beyond use date;
- (vii) date of preparation;
- (viii) name, initials, or electronic signature of the person(s) involved in the preparation;
- (ix) name, initials, or electronic signature of the responsible pharmacist;
- (x) finished preparation evaluation and testing specifications, if applicable; and
- (xi) comparison of actual yield to anticipated or theoretical yield, when appropriate.

(f) Office Use Compounding and Distribution of Compounded Preparations to Class C Pharmacies or Veterinarians in Accordance With §563.054 of the Act.

(1) General.

(A) A pharmacy may dispense and deliver a reasonable quantity of a compounded preparation to a practitioner for office use by the practitioner in accordance with this subsection.

(B) A Class A pharmacy is not required to register or be licensed under Chapter 431, Health and Safety Code, to distribute non-sterile compounded preparations to a Class C pharmacy.

(C) A Class C pharmacy is not required to register or be licensed under Chapter 431, Health and Safety Code, to distribute non-sterile compounded preparations that the Class C pharmacy has compounded for other Class C pharmacies under common ownership.

(D) To dispense and deliver a compounded preparation under this subsection, a pharmacy must:

- (i) verify the source of the raw materials to be used in a compounded drug;
- (ii) comply with applicable United States Pharmacopoeia guidelines, including the testing requirements, and the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191);
- (iii) enter into a written agreement with a practitioner for the practitioner's office use of a compounded preparation;
- (iv) comply with all applicable competency and accrediting standards as determined by the board; and
- (v) comply with the provisions of this subsection.

(2) Written Agreement. A pharmacy that provides non-sterile compounded preparations to practitioners for office use or to

another pharmacy shall enter into a written agreement with the practitioner or pharmacy. The written agreement shall:

(A) address acceptable standards of practice for a compounding pharmacy and a practitioner and receiving pharmacy that enter into the agreement including a statement that the compounded preparations may only be administered to the patient and may not be dispensed to the patient or sold to any other person or entity except as authorized by §563.054 of the Act;

(B) state that the practitioner or receiving pharmacy should include on a separate log or in a patient's chart, medication order, or medication administration record the lot number and beyond-use date of a compounded preparation administered to a patient; and

(C) describe the scope of services to be performed by the pharmacy and practitioner or receiving pharmacy, including a statement of the process for:

(i) a patient to report an adverse reaction or submit a complaint; and

(ii) the pharmacy to recall batches of compounded preparations.

(3) Recordkeeping.

(A) Maintenance of Records.

(i) Records of orders and distribution of non-sterile compounded preparations to a practitioner for office use or to a Class C pharmacy for administration to a patient shall:

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

(II) maintained separately from the records of products dispensed pursuant to a prescription or medication order; and

(III) supplied by the pharmacy within 72 hours, if requested by an authorized agent of the Texas State Board of Pharmacy or its representative. If the pharmacy maintains the records in an electronic format, the requested records must be provided in an electronic format. Failure to provide the records set out in this subsection, either on site or within 72 hours for whatever reason, constitutes prima facie evidence of failure to keep and maintain records.

(ii) Records may be maintained in an alternative data retention system, such as a data processing system or direct imaging system provided the data processing system is capable of producing a hard copy of the record upon the request of the board, its representative, or other authorized local, state, or federal law enforcement or regulatory agencies.

(B) Orders. The pharmacy shall maintain a record of all non-sterile compounded preparations ordered by a practitioner for office use or by a Class C pharmacy for administration to a patient. The record shall include the following information:

(i) date of the order;

(ii) name, address, and phone number of the practitioner who ordered the preparation and, if applicable, the name, address, and phone number of the Class C pharmacy ordering the preparation; and

(iii) name, strength, and quantity of the preparation ordered.

(C) Distributions. The pharmacy shall maintain a record of all non-sterile compounded preparations distributed pursuant to an order to a practitioner for office use or by a Class C pharmacy for administration to a patient. The record shall include the following information:

(i) date the preparation was compounded;

(ii) date the preparation was distributed;

(iii) name, strength, and quantity in each container of the preparation;

(iv) pharmacy's lot number;

(v) quantity of containers shipped; and

(vi) name, address, and phone number of the practitioner or Class C pharmacy to whom the preparation is distributed.

(D) Audit Trail.

(i) The pharmacy shall store the order and distribution records of preparations for all non-sterile compounded preparations ordered by and or distributed to a practitioner for office use or by a Class C pharmacy for administration to a patient in such a manner as to be able to provide an audit trail for all orders and distributions of any of the following during a specified time period.

(I) any strength and dosage form of a preparation (by either brand or generic name or both);

(II) any ingredient;

(III) any lot number;

(IV) any practitioner;

(V) any facility; and

(VI) any pharmacy, if applicable.

(ii) The audit trail shall contain the following information:

(I) date of order and date of the distribution;

(II) practitioner's name, address, and name of the Class C pharmacy, if applicable;

(III) name, strength, and quantity of the preparation in each container of the preparation;

(IV) name and quantity of each active ingredient;

(V) quantity of containers distributed; and

(VI) pharmacy's lot number;

(4) Labeling. The pharmacy shall affix a label to the preparation containing the following information:

(A) name, address, and phone number of the compounding pharmacy;

(B) the statement: "For Institutional or Office Use Only--Not for Resale"; or if the preparation is distributed to a veterinarian the statement: "Compounded Preparation";

(C) name and strength of the preparation or list of the active ingredients and strengths;

(D) pharmacy's lot number;

(E) beyond-use date as determined by the pharmacist using appropriate documented criteria;

(F) quantity or amount in the container;

(G) appropriate ancillary instructions, such as storage instructions or cautionary statements, including hazardous drug warning labels where appropriate; and

(H) device-specific instructions, where appropriate.

(g) Recall Procedures.

(1) The pharmacy shall have written procedures for the recall of any compounded non-sterile preparations provided to a patient, to a practitioner for office use, or a pharmacy for administration. Written procedures shall include, but not be limited to, the requirements as specified in paragraph (3) of this subsection.

(2) The pharmacy shall immediately initiate a recall of any non-sterile preparation compounded by the pharmacy upon identification of a potential or confirmed harm to a patient.

(3) In the event of a recall, the pharmacist-in-charge shall ensure that:

(A) each practitioner, facility, and/or pharmacy to which the preparation was distributed is notified, in writing, of the recall;

(B) each patient to whom the preparation was dispensed is notified, in writing, of the recall;

(C) if the preparation is prepared as a batch, the board is notified of the recall, in writing;

(D) if the preparation is distributed for office use, the Texas Department of State Health Services, Drugs and Medical Devices Group, is notified of the recall, in writing;

(E) the preparation is quarantined; and

(F) the pharmacy keeps a written record of the recall including all actions taken to notify all parties and steps taken to ensure corrective measures.

(4) If a pharmacy fails to initiate a recall, the board may require a pharmacy to initiate a recall if there is potential for or confirmed harm to a patient.

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

Filed with the Office of the Secretary of State on May 21, 2024.

TRD-202402270

Daniel Carroll, Pharm.D.

Executive Director

Texas State Board of Pharmacy

Effective date: June 10, 2024

Proposal publication date: March 22, 2024

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



PART 24. TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

CHAPTER 573. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER G. OTHER PROVISIONS

22 TAC §573.83

The Texas Commission of Licensing and Regulation (Commission), on behalf of the Texas Board of Veterinary Medical Examiners (TBVME), adopts a new rule at 22 Texas Administrative Code (TAC), Chapter 573, Subchapter G, §573.83, regarding the Rules of Professional Conduct, without changes to the proposed text as published in the April 12, 2024, issue of the *Texas Register* (49 TexReg 2242). This rule will not be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 22 TAC, Chapter 573, implement Texas Occupations Code, Chapter 801, Veterinarians.

The adopted rule adds §573.83 to Subchapter G, Other Provisions. The adopted rule is necessary to implement House Bill (HB) 4069, 88th Legislature, Regular Session (2023), which requires the adoption of rules for a veterinarian to disclose to an owner or caretaker of an ill or injured animal the description and estimated price of a proposed emergency treatment before providing the treatment.

The adopted rule ensures transparency for the public when receiving emergency veterinary care.

SECTION-BY-SECTION SUMMARY

The adopted rule adds §573.83, Price Transparency for Emergency Care. Subsection (a) defines "emergency care" for purposes of the section. Subsection (b) requires a veterinarian to disclose to the owner or caretaker of an animal that the animal requires emergency treatment. Subsection (c) enumerates the requirements of the disclosure required in subsection (b). Subsection (d) requires a veterinarian to update the disclosures if the animal's medical condition changes. Lastly, subsection (e) states that the person presenting the animal for emergency treatment is presumed to be its owner or caretaker.

PUBLIC COMMENTS

The proposed rule was published in the April 12, 2024, issue of the *Texas Register* (49 TexReg 2242). The public comment period closed on May 13, 2024. The Department received comments from 60 interested parties on the proposed rule. The public comments are summarized below.

Comment: The Department received one comment from an individual who, based on a personal experience, expressed support for the proposed rule.

Department Response: The Department appreciates the comment in support of the proposed rule. The Department did not make any changes to the proposed rule in response to this comment.

Comment: The Department received a comment from one individual who expressed that requiring a veterinarian, rather than front-office staff or a qualified veterinary technician, to leave a pet during an emergency to talk to the owner and provide an estimate is unnecessarily burdensome and onerous.

Department Response: The Department disagrees with the comment because House Bill 4069 delegates these responsibilities to the veterinarian. The Department did not make any changes to the proposed rule in response to this comment.

Comment: The Department received a comment from an individual expressing that a veterinarian should be able to stabilize an animal when there is a life-threatening situation and the person presenting the animal for treatment is willing to pay.

Department Response: The Department agrees with the comment. This comment is consistent with House Bill 4069 and the proposed rule. The Department did not make any changes to the proposed rule in response to this comment.

Comment: Taylor County Republican Party Precinct 403 suggested changes to the proposed rule, including its transfer to other sections (§573.20 or §573.22); adding a definition for the term "animal," as provided by Texas Penal Code §42.092 or by Texas Health and Safety Code §821.001; and adding an interpretation for the term "pricing," as used in §573.29.

Department Response: The Department disagrees with the suggested changes. The terms "animal" and "pricing" are used in the Texas Occupations Code, Chapter 801, and neither term is defined in this statute. In addition, as both terms are commonly used and generally understood, a particular definition to be used only in this rule chapter is unnecessary. The Department did not make any changes to the proposed rule in response to this comment.

Comment: The Department received a comment from an individual recommending that the proposed rule be changed to allow the veterinarian to obtain an advance authorization from an animal's owner to care for the animal if it is in need of immediate, life-saving care, and to allow the veterinarian to provide the detailed cost estimate after having the opportunity to fully examine the animal. Additionally, the commenter requested adding practical guidelines to follow when a veterinarian is unable to contact the owner when an animal's condition changes.

Department Response: The Department disagrees with the suggested changes, as they are inconsistent with the requirements established by House Bill 4069. The Department did not make any changes to the proposed rule in response to this comment.

Comment: The Department received a comment from an individual stating that the proposed rule would impede a veterinarian's ability to stabilize an animal's condition if it is in need of immediate attention. The commenter stated that the proposed rule should be clarified to remove possible undue delays in care in these situations. The commenter also stated that the rule should be amended to allow oral authorization of emergency care. Lastly, the commenter also requested adding practical guidelines to follow when a veterinarian cannot communicate with the owner of an animal to update its medical condition and the estimated price.

Department Response: The Department disagrees with the suggested changes, as they are inconsistent with the requirements established by House Bill 4069. The Department did not make any changes to the proposed rule in response to this comment.

Comment: The Department received comments from 17 individuals and from the Texas Veterinary Medical Association, which also provided an oral comment at the May 21, 2024, Commission meeting, all suggesting the same changes to the proposed rule. These commenters suggested adding language to establish a difference between "immediate life-saving care" and "longer-term less emergent treatments" to allow veterinarians to provide a cost estimate to stabilize the animal and a standard price disclosure for essential critical therapeutics. The commenters also recommended language to consider when a veterinarian cannot communicate with the owner or caretaker of an animal to update its medical condition and the estimated price. Finally, the commenters requested including the alternative for owners to pre-authorize emergency treatments when a veterinarian-client-patient relationship exists.

Department Response: The Department disagrees with the suggested changes, as they are inconsistent with the requirements established by House Bill 4069. The Department did not make any changes to the proposed rule in response to these comments.

Comment: The Department received comments from 36 individuals suggesting adding language to allow veterinarians to provide a cost estimate to stabilize the animal and a standard price disclosure for more long-term treatments. The commenters also recommended adding language to consider when a veterinarian cannot communicate with the owner or caretaker of an animal to update its medical condition and the estimated price.

Department Response: The Department disagrees with the suggested changes, as they are inconsistent with the requirements established by House Bill 4069. The Department did not make any changes to the proposed rule in response to this comment.

ADVISORY BOARD RECOMMENDATIONS AND COMMISSION ACTION

The State Board of Veterinary Medical Examiners (Board) met on January 23, 2024, to discuss the proposed rule. The Board recommended the proposed rule to be published in the *Texas Register*. At its meeting on May 21, 2024, the Commission adopted the proposed rule as recommended by the Board.

STATUTORY AUTHORITY

The adopted rule is adopted under the authority of Texas Occupations Code, Chapters 51 and 801, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51 and 801. No other statutes, articles, or codes are affected by the adopted rules.

The legislation that enacted the statutory authority under which the adopted rules are proposed to be adopted is House Bill 4069, 88th Legislature, Regular Session (2023).

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

Filed with the Office of the Secretary of State on May 24, 2024.

TRD-202402351

Doug Jennings

General Counsel

Texas Board of Veterinary Medical Examiners

Effective date: June 13, 2024

Proposal publication date: April 12, 2024

For further information, please call: (512) 475-4879

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TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 307. BEHAVIORAL HEALTH PROGRAMS

SUBCHAPTER F. BEHAVIORAL HEALTH PARTNERSHIP PROGRAM

26 TAC §§307.251, 307.253, 307.255, 307.257, 307.259, 307.261, 307.263, 307.265, 307.267

The Texas Health and Human Services Commission (HHSC) adopts new Subchapter F, Behavioral Health Partnership Program, in Texas Administrative Code, Chapter 307. New Subchapter F comprises §307.251, concerning Purpose; §307.253, concerning Application; §307.255, concerning Definitions; §307.257, concerning Behavioral Health Partnership Program Liaison Qualifications; §307.259, concerning Local Mental Health Authority or Local Behavioral Health Authority Responsibilities; §307.261, concerning Determining which Local Mental Health Authority or Local Behavioral Health Authority Employs a Behavioral Health Partnership Program Liaison; §307.263, concerning Responsibilities of a Behavioral Health Partnership Program Liaison; §307.265, concerning Texas Health and Human Services Commission Waiver Process; and §307.267, concerning Texas Health and Human Services Commission Notification.

Sections 307.259, 307.261, 307.263, and 307.265 are adopted with changes to the proposed text as published in the February 16, 2024, issue of the *Texas Register* (49 TexReg 840). These rules will be republished.

Sections 307.251, 307.253, 307.255, 307.257, and 307.267 are adopted without changes to the proposed text as published in the February 16, 2024, issue of the *Texas Register* (49 TexReg 840). These rules will not be republished.

BACKGROUND AND JUSTIFICATION

The rules comply with Texas Education Code §8.151 and §8.152, as amended by Senate Bill 26, 88th Legislature, Regular Session, 2023, which establishes a process for local mental health authorities (LMHAs) to submit a waiver request to the HHSC Executive Commissioner to hire a licensed master social worker or licensed professional counselor associate in lieu of a non-physician mental health professional (NPMHP) if the LMHA is unable to hire a NPMHP in its designated regional education service center (ESC). This adoption also includes application to Local Behavioral Health Authorities (LBHA). The adoption establishes the behavioral health partnership program (BHPP) as the program name and "behavioral health partnership program liaison" as the position title that includes an NPMHP or a person hired under the waiver process.

COMMENTS

The 31-day comment period ended on March 18, 2024.

During this period, HHSC received comments regarding the proposed rules from one commenter, the Texas Council of Community Centers. A summary of comments relating to the rules and HHSC's responses follows.

Comment: One commenter suggested the cross reference in §307.259(a)(7) addressing the annual activity and evaluation report, be amended to Texas Education Code §8.155 to refer to BHPP liaison duties, not Texas Education Code §8.153, which addresses the required Memorandum of Understanding with a regional educational service center.

Response: HHSC agrees with the comment and made a revision to correct the cross reference to Texas Education Code §8.155 in §307.259(a)(7).

Comment: One commenter stated the rules in §307.259(a)(6) and (7) do not identify specific metrics and do not require a certain mechanism to track outcomes of services provided. The commenter recommended revising language related to metrics and reporting practices in this section.

Response: HHSC declines to revise the rule. HHSC requires a quarterly report to monitor outcomes under §307.259(a)(6), although it is not required by statute. HHSC does not require specific metrics or a specific tracking mechanism as they vary widely by district and students. Additionally, LMHAs and LBHAs are already required to report on outcomes for school districts and students, and HHSC submits an annual report to the Legislature as required by Texas Education Code §8.158.

Comment: One commenter suggested that in compliance with Texas Education Code §8.152(b), the language in §307.261 be amended to reference all the requirements in Texas Education Code §8.152(b) rather than reference the general obligation to employ the BHPP liaison.

Response: HHSC agrees and revised language in §307.261 to add the requirement for the LMHA or LBHA to consult with other LMHAs or LBHAs in the service area and the ESC when making a hiring decision, as is consistent with Texas Education Code §8.152(b).

HHSC made minor editorial changes to §307.263(b), §307.263(b)(3)(C), §307.265(b)(2), and §307.265(b)(5) for clarity. HHSC also updated the agency's contact method in §307.259(a)(8) and §307.265(b).

STATUTORY AUTHORITY

The new sections are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Education Code §8.152(c) which provides the Executive Commissioner of HHSC with authority to approve waiver requests for an LMHA to hire a licensed master social worker or licenses professional counselor associate if an NPMHP cannot be hired.

§307.259. Local Mental Health Authority or Local Behavioral Health Authority Responsibilities.

(a) The LMHA or LBHA must:

(1) enter into a memorandum of understanding with the ESC to collaborate regarding the administration of this subchapter;

(2) employ a BHPP liaison to serve as a mental health and substance use resource for school districts located in the region served by an ESC and in which the LMHA or LBHA delivers services;

(3) pay the ESC a reasonable and negotiated cost-recovery fee, not to exceed \$15,000 per year unless the LMHA or LBHA and the ESC agree to a higher amount, for providing the space and administrative support necessary for the BHPP liaison to carry out the professional duties outlined in Texas Education Code §8.155;

(4) supervise the BHPP liaison;

(5) consult with any other LMHA or LBHA in the region and the regional ESC for input on supervising the BHPP liaison and coordinating services provided by the BHPP liaison;

(6) submit a written quarterly activity and evaluation report to the HHSC contract manager regarding the outcomes for school districts and students resulting from services delivered by a BHPP liaison in accordance with §307.263 of this subchapter (relating to Responsibilities of a Behavioral Health Partnership Program Liaison);

(7) submit a written annual activity and evaluation report to the HHSC contract manager regarding the outcomes for school districts and students resulting from services delivered by a BHPP liaison in accordance with Texas Education Code §8.155;

(8) submit a written waiver request to BHPP@hhs.texas.gov if required under Texas Education Code §8.152(c);

(9) ensure an LMSW or an LPC associate is eligible for an HHSC waiver request as outlined in this subchapter and the LMSW or LPC associate has the ability to fulfill the duties outlined in this subchapter if a waiver is requested;

(10) retain documentation in accordance with the LMHA's and LBHA's policies and procedures on efforts made to hire an NPMHP before submitting a waiver request; and

(11) submit a new waiver request, as needed, if the HHSC BHPP liaison vacates the position.

(b) If a BHPP liaison vacates the position within one year of approval of the waiver under subsection (a)(11) of this section, a new waiver request is not required.

(c) If a BHPP liaison vacates the position more than a year after approval of the waiver under subsection (a)(11) of this section, the LMHA or LBHA must attempt to hire a professional pursuant to Texas Education Code §8.152 before requesting a waiver under subsection (a)(11) of this section.

§307.261. Determining which Local Mental Health Authority or Local Behavioral Health Authority Employs a Behavioral Health Partnership Program Liaison.

If two or more LMHAs or LBHAs provide services in a region served by a regional ESC, the LMHA or LBHA that primarily operates in the county in which the center is located shall:

(1) in making a hiring decision about a BHPP liaison, consult with the other LMHAs or LBHAs providing services in that region;

(2) consult with the ESC before making the final hiring decision; and

(3) employ the BHPP liaison.

§307.263. Responsibilities of a Behavioral Health Partnership Program Liaison.

(a) A BHPP liaison must:

(1) serve as a mental health and substance use resource for school districts located in the region served by a regional ESC in which the LMHA or LBHA provides services; and

(2) operate within the scope of their professional state license.

(b) A BHPP liaison is responsible for carrying out the following functions and duties required of an NPMHP in accordance with Texas Education Code §8.155, including:

(1) helping school district personnel gain awareness and a better understanding of mental health and co-occurring mental health and substance use disorders;

(2) assisting school district personnel to implement initiatives related to mental health or substance use under state law or agency

rules, interagency memorandums of understanding, and related programs; and

(3) ensuring school district personnel are aware of:

(A) the list of recommended best practice-based programs and research-based practices developed under Texas Education Code §38.351;

(B) other public and private mental health and substance use prevention, treatment, and recovery programs available in the school district, including evidence-based programs delivered by an LMHA or LBHA and other public and private mental health resources, such as the Texas School Mental Health Resources database as required by Texas Education Code §38.253; and

(C) other available public and private mental health and substance use prevention, treatment, and recovery program resources administered by the LMHA or LBHA or HHSC to support school districts, students, and families;

(4) on a monthly basis, facilitating mental health first aid training;

(5) on a monthly basis, facilitating training on the effects of grief and trauma and providing support to children with intellectual or developmental disabilities who suffer from grief or trauma; and

(6) on a monthly basis, facilitating training on prevention and intervention programs that have been shown to be effective in helping students cope with pressures to:

(A) use alcohol, cigarettes, or illegal drugs; or

(B) misuse prescription drugs.

(c) A BHPP liaison employed under this subchapter must not treat or provide counseling to a student or provide advice to school district personnel regarding a specific student.

§307.265. Texas Health and Human Services Commission Waiver Process.

(a) If an LMHA or LBHA is unable to employ a person who qualifies as an NPMHP for the BHPP liaison position in its designated ESC, the LMHA or LBHA may request a waiver from the HHSC Executive Commissioner, or designee, to employ an LMSW or LPC associate to serve as the BHPP liaison, pursuant to Texas Education Code §8.152(c).

(b) To apply for a waiver, the LMHA or LBHA must complete and submit the written HHSC Local Mental and Behavioral Health Authority Waiver Request Form to BHPP@hhs.texas.gov addressing the following information:

(1) the name of the LMHA or LBHA requesting the waiver;

(2) the LMHA or LBHA's staff member's name and contact information;

(3) the LMHA or LBHA's recruitment efforts to hire an NPMHP;

(4) the duration of time the LMHA or LBHA was unable to hire for this position before requesting a waiver; and

(5) that the BHPP liaison waiver candidate is licensed as an LMSW or LPC associate.

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

Filed with the Office of the Secretary of State on May 22, 2024.

TRD-202402279

Karen Ray

Chief Counsel

Health and Human Services Commission

Effective date: June 11, 2024

Proposal publication date: February 16, 2024

For further information, please call: (512) 243-4241

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 9. EXPLORATION AND LEASING OF STATE OIL AND GAS

SUBCHAPTER E. POOLING AND UNITIZING STATE PROPERTY

31 TAC §9.81

BACKGROUND AND ANALYSIS

On behalf of the School Land Board ("SLB"), the General Land Office ("GLO") adopts an amendment to 31 TAC §9.81 (relating to Pooling and Unitizing of State Property) by changes made to paragraphs 9.81(a), 9.81(b), 9.81(c), and 9.81(d), without changes to the proposed text as published in the March 22, 2024, issue of the *Texas Register* (49 TexReg 1874) and the text will not be republished.

The adopted amendments to 31 TAC §9.81 update and clarify the timelines associated with School Land Board ("SLB") meetings, pooling committee meetings and makeup, and the GLO process to review and approve pooling and production sharing agreement applications.

COMMENTS BY THE PUBLIC

The GLO did not receive any comments on the amendments.

STATUTORY AUTHORITY

The amendment to 31 TAC §9.81 is adopted pursuant to the authority set out in Texas Natural Resources Code §31.051(3), which states that the Commissioner of the GLO shall make and enforce suitable rules consistent with the law.

STATUTES AFFECTED

Texas Natural Resources Code Chapter 52 is affected by this adopted amendment.

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

Filed with the Office of the Secretary of State on May 22, 2024.

TRD-202402287

Mark Havens

Chief Clerk

General Land Office

Effective date: June 11, 2024

Proposal publication date: March 22, 2024

For further information, please call: (512) 475-1859

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 4. COMMERCIAL VEHICLE REGULATIONS AND ENFORCEMENT PROCEDURES

SUBCHAPTER A. REGULATIONS GOVERNING HAZARDOUS MATERIALS

37 TAC §4.1

The Texas Department of Public Safety (the department) adopts amendments to §4.1, concerning Transportation of Hazardous Materials. This rule is adopted without changes to the proposed text as published in the April 12, 2024, issue of the *Texas Register* (49 TexReg 2250) and will not be republished.

The proposed amendment updates adoption of the federal hazardous materials regulations as amended through December 1, 2023.

No comments were received regarding the adoption of this rule.

This rule is adopted pursuant to Texas Transportation Code, Section 644.051, which authorizes the director to adopt rules regulating the safe transportation of hazardous materials and the safe operation of commercial motor vehicles; and authorizes the director to adopt all or part of the federal safety regulations by reference.

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

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

TRD-202402250

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Effective date: June 9, 2024

Proposal publication date: April 12, 2024

For further information, please call: (512) 424-5848

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SUBCHAPTER B. REGULATIONS GOVERNING TRANSPORTATION SAFETY

37 TAC §4.15

The Texas Department of Public Safety (the department) adopts amendments to §4.15, concerning Compliance Review and Safety Audit Programs. This rule is adopted without changes to the proposed text as published in the April 12, 2024, issue of the *Texas Register* (49 TexReg 2256) and will not be republished.

The proposed amendment adds as an imminent hazard to the public a motor carrier's refusal to submit to an inspection and the practice of employing unqualified drivers with fraudulent foreign commercial driver licenses. It also specifies the documentation

and retention requirements for a motor carrier that employs foreign commercial driver license personnel consistent with House Bill 4337, 88th Leg., R.S. (2023).

No comments were received regarding the adoption of this rule.

This rule is adopted pursuant to Texas Transportation Code, Section 644.051, which authorizes the director to adopt rules regulating the safe transportation of hazardous materials and the safe operation of commercial motor vehicles; and authorizes the director to adopt all or part of the federal safety regulations by reference.

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

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

TRD-202402251

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Effective date: June 9, 2024

Proposal publication date: April 12, 2024

For further information, please call: (512) 424-5848



PART 9. TEXAS COMMISSION ON JAIL STANDARDS

CHAPTER 259. NEW CONSTRUCTION RULES

SUBCHAPTER B. NEW MAXIMUM SECURITY DESIGN, CONSTRUCTION AND FURNISHING REQUIREMENTS

37 TAC §259.135

The Texas Commission on Jail Standards (TCJS) adopts an amendment to rule §259.135 concerning dormitory housing and dayrooms, adopted without changes as published in the March 1, 2024, issue of the *Texas Register* (49 TexReg 1245). The rule will not be republished.

The Texas Commission on Jail Standards adopts amendments to Texas Administrative Code, Title 37, §259.135, relating to dormitory housing. Specifically, the adopted amendment addresses the generally accepted industry standard of direct supervision inmate housing areas with congregate levels that exceed 48 inmates. Counties that utilize the direct supervision concept for inmate supervision have been forced to apply for a variance from minimum jail standards to operate inmate housing areas with a congregate level that exceeds 48 inmates. The construction and utilization of inmate housing areas with congregate levels that exceed 48 inmates is common across the nation and 10 counties in Texas currently operate direct supervision housing areas with no negative impact. Amending minimum jail standards to allow congregate levels that exceed 48 inmates when operated as direct supervision will acknowledge that this concept is viable and encouraged for counties that are capable of operating direct supervision facilities.

No comments were received from the public regarding adoption of this amendment.

The amendment is adopted under the authority of Government Code, Chapter 511, which authorizes the Texas Commission on Jail Standards to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

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

Filed with the Office of the Secretary of State on May 24, 2024.

TRD-202402339

Brandon Wood

Executive Director

Texas Commission on Jail Standards

Effective date: June 13, 2024

Proposal publication date: March 1, 2024

For further information, please call: (512) 850-8668



37 TAC §259.136

The Texas Commission on Jail Standards (TCJS) adopts an amendment to rule §259.136 concerning dormitory housing and dayrooms, adopted without changes as published in the March 1, 2024, issue of the *Texas Register* (49 TexReg 1245). The rule will not be republished.

The adopted amendment addresses the generally accepted industry standard of direct supervision inmate housing areas and dayrooms with congregate levels that exceed 48 inmates. Counties that utilize the direct supervision concept for inmate supervision have been forced to apply for a variance from minimum jail standards to operate inmate housing areas and dayrooms with a congregate level that exceeds 48 inmates. The construction and utilization of inmate housing areas and dayrooms with congregate levels that exceed 48 inmates is common across the nation and 10 counties in Texas currently operate direct supervision housing areas with no negative impact. Amending minimum jail standards to allow congregate levels that exceed 48 inmates when operated as direct supervision will acknowledge that this concept is viable and encouraged for counties that are capable of operating direct supervision facilities.

No comments were received from the public regarding adoption of this amendment.

The amendment is adopted under the authority of Government Code, Chapter 511, which authorizes the Texas Commission on Jail Standards to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

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

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