

# PROPOSED RULES

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

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

## TITLE 1. ADMINISTRATION

### PART 4. OFFICE OF THE SECRETARY OF STATE

#### CHAPTER 107. REGISTRATION OF VISION SUPPORT ORGANIZATIONS

The Office of the Secretary of State (Office) proposes new Chapter 107, §§107.1 - 107.5, concerning registration of vision support organizations (VSOs). The Office proposes new rules to implement the registration requirements for VSOs in Senate Bill 820, enacted by the 88th Legislature, Regular Session, codified at Chapter 74 of the Texas Business and Commerce Code (SB 820).

#### BACKGROUND INFORMATION AND JUSTIFICATION

SB 820, adopted by the 88th Legislature, Regular Session, establishes a required occupational registration for VSOs in Chapter 74 of the Texas Business and Commerce Code. The bill took effect on September 1, 2023.

As enacted by SB 820, Texas Business and Commerce Code §74.002 requires a VSO (as defined in Texas Business and Commerce Code §74.001(3)) to register annually with the Office. Texas Business and Commerce Code §74.004(a) identifies the information that must be included in the VSO's registration filed with the Office. Texas Business and Commerce Code §74.005(c) directs a VSO to file a corrected registration semi-annually as necessary. Texas Business and Commerce Code §74.004(b) specifies that a registration and each corrected registration must be accompanied by a fee in an amount set by the Office.

The purpose of these new rules under Chapter 107 (Registration of Vision Support Organizations) is to provide information regarding the procedures for VSO registration with the Office, in accordance with SB 820.

#### SECTION-BY-SECTION SUMMARY

Proposed §107.1 defines terms used within Chapter 107.

Proposed §107.2 specifies the procedure for a VSO to initially register with the Office, or to renew an existing registration, as required by Texas Business and Commerce Code §§74.002 and 74.004.

Proposed §107.3 provides that a registration of a VSO expires on December 31 of each year and must be renewed annually. The section also designates the time period for a registered VSO to submit a renewal registration and a new VSO to register after executing a vision support agreement (as defined in new §107.1).

Proposed §107.4 establishes the procedures and time periods for a VSO to submit a statement of correction, as required by Texas Business and Commerce Code §§74.004 and 74.005.

Proposed §107.5 sets forth the required fees under Chapter 74 of the Texas Business and Commerce Code.

#### FISCAL NOTE

SB 820 requires a VSO subject to Chapter 74 of the Texas Business and Commerce Code to file with the Office an annual registration and a corrected registration semiannually as necessary, each of which must be accompanied by a fee in an amount set by the Office. The proposed new rules do not impose any additional costs on a VSO seeking to register with the Office.

Texas Business and Commerce Code §74.004(b) states that a registration and each corrected registration must be accompanied by a fee set by the Office in an amount necessary to recover the costs of administering of Chapter 74 of the Texas Business and Commerce Code. The proposed rules set the fee at \$150 for initial and renewal annual registrations, and \$50 for statements of correction. Such fees are comparable to those for similar occupational registrations filed with the Office, particularly dental support organizations under Chapter 73 of the Texas Business and Commerce Code (after which SB 820 was closely modeled).

Christopher Burnett, Director of the Office's Business & Public Filings Division, has determined that for each year of the first five years that the proposed new sections will be in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the proposed rules. In addition, the Office does not anticipate that enforcing or administering the proposed rules will result in any reductions in costs or in any additional costs to the Office, the state, or local governments. The Office also does not anticipate that there will be any loss or increase in revenue to the Office, the state, or local governments as a result of enforcing or administering the proposed rules.

#### PUBLIC BENEFIT

Mr. Burnett has determined that for each year of the first five years that the proposed new sections will be in effect, the public benefit expected as a result of adopting the proposed new rules will be clarity with respect to the Office's application of Texas Business and Commerce Code §§74.002, 74.004, and 74.005. The proposed new rules will benefit the public by providing information regarding the registration of VSOs with the Office in accordance with Chapter 74 of the Texas Business and Commerce Code.

#### ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL ECONOMY

There are no anticipated economic costs to persons required to comply with the proposed new rules. There is a cost imposed

on a VSO seeking to register with the Office, or submitting a renewal or correction related to an existing registration, pursuant to Texas Business and Commerce Code §74.004. However, the Office's proposed new rules do not impose any additional costs on such entities. There is no effect on local economy for the first five years that the proposed new rules will be in effect; therefore, no local employment impact statement is required under Texas Government Code §§2001.022 and 2001.024(a)(6).

#### FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES

The proposed new rules will have no direct adverse economic impact on small businesses, micro-businesses, or rural communities. Accordingly, the preparation of an economic impact statement and a regulatory flexibility analysis, as specified in Texas Government Code §2006.002, is not required.

#### GOVERNMENT GROWTH IMPACT STATEMENT

Pursuant to Texas Government Code §2001.0221, the Office provides the following government growth impact statement for the proposed rules. For each year of the first five years that the proposed new rules will be in effect, the Office has determined the following:

- (1) the proposed rules will not create or eliminate a government program;
- (2) implementation of the proposed rules will not require the creation of new employee positions or the elimination of existing employee positions;
- (3) implementation of the proposed rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the proposed rules will not require an increase or decrease in fees paid to the agency;
- (5) the proposed rules are new rules and therefore create new regulations;
- (6) the proposed rules will not expand, limit, or repeal an existing regulation;
- (7) the proposed rules will not increase or decrease the number of individuals subject to the rules' applicability; and
- (8) the proposed rules will not positively or adversely affect the state's economy.

#### REQUEST FOR PUBLIC COMMENTS

Comments or questions on the proposed new rules may be submitted in writing and directed to Adam Bitter, General Counsel, Office of the Secretary of State, P.O. Box 12887, Austin, Texas 78711-2887, or by e-mail to [generalcounsel@sos.texas.gov](mailto:generalcounsel@sos.texas.gov). Comments will be accepted for thirty (30) days from the date of publication of the proposed rules in the *Texas Register*. Comments should be organized in a manner consistent with the organization of the proposed new rules.

### SUBCHAPTER A. DEFINITIONS

#### 1 TAC §107.1

##### STATUTORY AUTHORITY

The proposed new rules are authorized by Texas Government Code §2001.004(1) and Texas Business and Commerce Code §74.004(b). Texas Government Code §2001.004(1) requires a state agency to adopt rules of practice stating the nature and

requirements of formal and informal procedures. Texas Business and Commerce Code §74.004(b) directs the Office to set the applicable VSO filing fees. The proposed new rules implement Chapter 74 of the Texas Business and Commerce Code.

##### CROSS REFERENCE TO STATUTE

No other statute, code, or article is affected by the proposed rules.

##### §107.1. Definitions.

Words and terms defined in Chapter 74 of the Business and Commerce Code shall have the same meaning in this chapter. In addition, the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Non-optometrist owner--A person, including a corporation, association, general partnership, limited partnership, limited liability company, limited liability partnership, other legal entity, or sole proprietorship, who is not a licensed optometrist but maintains 5% or more ownership in a vision support organization.

(2) Professional entity--A professional corporation, professional limited liability company, professional association, general partnership that provides a professional service, or limited partnership that provides a professional service.

(3) Secretary--The Texas Secretary of State.

(4) Vision support agreement--One or more agreements under which a vision support organization provides two or more business support services to an optometrist.

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

Filed with the Office of the Secretary of State on June 6, 2024.

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Adam Bitter

General Counsel

Office of the Secretary of State

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For further information, please call: (512) 475-2813



### SUBCHAPTER B. REGISTRATION AND RENEWAL OF VISION SUPPORT ORGANIZATIONS

#### 1 TAC §107.2, §107.3

##### STATUTORY AUTHORITY

The proposed new rules are authorized by Texas Government Code §2001.004(1) and Texas Business and Commerce Code §74.004(b). Texas Government Code §2001.004(1) requires a state agency to adopt rules of practice stating the nature and requirements of formal and informal procedures. Texas Business and Commerce Code §74.004(b) directs the Office to set the applicable VSO filing fees. The proposed new rules implement Chapter 74 of the Texas Business and Commerce Code.

##### CROSS REFERENCE TO STATUTE

No other statute, code, or article is affected by the proposed rules.

##### §107.2. Registration and Renewal of Vision Support Organizations.

(a) A complete initial registration or renewal registration is comprised of:

(1) A completed registration form that is signed by a person authorized to act by or on behalf of the vision support organization, in the form promulgated by the secretary (See Form 4101); and

(2) Payment of the filing fee stated in §107.5 of this chapter (relating to Filing Fees).

(b) A registration statement or renewal application must comply with Business and Commerce Code §74.004, and also provide:

(1) For the vision support organization:

(A) The legal name;

(B) The business address and mailing address, if different; and

(C) A contact name, email address, and phone number.

(2) For each optometrist and each entity that employs or contracts with an optometrist to provide eye care services in this state with which the vision support organization has entered into an agreement to provide two or more business support services:

(A) The legal name and business address of each optometrist and each such entity, as applicable;

(B) If the optometrist provides eye care services through a professional entity, the legal name of the professional entity; and

(C) A disclosure of all business support services provided to each optometrist or each entity that employs or contracts with an optometrist to provide eye care services.

(3) For each optometrist who owns any portion of the vision support organization and for each non-optometrist owner who owns 5% or more of the vision support organization:

(A) The legal name and business address of the owner; and

(B) Whether the owner is an optometrist or a non-optometrist owner.

#### §107.3. Timing of Registration.

(a) Registrations will expire annually on December 31 of each year.

(b) A vision support organization seeking to renew an existing registration must file a renewal registration. Renewals may be submitted from ninety (90) days prior to expiration until January 31 of the year for which the next registration will be effective by submitting a completed registration form and paying the filing fee, except as provided in subsection (c) of this section.

(c) In the event a vision support organization is required to register under Chapter 74 of the Business and Commerce Code after January 31, the vision support organization must file an initial registration within ninety (90) days after the date of execution of a vision support agreement.

(d) The initial registration for a vision support organization that entered into a vision support agreement prior to February 1, 2024, must be filed not later than January 31, 2025.

(e) The initial registration for a vision support organization that first enters into a vision support agreement on or after February 1, 2024, must be filed not later than the ninetieth (90th) day after the date the agreement is executed.

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

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Adam Bitter

General Counsel

Office of the Secretary of State

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For further information, please call: (512) 475-2813



## SUBCHAPTER C. STATEMENT OF CORRECTION

### 1 TAC §107.4

#### STATUTORY AUTHORITY

The proposed new rules are authorized by Texas Government Code §2001.004(1) and Texas Business and Commerce Code §74.004(b). Texas Government Code §2001.004(1) requires a state agency to adopt rules of practice stating the nature and requirements of formal and informal procedures. Texas Business and Commerce Code §74.004(b) directs the Office to set the applicable VSO filing fees. The proposed new rules implement Chapter 74 of the Texas Business and Commerce Code.

#### CROSS REFERENCE TO STATUTE

No other statute, code, or article is affected by the proposed rules.

#### §107.4. Corrections.

(a) A vision support organization must submit a statement of correction semiannually if, during that period, any information provided in the initial registration or renewal registration, as applicable, changes.

(b) A statement of correction must include the following information:

(1) The legal name of the vision support organization;

(2) The date of the last filed registration;

(3) The registration number assigned by the secretary to the vision support organization; and

(4) A statement identifying the information that has changed.

(c) A vision support organization that is required to submit a statement of correction in accordance with subsection (a) of this section shall do so according to the following schedule:

(1) First half (January 1 - June 30) - Statement of correction due not later than the forty-fifth (45th) day after June 30.

(2) Second half (July 1 - December 31) - Statement of correction due not later than the forty-fifth (45th) day after December 31.

(d) The statement of correction must be signed by a person authorized to act by or on behalf of the vision support organization.

(e) The statement of correction must be accompanied by the filing fee stated in §107.5 of this chapter (relating to Filing Fees).

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

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Adam Bitter

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For further information, please call: (512) 475-2813



## SUBCHAPTER D. FILING FEES

### 1 TAC §107.5

#### STATUTORY AUTHORITY

The proposed new rules are authorized by Texas Government Code §2001.004(1) and Texas Business and Commerce Code §74.004(b). Texas Government Code §2001.004(1) requires a state agency to adopt rules of practice stating the nature and requirements of formal and informal procedures. Texas Business and Commerce Code §74.004(b) directs the Office to set the applicable VSO filing fees. The proposed new rules implement Chapter 74 of the Texas Business and Commerce Code.

#### CROSS REFERENCE TO STATUTE

No other statute, code, or article is affected by the proposed rules.

#### §107.5. Filing Fees.

(a) The filing fee for an initial registration or a renewal registration is \$150.

(b) The filing fee for a statement of correction is \$50.

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

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Adam Bitter

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Office of the Secretary of State

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For further information, please call: (512) 475-2813



## 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 C. APPLICATION, REVIEW AND AWARD PROCESS

### 10 TAC §190.20

The Office of the Governor ("OOG") proposes an amendment to 10 TAC §190.20. The proposed amendment will specify the deadline for submitting an application.

#### EXPLANATION OF PROPOSED AMENDMENT

The rule under consideration relates to the Governor's University Research Initiative ("GURI"), which was implemented to create and administer the GURI grant program, as enacted by Senate Bill 632 and House Bills 7 and 26 during the 84th Legislature, Regular Session, to facilitate the recruitment of distinguished researchers to eligible Texas universities.

The proposed amendment to §190.20 specifies that an application must be submitted not later than the 30th day before the distinguished researcher begins employment at the eligible institution. This will ensure that an application for a GURI grant award is considered during the recruitment stage. It will also give the GURI Advisory Board sufficient time to make its recommendations to the Office of the Governor prior to the distinguished researcher beginning employment.

#### FISCAL NOTE

Adriana Cruz, Executive Director, Texas Economic Development and Tourism Office, has determined that during each year of the first five years in which the proposed amendment is in effect, there will be no expected fiscal impact on state and local governments as a result of enforcing or administering the proposed amendment.

Ms. Cruz does not anticipate any measurable effect on local employment or the local economy as a result of the proposed amendment.

#### PUBLIC BENEFIT AND COSTS

Ms. Cruz has also determined that during each year of the first five years in which the proposed amendment is in effect, the public benefit anticipated as a result of the proposed rule change will be to ensure that GURI funds are used for recruitment as intended by Education Code, Subchapter H. There are no anticipated economic costs for persons required to comply with the proposed rule.

Ms. Cruz has determined there may be a positive fiscal impact on the state of Texas as a result of the proposed rule, as it ensures that GURI grant awards are used for recruitment purposes and not retention.

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities. Since the OOG has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, is not required.

#### GOVERNMENT GROWTH IMPACT STATEMENT

Ms. Cruz has determined that during each year of the first five years in which the proposed amendment is in effect, the amendment:

- 1) will not create or eliminate a government program;
- 2) will not require the creation of new employee positions or the elimination of existing employee positions;

- 3) will not require an increase or decrease in future legislative appropriations to the OOG;
- 4) will not require an increase or decrease in fees paid to the OOG;
- 5) does not create new regulations;
- 6) will not expand, limit, or repeal a existing regulations;
- 7) will not increase or decrease the number of individuals subject to the applicability of the rule; and
- 8) will not positively or adversely affect the Texas economy.

#### TAKINGS IMPACT ASSESSMENT

The OOG has determined that no private real property interests are affected by the proposed rule and the proposed rule does 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 proposed amendment does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

#### SUBMISSION OF COMMENTS

Written comments regarding the proposed rule amendment may be submitted for 30 days following the date of publication of this notice by mail to Terry Zrubek, Deputy Executive Director, Office of the Governor, Economic Development and Tourism, P.O. Box 12428, Austin, Texas 78711 or by email to Terry.Zrubek@gov.texas.gov with the subject line "GURI Rule Review." The deadline for receipt of comments is 5:00 p.m., Central Time, on July 21, 2024.

#### STATUTORY AUTHORITY

The amendment is proposed 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.

#### §190.20. Application Process.

- (a) The OOG will maintain a formal application available electronically at the OOG website.
- (b) At any time, the OOG may change the terms of the formal application document. Any applicant may be required to provide supplemental information if the formal application document is changed by the OOG.
- (c) At [H] the discretion of the OOG, applications may be accepted by a specified deadline or on a rolling basis [~~rolling basis~~]. The OOG will post notice of the application schedule of the GURI program at the OOG website.
- (d) An application must be submitted not later than the 30th day before the distinguished researcher begins employment at the eligible institution.

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

Filed with the Office of the Secretary of State on June 5, 2024.  
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Adriana Cruz  
Executive Director, Texas Economic Development and Tourism Office  
Office of the Governor, Economic Development and Tourism Office  
Earliest possible date of adoption: July 21, 2024  
For further information, please call: (512) 936-0100



## TITLE 16. ECONOMIC REGULATION

### PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

#### CHAPTER 130. PODIATRIC MEDICINE PROGRAM

The Texas Department of Licensing and Regulation (Department) proposes amendments to existing rules at 16 Texas Administrative Code (TAC) Chapter 130, Subchapter A, §§130.1 and §130.2; Subchapter B, §§130.20, 130.23, 130.27, and 130.28; Subchapter C, §130.30 and §130.32; Subchapter D §§130.40 - 130.42; Subchapter E, §§130.50, 130.51, 130.54, 130.55, and §§130.57 - 130.59; Subchapter F, §130.60; and Subchapter G, §§130.70, 130.72, and 130.73; proposes new rules at Subchapter B, §§130.21, 130.22, and 130.24, Subchapter C, §§130.31, 130.34 - 130.37; and Subchapter D, §§130.43 - 130.48; and proposes the repeal of existing rules at Subchapter B, §§130.21, 130.22, and 130.24, Subchapter C, §130.31, Subchapter D, §§130.43 - 130.49; and Subchapter E, §130.52 and §130.53, regarding the Podiatric Medicine Program. These proposed changes are referred to as "proposed rules."

#### EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 130, implement Texas Occupations Code, Chapter 202, Podiatrists; and Chapter 51, the enabling statute of the Texas Commission of Licensing and Regulation (Commission) and the Department. Specific provisions within this rule chapter also implement the statutory requirements under Texas Occupations Code, Chapters 53, 108, 112, 116, and 601.

The proposed rules are necessary to implement changes recommended as a result of the required four-year rule review conducted under Texas Government Code §2001.039. The Department's Notice of Intent to Review 16 TAC, Chapter 130, was published in the September 3, 2021, issue of the *Texas Register* (46 TexReg 5598). At its meeting on October 18, 2022, the Commission readopted the rule chapter in its entirety without changes. The readoption notice was published in the February 25, 2022, issue of the *Texas Register* (47 TexReg 988).

In response to the Notice of Intent to Review that was published, the Department received one public comment from one interested party regarding Chapter 130. The comment questioned whether there is a fee for an inactive status license. The comment has been addressed in the proposed rules by explaining that there is not a fee for an inactive license.

The proposed rules also include changes recommended by Department staff during the rule review process to reorganize and streamline the entire chapter. These recommendations include changes to consolidate the existing rules, reorganize provisions by subject matter, expand existing Subchapter C, eliminate duplicative provisions, and apply plain language principles to improve clarity.

The proposed rules also change the license terms for the Podiatric Medical Radiological Technician license, the Hyperbaric Oxygen Certificate, and the Nitrous Oxide/Oxygen Inhalation Conscious Sedation Registration. Beginning January 1, 2025, all three license types will change from one-year to two-year terms and application and renewal fees will be updated to reflect this change. Existing licenses renewed by the Department will be valid for one year if renewed before January 1, 2025, or for two years if renewed on or after January 1, 2025.

#### *Advisory Board Recommendations*

The proposed rules were presented to and discussed by the Podiatric Medical Examiners Advisory Board at its meeting on May 13, 2024. The Advisory Board did not make any changes to the proposed rules. The Advisory Board voted and recommended that the proposed rules be published in the *Texas Register* for public comment.

### SECTION-BY-SECTION SUMMARY

#### *Subchapter A. General Provisions.*

The proposed rules amend §130.1, Authority. The proposed rules change the name of the section from "Authority" to "Authority and Applicability." The proposed rules amend subsection (a) to identify other statutes that are implemented by the rules in Chapter 130. The proposed rules also add new subsection (b) to explain that the Chapters 60 and 100 rules also apply to the Podiatry program.

The proposed rules amend §130.2, Definitions. The proposed rules update the definition of "Podiatric Medical Radiological Technician" to clarify that the term includes a *Podiatry X-ray Machine Operator*. The proposed rules update the definition of "Practitioner" to clarify that the term includes a podiatrist and a podiatric physician. The proposed rules also remove unnecessary language from the definition of "Act" and add clarifying language to the definition of "License."

#### *Subchapter B. Advisory Board.*

The proposed rules amend §130.20, Board Membership. The proposed rules streamline this section by referring to the Occupations Code instead of repeating it verbatim.

The proposed rules repeal existing §130.21, Public Member Eligibility. This section is replaced with new §130.21, Public Member Eligibility.

The proposed rules add new §130.21, Public Member Eligibility. The proposed rules streamline this section by referring to the Occupations Code instead of repeating it verbatim.

The proposed rules repeal existing §130.22, Membership and Employee Restrictions. This section is replaced with new §130.22, Membership and Employee Restrictions.

The proposed rules add new §130.22, Membership and Employee Restrictions. The proposed rules streamline this section by referring to the Occupations Code instead of repeating it verbatim.

The proposed rules amend §130.23, Terms; Vacancies. The proposed rules streamline this section by referring to the Occupations Code instead of repeating it verbatim.

The proposed rules repeal existing §130.24, Grounds for Removal. This section is replaced with new §130.24, Grounds for Removal.

The proposed rules add new §130.24, Grounds for Removal. The proposed rules streamline this section by referring to the Occupations Code instead of repeating it verbatim.

The proposed rules amend §130.27, Advisory Board Meetings and Duties of Department. The proposed rules merge subsection (i) into subsection (g).

The proposed rules amend §130.28, Training. The proposed rules streamline this section by referring to the Occupations Code instead of repeating it verbatim.

#### *Subchapter C. Temporary Residency and Other License Types.*

The proposed rules amend Subchapter C, Temporary Residency. The proposed rules rename Subchapter C from "Temporary Residency" to "Temporary Residency and Other License Types," which now includes requirements for a Limited Faculty License, for a Podiatric Medical Radiological Technician Registration, for a Hyperbaric Oxygen Certificate, and for a Nitrous Oxide/Oxygen Inhalation Conscious Sedation Registration.

The proposed rules amend §130.30, Temporary Residency License--General Requirements and Application. The proposed rules remove the word "successfully" and replace the word "shall" with "must."

The proposed rules repeal existing §130.31, Temporary Residency License--Residency Requirements; Program Responsibilities; License Term. This section is replaced with new §130.31, Temporary Residency License--License Term; Residency Requirements; Program Responsibilities.

The proposed rules add new §130.31, Temporary Residency License--License Term; Residency Requirements; Program Responsibilities. The proposed rules rename the section from "Temporary Residency License--Residency Requirements; Program Responsibilities; License Term" to "Temporary Residency License--License Term; Residency Requirements; Program Responsibilities." The proposed rules rearrange the order of the section to increase readability.

The proposed rules amend §130.32, Temporary Residency License--Final Year of Residency. The proposed rules streamline the section to increase readability, rearrange the order of the section, and establish requirements a resident must follow in their final year of residency.

The proposed rules add new §130.34, Limited Faculty License--Requirements; License Term. The proposed rules create a standalone section for a limited faculty license by relocating existing §130.40(b) and §130.42(d) to this section. The proposed rules explain the requirements for procuring a limited faculty license and establish that the term of this license is up to two years. The proposed rules also establish when a limited faculty license will be terminated and that termination does not preclude a podiatrist from applying for or holding another license type issued under this subchapter.

The proposed rules add new §130.35, Podiatric Medical Radiological Technicians. The proposed rules relocate existing §130.53 to this section and update the number of training hours needed for podiatric medical radiological technicians. The proposed rules also change the length of the registration term from one year to two years. A registration is valid for one year if the registration was issued before January 1, 2025, or two years if the registration was issued on or after January 1, 2025. Similarly, the proposed rules establish that a registration

renewed by the department is valid for one year if the renewal was issued before January 1, 2025, and must be renewed annually, or two years if the renewal was issued on or after January 1, 2025, and must be renewed every two years. The proposed rules explain the process for completing a renewal application, establish that human trafficking prevention training is required for each renewal, and explain when the department may refuse to issue or renew a registration.

The proposed rules add new §130.36, Hyperbaric Oxygen Certificate--Application Requirements and Guidelines. The proposed rules relocate existing §130.47 to this section and change the length of the certificate term from one year to two years. A certificate is valid for one year if the certificate was issued before January 1, 2025, or two years if the certificate was issued on or after January 1, 2025. Similarly, the proposed rules establish that a certificate renewed by the department is valid for one year if the renewal was issued before January 1, 2025, and must be renewed annually, or two years if the renewal was issued on or after January 1, 2025, and must be renewed every two years.

The proposed rules add new §130.37, Nitrous Oxide/Oxygen Inhalation Conscious Sedation-Registration Requirements, Guidelines, and Direct Supervision. The proposed rules relocate existing §130.48 to this section and change the length of the certificate term from one year to two years. A registration is valid for one year if the registration was issued before January 1, 2025, or two years if the registration was issued on or after January 1, 2025. Similarly, the proposed rules establish that a registration renewed by the department is valid for one year if the renewal was issued before January 1, 2025, and must be renewed annually, or two years if the renewal was issued on or after January 1, 2025, and must be renewed every two years.

#### *Subchapter D. Doctor of Podiatric Medicine.*

The proposed rules amend §130.40, Doctor of Podiatric Medicine License--General Requirements and Application; Limited Faculty License. The proposed rules change the name of the section from "Doctor of Podiatric Medicine License--General Requirements and Applications; Limited Faculty License" to "Doctor of Podiatric Medicine License--General Requirements and Application." The proposed rules relocate the limited faculty license language to new §130.34 and streamline the remaining language to make it easier to read.

The proposed rules amend §130.41, Doctor of Podiatric Medicine License--Jurisprudence Exam. The proposed rules replace the word "shall" with "must."

The proposed rules amend §130.42, Doctor of Podiatric Medicine License--Term; Renewal. The proposed rules remove language relating to a limited faculty license and relocate it to new §130.34. The proposed rules also remove outdated language and add clarifying language.

The proposed rules repeal existing §130.43, Doctor of Podiatric Medicine License--Provisional License. This section is replaced with new §130.43, Doctor of Podiatric Medicine License--Provisional License.

The proposed rules add new §130.43, Doctor of Podiatric Medicine License--Provisional License. The proposed rules remove duplicative language located elsewhere in the chapter and streamline the remaining language to make it easier to read.

The proposed rules repeal existing §130.44, Continuing Medical Education--General Requirements. This section is replaced with

new §130.44, Continuing Medical Education--General Requirements.

The proposed rules add new §130.44, Continuing Medical Education--General Requirements. The proposed rules streamline the section and relocate the continuing medical education audit process to new §130.45.

The proposed rules repeal §130.45, Continuing Medical Education--Exceptions and Allowances; Approval of Hours. The proposed rules relocate the repealed provisions to new §130.46.

The proposed rules add new §130.45, Continuing Medical Education--Audit Process. The proposed rules relocate audit information from current §130.44 and establish that the Department will select random license holders to ensure compliance with CME hours.

The proposed rules repeal §130.46, Inactive Status. The proposed rules relocate the repealed provisions to new §130.47.

The proposed rules add new §130.46, Continuing Medical Education--Exceptions and Allowances; Approval of Hours. The proposed rules relocate the requirements of existing §130.45 to this new section.

The proposed rules repeal §130.47, Hyperbaric Oxygen Certificate--Application Requirements and Guidelines. The proposed rules relocate the repealed provisions to new §130.36.

The proposed rules add new §130.47, Inactive Status. The proposed rules relocate the requirements of existing §130.46 to this new section and establish that a practitioner may place a license on inactive status at no cost.

The proposed rules repeal §130.48, Nitrous Oxide/Oxygen Inhalation Conscious Sedation--Registration Requirements, Guidelines, and Direct Supervision. The proposed rules relocate the repealed provisions to new §130.37.

The proposed rules add new §130.48, Voluntary Charity Care Status. The proposed rules relocate the requirements of existing §130.49 to this new section.

The proposed rules repeal §130.49, Voluntary Charity Care Status. The proposed rules relocate the repealed provisions to new §130.48.

#### *Subchapter E. Practitioner Responsibilities and Code of Ethics.*

The proposed rules amend §130.50, Practitioner Identification; Professional Corporations or Associations. The proposed rules remove language regarding the purpose of this section and streamline the rest of the section to make it easier to read.

The proposed rules amend §130.51, Advertising. The proposed rules streamline the section and remove language relating to certifying boards that are not recognized by the Council of Podiatric Medical Education of the American Podiatric Medical Association.

The proposed rules repeal §130.52, Medical Offices, because the Department does not regulate medical offices, but individual licensees.

The proposed rules repeal §130.53, Podiatric Medical Radiological Technicians. The proposed rules relocate the repealed provisions to new §130.35.

The proposed rules amend §130.54, Records. The proposed rules streamline the section to make it easier to read.

The proposed rules amend §130.55, Practitioner Code of Ethics. The proposed rules add new subsection (g) to establish that treatment must be consistent with best practices and standards observed in the podiatry community.

The proposed rules amend §130.57, Sexual Misconduct. The proposed rules streamline the section to make it easier to read.

The proposed rules amend §130.58, Standards for Prescribing Controlled Substances and Dangerous Drugs. The proposed rules streamline the section to make it easier to read.

The proposed rules amend §130.59, Opioid Prescription Limits and Required Electronic Prescribing. The proposed rules streamline the section to make it easier to read.

#### *Subchapter F. Fees.*

The proposed rules amend §130.60, Fees. The proposed rules update the fees for the hyperbaric oxygen certificate, the nitrous oxide registration, and the podiatric medical radiological technician registration, because the certificate and registration terms are changed from one year to two years. The fees are \$25 if the certificate or registration is issued or renewed before January 1, 2025, or \$50 if the certificate or registration is issued or renewed on or after January 1, 2025. The proposed rules add a \$0 fee for an Inactive Status License (Initial and Renewal). The proposed rules also make clean-up changes to the cross-referenced fees under Chapter 60.

#### *Subchapter G. Enforcement.*

The proposed rules amend §130.70, Complaints and Claims. The proposed rules replace the word "shall" with "must" and streamline the section to make it easier to read.

The proposed rules amend §130.72, Administrative Penalties and Sanctions. The proposed rules clarify that a person or entity who violates or attempts to violate the Occupations Code, this chapter, or any rule of the commission may face proceedings against them.

The proposed rules amend §130.73, Conditions of Suspension of License. The proposed rules streamline the section to make it easier to read.

### FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

#### *State Government Costs and Revenues*

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rules are in effect, there are no estimated additional costs or reductions in costs to state government as a result of enforcing or administering the proposed rules. Any activities required to implement the proposed rule changes, if any, are one-time program administration tasks that are routine in nature, such as modifying or revising publications or website information, which will also not result in an increase or decrease in program costs.

Mr. Couvillon has determined that for each year of the first five years the proposed rules are in effect, the only increase in revenue to state government will occur in the latter eight months of the first fiscal year, by approximately \$4,200. The revenue in all subsequent fiscal years will be approximately the same as current revenue amounts.

The increase in revenue is a result of the proposed rules doubling the length of the license term for the Registered Podiatric Medical Radiological Technician registration, the Hyperbaric Oxygen certificate, and the Nitrous Oxide/Oxygen Inhalation Conscious

Sedation registration. The application fees for these licenses will need to double as well, to keep the amount of revenue for the administration of the program consistent. The increase in revenue will occur when some of the licensee population will pay application fees that are doubled, when, prior to the adoption of the proposed rules, these applicants would not have paid doubled fees.

Mr. Couvillon has determined that for each year of the first five years the proposed rules are in effect, there is no estimated loss in revenue to the state as a result of enforcing or administering the proposed rules. The proposed rules do not create a revenue loss, as they do not eliminate or decrease any fees assessed by the licensing program.

#### *Local Government Costs and Revenues*

Mr. Couvillon has determined that for each year of the first five years the proposed rules are in effect, enforcing or administering the proposed rules does not have foreseeable implications relating to costs or revenues of local governments. There is no impact to local government costs or revenues because local governments are not responsible for any regulation of podiatry.

### LOCAL EMPLOYMENT IMPACT STATEMENT

Because Mr. Couvillon has determined that the proposed rules will not affect a local economy, the agency is not required to prepare a local employment impact statement under Texas Government Code §2001.022. The proposed rules have no anticipated impact on the local economy because they are not anticipated to increase or decrease employment opportunities for professionals licensed under Texas Occupations Code Chapter 202 in any area of the state or increase or decrease the number of individuals who may choose to become licensed in the podiatry program.

### PUBLIC BENEFITS

Mr. Couvillon also has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be an effective and efficient regulatory program for podiatry, which protects the health, safety, and welfare of the citizens of Texas. The proposed rules clarify, streamline, and reorganize the rules to make them more user friendly for licensees and the public. The proposed rules also change the license terms for the Registered Podiatric Medical Radiological Technician licenses, the Hyperbaric Oxygen certificates, and the Nitrous Oxide/Oxygen Inhalation Conscious Sedation registrations, thereby allowing these persons to renew their licenses every other year instead of renewing every year.

### PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules. The proposed rules have no economic costs to persons who are license holders, businesses, or the general public in Texas. The rules do not impose additional fees upon licensees, nor do they create requirements that could cause licensees to expend funds for equipment, technology, staff, supplies or infrastructure.

### FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed rules. Because the agency has determined that



the proposed rules will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, are not required.

The proposed rules have no anticipated adverse economic effect on small businesses or micro-businesses because they do not impose additional fees upon licensees or small or micro-businesses, nor do they create requirements that would cause licensees or those businesses to expend funds for equipment, staff, supplies, or infrastructure. Additionally, the proposed rules have no anticipated adverse economic effect on rural communities because the rules will not decrease the availability of podiatric medical services, nor will the rules increase the cost of those services in rural communities.

#### ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT

The proposed rules do not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the agency is not required to take any further action under Texas Government Code §2001.0045.

#### GOVERNMENT GROWTH IMPACT STATEMENT

Pursuant to Texas Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed rules. For each year of the first five years the proposed rules will be in effect, the agency has determined the following:

1. The proposed rules do not create or eliminate a government program.
2. Implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions.
3. Implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency.
4. The proposed rules do not require an increase or decrease in fees paid to the agency. The proposed rules change some fee amounts, but also change how often they are paid, so there is no actual increase or decrease in fees paid to the agency.
5. The proposed rules do not create a new regulation.
6. The proposed rules do expand, limit, or repeal an existing regulation. The proposed rules repeal an existing regulation regarding podiatric medical offices.
7. The proposed rules do not increase or decrease the number of individuals subject to the rules' applicability.
8. The proposed rules do not positively or adversely affect this state's economy.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENTS

Comments on the proposed rules may be submitted electronically on the Department's website at <https://ga.tdlr.texas.gov:1443/form/gcerules>; by facsimile to (512) 475-3032; or by mail to Shamica Mason, Legal Assistant, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711. The deadline for comments is 30 days after publication in the *Texas Register*.

#### SUBCHAPTER A. GENERAL PROVISIONS

##### 16 TAC §130.1, §130.2

##### STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapters 51 and 202, 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 proposed rules are those set forth in Texas Occupations Code, Chapters 51, 53, 108, 112, 116, 202, and 601. No other statutes, articles, or codes are affected by the proposed rules.

##### *§130.1. Authority and Applicability.*

(a) This chapter is promulgated under the authority of the Texas Occupations Code, Chapters 51 and 202. Specific provisions within this chapter also implement the statutory requirements under Texas Occupations Code, Chapters 53, 108, 112, 116, and 601.

(b) In addition to this chapter, the rules under 16 TAC Chapter 60, Procedural Rules of the Commission and the Department, and 16 TAC Chapter 100, General Provisions for Health-Related Programs, are applicable to the Podiatric Medicine Program.

##### *§130.2. Definitions.*

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

- (1) Act--The Podiatric Medical Practice Act of Texas[; Texas Occupations Code, Chapter 202].
- (2) Advisory Board--The Podiatric Medical Examiners Advisory Board, Texas Occupations Code, Chapter 202.
- (3) Commission--The Texas Commission on Licensing and Regulation.
- (4) Continuing Medical Education (CME)--Educational activities which serve to maintain, develop, or increase the knowledge, skills, and professional performance and relationships that a practitioner uses to provide services for patients, the public, or the profession.
- (5) Department--The Texas Department of Licensing and Regulation.
- (6) Executive Director--The executive director of the department.
- (7) Graduate Podiatric Medical Education (GPME)--An accredited graduate podiatric medical education or residency training program.
- (8) License--The term includes a license, registration, certificate, or other authorization issued under the Act.
- (9) Medical Records--Any records, reports, notes, charts, x-rays, or statements pertaining to the history, diagnosis, evaluation,

treatment or prognosis of the patient including copies of medical records of other health care practitioners contained in the records of the practitioner to whom a request for release of records has been made.

(10) Podiatric Medical Radiological Technician--A person who performs only radiological podiatric procedures under the supervision of a practitioner. The term also includes Podiatry X-ray Machine Operator.

(11) Public Communication--Any written, printed, visual, or oral statement or other communication made or distributed, or intended for distribution, to a member of the public.

(12) Practitioner--A person validly licensed by the department to practice podiatric medicine in the State of Texas. The term is used interchangeably with "Podiatrist" and "Podiatric Physician" in this chapter.

(13) Publication--Any and all public communications relating to the practitioner's practice, including but not limited to, advertisements, announcements, invitations, press releases, journal articles, periodical articles, leaflets, news stories, materials distributed by private or by United States mail, and signs or placards placed in public view or electronic submission.

(14) Solicitation--A private communication to a person concerning the performance of a podiatric service for such person.

(15) Supervision--Responsibility for the control of quality, radiation safety and protection, and technical aspects of podiatric radiological procedures utilized in podiatric medicine for diagnostic purposes.

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

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

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Doug Jennings

General Counsel

Texas Department of Licensing and Regulation

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For further information, please call: (512) 463-7750



## SUBCHAPTER B. ADVISORY BOARD

### 16 TAC §§130.20 - 130.24, 130.27, 130.28

#### STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapters 51 and 202, 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 proposed rules are those set forth in Texas Occupations Code, Chapters 51, 53, 108, 112, 116, 202, and 601. No other statutes, articles, or codes are affected by the proposed rules.

#### §130.20. *Board Membership.*

[(a)] The Podiatric Medical Examiners Advisory Board consists of nine members appointed by the governor as prescribed by Occupations Code §202.051. [follows:]

[(1) six members who are licensed in this state to practice podiatry and have been actively engaged in the practice of podiatry for the five years preceding appointment; and]

[(2) three members who represent the public.]

[(b) Appointments to the board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.]

#### §130.21. *Public Member Eligibility.*

If a person or the person's spouse meets any of the specifications prescribed by Occupations Code §202.053, the person is not eligible for appointment as a public member of the advisory board.

#### §130.22. *Membership and Employee Restrictions.*

If a person meets any of the specifications prescribed by Occupations Code §202.054, the person may not be a member of the advisory board.

#### §130.23. *Terms; Vacancies.*

(a) Members of the advisory board serve staggered six-year terms as prescribed by Occupations Code §202.056. [~~with the term of three members expiring on February 1 of each odd numbered year. At the expiration of the term of each member, the governor shall appoint a successor.~~]

(b) If a vacancy occurs during a term, the governor shall appoint a replacement as prescribed by Occupations Code §202.056. [~~who meets the qualifications of the vacated position to serve for the remainder of the term.~~]

#### §130.24. *Grounds for Removal.*

If a member meets any of the specifications prescribed by Occupations Code §202.056, it is a ground for removal from the advisory board.

#### §130.27. *Advisory Board Meetings and Duties of Department.*

(a) The advisory board shall meet at the call of the presiding officer of the commission or the executive director.

(b) The department will present the following documents, including any updates or revisions, to the advisory board for its input and recommendation:

(1) The penalty matrix for podiatry to be included in the department's Enforcement Plan; and

(2) Criminal Conviction Guidelines (Guidelines for Applicants with Criminal Convictions) for podiatry.

(c) The department will provide information regarding the general investigative, enforcement, or disciplinary procedures of the department or commission to the advisory board in the following manner:

(1) At advisory board meetings, the department will provide a report on recent enforcement activities, including:

(A) a brief description of final orders entered in enforcement cases; and

(B) statistics on complaints received, disposition of cases, and any sanctions or administrative penalties assessed;

(2) On request of the advisory board, the department will provide additional information:

(A) during the staff report portion of the advisory board meeting; or

(B) by placing a discussion item on the agenda for a future advisory board meeting; or

(3) The department may provide information directly to an individual member of the advisory board in response to a request from that member.

(d) The commission may not adopt a new rule relating to the scope of practice of, a health-related standard of care for, or the ethical practice of the profession of podiatry unless the rule has been proposed by the advisory board.

(e) Under Occupations Code §51.2032(b) and (c), the advisory board may propose a rule described by subsection (d) according to the following procedure:

(1) The advisory board, by a majority vote of the members present and voting at a meeting at which a quorum is present, shall either:

(A) recommend that the rule be published in the *Texas Register* for public comment; or

(B) if the rule has been published and after considering the public comments, make a recommendation to the commission concerning adoption of the rule;

(2) The rule must be within the commission's legal authority to adopt; and

(3) The department may make non-substantive, editorial changes to the rule as necessary.

(f) The commission shall either adopt the rule as proposed by the advisory board under subsection (e), with any non-substantive, editorial changes made by the department under subsection (e)(3), or return the rule to the advisory board for revision.

(g) The department will establish an advisory board work group to review and make recommendations regarding continuing education requirements. Opinions or recommendations made will be presented to the full advisory board for discussion.

(h) The department may obtain additional expertise from one or more of the following sources:

(1) a former member of the advisory board;

(2) a department staff expert; or

(3) an outside expert with relevant education, training, or experience.

~~[(i) Opinions or recommendations made under subsection (g) will be presented to the full advisory board for discussion.]~~

§130.28. *Training.*

~~[(a)] A person who is appointed to and qualifies for office as a member of the advisory board may not vote, deliberate, or be counted as a member in attendance at a meeting of the advisory board until the person completes a training program that complies with Occupations Code, §202.061 [this section].~~

~~[(b) The training program must provide the person with information regarding:]~~

~~[(1) this chapter;]~~

~~[(2) the department's programs, functions, and rules with respect to this chapter;]~~

~~[(3) the results of the most recent formal audit of the department with respect to this chapter;]~~

~~[(4) the scope and limitations on the rulemaking authority of the advisory board;]~~

~~[(5) the types of rules, interpretations, and enforcement actions that may implicate federal Antitrust law by limiting competition or impacting prices charged by persons engaged in a profession or business regulated under this chapter, including rules, interpretations, and enforcement actions that:]~~

~~[(A) regulate the scope of practice of persons in a profession or business regulated under this chapter;]~~

~~[(B) restrict advertising by persons in a profession or business regulated under this chapter;]~~

~~[(C) affect the price of goods or services provided by persons in a profession or business regulated under this chapter; and]~~

~~[(D) restrict participation in a profession or business regulated under this chapter;]~~

~~[(6) the requirements of:]~~

~~[(A) laws relating to open meetings, public information, administrative procedure, and disclosing conflicts of interest; and]~~

~~[(B) other laws applicable to members of the advisory board in performing the members' duties; and]~~

~~[(7) any applicable ethics policies adopted by the commission or the Texas Ethics Commission.]~~

~~[(e) The executive director shall create a training manual that includes the information required by subsection (b). The executive director shall distribute a copy of the training manual annually to each advisory board member. On receipt of the training manual, each advisory board member shall sign and submit to the executive director a statement acknowledging receipt of the training manual.]~~

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

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**16 TAC §§130.21, 130.22, 130.24**

**STATUTORY AUTHORITY**

The proposed repeals are proposed under Texas Occupations Code, Chapters 51 and 202, 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 proposed repeals are those set forth in Texas Occupations Code, Chapters 51, 53, 108, 112, 116, 202, and 601. No other statutes, articles, or codes are affected by the proposed repeals.

§130.21. *Public Member Eligibility.*

§130.22. *Membership and Employee Restrictions.*

§130.24. *Grounds for Removal.*

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

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## SUBCHAPTER C. TEMPORARY RESIDENCY

### 16 TAC §§130.30 - 130.32, 130.34 - 130.37

#### STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapters 51 and 202, 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 proposed rules are those set forth in Texas Occupations Code, Chapters 51, 53, 108, 112, 116, 202, and 601. No other statutes, articles, or codes are affected by the proposed rules.

#### *§130.30. Temporary Residency License--General Requirements and Application.*

(a) A person who is enrolled in an accredited graduate podiatric medical education (GPME) program in Texas must hold a temporary residency license.

(b) The GPME program must be accredited by the Council on Podiatric Medical Education of the American Podiatric Medical Association.

(c) An applicant granted a temporary residency license for the purpose of pursuing a GPME program in the State of Texas must [shall] not engage in the practice of podiatric medicine, whether for compensation or free of charge, outside the scope and limits of the GPME program in which the applicant is enrolled.

(d) A temporary residency license granted by the department for the purpose of pursuing a GPME program in the State of Texas is valid until the licensee leaves or is terminated from said GPME program.

(e) All temporary residency licensees shall be subject to the same fees and penalties as all other licensees as set forth in the Act and this chapter, except that temporary residency licensees are not subject to continuing medical education requirements.

(f) To be eligible for a temporary residency license an applicant must:

(1) be at least 21 years of age;

(2) pass [successfully complete] at least 90 semester hours of undergraduate college courses acceptable at the time of completion for credit toward a bachelor's degree at an institution of higher education determined by the department to have acceptable standards;

(3) [successfully] graduate from a reputable college of podiatry approved by the Council on Podiatric Medical Education of the

American Podiatric Medical Association, and the college must have been so approved during the entire period of the applicant's course of instruction;

(4) [successfully] pass all required sections of the American Podiatric Medical Licensing Examination;

(5) pay all applicable fees;

(6) submit a completed application in a form and manner prescribed by the department [on a department-approved form];

(7) submit all transcripts of relevant college coursework, acceptable to the department;

(8) [successfully] pass a criminal history background check performed by the department;

(9) provide proof of successful completion of a course in cardiopulmonary resuscitation (CPR);

(10) complete the "Memorandum of Understanding for Approved Residency Program";

(11) complete the "Certificate of Acceptance for Postgraduate Training Program"; and

(12) [successfully] pass a National Practitioner Data Bank query check performed by the department.

(g) The department approves and adopts by reference the Standards and Requirements for Approval of Residencies in Podiatric Medicine and Surgery and Procedures for Approval of Residencies in Podiatric Medicine and Surgery adopted by the Council on Podiatric Medical Education of the American Podiatric Medical Association.

(h) The department approves and adopts by reference the Standards and Requirements for Accrediting Colleges of Podiatric Medicine and Procedures for Accrediting Colleges of Podiatric Medicine adopted by the Council on Podiatric Medical Education of the American Podiatric Medical Association.

(i) The applicant must [shall] submit evidence sufficient for the department to determine that the applicant has met all the requirements and any other information reasonably required by the department. Any application, diploma or certification, or other document required to be submitted to the department that is not in the English language must be accompanied by a certified translation into English.

#### *§130.31. Temporary Residency License--License Term; Residency Requirements; Program Responsibilities.*

(a) License term. A temporary residency license is valid for one year. The license holder must renew by submitting a completed renewal application in a form and manner prescribed by the department and paying the required fee under §130.60. The annual renewal application notification will be deemed to be written notice of the impending license expiration forwarded to the person at the person's last known address. A temporary residency license to practice podiatric medicine expires on June 30 of each year.

(b) Temporary residency license responsibilities. A temporary residency license holder is not considered to be a fully licensed podiatrist who independently practices podiatric medicine without supervision. A temporary residency license holder is a person in training and is limited by the Graduate Podiatric Medical Education (GPME) program for residency based supervised patient encounters, supervision of which is designed to protect patients and the citizens of Texas.

(1) A person enrolled in a GPME program must hold a temporary residency license at all times and is not considered to be qualified for a Doctor of Podiatric Medicine license until all residency program requirements have been completed and fulfilled as certified by

the GPME program residency director, and all other requirements for licensure have been attained.

(2) Residents enrolled in an accredited GPME residency program who hold a temporary residency license (i.e. denoted with the letter "T" followed by numerals) may register with the U.S. Drug Enforcement Administration (DEA) to prescribe controlled substances subject to the supervision of the program and residency director. Under no circumstances are residents allowed to prescribe controlled substances for purposes outside of the approved residency program.

(c) Residency Requirements. All residency programs requesting temporary residency licenses for their enrollees must meet all American Podiatric Medical Association/Council on Podiatric Medical Education (APMA/CPME) requirements for accreditation.

(d) Residency director requirements. Within 30 days after the start date of the program each year, the residency director must report to the department a list of all residents enrolled in the program. The residency director will be held responsible for the entire program, including, but not limited to:

(1) ensuring that the temporary residency licensee is practicing within the scope of the residency program requirements;

(2) ensuring that the temporary residency licensee has read and understood the Act and rules governing the practice of podiatric medicine; and

(3) ensuring that all residency program attendees are properly licensed with the department prior to participation in the program.

#### §130.32. *Temporary Residency License--Final Year of Residency.*

(a) A holder of a temporary residency license who has entered the final year of an accredited GPME program, [who] is in good standing with the GPME program, and [who] is on course to complete the course in a timely manner, is [may be] permitted to apply for the Doctor of Podiatric Medicine license in the spring, if [provided that] the resident has entered and signed the "Memorandum of Understanding for Conditional Issuance of Texas Doctor of Podiatric Medicine License" (MOU).

(b) A holder of a temporary residency license who passes the jurisprudence examination, [and who] is in compliance with the resident's MOU(s), and [who] meets all other requirements of the law regarding licensure may be issued a Doctor of Podiatric Medicine license prior to completion of the last year of the residency. The Doctor of Podiatric Medicine license issued under this subsection will be subject to the resident's MOU and to the following conditions and restrictions[, in addition to any other provisions in statute and rule applicable to a license to practice podiatry, in general that]:

(1) the resident must pass [successfully complete] and graduate from the resident's accredited GPME program by the date noted in the resident's MOU; [with the department, and]

(2) the resident must submit [to the department] proof of passage [successful completion] and graduation to the department within 30 days after the end date of the residency as noted on the MOU. Failure to timely provide the required proof to the department [requires] subjects the Doctor of Podiatric Medicine license to automatic revocation; [and]

(3) [(2)] the resident must [who has received a Doctor of Podiatric Medicine license prior to successful completion and graduation from an accredited GPME program, and for such period of time while still a resident, shall] practice podiatry only under the temporary residency license, and subject to the scope and limits of the GPME program, and must [shall] not practice podiatry under the Doctor of

Podiatric Medicine license until after passage [successful completion] and graduation from the GPME program and after providing to the department proof of such completion and graduation; and [-]

(4) the resident must comply with any other provisions in statute and rule applicable to a license to practice podiatry.

#### §130.34. *Limited Faculty License--Requirements; License Term.*

(a) Requirements. The department may issue a limited faculty license to practice podiatry only for purposes of instruction in an educational institution to a podiatrist who has not completed the jurisprudence examination required in §130.40(a)(5), if the applicant:

(1) at the time of applying for a limited faculty license has accepted an appointment or is serving as a full-time member of the faculty of an educational institution in this state offering an approved or accredited course of study or training leading to a degree in podiatry;

(2) holds a license to practice podiatry from another state with licensing requirements that are substantially equivalent to the requirements established by this subchapter; and

(3) otherwise satisfies the requirements of this section.

(b) License Term. A limited faculty license to practice podiatry is valid for two years.

(1) The department will terminate a limited faculty license immediately upon receiving notice that the faculty appointment of the podiatrist holding the license is terminated.

(2) The termination of a limited faculty license does not prohibit or otherwise impair the ability of a podiatrist to apply for or hold another license type issued under this subchapter.

#### §130.35. *Podiatric Medical Radiological Technicians.*

(a) This section implements Texas Occupations Code, Chapter 601. This section does not apply to persons certified by the Texas Medical Board under the Medical Radiologic Technologist Certification Act who are Non-Certified Technicians (NCTs), Certified Medical Radiologic Technologists (MRTs), or Limited Medical Radiologic Technologists (LMRTs).

(b) It is the practitioner's responsibility to ensure that all individuals wishing to perform podiatric radiological procedures are properly trained and apply for registration with the department as a podiatric medical radiological technician. For the purposes of this section, the term Podiatric X-ray Machine Operator, (PXMO) is synonymous with podiatric medical radiological technicians.

(c) Podiatric equipment training course providers and standards for curricula and instructors must be approved by the department.

(d) A podiatric medical radiological technician applicant must:

(1) be 18 years of age or older;

(2) successfully complete, at a minimum, the following 45 hours of clinical and didactic training requirements and provide proof of completion to the department:

(A) five classroom hours and five out-of-classroom hours of radiation safety and protection for the patient, self, and others;

(B) five classroom hours and five out-of-classroom hours of radiographic equipment used in podiatric medicine, including safety standards, operation, and maintenance;

(C) 10 classroom hours and 10 out-of-classroom hours in podiatric radiologic procedures, imaging production and evaluation; and

(D) three classroom hours and two out-of-classroom hours in methods of patient care and management essential to radiologic procedures, excluding CPR, BCLS, ACLS and similar subjects; and

(3) submit a completed application in a form and manner prescribed by the department; and

(4) pay the required fee under §130.60.

(e) A supervising podiatrist must:

(1) verify the student's out-of-classroom training hours;

(2) require the student to maintain a log demonstrating the successful production of x-rays in the clinical setting;

(3) oversee the student's successful production of at least 90 x-rays in the clinical setting; and

(4) sign the log

(f) A podiatric medical radiological technician must hold a registration and must perform only podiatric radiological procedures.

(g) A podiatric medical radiological technician registrant must perform radiological procedures only under the supervision of a practitioner physically present on the premises.

(h) A podiatric medical radiological technician registrant must not perform any dangerous or hazardous procedures as identified by the Texas Medical Board.

(i) A podiatric medical radiological technician registrant must comply with the safety rules of the Texas Department of State Health Services, Radiation Control Program relating to the control of radiation.

(j) Registration Term and Renewal. A registration is valid for one or two years.

(1) A registration is valid for one year if the registration was issued before January 1, 2025, or two years if the registration was issued on or after January 1, 2025.

(2) A registration renewed by the department is valid for:

(A) one year, if the registration was renewed before January 1, 2025; or

(B) two years, if the registration was renewed on or after January 1, 2025.

(3) A registration renewal is completed by submitting a registration renewal application in a form and manner prescribed by the department and paying the required fee under §130.60.

(4) For each registration renewal, a podiatric medical radiological technician must complete the human trafficking prevention training required under Occupations Code, Chapter 116, and provide proof of completion as prescribed by the department.

(k) A podiatric medical radiological technician registrant must inform the department of any address change or change of supervising podiatric physician within two weeks.

(l) The department may refuse to issue or renew a registration to an applicant or a podiatric medical radiological technician who:

(1) violates or attempts to violate the Podiatric Medical Practice Act of Texas, the rules, an order of the executive director or commission previously entered in a disciplinary proceeding, or an order to comply with a subpoena issued by the department;

(2) violates or attempts to violate the Medical Radiologic Technologist Certification Act, or the rules promulgated by the Texas Medical Board;

(3) violates or attempts to violate the rules of the Texas Department of State Health Services for Control of Radiation, as prescribed by Health and Safety Code, Chapter 401;

(4) obtains, attempts to obtain, or uses a registration by bribery or fraud;

(5) engages in unprofessional conduct, including but not limited to, conviction of a crime or commission of any act that is in violation of the laws of the State of Texas if the act is connected with provision of health care;

(6) develops or has an incapacity that prevents the practice of a podiatric medical radiological technician with reasonable skill, competence, and safety to the public as a result of:

(A) an illness;

(B) drug or alcohol dependency; or habitual use of drug or intoxicating liquors; or

(C) another physical or mental condition;

(7) fails to practice in an acceptable manner consistent with public health and welfare;

(8) has disciplinary action taken against a radiological certification, permit, or registration in another state, or by another regulatory agency;

(9) engages in acts requiring registration under these rules without a current registration from the department; or

(10) has had a registration revoked, suspended, or has received disciplinary action.

(m) The commission, executive director, or department, as appropriate, may suspend, revoke, or refuse to issue or renew the registration upon finding that a podiatric medical radiological technician has committed any offense listed in this section.

§130.36. Hyperbaric Oxygen Certificate--Application Requirements and Guidelines.

(a) A certificate to supervise and administer hyperbaric oxygen is available to practitioners. To obtain the certificate, the practitioner must:

(1) submit an application in a form and manner prescribed by the department; and

(2) pay the required fee under §130.60.

(b) A practitioner practicing hyperbaric oxygen must:

(1) follow the published recommendations of the Undersea Hyperbaric Medical Society, Inc. (UHMS);

(2) act within the credentials and bylaws of the hospital that operates the hyperbaric unit;

(3) only practice hyperbaric oxygen in a hospital setting;

(4) show evidence of attendance and successful completion of a hyperbaric medicine team training course that is recognized by the UHMS;

(5) only utilize hyperbaric oxygen in the treatment of the foot as recognized by the Podiatric Medical Practice Act; and

(6) have on file with the department documentation certifying compliance with the above requirements, prior to administering hyperbaric oxygen.

(c) Certificate Term and Renewal.

(1) The Hyperbaric Oxygen Certificate is valid for: one year if the certificate was issued before January 1, 2025, or two years if the registration was issued on or after January 1, 2025.

(2) A certificate renewed by the department is valid for one year if the certificate was renewed before January 1, 2025, and must be renewed annually, or two years if the certificate was renewed on or after January 1, 2025, and must be renewed every two years. A certificate renewal is completed by submitting a certificate renewal application in a form and manner prescribed by the department and paying the required fee under §130.60.

(d) A certificate holder must inform the department within 10 business days of any address change or change of hospital setting.

(e) A hyperbaric oxygen certificate must be clearly displayed in the office alongside the original license.

§130.37. Nitrous Oxide/Oxygen Inhalation Conscious Sedation--Registration Requirements, Guidelines, and Direct Supervision.

(a) As used in this section, conscious sedation means the production of an altered level of consciousness in a patient by pharmacological or non-pharmacological methods.

(b) Conscious sedation of a patient by nitrous oxide is the administration by inhalation of a combination of nitrous oxide and oxygen producing a minimally depressed level of consciousness while retaining the patient's ability to maintain a patent airway independently and continuously, and to respond appropriately to physical stimulation and verbal command.

(c) Conscious sedation of a patient by nitrous oxide must be induced, maintained, and continuously supervised only by the practitioner or by the assistant under continuous direct supervision of the practitioner. The nitrous oxide must not be flowing if the practitioner is not present in the room.

(d) To use nitrous oxide/oxygen inhalation conscious sedation on a patient for podiatric medical purposes in the State of Texas, the practitioner must first register with the department and provide the following:

(1) proof that the practitioner has completed a didactic and clinical course which includes aspects of monitoring patients and the hands-on use of the gas machine. The didactic and clinical course must:

(A) be directed by a licensed and certified M.D., D.O., D.D.S., or D.P.M., in the State of Texas with advanced educational and clinical experience with routine administration of nitrous oxide/oxygen inhalation conscious sedation;

(B) include a minimum of four hours didactic work in pharmacodynamics of nitrous oxide/oxygen inhalation conscious sedation; and

(C) include a minimum of six hours of clinical experience under personal supervision;

(2) proof that the practitioner has completed a CME course in nitrous oxide/oxygen inhalation conscious sedation that includes training in the prevention and management of emergencies in the podiatric medical practice; and

(3) proof that the practitioner has completed a basic and advanced CPR program sponsored by either the American Heart Association or the American Red Cross. Proof of current certification is

the responsibility of the podiatric physician. Additionally, the D.P.M. must provide documented training or emergency procedures to office personnel.

(e) The department may, at any time and without prior notification, require an on-site office evaluation to determine that all standards regarding nitrous oxide/oxygen inhalation conscious sedation are being met.

(f) Registration Term and Renewal. A registration is valid for one or two years.

(1) A registration is valid for one year if the registration was issued before January 1, 2025, or two years if the registration was issued on or after January 1, 2025.

(2) A registration renewed by the department is valid for one year if the registration was renewed before January 1, 2025, and must be renewed annually, or two years if the registration was renewed on or after January 1, 2025, and must be renewed every two years. A registration renewal is completed by submitting a registration renewal application in a form and manner prescribed by the department and paying the required fee under §130.60.

(3) A registration will not be renewed if a current certificate of inspection of the gas machine is not filed with the department.

(g) A registrant must inform the department within 10 business days of any address change.

(h) When a registration is issued, it must be clearly displayed in the office.

(i) All office personnel who assist the practitioner in the nitrous oxide/oxygen inhalation conscious sedation procedure must:

(1) be trained in basic life support;

(2) have annual reviews of emergency protocols, contents, and use of emergency equipment; and

(3) have annual reviews of basic CPR.

(j) Documentation verifying these annual reviews must be maintained in the office of the practitioner who employs the personnel and must be provided to the department if requested.

(k) The practitioner must evaluate and document in the patient's medical record, prior to the nitrous oxide/oxygen inhalation conscious sedation procedure, the patient's health and medical status to ensure that nitrous oxide/oxygen inhalation conscious sedation is medically appropriate.

(l) Equipment used must meet the following safety criteria: The gas machine must have:

(1) 30% minimum oxygen flow;

(2) Glass flow tubes;

(3) Nitrous oxide fail-safe (will not flow without oxygen);

(4) Automatic room air intake in the event the bag is empty;

(5) Non-rebreathing check valve;

(6) Oxygen flush; and

(7) Auxiliary oxygen outlet with one demand valve resuscitation assembly per office.

(m) All practitioners administering nitrous oxide must have:

(1) a functioning vacuum system;

(2) a scavenger system;

(3) appropriate emergency drugs and equipment for resuscitation;

(4) a manifold to provide for protection against overpressure. The manifold must be equipped with an audible alarm system. The machine must have a service check on a three-year basis, a copy of which must be filed with the department; and

(5) a method of locking the nitrous oxide tanks after business hours.

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

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

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Texas Department of Licensing and Regulation

Earliest possible date of adoption: July 21, 2024

For further information, please call: (512) 463-7750



## 16 TAC §130.31

### STATUTORY AUTHORITY

The proposed repeals are proposed under Texas Occupations Code, Chapters 51 and 202, 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 proposed repeals are those set forth in Texas Occupations Code, Chapters 51, 53, 108, 112, 116, 202, and 601. No other statutes, articles, or codes are affected by the proposed repeals.

*§130.31. Temporary Residency License--Residency Requirements; Program Responsibilities; License Term.*

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

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## SUBCHAPTER D. DOCTOR OF PODIATRIC MEDICINE

### 16 TAC §§130.40 - 130.48

#### STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapters 51 and 202, 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 proposed rules are those set forth in Texas Occupations Code, Chapters 51, 53, 108, 112, 116, 202, and 601. No other statutes, articles, or codes are affected by the proposed rules.

*§130.40. Doctor of Podiatric Medicine License--General Requirements and Application[; Limited Faculty License].*

(a) An applicant for a license to practice podiatry in this state must:

(1) be at least 21 years of age;

(2) pass [successfully complete] at least 90 semester hours of undergraduate college courses acceptable at the time of completion for credit toward a bachelor's degree at an institution of higher education determined by the department to have acceptable standards;

(3) [successfully] graduate from a [reputable] college of podiatry approved by the Council on Podiatric Medical Education of the American Podiatric Medical Association, and the college must have been so approved during the entire period of the applicant's course of instruction;

(4) [successfully] pass all required sections of the American Podiatric Medical Licensing Examination;

(5) [successfully] pass the jurisprudence examination[; except as provided in subsection (b)];

(6) successfully complete at least one year of GPME in a program approved by the Council on Podiatric Medical Education of the American Podiatric Medical Association with a hospital, clinic, or institution acceptable to the department (successful completion means the applicant must have finished the entire GPME program in which the applicant matriculated; partial program attendance is not acceptable) [(successful completion means the GPME program which was actually begun/matriculated is completed; the applicant must have successfully completed the entire program; partial program attendance is not acceptable);]

(7) pay all applicable fees;

(8) submit a completed application in a form and manner prescribed by the department [on a department-approved form];

(9) submit all transcripts of relevant college coursework, acceptable to the department;

(10) [successfully] pass a criminal history background check performed by the department;

(11) provide proof of passage [successful completion] of a course in cardiopulmonary resuscitation (CPR); and

(12) [successfully] pass a National Practitioner Data Bank query check performed by the department.

(b) At the discretion of the executive director, the GPME requirement, which became effective in Texas on July 1, 1995, may be waived if the applicant:

(1) has been licensed and in active podiatric practice for at least five continuous years in another state; and

(2) demonstrates in the application to the department an acceptable record from that state and all other states under which the applicant has ever been licensed.

{(b) The department may issue a limited faculty license to practice podiatry only for purposes of instruction in an educational



institution to a podiatrist who has not completed the jurisprudence examination required in subsection (a)(5), if the applicant:}]

[(1) at the time of applying for a limited faculty license has accepted an appointment or is serving as a full-time member of the faculty of an educational institution in this state offering an approved or accredited course of study or training leading to a degree in podiatry;]

[(2) holds a license to practice podiatry from another state with licensing requirements that are substantially equivalent to the requirements established by this subchapter; and]

[(3) otherwise satisfies the requirements of this section.]

(c) At the discretion of the department, the National Board Part III (formerly known as PM Lexis) requirement, which became effective in Texas on January 29, 1992, may be waived if:

(1) the applicant has been in active licensed practice for at least five continuous years, with an acceptable record;

(2) the applicant has successfully completed any other course of training reasonably required by the executive director relating to the safe care and treatment of patients; and

(3) the executive director determines that the applicant has substantially equivalent experience and was not required to pass a part of an examination related to the testing of clinical skills when licensed in this or another state.

[(e) At the discretion of the executive director, the GPME requirement may be waived if the applicant has been in active podiatric practice for at least five continuous years in another state under license of that state, and upon application to the department demonstrates an acceptable record from that state and from all other states under which the applicant has ever been licensed. The GPME requirement became effective in Texas on July 1, 1995.]

(d) A showing of an acceptable record under this section is defined to include, but is not limited to:

(1) a showing that the applicant has:

(A) no civil or criminal judgement, in state or federal court or other judicial forum, entered against the applicant on a podiatric medical-related cause of action;

(B) no conviction of or deferred adjudication for a felony;

(C) no dishonorable discharge from military service; and

(D) no disciplinary action recorded from any medical institution or agency or organization, including, but not limited to:

(i) any licensing board;

(ii) hospital;

(iii) surgery center;

(iv) clinic;

(v) professional organization;

(vi) governmental health organization; or

(vii) extended-care facility.

(2) If any judgment or disciplinary determination under this subsection, has been on appeal, reversed, reversed and rendered, or remanded and later dismissed, or in any other way concluded in favor of the applicant, it shall be the applicant's responsibility to bring such result to the notice of the department by way of certified mail

along with any such explanation of the circumstances as the applicant deems pertinent to the determination of admittance to licensure in this state.

(3) The applicant must obtain and submit to the department a letter directly from all state boards under which they have ever been previously licensed stating that the applicant is a licensee in good standing with each said board or that said prior license or licenses were terminated or expired with the licensee in good standing.

[(d) At the discretion of the executive director, the executive director may excuse an applicant for a license from the National Board Part III (formerly known as PM Lexis) requirement if the executive director determines that an applicant with substantially equivalent experience was not required to pass a part of an examination related to the testing of clinical skills when the applicant was licensed in this or another state with an acceptable record, provided that the applicant has been in active licensed practice for at least five continuous years and has successfully completed any other course of training reasonably required by the executive director relating to the safe care and treatment of patients. The National Board Part III/PM Lexis came into existence in June 1987. Texas began the National Board Part III/PM Lexis requirement for licensure on January 29, 1992.]

[(e) A showing of an acceptable record under this section is defined to include, but is not limited to:]

[(1) a showing that the applicant has not had entered against them a judgment, civil or criminal, in state or federal court or other judicial forum, on a podiatric medical-related cause of action; no conviction of or deferred adjudication for a felony; no disciplinary action recorded from any medical institution or agency or organization, including, but not limited to, any licensing board, hospital, surgery center, clinic, professional organization, governmental health organization, or extended-care facility; and no dishonorable discharge from military service.]

[(2) If any judgment or disciplinary determination under this subsection, has been on appeal, reversed, reversed and rendered, or remanded and later dismissed, or in any other way concluded in favor of the applicant, it shall be the applicant's responsibility to bring such result to the notice of the department by way of certified letter along with any such explanation of the circumstances as the applicant deems pertinent to the determination of admittance to licensure in this state.]

(e) [(f)] The department approves and adopts by reference the Standards and Requirements for Approval of Residencies in Podiatric Medicine and Surgery and Procedures for Approval of Residencies in Podiatric Medicine and Surgery adopted by the Council on Podiatric Medical Education of the American Podiatric Medical Association.

(f) [(g)] The department approves and adopts by reference the Standards and Requirements for Accrediting Colleges of Podiatric Medicine and Procedures for Accrediting Colleges of Podiatric Medicine adopted by the Council on Podiatric Medical Education of the American Podiatric Medical Association.

(g) [(h)] The department may require additional information from an applicant who has been out of practice for more than two years and require the applicant to complete additional education, examinations, or training before issuing a license to ensure the applicant [podiatrist] possesses reasonable knowledge, skill and competence for the safe care and treatment of patients.

(h) [(i)] The applicant must [shall] submit, in a form and manner prescribed by [through a method acceptable to] the department, evidence sufficient for the department to determine that the applicant has met all the requirements and any other information reasonably required by the department. Any application, diploma or certification, or other

document required to be submitted to the department that is not in the English language must be accompanied by a certified translation into English.

*§130.41. Doctor of Podiatric Medicine License--Jurisprudence Exam.*

(a) All applicants shall be provided detailed information about the examination process prior to exam administration.

(b) Applicants must [shall] follow the security procedures required for administration of the exam at each testing facility.

(c) A license shall not be issued to any person who has been detected in a deceptive, dishonest or fraudulent act while taking an examination required by the department.

(d) The passing score for the examination shall be determined by the department.

*§130.42. Doctor of Podiatric Medicine License--Term; Renewal.*

(a) A Doctor of Podiatric Medicine license is valid for two years.

(b) To renew a Doctor of Podiatric Medicine license, the licensee must:

(1) submit a completed [~~department-approved~~] renewal application in a form and manner prescribed by the department;

(2) complete all required continuing medical education hours as required by §130.44; and

(3) pay the required fee under §130.60.

(c) For each license renewal [on or after September 1, 2020], a Doctor of Podiatric Medicine must complete the human trafficking prevention training required under Occupations Code, Chapter 116, and provide proof of completion as prescribed by the department.

~~[(d) A limited faculty license to practice podiatry only for purposes of instruction in an educational institution is valid for the term indicated in subsection (a), except that the department shall terminate a limited faculty license immediately upon receiving notice that the faculty appointment of the podiatrist holding the limited faculty license is terminated. The termination of a limited faculty license does not prohibit or otherwise impair the ability of a podiatrist to apply for or hold another license type issued under this subchapter.]~~

*§130.43. Doctor of Podiatric Medicine License--Provisional License.*

(a) An applicant for a provisional license must abide by all the provisions of §130.40 except for §130.40(a)(5) and must meet the following requirements:

(1) be licensed in good standing as a podiatric physician in another state, the District of Columbia, or a territory of the United States that has licensing requirements that are substantially equivalent to the requirements of the Act, subsequent amendments, and rules;

(2) furnish proof of such licensure to the department;

(3) not have been revoked or suspended in any jurisdiction; and

(4) pass the jurisprudence exam.

(b) An applicant for provisional licensure must be sponsored by a person currently licensed by the department for at least five years and in good standing under the Act with the following conditions applicable.

(c) Prior to beginning practice in Texas, the sponsor licensee must ensure the following:

(1) that the applicant for provisional licensure will be working within the same office and under the direct supervision of the sponsor licensee; and

(2) that such sponsor licensee is aware of the Act and rules governing provisional licensure and that the sponsorship will cease upon the invalidity of the provisional license.

(d) The sponsor licensee will be held responsible for the unauthorized practice of podiatric medicine should such provisional license expire.

(e) An applicant for a provisional license may be excused from the requirement of sponsorship of this rule if the department determines that compliance with this subsection constitutes a hardship to the applicant.

(f) A provisional license is valid for up to 180 days or until passage or failure of the jurisprudence exam and may be renewed up to three times. It is the responsibility of the applicant and sponsor to return the provisional license to the department upon expiration.

(g) If at any time during the provisional licensure period it is determined that the holder of such provisional license has violated the Act or department rules, such provisional license will be subject to disciplinary action including revocation.

*§130.44. Continuing Medical Education--General Requirements.*

(a) A licensee must complete 50 hours of department-approved continuing medical education (CME) every two years for the renewal of the license to practice podiatric medicine. One hour of training is equal to one hour of CME. It is the responsibility of the licensee to ensure that all CME hours being claimed meet the standards for CME as set by the commission.

(b) A licensee must complete two CME hours related to approved procedures of prescribing and monitoring controlled substances prior to the first anniversary of the date the license was originally issued.

(c) A licensee must complete at least two CME hours on a course, class, seminar, or workshop in: Ethics in the Delivery of Health Care Services and/or Rules and Regulations pertaining to Podiatric Medicine in Texas.

(1) Acceptable topics for the course, class, seminar, or workshop include:

(A) Human Trafficking Prevention;

(B) Healthcare Fraud;

(C) Professional Boundaries;

(D) Practice Risk Management or Podiatric Medicine related Ethics or Jurisprudence courses;

(E) Abuse and Misuse of Controlled Substances;

(F) Opioid Prescription Practices, and/or

(G) Pharmacology, including those sponsored by an entity approved by the CPME, APMA, APMA affiliated organizations, American Medical Association (AMA), AMA affiliated organizations, or governmental entities, or the entities described in subsections (e) and (f).

(2) Any program approved by the CPME of the APMA is acceptable to the department.

(d) A licensee whose practice includes prescription or dispensation of opioids must annually complete at least one hour of CME covering best practices, alternative treatment options, and multi-modal ap-

proaches to pain management that may include physical therapy, psychotherapy, and other treatments.

(e) A licensee shall receive credit for each hour of podiatric medical meetings and training sponsored by:

- (1) the APMA;
- (2) APMA affiliated organizations;
- (3) the Texas Podiatric Medical Association (TPMA);
- (4) state, county or regional podiatric medical association podiatric medical meetings;
- (5) university sponsored podiatric medical meetings;
- (6) hospital podiatric medical meetings or hospital podiatric medical grand rounds;
- (7) medical meetings sponsored by the Foot & Ankle Society or the orthopedic community relating to foot care; and
- (8) others, at the discretion of the Advisory Board. A practitioner may receive credit for giving a lecture, equal to the credit that a podiatrist attending the lecture obtains.

(f) A licensee shall receive credit for each hour of training for non-podiatric medical sponsored meetings that are relative to podiatric medicine and department approved. This includes, but is not limited to;

- (1) hospital grand rounds;
- (2) hospital CME programs;
- (3) corporate sponsored meetings;
- (4) meetings sponsored by the American Medical Association, the orthopedic community, the American Diabetes Association, the Nursing Association, the Physical Therapy Association; and
- (5) others if approved by the department.

(g) A licensee may obtain up to 20 CME hours per biennium for practice management, home study and self-study programs if the provider is approved by the CPME.

(h) A licensee may receive up to three CME hours for Cardiopulmonary Resuscitation (CPR) certification or up to six hours of CME for Advanced Cardiac Life Support (ACLS) certification, but not both. No on-line CPR certification will be accepted by the department for CME credit.

(i) A licensee may only receive one CME hour for having an article published in a peer review journal, regardless of the number of times or the number of journals in which the article is published.

(j) With the exception of the allowed hours carried forward, the required 50 hours of CME must be obtained in a 24-month period immediately preceding the date in which the license is to be renewed. The 24-month period will begin on the first full day of the month after the practitioner's date of renewal and end two years later. A licensee who completes more than the required 50 hours during the preceding CME period may carry forward a maximum of 10 hours for the next renewal CME period.

(k) Licensees that are deficient in CME hours must complete all deficient CME hours and current biennium CME requirements in order to maintain licensure.

(l) CME obtained as a part of a disciplinary action is not acceptable credit towards the total of 50 hours required every two years.

(m) The CPME updated the CPME 720 - Standards and requirements for approval of providers of continuing education in podiatric medicine, effective July 1, 2020.

(1) The CPME standards define Internet Live Activity as "an online continuing educational activity available at a certain time on a certain date and available only in real-time, just as if it were a continuing educational activity held in an auditorium. Once the event has taken place, learners may no longer participate in that activity."

(2) Some examples of an internet live activity are a webinar, videoconference, or teleconference.

(3) CPME has also released guidance for CME in response to COVID-19 concerns.

(4) Providers of CME, including all organizations listed in the podiatry CME rules, can organize and present an internet live activity for CME credit.

(5) There are no limits on the amount of CME hours that can be obtained through internet live activity.

#### §130.45. Continuing Medical Education--Audit Process.

(a) The department employs an audit system for CME reporting. The licensee is responsible for maintaining a record of the licensee's CME experiences. The certificates or other documentation verifying earning of CME hours are only to be forwarded to the department if the licensee has been selected for audit.

(b) The audit process shall be as follows:

(1) The department will select for audit a random sample of licensees to ensure compliance with CME hours. The audit may occur before, during, or after the license renewal process.

(2) If selected for an audit, the licensee must submit copies of certificates, transcripts, or other documentation satisfactory to the department, verifying the licensee attendance, participation and completion of the CME.

(3) Failure to timely furnish this information within 30 calendar days after notification of the audit, being deficient in the CME required for the most recent renewal of the license, failure to complete all CME within 90 calendar days after notification of the deficiency, or providing false information during the audit process are grounds for disciplinary action against the licensee.

(4) If selected for CME audit during the renewal period, the licensee may renew and pay renewal fees.

#### §130.46. Continuing Medical Education--Exceptions and Allowances; Approval of Hours.

(a) Delinquency of CME hours may be allowed in cases of hardship, as determined on an individual basis by the executive director. In cases of such hardship, hours of delinquency must be current at the end of a three-year period.

(b) Any licensee not actively practicing podiatric medicine shall be exempt from these requirements; however, upon resuming practice of podiatric medicine, that licensee must fulfill the requirements of the preceding year from the effective date prior to the resumption of practice.

(c) Hours obtained in colleges or universities while working on a degreed or non-degreed program or an approved residency program by the Council on Podiatric Medical Education shall be considered as having fulfilled the requirements of continuing education hours for the fiscal year, provided that the courses are of a medical nature.

(d) Hours of continuing education submitted to the department for approval, must be certified by the continuing education director of

the institution or organization from which the hours were obtained, that the licensee was in actual attendance for the specified period.

§130.47. Inactive Status.

(a) A practitioner may place a license on inactive status, at no cost, by submitting a completed application in a form and manner prescribed by the department.

(b) A person whose license is on inactive status must not practice podiatric medicine in this state. The practice of podiatric medicine by a person whose license is on inactive status constitutes the practice of podiatric medicine without a license.

(c) A practitioner on inactive status must renew the inactive status every two years, at no cost, in a form and manner prescribed by the department.

(d) To change from an inactive status license to an active status license, an applicant must:

(1) submit a completed application in a form and manner prescribed by the department;

(2) pay the required renewal fee as prescribed in §130.60; and

(3) complete the CME that is required for the renewal of an active license during the preceding license period. CME hours used to satisfy the requirement for changing from an inactive status license to an active status license must not also be utilized for a future renewal of an active status license.

§130.48. Voluntary Charity Care Status.

(a) This section implements Texas Occupations Code, Chapter 112. As used in this section:

(1) "Voluntary charity care" means medical care provided for no compensation:

(A) to indigent populations;

(B) in medically underserved areas; or

(C) for a disaster relief organization.

(2) "Compensation" means direct or indirect payment of anything of monetary value, except payment or reimbursement of reasonable, necessary, and actual travel and related expenses.

(b) A practitioner may place a license on voluntary charity care status, at no cost, by submitting a completed application in a form and manner prescribed by the department.

(c) The practice by a practitioner on voluntary charity care status:

(1) is limited to voluntary charity care for which the practitioner receives no compensation of any kind for podiatric services rendered;

(2) does not include the provision of podiatric services for compensation which has monetary value of any kind;

(3) does not include the provision of podiatric services to members of the practitioner's family; and

(4) does not include the self-prescribing of controlled substances or dangerous drugs.

(d) A practitioner on voluntary charity care status must:

(1) renew the voluntary charity status every two years, at no cost, in a form and manner prescribed by the department; and

(2) complete 25 hours of CME during each renewal cycle.

(e) A practitioner on voluntary charity care status is subject to disciplinary action for:

(1) a violation of the Act or rule adopted under this chapter;

(2) obtaining, or attempting to obtain, voluntary charity care status by submitting false or misleading information to the department; or

(3) unprofessional or dishonorable conduct likely to deceive, defraud, or injure the public if the practitioner engages in the compensated practice of podiatric medicine, the provision of podiatric services to members of the practitioner's family, or the self-prescribing of controlled substances or dangerous drugs.

(f) A practitioner on voluntary charity care status must apply with the department before returning to active status by:

(1) submitting a completed application in a form and manner prescribed by the department;

(2) providing a description of the work performed while on voluntary charity care status;

(3) paying the required doctor of podiatric medicine license renewal fee under §130.60; and

(4) completing an additional 25 hours of CME to meet the doctor of podiatric medicine renewal requirements.

(g) The department may require additional information, education, examinations, or training from a podiatrist who has been on voluntary charity care status for more than two years before returning to active status.

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

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

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Doug Jennings

General Counsel

Texas Department of Licensing and Regulation

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For further information, please call: (512) 463-7750



**16 TAC §§130.43 - 130.49**

**STATUTORY AUTHORITY**

The proposed repeals are proposed under Texas Occupations Code, Chapters 51 and 202, 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 proposed repeals are those set forth in Texas Occupations Code, Chapters 51, 53, 108, 112, 116, 202, and 601. No other statutes, articles, or codes are affected by the proposed repeals.

*§130.43. Doctor of Podiatric Medicine License--Provisional License.*

*§130.44. Continuing Medical Education--General Requirements.*

*§130.45. Continuing Medical Education--Exceptions and Allowances; Approval of Hours.*

*§130.46. Inactive Status.*

§130.47. *Hyperbaric Oxygen Certificate--Application Requirements and Guidelines.*

§130.48. *Nitrous Oxide/Oxygen Inhalation Conscious Sedation--Registration Requirements, Guidelines, and Direct Supervision.*

§130.49. *Voluntary Charity Care Status.*

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

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## SUBCHAPTER E. PRACTITIONER RESPONSIBILITIES AND CODE OF ETHICS

### 16 TAC §§130.50, 130.51, 130.54, 130.55, 130.57 - 130.59

#### STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapters 51 and 202, 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 proposed rules are those set forth in Texas Occupations Code, Chapters 51, 53, 108, 112, 116, 202, and 601. No other statutes, articles, or codes are affected by the proposed rules.

§130.50. *Practitioner Identification; Professional Corporations or Associations.*

(a) A practitioner must [shall] use the following professional identifiers in any publication related to the practice of podiatric medicine: Doctor of Podiatric Medicine, D.P.M., Podiatrist, Podiatric Physician.

(b) A practitioner must [Practitioners shall] include one of the following designations to describe the practitioner's [his or her] practice in all publications related to the practice of podiatric medicine: Foot Surgeon, Podiatric Surgeon, Foot Specialist, Doctor and Surgeon of the Foot, Injuries and Diseases of the Foot, Podiatric Physician.

[(e) The purpose of this section and of so limiting the professional designations of a practitioner and the practitioner's practice business is to ensure that the public and all prospective patients are reasonably informed of the distinction between a podiatrist and other medical practitioners as is reflected by the difference in training and licensing and the scope of practice.]

(c) [(d)] A practitioner must [shall] not use a trade name or assumed name to identify the practitioner's [his] practice, except as authorized in this section.

(d) [(e)] A practitioner must provide the department with the practitioner's practice name, corporate name, trade name or assumed name to identify an individual practice, or a group of podiatric physicians with which he/she is practicing and the address, and notify the department of any changes within 10 business days.

(e) [(f)] The name of a professional corporation created for the practice of podiatric medicine must [shall] include one of the following suffixes:

- (1) (Name), A Professional Corporation;
- (2) (Name), A Prof. Corp.;
- (3) (Name), P.C.;
- (4) (Name), Incorporated;
- (5) (Name), Inc.;
- (6) (Name), Professional Association;
- (7) (Name), P.A.;
- (8) (Name), P.L.L.P.;
- (9) (Name), Professional Limited Liability Partnership;
- (10) (Name), P.L.L.C.;
- (11) (Name), Professional Limited Liability Company;
- (12) (Name), L.L.C.; or
- (13) (Name), Limited Liability Company.

(f) [(g)] A practitioner practicing in a group composed of practitioners from different branches of the healing arts may practice under a corporate name, trade name or assumed name adopted by the group, provided the name fairly and objectively identifies the practice. In addition, within the group, the practitioner must [shall] identify themselves [himself] appropriately.

§130.51. *Advertising.*

(a) A practitioner may advertise. A practitioner must [shall] not use or participate in the use of any publication, including advertisements, news stories, press releases, and periodical articles, that contains a false, misleading, or deceptive statement.

(b) A practitioner must [may] not include any of the following types of statements in any advertisements or press releases:

(1) a misrepresentation of fact, or claims as fact something that has not been generally accepted among the podiatric community or by the department as having been proven or established as fact;

(2) a statement that is likely to mislead or deceive or entice or persuade a reasonable person because it fails to make full disclosure of relevant facts whether regarding fees, modes of treatment, conditions or techniques of surgery, post-operative conditions such as degree of pain, length of time of recovery, mobility and strength during recovery, and the like;

(3) a statement that is intended or likely to create in a [an ordinary] reasonable person false or unjustified expectations of favorable results;

(4) a laudatory statement, or other statement or implication that the practitioner's services are of exceptional quality;

(5) [a] statistical data or information that reflects or is intended to reflect quality or degree of success of past performance, or prediction of future success;

(6) a representation that podiatric services can or will be completely performed for a stated fee amount when this is not the case, or makes representations with respect to fees that do not disclose all variables affecting the fees, or makes representations that might [reasonable] cause a reasonable [an ordinary prudent] person to misunderstand or be deceived about the fee amount;

(7) a representation that health care insurance deductibles or co-payments may be waived or are not applicable to health care services to be provided if the deductibles or co-payments are required; or

(8) a representation that the benefits of a health benefit plan will be accepted as full payment when deductibles or co-payments are required.

(c) Information contained in a public communication by a practitioner may include, but is not limited to the following:

(1) name, address, telephone numbers, office hours, and telephone-answering hours;

(2) biographical and educational background;

(3) professional memberships and attainments and certifications, subject~~[, however,]~~ to the provisions of subsection (e);

(4) description of services offered, subject~~[, however]~~ to the provisions of subsection (f);

(5) foreign language ability;

(6) acceptable credit arrangements, subject~~[, however,]~~ to the provisions of subsection (b)(2) and (b)(6);

(7) the limitation of practice to certain areas of podiatric medicine;

(8) the opening or change in location of any office and change in personnel;

(9) fees charged for the initial consultation, provided that any limitation on the time for the consultation must [shall if the time for the consultation is to be limited, any such limitation on the time] be stated;

(10) fixed fees for specific podiatric treatments and services, subject, however, to the provisions of subsection (b)(2) and (b)(6); and

(11) a statement that a schedule of fees or an estimate of fees to be charged for specific treatments or services will be available on request.

(d) All practitioners must [shall] retain recordings, transcripts, or copies of all public communications by date of publication for a period of at least two years after such communication was made.

(e) A practitioner may advertise or publish the name of any board of certification under which the practitioner has fully and validly become certified, provided that the full name of the certifying board is included in the publication. ~~[; except as provided by this subsection, practitioners may not list in any type of advertisement or public communication any certifying board that is not approved or recognized by the Council on Podiatric Medical Education of the American Podiatric Medical Association.]~~

(f) A practitioner must not list in any type of advertisement or public communication any certifying board that is not approved or recognized by the Council on Podiatric Medical Education of the American Podiatric Medical Association.

~~[(f) Each certifying board that is not recognized by the Council on Podiatric Medical Education of the American Podiatric Medical Association must meet each of the following requirements:]~~

~~[(1) the certifying board requires all practitioners who are seeking certification to successfully pass a written or an oral examination or both, which tests the applicant's knowledge and skills in the specialty or subspecialty area of podiatric medicine. All or part of the~~

~~examination may be delegated to a testing organization. All examinations require a psychometric evaluation for validation;]~~

~~[(2) the certifying board has written proof of a determination by the Internal Revenue Service that the certifying board is tax exempt under the Internal Revenue Code pursuant to §501(c);]~~

~~[(3) the certifying board has a permanent headquarters and staff;]~~

~~[(4) the certifying board has at least 100 duly licensed certificants from at least one-third of the states; and]~~

~~[(5) the certifying board requires all practitioners who are seeking certification to have satisfactorily completed identifiable and substantial training in the specialty or subspecialty area of podiatric medicine in which the practitioner is seeking certification, and the certifying organization utilizes appropriate peer review. This identifiable training shall be deemed acceptable unless determined by the department, with the advice of the advisory board, to be inadequate in scope, content, and duration in that specialty or subspecialty area of podiatric medicine in order to protect the public health and safety.]~~

(g) The terms "board eligible", "board qualified", or any similar words or phrase calculated to convey the same meaning must [may] not be used in advertising.

(h) If a publication by or for a practitioner mentions [includes mention of] a particular surgical technique or device, the publication must also include a specific and true statement that reveals ~~[to an ordinary reasonable person]~~ the limits, ~~[and]~~ scope, and specific purpose of the technique or device so as not to mislead a [an ordinary] reasonable person regarding the difficulty, pain or discomfort, length of time for surgery or recuperation, or possibility of complications.

*§130.54. Records.*

(a) All practitioners must [shall] make, maintain, and keep accurate records of the diagnosis made and the treatment performed for and upon each of the practitioner's [his or her] patients for reference and for protection of the patient for at least five years following the completion of treatment.

(b) The records of the identity, diagnosis, evaluation, or treatment of a patient by a practitioner that are created or maintained by a practitioner are the property of the practitioner.

(c) A practitioner must furnish copies, a summary, or a narrative of the medical records pursuant to a written request by:

(1) the patient;

(2) a parent or legal guardian if the patient is a minor;

(3) a legal guardian if the patient has been adjudicated incompetent to manage his or her personal affairs;

(4) an attorney ad litem appointed for the patient; or

(5) a personal representative if the patient is deceased, except if the practitioner determines that access to the information would be harmful to the physical, mental, or emotional health of the patient. The practitioner must delete confidential information about another patient or family member of the patient who has not consented to the release.

~~[(e) A practitioner shall furnish copies of medical records or a summary or narrative of the medical records pursuant to a written request by the patient or by a parent or legal guardian if the patient is a minor, or a legal guardian if the patient has been adjudicated incompetent to manage his or her personal affairs, or an attorney ad litem appointed for the patient or personal representative if the patient is deceased, except if the practitioner determines that access to the informa-~~

tion would be harmful to the physical, mental, or emotional health of the patient. The practitioner may delete confidential information about another patient or family member of the patient who has not consented to the release.]

(d) The requested copies of medical records or [of] a summary or narrative of the records must [shall] be furnished by the practitioner within thirty (30) days after the date of the request and reasonable fees for furnishing the information shall be paid by the patient or someone on behalf of the patient.

(e) As referenced in subsection (c), if the practitioner denies the request for copies of medical records or a summary or narrative of the records, either in whole or in part, the practitioner must [shall] furnish the patient a written statement, signed and dated, stating the reason for the denial, and a copy of the statement denying the request must [shall] be placed in the patient's medical records.

(f) The practitioner is entitled to [responding to a request for such information shall be entitled to receive] a reasonable fee for providing the requested information. In addition, a reasonable fee may include actual costs for mailing, shipping, or delivery of the records and x-rays.

(g) A practitioner is entitled to payment of a reasonable fee prior to releasing a requested copy, summary, or narrative of medical records. A practitioner may retain the requested information until payment is received but must notify the requesting party, in writing and within ten calendar days of receiving the request, of the need for payment.

(1) A copy of the letter regarding the need for payment shall be made part of the patient's medical record. Medical records requested pursuant to a proper request for release may not be withheld from the patient, the patient's authorized agency, or the patient's designated recipient for such records based on a past due account for medical care or treatment previously rendered to the patient.

(2) A practitioner is not entitled to payment of a reasonable fee when the information is requested for purposes of emergency or acute medical care by a health care provider licensed by any state, territory, or insular possession of the United States or any State or Province of Canada.

~~[(g) The practitioner providing copies of requested medical records or a summary or a narrative of such medical records shall be entitled to payment of a reasonable fee prior to release of the information unless the information is requested by a health care provider licensed in Texas or licensed by any state, territory, or insular possession of the United States or any State or Province of Canada if requested for purposes of emergency or acute medical care. In the event the practitioner receives a proper request for copies of medical records or a summary or narrative of the medical records for purposes other than for emergency or acute medical care, the practitioner may retain the requested information until payment is received. In the event payment is not routed with such a request, within ten calendar days from receiving a request for the release of such medical records for reasons other than emergency or acute medical care, the practitioner shall notify the requesting party in writing of the need for payment and may withhold the information until payment of a reasonable fee is received. A copy of the letter regarding the need for payment shall be made part of the patient's medical record. Medical records requested pursuant to a proper request for release may not be withheld from the patient, the patient's authorized agency, or the patient's designated recipient for such records based on a past due account for medical care or treatment previously rendered to the patient.]~~

(h) A subpoena is not [shall not be] required for the release of medical records requested pursuant to a proper release for records under this section made by a patient or by the patient's guardian or other representative duly authorized to obtain such records.

(i) A practitioner is only required to provide copies of billing records pertaining to medical treatment of a patient when specifically requested in a proper request for release of medical records.

~~[(i) In response to a proper request for release of medical records, a practitioner shall not be required to provide copies of billing records pertaining to medical treatment of a patient unless specifically requested pursuant to the request for release of medical records.]~~

(j) The allowable charges as set forth in this chapter shall be maximum amounts, and this chapter shall be construed and applied [so as] to be consistent with lower fees or the prohibition or absence of such fees as required by state statute or prevailing federal law.

§130.55. *Practitioner Code of Ethics.*

(a) The health and safety of patients shall be the first consideration of the practitioner. The principal objective to the practitioner is to render service to humanity. A practitioner shall continually strive to improve his medical knowledge and skill for the benefit of his patients and colleagues. The practitioner shall administer to patients in a professional manner and to the best of his ability. Secrets and personal information entrusted to him shall be held inviolate unless disclosure is necessary to protect the welfare of the individual or the community. A practitioner shall be temperate in all things in recognition that his knowledge and skill are essential to public health, welfare, and human life.

(b) A practitioner shall conduct his practice on the highest plane of honesty, integrity, and fair dealing and shall not mislead his patients as to the gravity of such patient's podiatric medical needs. A practitioner shall not abandon a patient he has undertaken to treat. The practitioner may discontinue treatment after reasonable notice has been given to the patient by the practitioner of the practitioner's intention to discontinue treatment and the patient has had a reasonable time to secure the services of another practitioner or all podiatric medical services actually begun have been completed and there is no contract or agreement to provide further treatment.

(c) A practitioner shall not aid an unethical practitioner or engage in any subterfuge with any person, business, or organization. The practitioner shall expose any illegal, unethical, or dishonest conduct of other practitioners and cooperate with those invested with the responsibility of enforcement of the law and these rules of conduct.

(d) A person under a practitioner's care or treatment on whom podiatric medical surgery is to be performed in connection with such care or treatment should be informed by the practitioner of the identity of the surgeon before the surgery is performed.

(e) The practitioner has special knowledge which his patient does not have; therefore, to avoid misunderstanding he should advise his patient in advance of beginning treatment of the nature and extent of the treatment needed; the approximate time required to perform the recommended treatment and services; and any further or additional services or return by the patient for treatment, adjustments, or consultation and the time in which this shall occur. A practitioner should inform his patients as to the fees to be charged for services before the services are performed, regardless of whether the fees are charged on a case basis, on the basis of a separate charge for each service, or a combination of these two methods, or some other basis. If an exact fee for a particular service, as in extended care cases, cannot be quoted to a patient, a fair and reasonable estimate of what the fee will be and the basis on which it will be determined should be given the patient.

(f) A practitioner shall not tender or receive a commission for a referral.

(g) A podiatrist's treatment of a patient must be consistent with the best practices and standards observed in the podiatry community and must be performed with the same level of skill required of a reasonably prudent podiatrist practicing under the same or similar circumstances.

§130.57. *Sexual Misconduct.*

(a) Sexual misconduct is behavior that exploits the physician-patient or physician-staff member relationship in a sexual way. This behavior is non-diagnostic and non-therapeutic, may be verbal or physical, and may include expressions of thoughts and feelings or gestures that are sexual or that reasonably may be construed by a person as sexual.

(b) Sexual misconduct may be the basis for disciplinary action if the behavior was injurious or there is an exploitation of the physician-patient or physician-staff member relationship.

(c) Sexual violation may include physician-patient or physician-staff member sex, whether or not initiated by the patient/staff, and engaging in any conduct with a patient/staff that is sexual or may be reasonably interpreted as sexual, including but not limited to:

- (1) sexual intercourse, genital-to-genital contact;
- (2) oral to genital contact;
- (3) oral to anal contact, genital to anal contact;
- (4) kissing in a romantic or sexual manner;

(5) touching breasts, genitals, or any sexualized body part for any purpose other than appropriate examination or treatment, or where the patient/staff has refused or has withdrawn consent;

(6) encouraging the patient/staff to masturbate in the presence of the physician or masturbation by the physician while the patient/staff is present; and

(7) offering to provide practice-related services, such as drugs, in exchange for sexual favors.

(d) Sexual impropriety may comprise behavior, gestures, or expressions that are seductive, sexually suggestive, or sexually demeaning to a patient/staff, including but not limited to:

(1) disrobing or draping practices that reflect a lack of respect for the patient's/staff's privacy, deliberately watching a patient/staff dress or undress, instead of providing privacy for disrobing;

(2) subjecting a patient/staff to an intimate examination in the presence of medical students or other parties without the explicit consent of the patient/staff or when consent has been withdrawn;

(3) examination or touching of genitals without the use of gloves;

(4) inappropriate comments about or to the patient/staff, including but not limited to:

(A) making sexual comments about a person's body or underclothing;

(B) making sexualized or sexually demeaning comments to a patient/staff;

(C) criticizing the patient's/staff's sexual orientation (transgender, homosexual, heterosexual, or bisexual);

(D) making comments about potential sexual performance during an examination or consultation, except when the

examination or consultation is pertinent to the issue of sexual function or dysfunction;

(E) requesting details of sexual history, sexual likes, or sexual dislikes when not clinically indicated for the type of consultation;

~~{(4) inappropriate comments about or to the patient/staff, including but not limited to making sexual comments about a person's body or underclothing, making sexualized or sexually demeaning comments to a patient/staff, criticizing the patient's/staff's sexual orientation (transgender, homosexual, heterosexual, or bisexual), making comments about potential sexual performance during an examination or consultation except when the examination or consultation is pertinent to the issue of sexual function or dysfunction, requesting details of sexual history or sexual likes or dislikes when not clinically indicated for the type of consultation;}~~

(5) engaging in treatment or examination of a patient/staff for other than bona fide health care purposes or in a manner substantially inconsistent with reasonable health care practices;

(6) using the physician-patient or physician-staff member relationship under the pretext of treatment to solicit a date;

(7) initiation by the physician of conversation regarding the sexual problems, preferences, or fantasies of the physician; and

(8) examining the patient/staff intimately without consent.

(e) Sexual exploitation by a practitioner is the breakdown of the professionalism in the physician/patient/staff relationship constituting sexual abuse. Sexual exploitation may undermine the therapeutic relationship, may exploit the vulnerability of the patient/staff, and ultimately may be detrimental to the patient's/staff's emotional well-being, including but not limited to:

(1) causing emotional dependency of the patient/staff;

(2) causing unnecessary dependence outside the therapeutic relationship;

(3) breach of trust; and

(4) imposing coercive power over the patient/staff.

(f) A third impartial person who is the same sex as the patient must be present in the examining room if a patient is asked to disrobe or if the genitalia are examined.

(g) The practitioner under investigation for sexual misconduct may be required to have a complete medical evaluation, including appropriate mental and physical examination. Laboratory examination should include appropriate urine and blood drug screens.

(h) The psychiatric history and mental status examination is to be performed by a psychiatrist knowledgeable in the evaluation suspected of sexual misconduct. The examination may include neuropsychological testing.

(i) Sexual violation or impropriety may warrant disciplinary action by the department up to and including revocation of license.

(j) In the event a physician applies for license reinstatement, any petition for reinstatement will include the stipulation that additional mental and physical evaluations may be required prior to the department's review for reinstatement to ensure the continuing protection of the public.

§130.58. *Standards for Prescribing Controlled Substances and Dangerous Drugs.*

(a) A podiatrist must comply with all federal and state laws and regulations relating to the ordering and prescribing of controlled sub-



stances in Texas, including, but not limited to, requirements set forth by:

- (1) the United States Drug Enforcement Administration;
- (2) the United States Food and Drug Administration;
- (3) the Texas Health and Human Services Commission;
- (4) the Texas Department of Public Safety;
- (5) the Texas State Board of Pharmacy; and
- (6) the department.

~~[(a) Podiatrists shall comply with all federal and state laws and regulations relating to the ordering and prescribing of controlled substances in Texas, including but not limited to requirements set forth by the United States Drug Enforcement Administration, United States Food & Drug Administration, Texas Health & Human Services Commission, Texas Department of Public Safety, Texas State Board of Pharmacy, and the department.]~~

(b) A podiatrist must ~~[may]~~ not prescribe a controlled substance except for a valid podiatric medical purpose and in the course of podiatric practice.

(c) A podiatrist must ~~[may]~~ not confer upon and must ~~[may]~~ not delegate prescriptive authority (the act of prescribing or ordering a drug or device) to any other person.

(d) A podiatrist may designate an agent to communicate a prescription to a pharmacist. The podiatrist remains personally responsible for the actions of the designated agent who communicates a prescription to a pharmacist. A podiatrist who designates an agent must:

(1) on request, provide a pharmacist with a copy of the podiatrist's written authorization for a designated agent to communicate a prescription; and

(2) maintain a list of the designated agents at the podiatrist's usual place of business.

~~[(d) A podiatrist may designate an agent to communicate a prescription to a pharmacist. A podiatrist who designates an agent shall provide a pharmacist on request with a copy of the podiatrist's written authorization for a designated agent to communicate a prescription and shall maintain at the podiatrist's usual place of business a list of the designated agents. The podiatrist remains personally responsible for the actions of the designated agent who communicates a prescription to a pharmacist.]~~

(e) Responsible prescribing of controlled substances requires that a podiatrist consider certain elements prior to issuing a prescription, including, but not limited to:

- (1) reviewing the patient's Schedule II, III, IV, and V prescription drug history report by accessing the Texas State Board of Pharmacy's - Texas Prescription Monitoring Program (PMP) database;
- (2) the patient's date of birth matches with proper identification;
- (3) an initial comprehensive history and physical examination is performed;
- (4) the Schedule II prescription copy is in the chart or record found for each prescription written; and
- (5) alternative therapy (e.g. ultrasound, TENS) discussed and prescribed for the patient.

(f) Prior to prescribing opioids, benzodiazepines, barbiturates, or carisoprodol, a podiatrist must ~~[shall]~~ review the patient's Schedule

II, III, IV, and V prescription drug history report by accessing the Texas State Board of Pharmacy's - Texas Prescription Monitoring Program (PMP) database. Failure to do so is grounds for disciplinary action by the department.

(g) Prior to prescribing any controlled substance, a podiatrist may review the patient's Schedule II, III, IV, and V prescription drug history report by accessing the Texas State Board of Pharmacy's - Texas Prescription Monitoring Program (PMP) database.

(h) An employee of the podiatrist acting at the direction of the podiatrist may perform the function described in subsection (e) and (f) so long as that employee acts in compliance with HIPAA and only accesses information related to a particular patient of the podiatrist.

(i) A podiatrist or an employee of a podiatrist acting at the direction of the podiatrist may access the Texas State Board of Pharmacy's - Texas Prescription Monitoring Program (PMP) database to inquire about the podiatrist's own Schedule II, III, IV, and V prescription drug activity.

(j) A podiatrist or an employee of a podiatrist acting at the direction of the podiatrist may not access the Texas State Board of Pharmacy's - Texas Prescription Monitoring Program (PMP) database for reasons not directly related to a patient under their care. Unauthorized access is grounds for disciplinary action by the department.

(k) If a podiatrist uses an electronic medical records management system (health information exchange) that integrates a patient's Schedule II, III, IV, and V prescription drug history data from the Texas State Board of Pharmacy's - Texas Prescription Monitoring Program (PMP) database, a review of the electronic medical records management system (health information exchange) with the integrated data must ~~[shall]~~ be deemed compliant with the review of the Texas State Board of Pharmacy's - Texas Prescription Monitoring Program (PMP) database as required under §481.0764(a) of the Texas Health and Safety Code and these rules.

(l) The duty to access a patient's Schedule II, III, IV, and V prescription drug history report through the Texas State Board of Pharmacy's - Texas Prescription Monitoring Program (PMP) database as described in subsection (e) does not apply in the following circumstances:

(1) it is clearly noted in the patient's medical record that the patient has a diagnosis of cancer or is in hospice care; or

(2) the podiatrist or an employee of the podiatrist makes a good faith attempt to access the Texas State Board of Pharmacy's - Texas Prescription Monitoring Program (PMP) database but is unable to access the information because of circumstances outside the control of the podiatrist or an employee of the podiatrist and the good faith attempt and circumstances are clearly documented in the patient's medical record for prescribing a controlled substance.

(m) Information obtained from the Texas State Board of Pharmacy's - Texas Prescription Monitoring Program (PMP) database may be included in any form in the searched patient's medical record and is subject to any applicable state or federal confidentiality, privacy or security laws.

(n) In accordance with Texas Health and Safety Code Chapter 483, Subchapter E., a podiatrist may prescribe an opioid antagonist to a person at risk of experiencing an opioid-related drug overdose or to a family member, friend, or other person in a position to assist the person who is at risk of experiencing an opioid-related drug overdose. A podiatrist who prescribes an opioid antagonist must ~~[shall]~~ document the basis for the prescription in the medical record of the person who is at risk of experiencing an opioid-related drug overdose.

§130.59. *Opioid Prescription Limits and Required Electronic Prescribing.*

(a) In this section, "acute pain" means the normal, predicted, physiological response to a stimulus such as trauma, disease, and operative procedures. Acute pain is time limited and the term does not include:

- (1) chronic pain;
- (2) pain being treated as part of cancer care;
- (3) pain being treated as part of hospice or other end-of-life care; or
- (4) pain being treated as part of palliative care.

(b) For the treatment of acute pain, a podiatrist must ~~[may]~~ not:

- (1) issue a prescription for an opioid in an amount that exceeds a 10-day supply; or
- (2) provide for a refill of an opioid.

(c) After January 1, 2021, all controlled substances must be prescribed electronically except:

(1) in an emergency or in circumstances in which electronic prescribing is not available due to temporary technological or electronic failure, in a manner provided for by the Texas State Board of Pharmacy rules;

(2) by a practitioner to be dispensed by a pharmacy located outside this state, in a manner provided for by the Texas State Board of Pharmacy rules;

(3) when the prescriber and dispenser are in the same location or under the same license;

(4) in circumstances in which necessary elements are not supported by the most recently implemented national data standard that facilitates electronic prescribing;

(5) for a drug for which the United States Food and Drug Administration requires additional information in the prescription that is not possible with electronic prescribing;

(6) for a non-patient-specific prescription pursuant to a standing order, approved protocol for drug therapy, collaborative drug management, or comprehensive medication management, in response to a public health emergency or in other circumstances in which the practitioner may issue a non-patient-specific prescription;

(7) for a drug under a research protocol;

(8) by a practitioner who has received a waiver under Section 481.0756 of the Texas Health and Safety Code from the requirement to use electronic prescribing, as provided by subsections (d) - (e); or

(9) under circumstances in which the practitioner has the present ability to submit an electronic prescription but reasonably determines that it would be impractical for the patient to obtain the drugs prescribed under the electronic prescription in a timely manner and that a delay would adversely impact the patient's medical condition.

(d) To obtain a waiver of the requirement to use electronic prescribing, a practitioner must submit a waiver request on a form approved by the department.

(1) The waiver request form must document sufficient evidence of the circumstances justifying the waiver as outlined in subsection (e).

(2) A waiver granted by the department under this section shall expire one year after the date of approval.

(3) A practitioner must reapply for a subsequent waiver not earlier than the 30th day before the date the waiver expires if the circumstances that necessitated the waiver continue.

~~{(d) To obtain a waiver of the requirement to use electronic prescribing, a practitioner must submit a waiver request on a form approved by the department. The waiver request form must document sufficient evidence of the circumstances justifying the waiver as outlined in subsection (e). A waiver granted by the department under this section shall expire one year after the date of approval. A practitioner may reapply for a subsequent waiver not earlier than the 30th day before the date the waiver expires if the circumstances that necessitated the waiver continue.}~~

(e) A practitioner's waiver of electronic prescribing request form must contain sufficient evidence of one or more of the following that, in the judgment of the executive director, justify the issuance of a waiver:

(1) economic hardship, including:

(A) any special situational factors affecting either the cost of compliance or ability to comply;

(B) the likely impact of compliance on profitability or viability; and

(C) the availability of measures that would mitigate the economic impact of compliance;

(2) technological limitations not reasonably within the control of the practitioner;

(3) issuance of fifty or fewer prescriptions for controlled substances in the year immediately prior to the application for a waiver, as documented by the Texas Prescription Monitoring Program; or

(4) other exceptional circumstances demonstrated by the practitioner.

(f) The department may revoke or refuse to issue a waiver under this section if the practitioner violates or attempts to violate any provision of Texas Occupations Code, Chapters 51 or 202, this chapter, or any rule or order of the executive director or commission.

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

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Doug Jennings

General Counsel

Texas Department of Licensing and Regulation

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For further information, please call: (512) 463-7750

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**16 TAC §130.52, §130.53**

**STATUTORY AUTHORITY**

The proposed repeals are proposed under Texas Occupations Code, Chapters 51 and 202, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chap-

ters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed repeals are those set forth in Texas Occupations Code, Chapters 51, 53, 108, 112, 116, 202, and 601. No other statutes, articles, or codes are affected by the proposed repeals.

§130.52. *Medical Offices.*

§130.53. *Podiatric Medical Radiological Technicians.*

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

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## SUBCHAPTER F. FEES

### 16 TAC §130.60

#### STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapters 51 and 202, 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 proposed rules are those set forth in Texas Occupations Code, Chapters 51, 53, 108, 112, 116, 202, and 601. No other statutes, articles, or codes are affected by the proposed rules.

§130.60. *Fees.*

(a) Fees paid to the department are non-refundable.

(b) Fees are as follows:

(1) Temporary Residency License (Initial and Renewal)--\$125

(2) Extended Temporary License extension--\$50

(3) Provisional License--\$125

(4) Doctor of Podiatric Medicine Initial License--\$750

(5) Doctor of Podiatric Medicine Renewal License--\$700

(6) Limited Faculty Initial License--\$125

(7) Limited Faculty Renewal License--\$60

(8) Voluntary Charity Care Status License (Initial and Renewal)--\$0

(9) Inactive Status License (Initial and Renewal)--\$0

(10) [(9)] Active Duty Military Members--\$0

(11) [(10)] Hyperbaric Oxygen Certificate (Initial and Renewal)--\$25 if issued or renewed before January 1, 2025; \$50 if issued or renewed on or after January 1, 2025

(12) [(11)] Nitrous Oxide Registration (Initial and Renewal)--\$25 if issued or renewed before January 1, 2025; \$50 if issued or renewed on or after January 1, 2025

(13) [(12)] Podiatric Medical Radiological Technician Registration (Initial and Renewal) [Technicians] --\$25 if issued or renewed before January 1, 2025; \$50 if issued or renewed on or after January 1, 2025

(14) [(13)] Duplicate License/replacement license--\$25

(15) [(14)] The fee for a criminal history evaluation letter is the fee prescribed under §60.42 [(relating to Criminal History Evaluation Letters)].

(16) [(15)] A dishonored/[returned check or] payment fee is the fee prescribed under §60.82 [(relating to Dishonored Payment Device)].

(17) [(16)] Late renewal fees for licenses issued under this chapter are provided under §60.83 [(relating to Late Renewal Fees)].

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

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## SUBCHAPTER G. ENFORCEMENT

### 16 TAC §§130.70, 130.72, 130.73

#### STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapters 51 and 202, 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 proposed rules are those set forth in Texas Occupations Code, Chapters 51, 53, 108, 112, 116, 202, and 601. No other statutes, articles, or codes are affected by the proposed rules.

§130.70. *Complaints and Claims.*

(a) The licensee must display a department-approved sign or provide to all patients and consumers a brochure that notifies consumers or recipients of services of the name, mailing address, website, and telephone number of the department and a statement informing consumers or recipients of services that complaints against a licensee can be directed to the department.

(b) The sign must [shall] be conspicuously and prominently displayed in a location where it may be seen by all patients. The consumer brochure, if chosen, must be prominently displayed and available to patients and consumers at all times.

(c) Each defendant practitioner against whom a professional liability claim or complaint has been filed must report the claim or complaint to the department. The information is to be reported by insurers

or other entities providing medical professional liability insurance for a practitioner. If an insurance carrier does not adequately report, reporting must [shall] be the responsibility of the practitioner.

(d) One separate report must [shall] be filed for each defendant insured practitioner.

(e) The information must be provided within 30 days of receipt of the claim or suit. A copy of the claim letter or petition must be attached.

(f) The information reported must contain at least the requested data as follows:

(1) There must be enough identification data available to enable department staff to match the closure report to the original file. The data required to accomplish this include:

(A) name and license number of defendant practitioner(s); and

(B) name of plaintiff; or

(2) A court order or settlement agreement is acceptable and should contain the necessary information to match the closure information to the original file.

(g) Failure by a licensed insurer to report under this section must [shall] be referred to the Texas Department of Insurance and sanctions under the Texas Insurance Code may be imposed for failure to report.

(h) For the purposes of this section, a professional liability claim or complaint shall be defined as a cause of action against a practitioner for treatment, or other claimed departure from accepted standards of medical or health care or safety which proximately results in injury to or death of the patient, whether the patient's claim or cause of action sounds in tort or contract to include: [~~interns, residents, supervising practitioner, on-call practitioner, consulting practitioner, and those practitioner who administer, read, or interpret laboratory tests, x-rays, and other diagnostic studies.~~]

(1) interns;

(2) residents;

(3) supervising practitioner;

(4) on-call practitioner;

(5) consulting practitioner; and

(6) practitioners who administer, read, or interpret laboratory tests, x-rays, and other diagnostic studies.

(i) Claims that are not required to be reported under this chapter but which may be reported include, but are not limited to, the following:

(1) Product liability claims;

(2) antitrust allegations;

(3) allegations involving improper peer review activities;

(4) civil rights violations;

(5) allegations of liability for injuries occurring on a podiatric physician's property, but not involving a breach of duty in the podiatric physician-patient relationship; or

(6) business disputes.

(j) Claims that are not required to be reported under this chapter may however be voluntarily reported pursuant to the provisions of the Act.

#### §130.72. *Administrative Penalties and Sanctions.*

(a) If a person or entity violates or attempts to violate any provision of Texas Occupations Code, Chapters 51 or 202, this chapter, or any rule or order of the executive director or commission, proceedings may be instituted to impose administrative penalties, administrative sanctions, or both in accordance with the provisions of Texas Occupations Code, Chapters 51 and 202, any associated rules, and consistent with the department's enforcement plan.

(b) A person authorized to receive information by accessing the Texas State Board of Pharmacy's - Texas Prescription Monitoring Program (PMP) database must [may] not disclose or use the information in a manner not authorized by law.

(c) A person authorized to receive information by accessing the Texas State Board of Pharmacy's - Texas Prescription Monitoring Program (PMP) database commits an offense if the person discloses or uses the information in a manner not authorized by law.

(d) A person authorized to receive information by accessing the Texas State Board of Pharmacy's - Texas Prescription Monitoring Program (PMP) database commits an offense if the person makes a material misrepresentation or fails to disclose a material fact in the request for information.

(e) The department shall deny an application for license, and shall revoke the license of a person licensed under Chapter 202, Texas Occupations Code, as required by Chapter 108, Subchapter B, Texas Occupations Code.

(f) A person whose application for licensure has been denied, or whose license has been revoked, pursuant to Texas Occupations Code, Chapter 108, Subchapter B may reapply or seek reinstatement as provided by that subchapter.

#### §130.73. *Conditions of Suspension of License.*

(a) Suspension of a license means that the office of the practitioner is to be closed for the purposes of receiving, diagnosing, treating, or consulting with patients.

(1) The suspended practitioner must not participate for income in any professional activity that is directly related to:

(A) the diagnosis of a patient;

(B) the treatment of a patient; or

(C) activities that involve consultation services related to management of a practice.

(2) The suspended practitioner may refer patients to another practitioner for treatment or consultation during the period of the suspension, but the suspended practitioner must not derive any income from such referrals.

(3) The suspended practitioner may allow another practitioner to see the suspended practitioner's patients during the period of the suspension, in the suspended practitioner's office or the other practitioner's office, but the suspended practitioner must not derive income from the other practitioner by way of referral fees, or the like.

{(a) Suspension of a license means that the office of the practitioner is to be closed for the purposes of receiving, diagnosing, treating, or consulting with patients, and the licensee may not participate for income in any professional activity that is directly related to diagnosis or treatment of a patient or activities that involve consultation services related to management of a practice. The practitioner may refer patients to another practitioner for treatment or consultation during the period of the suspension, but the practitioner shall not derive any income from such referrals. The practitioner may allow another practitioner to see

the practitioner's patients during the period of the suspension the practitioner's office or other practitioner's office, but the practitioner shall derive no income from the other practitioner by way of referral fees, or the like.]

(b) The practitioner's office may remain open for the purposes of administrative work, including making future appointments, arranging referrals, handling mail, processing accounts, billing, and insurance matters, and other similar matters not directly related to the diagnosis and treatment of patients.

(c) If the suspended practitioner shares offices with another practitioner, the other practitioner shall be allowed to continue to practice, [; but the suspended practitioner shall not share income with the other practitioner, including any income derived in any way from the diagnosis or treatment of patients. The department may, through unannounced visits or by requesting documentation, check on the business arrangement that the suspended practitioner has with the other practitioner(s) regarding the renting of equipment, rental of business facilities, referral fees or any other negotiated arrangement so as to be sure that the suspended practitioner is not deriving any monies from the practice of podiatric medicine.]

(1) The suspended practitioner must not share income with the other practitioner, including any income derived in any way from the diagnosis or treatment of patients.

(2) The department may, through unannounced visits or by requesting documentation, check on the business arrangement that the suspended practitioner has with the other practitioner(s) regarding the renting of equipment, rental of business facilities, referral fees or any other negotiated arrangement so as to be sure that the suspended practitioner is not deriving any monies from the practice of podiatric medicine.

(d) If a license suspension is probated, the commission or executive director may require the licensee to:

(1) report regularly to the department on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the commission or executive director; or

(3) continue or review continuing professional education until the licensee attains a degree of skill satisfactory to the department in those areas that are the basis of the probation.

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

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## TITLE 19. EDUCATION

### PART 2. TEXAS EDUCATION AGENCY

#### CHAPTER 101. ASSESSMENT

## SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING THE PARTICIPATION OF ENGLISH LANGUAGE LEARNERS IN STATE ASSESSMENTS

### DIVISION 1. ASSESSMENTS OF ENGLISH LANGUAGE PROFICIENCY AND ACADEMIC CONTENT FOR ENGLISH LANGUAGE LEARNERS

#### 19 TAC §§101.1001, 101.1003, 101.1005, 101.1007

The Texas Education Agency (TEA) proposes amendments to §§101.1001, 101.1003, 101.1005, and 101.1007, concerning the participation of English language learners in state assessments. The proposed amendments would align the rules with existing state and federal policies regarding the assessment of emergent bilingual (EB) students.

**BACKGROUND INFORMATION AND JUSTIFICATION:** The proposed amendments to 19 TAC Chapter 101, Subchapter AA, Division 1, would align rules relating to the assessment of EB students with existing state and federal statute. Specifically, the proposed amendments would replace all references to "English learner (EL)" or "English language learner (ELL)" with "emergent bilingual (EB) student," in accordance with Texas Education Code, §29.052.

Section 101.1001, Scope of Rules, defines which students the provisions of Division 1 of Chapter 101, Subchapter AA, apply to. The proposed amendment would clarify that the 60 consecutive days referenced in the rule are "calendar" days for assessment purposes.

Section 101.1003, English Language Proficiency Assessments, clarifies the definition of an EB student and the requirements for EB students to be tested for English language proficiency. The proposed amendment would clarify that EB students in Grades 2-12 must meet the participation requirements to be assessed with the alternate English language proficiency assessment.

Section 101.1005, Assessments of Achievement in Academic Content Areas and Courses, addresses the academic assessment participation requirements for EB students. The proposed amendment would update the rules regarding the assessment options currently available. Specifically, subsection (a) would be updated to clarify that only EB students in Grade 3 or higher are eligible to participate in state academic assessments.

Section 101.1005(b) would be updated to clarify that EB students take the English-version state assessment, with or without allowable testing accommodations, unless the Spanish-version state assessment is more appropriate or the student meets the participation requirements for the alternate assessment. The phrase "with or without allowable testing accommodations" replaces references to the linguistically accommodated version of the assessment since a separate linguistically accommodated version has been replaced with an embedded supports or "accommodated" version. The alternate assessment in subsection (b)(3) would be clarified and re-numbered as new paragraph (2).

Section 101.1005(f) would be eliminated to clarify that all EB students, including those whose parents or guardians decline bilingual services, have access to appropriate assessments and accommodations. Subsection (h) would be eliminated as account-

ability information is no longer within the scope of assessment rules.

Section 101.1007, Assessment Provisions for Graduation, outlines the special provision for eligible EB students related to the use of the State of Texas Assessments of Academic Readiness (STAAR®) English I end-of-course assessment in satisfying high school graduation requirements. The proposed amendment would update the language to include "EB students."

**FISCAL IMPACT:** Iris Tian, deputy commissioner for analytics, assessment, and reporting, has determined that for the first five-year period the proposal is in effect, there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

**LOCAL EMPLOYMENT IMPACT:** The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

**SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT:** The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

**COST INCREASE TO REGULATED PERSONS:** The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

**TAKINGS IMPACT ASSESSMENT:** The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

**GOVERNMENT GROWTH IMPACT:** TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would expand regulations by broadening the assessment options for EB students. Additionally, the proposed rulemaking would increase the number of individuals subject to the rules' applicability by repealing an existing limitation.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not limit or repeal an existing regulation; would not decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

**PUBLIC BENEFIT AND COST TO PERSONS:** Ms. Tian has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be ensuring that all EB students take the appropriate assessments and have access to the available accommodations. There is no anticipated economic cost to persons who are required to comply with the proposal.

**DATA AND REPORTING IMPACT:** The proposal would have no data and reporting impact.

**PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS:** TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

**PUBLIC COMMENTS:** The public comment period on the proposal begins June 21, 2024, and ends July 22, 2024. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on June 21, 2024. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About\\_TEA/Laws\\_and\\_Rules/Commissioner\\_Rules\\_\(TAC\)/Proposed\\_Commissioner\\_of\\_Education\\_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/).

**STATUTORY AUTHORITY.** The amendments are proposed under Texas Education Code (TEC), §39.023(a), (b), (c), and (l), which specify the required assessments for students in Grades 3-8, students who are significantly cognitively disabled, students enrolled in high school courses, and students whose primary language is Spanish, respectively; §39.023(m), which authorizes the commissioner to develop procedures for a language proficiency assessment committee to determine which students qualify for an exemption from the administration of required assessments; TEC, §39.025, which establishes the secondary-level performance required to receive a Texas high school diploma; TEC, §39.027, which establishes the parameters by which an Emergent Bilingual (EB) student may be granted an exemption from an assessment instrument, defines recent unschooled immigrants and an unschooled asylee or refugee, and authorizes the commissioner to develop an assessment system to evaluate the English language proficiency of all EB students; and the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act, §1111(b)(2)(B) and (b)(2)(G), which specify the academic testing requirements for students in Grades 3-12 and the English language proficiency testing requirements for EB students in Kindergarten-Grade 12, respectively.

**CROSS REFERENCE TO STATUTE.** The amendments implement Texas Education Code, §§39.023, 39.025, and 39.027; and the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act, §1111(b)(2).

*§101.1001. Scope of Rules.*

(a) Except as specified in subsection (b) of this section, the provisions of this division shall apply to all students.

(b) The provisions of §101.1005(b)(1)-(2) of this title (relating to Assessments of Achievement in Academic Content Areas and Courses) and §101.1007 of this title (relating to Assessment Provisions for Graduation) shall apply beginning with students first enrolled in Grade 9 or below in the 2011-2012 school year.

(c) For purposes of this subchapter, a student who has been enrolled in a U.S. school for at least 60 consecutive calendar days during a school year is considered to have been enrolled in a U.S. school for that school year.

*§101.1003. English Language Proficiency Assessments.*

(a) In Kindergarten-Grade 12, an emergent bilingual (EB) student [English learner (EL)], as defined by [the] Texas Education Code (TEC), Chapter 29, Subchapter B, as a student whose primary language is other than English and whose English language skills are such that the student has difficulty performing ordinary classwork [of limited English proficiency], shall be administered state [state-identified] English language proficiency assessments annually in listening, speaking, reading, and writing to fulfill state requirements under [the] TEC, Chapter 39, Subchapter B, and federal requirements.

(b) In rare cases, the admission, review, and dismissal (ARD) committee in conjunction with the language proficiency assessment committee (LPAC) may determine that it is not appropriate for an EB student in Grades 2-12 [ELL] who receives special education services to participate in the general English language proficiency assessment required by subsection (a) of this section for reasons associated with the student's particular disability.

(1) Students with the most significant cognitive disabilities who cannot participate in the general English language proficiency assessment, even with allowable accommodations, and meet the participation requirements for the alternate English language proficiency assessment shall participate in the alternate English language proficiency assessment to meet federal requirements.

(2) The ARD committee shall document the decisions and justifications in the student's individualized education program, and the LPAC shall document the decisions and justifications in the student's permanent record file.

(c) In the case of an EB student [ELL] who receives special education services, the ARD committee in conjunction with the LPAC shall determine and document the need for allowable testing accommodations in accordance with administrative procedures established by the Texas Education Agency.

*§101.1005. Assessments of Achievement in Academic Content Areas and Courses.*

(a) The language proficiency assessment committee (LPAC) shall select the appropriate assessment option for each emergent bilingual (EB) student in Grade 3 or higher [English language learner (ELL)] in accordance with this subchapter. For each EB student [ELL] who receives special education services, the student's admission, review, and dismissal (ARD) committee in conjunction with the student's LPAC shall select the appropriate assessments. The LPAC shall document the decisions and justifications in the student's permanent record file, and the ARD committee shall document the decisions and justifications in the student's individualized education program. Assessment decisions shall be made on an individual student basis and in accordance with administrative procedures established by the Texas Education Agency (TEA).

(b) Except as provided by subsection (c) of this section, an EB student [ELL] shall participate in the Grades 3-8 and end-of-course assessments, with or without allowable testing accommodations, as required by [the] Texas Education Code (TEC), §39.023(a) and (c) [§39.023(e)]. Except as specified in paragraphs (1) and (2) [(1)-(3)] of this subsection, an EB student [ELL] shall be administered the general form of the English-version state assessment.

(1) An EB student in Grades 3-5 may be administered the Spanish-version state assessment, with or without allowable testing accommodations, if the assessment in Spanish is the most appropriate measure of the student's academic progress, in accordance with TEC, §39.023(l).

(2) An EB student in Grade 3 or higher who receives special education services based on the most significant cognitive disabilities may be administered an alternate assessment instrument based on alternative achievement standards, in accordance with TEC, §39.023(b), if the student meets the participation requirements.

[(1) A Spanish-speaking ELL in Grades 3-5 may be administered the state's Spanish-version assessment if an assessment in Spanish will provide the most appropriate measure of the student's academic progress.]

[(2) An ELL in Grade 3 or higher may be administered the linguistically accommodated English version of the state's mathematics, science, or social studies assessment if:]

[(A) a Spanish-version assessment does not exist or is not the most appropriate measure of the student's academic progress;]

[(B) the student has not yet demonstrated English language proficiency in reading as determined by the assessment under §101.1003 of this title (relating to English Language Proficiency Assessments); and]

[(C) the student has been enrolled in U.S. schools for three school years or less or qualifies as an unshooled asylee or refugee enrolled in U.S. schools for five school years or less.]

[(3) In certain cases, an ELL who receives special education services may, as a result of his or her particular disabling condition, qualify to be administered an alternative assessment instrument based on alternative achievement standards.]

(c) In accordance with [the] TEC, §39.027(a), an unshooled asylee or refugee who meets the criteria of paragraphs (1)-(3) of this subsection shall be granted an exemption from an administration of an assessment instrument under [the] TEC, §39.023(a), (b), or (l). This exemption will only apply during the school year an unshooled asylee or refugee is first enrolled in a U.S. public school. An unshooled asylee or refugee is a student who:

(1) enrolled in a U.S. school as an asylee as defined by 45 Code of Federal Regulations §400.41 or a refugee as defined by 8 United States Code §1101;

(2) has a Form I-94 Arrival/Departure record, or a successor document, issued by the United States Citizenship and Immigration Services that is stamped with "Asylee," "Refugee," or "Asylum"; and

(3) as a result of inadequate schooling outside the United States, lacks the necessary foundation in the essential knowledge and skills of the curriculum prescribed under [the] TEC, §28.002, as determined by the LPAC.

(d) For purposes of LPAC determinations in subsection (c) of this section, inadequate schooling outside the United States is defined as little or no formal schooling outside the United States such that the asylee or refugee lacked basic literacy in his or her primary language upon enrollment in school in the United States.

(e) The LPAC shall, in conjunction with the ARD committee if the EB student [ELL] is receiving special education services under [the] TEC, Chapter 29, Subchapter A, determine and document any allowable testing accommodations for assessments under this section in accordance with administrative procedures established by [the] TEA.

[(f) An ELL whose parent or guardian has declined the services required by the TEC, Chapter 29, Subchapter B, is not eligible for special assessment, accommodation, or accountability provisions made available to ELLs on the basis of limited English proficiency.]

(f) [(g)] School districts may administer the assessment of academic skills in Spanish to a student who is not identified as an EB student [limited English proficient] but who participates in a bilingual program if the LPAC determines the assessment in Spanish to be the most appropriate measure of the student's academic progress.

[(h) Policies for including the academic performance of an ELL in state and federal accountability measures, which will take into account the second language acquisition developmental needs of this student population, shall be delineated in the official TEA publications required by Chapter 97 of this title (relating to Planning and Accountability).]

§101.1007. *Assessment Provisions for Graduation.*

(a) Although an emergent bilingual (EB) student [English language learner (ELL)] shall not be exempt from taking an end-of-course assessment for reasons associated with limited English proficiency or inadequate schooling outside the United States, the special provision [provisions] under subsection (b) of this section shall apply to an EB student [ELL] enrolled in an English I course or an English for Speakers of Other Languages (ESOL) I course if the EB student [ELL]:

(1) has been enrolled in U.S. schools for three school years or less or qualifies as an unenrolled asylee or refugee enrolled in U.S. schools for five school years or less; and

(2) the student has not yet demonstrated English language proficiency in reading as determined by the assessment under §101.1003 of this title (relating to English Language Proficiency Assessments).

(b) Concerning the applicable English I assessment [in which the student is enrolled], an EB student [ELL] who meets the eligibility criteria in subsection (a) of this section shall not be required to retake the assessment each time it is administered if the student passes the course but fails to achieve the passing standard on the assessment.

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

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## CHAPTER 129. STUDENT ATTENDANCE SUBCHAPTER AA. COMMISSIONER'S RULES

### 19 TAC §129.1025

The Texas Education Agency (TEA) proposes an amendment to §129.1025, concerning the student attendance accounting handbook. The proposed amendment would adopt by reference the *2024-2025 Student Attendance Accounting Handbook*. The handbook provides student attendance accounting rules for school districts and charter schools.

**BACKGROUND INFORMATION AND JUSTIFICATION:** TEA has adopted its student attendance accounting handbook in rule since 2000. Attendance accounting evolves from year to year, so the intention is to annually update §129.1025 to refer to the most recently published student attendance accounting handbook.

Each annual student attendance accounting handbook provides school districts and charter schools with Family Services Plan (FSP) eligibility requirements of all students, prescribes the minimum requirements of all student attendance accounting systems, lists the documentation requirements for attendance audit purposes, and details the responsibilities of all district personnel involved in student attendance accounting. TEA distributes FSP resources under the procedures specified in each current student attendance accounting handbook. The final version of

the student attendance accounting handbook is published on the TEA website. A supplement, if necessary, is also published on the TEA website.

The proposed amendment to §129.1025 would adopt by reference the student attendance accounting handbook for the 2024-2025 school year. The proposed handbook is available on the TEA website at <https://tea.texas.gov/finance-and-grants/financial-compliance/student-attendance-accounting-handbook>.

Significant changes to the *2024-2025 Student Attendance Accounting Handbook* would include the following.

#### *Section 1, Overview*

Texas Education Core (TEC), Chapter 48, specifically §48.008, establishes the requirements for adopting an attendance accounting system and reporting attendance accounting data through Texas Student Data System Public Education Information Management (TSDS PEIMS). The following changes implement reporting requirements for attendance and funding.

Language referring to the footnote would be revised to show TEC, §48.008.

#### *Section 2, Audit requirements*

TEC, Chapter 42, specifically §42.255, establishes the requirements for violation of presenting reports that contain false information. TEC, §42.008, authorizes the commissioner of education to require audit reports to be submitted for review and analysis. TEC, §44.010, allows for the review of budget, fiscal, and audit reports to determine whether all legal requirements have been met. The following changes implement reporting for audit requirements to account for attendance and funding.

Language would be revised to show the current website for the Texas State Library and Archives Commission.

Language would be revised to state that districts must use the coding structure defined in the Texas Education Data Standards (TEDS) as they relate to attendance.

Language would be revised to state that Student Detail Reports must contain instructional track (Calendar Code) attended by the student.

The language in the Student Detail, Campus Summary, and District Summary Reports would be revised to reflect the expiration of virtual instruction.

Language would be revised to state that charter schools (including those authorized under TEC, Chapter 12, Subchapter G) are required to submit six-week District Summary Reports via the FSP payment system.

Language would be revised to state that additional required documentation must include board-approved local policy that defines the instruction methods.

Language would be revised to state that additional required documents must include any and all bell schedules used during the school year.

#### *Section 3, General Attendance Requirements*

TEC, §25.081, and Chapter 48, specifically §48.005, establish the general parameters for attendance and school operation. The following changes would implement reporting requirements for attendance and funding.

Language would be revised to state that Code 0 will be used for a student receiving special education services who has graduated



but returned or continues enrollment with less than two hours of daily instruction, as well as for students who receive special education and related services through an approved contract with a nonpublic day or nonpublic residential school.

Language would be revised to exclude children served in an early childhood special education (ECSE) program from average daily attendance (ADA) Code 0 who have visual impairments, who are deaf or hard of hearing, or both.

Language would be revised to include students who are 26 years old on September 1 of the current year and are not enrolled in a TEC, Chapter 12, Subchapter G, Adult High School Charter School Program.

Language would be revised to state that Code 9 applies to a student who is enrolled in a virtual learning program but not in membership.

Language referencing the funding table would be revised to show changes.

Language would be revised to state that, for funding purposes, the number of days of participation for any student in any special program cannot exceed the number of days present for the same reporting period for the same instructional track.

Language would be expanded to include students who are continuing enrollment to receive special education services or students who have returned to school to receive special education services after receiving a diploma as students who are eligible to continue to generate ADA for funding purposes.

Language would be revised to state that a student may also be entitled to receive special education services through age 21 if the student has a disability and the district determines the student would have met the Texas criteria to continue the receipt of special education services after having been awarded a diploma.

Language in the Age Eligibility table would be revised to align with changes made in the proposed handbook.

Language would be revised to state that students aged 22 to 25 who previously received special education services and are enrolled to complete high school requirements are not eligible for special education weighted state funding but qualify for other weighted state funding.

The footnotes related to maximum age eligibility and enrollment procedures have been revised to show 19 TAC §89.1070(f) and TEC, §26.0125.

Language would be revised to state that a district may accept documentation of an updated address, telephone number, and email address electronically for a student who is continuing enrollment in the district from the prior school year.

The footnotes containing the link and Frequently Asked Questions (FAQ) for residency requirements would be updated.

The name of the Compliance and Inquiries Division would be updated.

Language would be revised to state that students who begin school as homebound, including Compensatory Education Home Instruction (CEHI), may indicate their official entry date as the first day of the school year as long as all the documentation requirements are met and the full number of hours needed are provided by the end of that week.

Language referencing student entitlement to attend school in a particular district would be deleted.

Language stating that districts must accept the transfer application of students whose parent or guardian is an active military servicemember or peace officer and requests a transfer to another campus in the currently enrolled district or to another adjoining school district would be moved from the incorrect section and added to the correct sections.

Language would be revised to change the term "homeless" to "students who experience homelessness."

Language would be revised to state that a student who experiences homelessness or a student who is in foster care should be admitted temporarily for 30 days if acceptable evidence of vaccination is not available.

Language would be revised to list the requirements to enroll an infant or toddler in the district or the Regional Day School Program for the Deaf (RDSPD) that will be providing the appropriate services as described in the Individualized Family Services Plan (IFSP).

Language would be revised to state that once withdrawn, students in Grades 7-12 must be reported as school leavers and cannot be considered dropouts according to the C162 Exit Withdraw Type table in TEDS.

Language concerning student record and record transfer would be revised to include an original copy of the home language survey (HLS), Language Proficiency Assessment Committee (LPAC) documentation, and either parental permission/denial forms for bilingual education programs or English as a second language (ESL) program services, if applicable.

Language would be revised to include an alternative attendance-taking time for students receiving special education services through an 18 plus program that provides community-based instruction.

Language would be revised to state that if a school district provides instructional services for special education after school or on Saturday, the contact hours may be counted for job coaching for a student in a work-based learning opportunity that is available only in the evening.

Language would be revised in an example referring to attendance and students who are not in membership or are served outside the home district.

Language referring to effective dates for program changes would be deleted.

Language would be revised to state that the district providing instruction must establish a written agreement with the nonresidential treatment facility. Students receiving special education services in this situation may still be eligible for those services during their time at a nonresidential treatment facility.

Language would be revised to state that a student who has an infant (0-6 months) considered medically fragile and who meets the criteria for General Education Homebound (GEH) program may also be considered for the GEH program.

Language referring to provision of additional remote instruction in the GEH program would be removed.

Language in the footnote would be revised to show the current link to the Texas Medical Board.

References to supplementing in-person homebound instruction with virtual instruction would be deleted.

Language would be revised to state that students who begin school on GEH may indicate their official entry date as the first day of the school year as long as all the documentation requirements are met and the full number of hours needed are provided by the end of that week.

Language would be revised in the table showing required number of operational and instructional minutes to include Subchapter G, Adult High School Charter School Program. The footnote would be revised to show TEC, §12.251.

Language would be revised to state that all the students in a particular school or track will have the same number of school days (Number Days Taught).

Language would be revised to update waivers listed in subsection 3.8, Calendar.

Language would be revised to state that days with low attendance that do not qualify for a waiver must still be reported as instructional days.

Language would be revised to state that, effective with the 2025-2026 school year, school districts and open-enrollment charter schools with four-day school weeks are not eligible to receive staff development waivers.

Language would be revised to state that the staff development waiver only covers real-time staff development involving all district staff at once, replacing student instruction. Exchange or trade days or individual professional development outside regular hours cannot count toward waiver requirements for staff development minutes.

Language would be revised to state that if TEA grants a district a waiver for a missed school day or a low-attendance day, the district must treat the day as a non-school day in the district's student attendance accounting system and report the day with a Calendar Waiver Event Type (E1570).

Language would be revised to state that a waiver for a dual credit course must be submitted using the Other Waiver application in TEA's automated waiver application system.

Language referencing a school safety training waiver would be added.

Language referencing footnote TEC, §25.0815, would be added.

Language would be revised to specify the date for initial TSDS PEIMS summer submission and the dates for resubmission.

Language would be revised to reflect changes in examples listed in Section 3.

Language would be added to state example for using the life-threatening illness provision to claim funding.

Language would be revised to show the change in numbering order of examples.

#### *Section 4, Special Education*

TEC, Chapter 48, specifically §48.102, authorizes funding for special education in certain circumstances. TEC, §48.004, authorizes the commissioner to require reports that may be necessary to implement and administer the FSP. The following changes would implement reporting for special education to account for attendance and funding.

Language would be added to state that special education staff, not attendance staff, must provide coding information. Special education directors ensure accuracy of data and communicate

to attendance personnel. Special education staff must check the Student Detail Report at the end of each six-week period.

Language would be revised to state that eligibility for special education and related services is determined for children aged birth to two years who have a visual impairment (VI), who are deaf or hard of Hearing (DHH), or who are both.

Language would be revised to state that a student is coded as 00 in the TSDS PEIMS Student Special Education Program Association Entity when receiving only speech therapy, regardless of the delivery model, or when receiving speech therapy along with other related services but no instructional special education services.

Language would be revised to describe situations when a student will not have an instructional setting code of 00.

Language would be revised to state that for code 1, home instruction may be used for infants or toddlers (birth to two years of age) with VI or DHH as determined by the IFSP committee, and for students aged three to five as decided by the admission, review, and dismissal (ARD) committee.

Language would be revised to state that in making eligibility and placement decisions for students six years of age and older, the ARD committee must consider information from a licensed physician.

Language would be revised to state that infants and toddlers (children from birth through two years of age) who are DHH, VI, or both may receive home instruction as determined by the IFSP team and be reported as homebound.

Language would be revised to state that students who begin school as homebound, including CEHI, may indicate their official entry date as the first day of the school year as long as all the documentation requirements are met and the full number of hours needed are provided by the end of that week.

Language would be revised to state that code 02 is used for students receiving special education in a hospital or residential care facility by district personnel. If a student in such a facility receives services on a campus outside their parent's district, they are coded with a residential care and treatment code. If the parent resides in the facility's district, the student is reported based on the arrangement at the campus. A student who is receiving special education services by school district personnel at the facility but is not residing in the facility is in an off-home campus instructional setting.

Language would be revised to state that code 08 is used for students in job training aligned with their postsecondary employment goals with direct special education involvement in an individualized education program (IEP) implementation. It covers services in Career Technical Education (CTE) classes or specified work-based learning. Eligibility requires the student's employment in a job with special education personnel directly involved, excluding mere employer consultation.

Language would be revised to state that a student must meet special education eligibility requirements to be reported as a student in special education.

Language would be revised to state that codes 41 or 42 are used for students receiving related services in a special education setting, except if they receive only speech therapy alongside other related services. If a student gets special education instruction and speech therapy, the resource room code is used and Special Education Program Service 25 is reported.

Language would be revised to state that code 60 is used for students who are served in off-campus programs as these are defined in 19 TAC §89.1094.

Language would be revised to include Student School Association Entity in code 71.

Language would be revised to state that codes 81-89 are used for students in residential care facilities who receive special education services on a local district campus where the facility is located, but their parents do not reside in that district. Students under Department of Family and Protective Services conservatorship in relative or kinship care or foster homes will not use this code, except those in cottage homes or congregate care meeting the criteria.

Language would be revised to state that Code 87 indicates that a student resides in a facility and receives special education and related services by school district personnel in a facility (other than the one in which the student resides and other than a non-public day school) not operated by a school district.

Language would be revised to state that codes 91-98 will be used when a student receives special education and related services at South Texas Independent School District or Windham School District. This includes partial hospitalization programs or other outpatient facilities at which school district personnel are providing instruction. The student is in a non-district community setting, aiding their transition to postsecondary education, integrated employment, or independent living, with instruction or involvement from district personnel aligning with their individual transition goals.

Language would be revised to state that code 96 also applies to students who are receiving services, after having met graduation requirements and determined eligible by the student's ARD committee, on property that is owned or operated by a school district.

Language would be revised to state that Student Detail Reports and the TSDS PEIMS Student Special Education Program Association Entity must contain speech therapy reporting information (Descriptor Table Special Education Program Service (C341)) for any student receiving special education services.

Language would be revised to state the specific usage of Special Education Program Service 24.

Language would be revised to state that for Special Education Program Service 25, the student's TSDS PEIMS Special Education Program Reporting Period Attendance Entity must display both the student's primary instructional setting code (other than 00) and code 00. However, if the student is in a mainstream setting and receives speech therapy, only code 00 should be reported.

Language would be revised to state the specific usage of Special Education Program Service 23.

Language would be revised to state that, starting from the 2025-2026 school year, TEA will gradually remove references to programs for children with disabilities (PPCD) in its publications to emphasize that children eligible for these services must be served in the least restrictive environment outlined in their IEP.

Language referencing ECSE services and Kindergarten programs would be deleted. A revision would be made to state that the PPCD indicator should be changed when a student turns six.

Language referencing ECSE services and Head Start would be deleted along with the footnotes.

Language referencing shared service agreements would be revised to state that students must be reported on the Student School Association Entity as a transfer student (attribution 06 - Transfer Student).

Language would be revised to include changes for students who receive instructional services through the RDSPD.

Language would be revised to reflect changes in the coding chart table detailing services for students with disabilities.

Language would be revised to state that district must report Extended School Year services data to TEA using Extended School Year Services Attendance Entity according to the TEDS.

Language would be revised to reflect changes in the examples for Vocational Adjustment Class specifically for the local credit course and the CTE classes.

Language would be revised in mainstream examples to indicate changes in reporting of instructional codes using Special Education Program Service.

Language referencing examples for resource room codes 41 and 42 would be revised.

Language would be revised to reflect changes in the Self-Contained, Regular Campus examples, specifically for the reporting of the instructional setting code.

Language would be revised to reflect changes in the Off Home Campus examples, specifically for the reporting of the instructional setting code.

Language would be revised to reflect changes in the Speech Therapy only and Speech Therapy with Other Services examples, specifically for the reporting of instructional setting code.

#### *Section 5, Career and Technical Education (CTE)*

TEC, Chapter 48, including §48.106, authorizes funding for CTE in certain circumstances. TEC, Chapter 29, Subchapter F, establishes general parameters for CTE programs. TEC, §48.004, authorizes the commissioner to require reports as may be necessary to implement and administer the FSP. The following changes would implement reporting for CTE to account for attendance and funding.

Language would be revised to reflect the current link for state-approved CTE courses.

Language referencing enrollment procedures would be revised to state that the ARD committee will create the student's transition plan, aligning courses of study with their postsecondary goals and updating the personal graduation plan as needed for students receiving special education services.

Language would be revised to state that after five consecutive days without CTE services being provided, local education agency (LEA) personnel must remove the student from the TSDS PEIMS CTE Program Reporting Period Attendance Entity's eligible days present effective the first day of placement in the disciplinary setting.

Language would be revised to state that LEAs can claim a maximum of three contact hours (V3) for a single course. To qualify for CTE weighted funding, course periods must average a minimum of 45 minutes per day throughout the calendar year including pep rallies, assemblies, modified bell schedules etc.,

but excluding days covered under Attendance Accounting during Testing Days, Staff Professional Development Waivers, and Closures for Bad Weather or Other Health and Safety Issues.

Language would be revised to show updated CTE Weighted Funding Tiers as calculated by TEA.

Language would be revised to state that student instruction during one class period per week is required to be a minimum of 45 minutes in length in a practicum instructional arrangement.

Language would be revised to state that adaptations such as accommodations or modifications must be implemented as specified by a student's IEP, as applicable, for project-based capstone courses.

Language would be revised to state that to receive CTE weighted funding, class periods are required to be a minimum of 45 minutes in length and an average of 45 minutes during the calendar year.

Language throughout the examples in section 5 would be revised to show the change from course Service ID to CTE Service ID.

#### *Section 6, Bilingual/English as a Second Language (ESL)*

TEC, Chapter 48, specifically §48.105, authorizes funding for bilingual or special language programs in certain circumstances. TEC, Chapter 29, Subchapter B, establishes general parameters for bilingual and special language programs. TEC, §48.004, authorizes the commissioner to require reports as may be necessary to implement and administer the FSP. The following changes would implement reporting for bilingual and special language programs to account for attendance and funding.

Language would be revised to state that reclassification is when the LPAC decides an emergent bilingual (EB) student meets criteria to be English proficient (EP), entering year one of monitoring. Exit occurs when the student is no longer classified as EB, ending bilingual or ESL program participation per LPAC recommendation and parental approval.

Language would be revised to state that LEAs are required to clarify in a timely manner which of the two non-English languages is used most of the time, if multiple languages are indicated in the HLS.

Language would be revised in the footnote to show the current link for appropriate bilingual program type codes.

Language would be revised to state that for students transferring within Texas, if the sending district cannot provide the original HLS, the receiving district documents that the original HLS was not included in the student's cumulative folder and documents the attempts and/or reason why the HLS was not obtained.

Language would be revised to state that after five consecutive days without participation in the bilingual or ESL education program, district personnel should remove the student's days from the TSDS PEIMS Bilingual ESL Program Reporting Period Attendance Entity.

Language would be revised to provide the current link for current reclassification requirements.

Language would be revised to update the list of required documents.

Language would be revised to provide the current link for additional resources for program implementation.

#### *Section 7, Prekindergarten (Pre-K)*

TEC, Chapter 29, Subchapter E, establishes special general parameters for prekindergarten (pre-K) programs. TEC, Chapter 48, including §48.005, establishes ADA requirements and authorizes funding for certain circumstances. TEC, §48.004, authorizes the commissioner to require reports that may be necessary to implement and administer the FSP. The following changes would implement reporting for prekindergarten to account for attendance and funding.

Language would be revised to state that, regardless of whether a district runs a three-year-old pre-K program, students three years of age who are eligible for special education and related services may be placed in a pre-K class by the ARD committee.

Language would be revised to show a change in terminology from an English learner to emergent bilingual.

Language would be revised to include documentation regarding what languages were used in the home setting if the student had a previous home setting.

Language related to pre-K eligibility based on homelessness would be deleted.

#### *Section 9, Pregnancy-Related Services (PRS)*

TEC, Chapter 48, including §48.104, authorizes funding for students who are pregnant under certain circumstances. TEC, §48.004, authorizes the commissioner to adopt reports that may be necessary to implement and administer the FSP. The following changes would implement reporting for pregnancy-related services (PRS) to account for attendance and funding.

Language would be revised to state that students who do not come to school and who do not receive CEHI or general education or special education homebound services must be counted absent in accordance with the charts provided in this section.

Language would be revised to state the different entities that PRS student needs to identify within the TSDS PEIMS.

Language would be revised to include the current link for Texas Medical Board.

Language would be revised to state that for a baby recovery period, a note from a medical practitioner stating the infant's need for hospital confinement is required.

Language would be revised to state that a student who commences school on homebound (including CEHI) may indicate their official entry date as the first day of the school year as long as all the documentation requirements are met and the full number of hours needed are provided by the end of that week.

Language would be revised to state that a pregnant student's ARD committee and PRS program staff members must collaboratively address the student's service needs.

Language would be revised to state that the period of homebound postpartum services for a student receiving special education services may exceed 10 weeks if determined necessary by the ARD committee.

Language would be revised to state that a CEHI teacher may maintain additional documentation as to when a student physically returns to campus to resume their regular schedule. This may or may not be the date the student was scheduled to return.

Language would be revised to show the accurate CTE Program Association Entity.

Language would be revised in the example to state that if all of the required documentation is obtained and the student is provided the full amount of CEHI hours by the end of the first week, the district may claim her entry date.

#### *Section 10, Alternative Education Programs (AEPS) and Disciplinary Removals*

TEC, Chapter 48, specifically §48.270, establishes the requirements for violation of presenting reports that contain false information. TEC, §48.004, authorizes the commissioner to adopt reports that may be necessary to implement and administer the FSP. TEC, §44.010, allows for the review of budget, fiscal, and audit reports to determine whether all legal requirements have been met. The following changes would implement reporting for audit requirements to account for attendance and funding.

Language would be revised to state that the leaver code reported on the TSDS PEIMS Student School Association Entity is 98.

Language would be revised to state that neither the TEC nor the TAC outline teacher requirements for the disciplinary alternative setting of an in-school suspension program.

Language would be revised to state that a district should contact TEA to establish a separate campus for the district's Juvenile Justice Alternative Education Program (JJAEP) students and enroll students at this JJAEP campus as the students are placed at the JJAEP facility.

Language would be revised to state that while in a Disciplinary Alternative Education Program (DAEP) or JJAEP, a student served by special education must receive all current IEP-designated services.

Language would be revised to state that a student is not eligible for ADA if the student has been assigned out-of-school suspension for the first day of school. A student cannot be absent on the first day of school.

#### *Section 11, Nontraditional Programs*

TEC, Chapter 29, Subchapter A, establishes special general parameters for nontraditional programs. TEC, Chapter 48, including §48.005, establishes ADA requirements and authorizes funding for certain circumstances. TEC, §48.004, authorizes the commissioner to require reports that may be necessary to implement and administer the FSP. The following changes would implement reporting for nontraditional programs to account for attendance and funding.

Language would be revised to reflect changes made to the College Credits Program table. Language would be revised to state the requirements for a dual credit or dual enrollment course.

Language would be revised to state that dual credit includes a course for which a high school student may earn credit only at an institution of higher education (previously referred to as a dual enrollment course) if the course meets the requirements of 19 TAC Chapter 4, Subchapter D. Dual credit and dual enrollment are synonymous. An institution is not required to offer dual credit courses for high school students.

Language would be revised to state student eligibility requirements specific to dual credit courses.

Language referencing the table for minimum passing standards to demonstrate dual credit eligibility would be deleted.

Language would be revised to state that a student enrolled in a TEA-designated Early College High School or Pathways in Tech-

nology Early College High School (P-TECH) program may enroll in dual credit courses if the student demonstrates college readiness in alignment 19 TAC §§4.51-4.63 and 4.81-4.86.

Language would be revised to state that Additional Days School Year (ADSY) provides half-day formula funding for school systems that add instructional days to any of their pre-K through Grade 5 campuses. (TEC, §48.0051)

Language would be revised to state that should an LEA utilizing ADSY funding file for and receive a low attendance waiver, the granting of a low attendance waiver does not reduce the 180 days of instruction for ADSY purposes. An ADSY waiver is not required to be filed for the same date as an approved low-attendance-day waiver.

Language would be revised to state that special education services for students who have completed credit and assessment requirements for graduation and have been determined eligible by their ARD committee to continue enrollment as specified in 19 TAC §89.1070(h) or (i) do not meet the statutory eligibility for Optional Flexible School Day Program (OFSDP). The district should follow the schedule of services in the IEP and claim the applicable ADA funding.

Language would be revised to state that changing the record type during a reporting period is allowed in specific cases, like when a student starts OFSDP, when a student transitions in or out of DAEP, or when an OFSDP student begins receiving PRS CEHI services mid-reporting period.

Language referencing funding eligibility for students 21 through 25 years of age would be deleted.

Language would be revised to state that all attendance must be reported through the OFSDP Flexible Regular Program Reporting Period Attendance Entity.

Language would be revised to state that high school equivalency program attendance is reported using the Flexible Regular Program Reporting Period Attendance Entity.

#### *Section 12, Virtual, Remote, and Electronic Instruction*

TEC, Chapter 30A, establishes the general parameters for the Texas Virtual School Network (TXVSN). TEC, §30A.153, authorizes funding for the TXVSN for the FSP under certain circumstances. TEC, §48.004, authorizes the commissioner to adopt reports that may be necessary to implement and administer the FSP. The following changes would implement reporting for the TXVSN to account for attendance and funding.

Language would be revised to provide the current link for a list of TXVSN online schools officially recognized by the agency.

Language would be deleted for Remote Instruction That is Not Delivered through the TXVSN.

Language would be revised to state that a student who has an infant (0-6 months) considered medically fragile and who meets the criteria for Remote Conferencing-Regular Students may also be considered for the GEH program. If a waiver is granted, the affected student will generate attendance according to the two-through-four-hour rule and based on if the student is virtually present at the official attendance-taking time.

Language would be revised to state that the district can submit a request for a general waiver using TEA's automated waiver application system, which is available in TEA Login (TEAL) and cite the requirements in the general waiver section.

Language would be deleted from Remote Conferencing-Students Receiving Special Education and Related Services.

Language would be revised to state if a waiver is approved, attendance will be tracked based on the two-through-four-hour rule. If a student is scheduled to be on campus, their attendance will be recorded if they are physically present. If they are scheduled to be off campus, they will be marked as present if they attend virtually at the official attendance time.

Language referencing the entire section on Virtual Instruction (Local Remote Learning Programs) under TEC, §29.9091, or as modified by TEC, §48.007(c), would be deleted.

### *Section 13, Appendix: Average Daily Attendance (ADA) and Funding*

Language would be revised to state that days in attendance are the total number of days that a student was in attendance (present at the designated attendance-taking time or absent for a purpose described by 19 TAC §129.1025) during a specific period (for example, a 180-day school year) while that student was eligible to generate funding (in membership).

Language would be revised to provide the current link for the CTE Program Reporting Period Attendance Entity.

Language would be revised to provide the current link for the course level provided in the CTE Lookup - Table.

Language would be revised to provide the current link for further guidance on the Bilingual Education Allotment.

### *Glossary*

Language would be revised to update the definition of at-risk.

Language would be revised to update the definition of bilingual/ESL eligible days.

Language referencing EP would be deleted.

Language would be revised to update the definition of in-school suspension, prekindergarten (pre-K), and reclassification.

**FISCAL IMPACT:** Amy Copeland, associate commissioner for finance and chief school finance officer, has determined that for the first five-year period the proposal is in effect, there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

**LOCAL EMPLOYMENT IMPACT:** The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

**SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT:** The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

**COST INCREASE TO REGULATED PERSONS:** The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

**TAKINGS IMPACT ASSESSMENT:** The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

**GOVERNMENT GROWTH IMPACT:** TEA staff prepared a Government Growth Impact Statement assessment for this proposed

rulemaking. During the first five years the proposed rulemaking would be in effect, it would expand and limit an existing regulation. The proposed changes to the *2024-2025 Student Attendance Accounting Handbook* would amend requirements and provide clarity regarding student attendance accounting procedures. In some instances, the proposed changes would add information, and in some instances, information would be removed.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

**PUBLIC BENEFIT AND COST TO PERSONS:** Ms. Copeland has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be to continue to inform the public of the existence of annual publications specifying attendance accounting procedures for school districts and charter schools. There is no anticipated economic cost to persons who are required to comply with the proposal.

**DATA AND REPORTING IMPACT:** The proposal would have no data and reporting impact.

**PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS:** TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

**PUBLIC COMMENTS:** The public comment period on the proposal begins June 21, 2024, and ends July 22, 2024. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on June 21, 2024. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About\\_TEA/Laws\\_and\\_Rules/Commissioner\\_Rules\\_\(TAC\)/Proposed\\_Commissioner\\_of\\_Education\\_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/).

**STATUTORY AUTHORITY.** The amendment is proposed under Texas Education Code (TEC), §7.055(b)(35), which states that the commissioner shall perform duties in connection with the Foundation School Program (FSP) as prescribed by TEC, Chapter 48; TEC §12.251, which states the definition of adult high school charter school programs; TEC, §25.001, which states that a school district must allow for an active duty member of the armed forces of the United States to be allowed 90 days to provide proof of residency; TEC, §25.0344, which states that a parent serving as a peace officer or service member may request a transfer to a district and campus of their choice; TEC, §25.081, which states that, for each school year, each school district must operate so that the district provides for at least 75,600 minutes, including time allocated for instruction, intermissions, and recesses, for students; TEC, §25.081(d), which authorizes the commissioner to adopt rules to implement the section; TEC, §25.081(g), which states that a school district may not provide student instruction on Memorial Day but that if

a school district would be required to provide student instruction on Memorial Day to compensate for minutes of instruction lost because of school closures caused by disaster, flood, extreme weather conditions, fuel curtailment, or another calamity, the commissioner shall approve the instruction of students for fewer than the number of minutes required under TEC, §25.081(a); TEC, §25.0812, which states that school districts may not schedule the last day of school for students before May 15; TEC, §25.087, which provides purposes for which a school district shall excuse a student from attending school; TEC, §28.02124, which states that a parent may request that a student repeat a course for high school credit; TEC, §29.081, which states that attendance accounting and FSP funding for Optional Flexible School Day Program participation may be generated through a remote or hybrid dropout recovery education program; TEC, §29.0822, which enables a school district to provide a program under this section that meets the needs of students described by TEC, §29.0822(a), for a school district that meets application requirements, including allowing a student to enroll in a dropout recovery program in which courses are conducted online. TEC, §29.0822, authorizes the commissioner to adopt rules for the administration of the section; TEC, §30A.153, which states that, subject to the limitation imposed under TEC, §30A.153(a-1), a school district or open-enrollment charter school in which a student is enrolled is entitled to funding under TEC, Chapter 48, or in accordance with the terms of a charter granted under TEC, §12.101, for the student's enrollment in an electronic course offered through the state virtual school network in the same manner that the district or school is entitled to funding for the student's enrollment in courses provided in a traditional classroom setting, provided that the student successfully completes the electronic course; TEC, §30A.153(d), which authorizes the commissioner to adopt rules necessary to implement the section, including rules regarding student attendance accounting; TEC, §48.004, which states that the commissioner shall adopt rules, take action, and require reports consistent with TEC, Chapter 48, as necessary to implement and administer the FSP; TEC, §48.005, which states that average daily attendance (ADA) is the quotient of the sum of attendance for each day of the minimum number of days of instruction as described under TEC, §25.081(a), divided by the minimum number of days of instruction; TEC, §48.005(m), which authorizes the commissioner to adopt rules necessary to implement the section and subsections (m-1) and (m-2), which address virtual or remote instruction-related funding; TEC, §48.102, which states that for each student in average daily attendance in a special education program under TEC, Chapter 29, Subchapter A, in a mainstream instructional arrangement, a school district is entitled to an annual allotment equal to the adjusted basic allotment multiplied by 1.15. For each full-time equivalent student in average daily attendance in a special education program under TEC, Chapter 29, Subchapter A, in an instructional arrangement other than a mainstream instructional arrangement, a district is entitled to an annual allotment equal to the adjusted basic allotment multiplied by a weight determined according to its instructional arrangement; TEC, §48.103, which states that for each student that a district serves who has been identified as having dyslexia or a related disorder, the district is entitled to an annual allotment equal to the basic allotment multiplied by 0.1 or a greater amount provided by appropriation; TEC, §48.104, which states that for each student who does not have a disability and resides in a residential placement facility in a district in which the student's parent or legal guardian does not reside, a district is entitled to an annual allotment equal to the basic allotment multiplied

by 0.2 or, if the student is educationally disadvantaged, 0.275. For each full-time equivalent student who is in a remedial and support program under TEC, §29.081, because the student is pregnant, a district is entitled to an annual allotment equal to the basic allotment multiplied 2.41; TEC, §48.105, which states that for each student in average daily attendance in a bilingual education or special language program under TEC, Chapter 29, Subchapter B, a district is entitled to an annual allotment equal to the adjusted basic allotment multiplied by 0.1 or 0.15 if the student is in a bilingual education program using a dual language immersion/one-way or two-way program model, and for students not described in subdivision (1), 0.05 if the student is in bilingual education program using a dual language immersion/two-way program model; TEC, §48.106, which states that for each full-time equivalent student in average daily attendance in an approved career and technology education program in Grades 7-12 or in career and technology education programs, a district is entitled to an annual allotment equal to the basic allotment multiplied by a weight of 1.35 and \$50 for each student that is enrolled in two or more advanced career and technology classes for a total of three or more credits; a campus designated as a Pathways in Technology Early College High School (P-TECH) school under TEC, §29.556; or a campus that is a member of the New Tech Network and that focuses on project-based learning and work-based education; TEC, §48.108, which states that for each student in average daily attendance in Kindergarten-Grade 3, a district is entitled to an annual allotment equal to the basic allotment multiplied by 0.1 if the student is educationally disadvantaged or a student of limited English proficiency, as defined by TEC, §29.052, and in bilingual education or special language program under TEC, Chapter 29, Subchapter B; TEC, §48.109, which states that for each student in the gifted and talented category, the district is entitled to an annual allotment equal to the basic allotment multiplied by 0.07 for each school year or a greater amount provided by appropriation. If by the end of the 12th month after receiving an allotment for developing a program a district has failed to implement a program, the district must refund the amount of the allotment to the agency within 30 days. Not more than five percent of a district's students in average daily attendance are eligible for funding under this section. If the state funds exceed amount of state funds appropriated in any year for the programs, the commissioner shall reduce the districts tier one allotment. If funds are less than the total amount appropriated for the school year, the commissioner shall transfer the remainder to any program. After each district has received allotted funds for this program, the State Board of Education may use up to \$500,000 of the funds allocated under this section for other programs; TEC, §48.270, which states that when, in the opinion of the agency's director of school audits, audits or reviews of accounting, enrollment, or other records of a school district reveal deliberate falsification of the records, or violation of the provisions of TEC, Chapter 48, through which the district's share of state funds allocated under the authority of this chapter would be, or has been, illegally increased, the director shall promptly and fully report the fact to the State Board of Education, the state auditor, and the appropriate county attorney, district attorney, or criminal district attorney; and TEC, §49.204, which states that a school district with a local revenue in excess of entitlement may reduce the district's local revenue level by serving nonresident students who transfer to the district and are educated by the district but who are not charged tuition.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§7.055(b)(35), 12.251, 25.001,

25.0344, 25.081, 25.0812, 25.087, 28.02124, 29.081; 29.0822, 30A.153, 48.004, 48.005, 48.102, 48.103, 48.104, 48.105, 48.106, 48.108, 48.109, 48.270, and 49.204.

§129.1025. *Adoption by Reference: Student Attendance Accounting Handbook.*

(a) The student attendance accounting guidelines and procedures established by the commissioner of education under §129.21 of this title (relating to Requirements for Student Attendance Accounting for State Funding Purposes) and the Texas Education Code, §48.004, to be used by school districts and charter schools to maintain records and make reports on student attendance and student participation in special programs will be published annually.

(b) The standard procedures that school districts and charter schools must use to maintain records and make reports on student attendance and student participation in special programs for school year 2024-2025 [2023-2024] are described in the official Texas Education Agency (TEA) publication 2024-2025 [2023-2024] *Student Attendance Accounting Handbook*, which is adopted by this reference as the agency's official rule. A copy of the 2024-2025 [2023-2024] *Student Attendance Accounting Handbook* is available on the TEA website with information related to financial compliance. The commissioner will amend the 2024-2025 [2023-2024] *Student Attendance Accounting Handbook* by reference and amend this subsection and this subsection adopting it by reference, as needed.

(c) Data from previous school years will continue to be subject to the student attendance accounting handbook as the handbook existed in those years.

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

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

TRD-202402549

Cristina De La Fuentes-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: July 21, 2024

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



## TITLE 22. EXAMINING BOARDS

### PART 24. TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

#### CHAPTER 577. GENERAL ADMINISTRATIVE DUTIES

##### SUBCHAPTER B. STAFF

###### 22 TAC §577.15

The Texas Department of Licensing and Regulation (Department), on behalf of the Texas Board of Veterinary Medical Examiners (TBVME), proposes amendments to an existing rule at 22 Texas Administrative Code (TAC), Chapter 577, Subchapter B, §577.15, regarding the General Administrative Duties. These proposed changes are referred to as the "proposed rules."

###### EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 22 TAC, Chapter 577, implement Texas Occupations, Chapter 801, Veterinarians.

The proposed rules amend §577.15, Fee Schedule. The proposed rules are required to comply with the General Appropriations Act, House Bill (HB) 1, 88th Legislature Regular Session (2023) at Article VIII, Section 1, which requires certain agencies, including the TBVME, to bring in enough revenue to cover the appropriations given to the TBVME. Therefore, the TBVME is required to increase its revenue through assessed fees to cover the additional appropriations.

The increased appropriation amount of this biennium is expected to decrease next biennium since the amount of funding the TBVME needs will decrease once a new licensing system has been procured. At that time the TBVME will propose rules to decrease the fee amounts so revenue projections for these proposed rules are only for the first two years following adoption.

###### Advisory Board Recommendations

The proposed rules were presented to and discussed by the State Board of Veterinary Medical Examiners (Board) at its meeting on January 23, 2024. The Board did not make any changes to the proposed rules. The Board voted and recommended that the proposed rules be published in the *Texas Register* for public comment.

###### SECTION-BY-SECTION SUMMARY

The proposed rules amend §577.15, Fee Schedule. The proposed rules increase the license application fees for all licenses issued under the statute and rules.

###### FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Tony Couvillon, TDLR Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rules are in effect, there are no estimated additional costs or reductions in costs to the state and local governments as a result of enforcing or administering the proposed rules.

Mr. Couvillon has also determined that for each year of the first five years the proposed rules are in effect, there is no estimated loss in revenue to the state or to local governments as a result of enforcing or administering the proposed rules.

Mr. Couvillon has determined that for each year of the first five years the proposed rules are in effect, there will be implications relating to an increase in revenue.

The 88th Legislature appropriated additional funding to the TBVME for various purposes in the Fiscal Year 2024-25 biennium. The General Appropriations Act requires certain Article VIII agencies, of which TBVME is one, to bring in enough revenue to cover the appropriations given to the TBVME. Therefore, the TBVME is required to increase its revenue through assessed fees to cover the additional appropriations.

The increased appropriation amount of this biennium is expected to decrease next biennium since the amount of funding the TBVME needs will decrease once a new licensing system has been procured. At that time, the TBVME will propose rules to decrease the fee amounts so revenue projections for these proposed rules are only for the first two years following adoption.

Veterinary license fees are currently \$515 for an initial license and \$195 for a renewal license. The proposed rules increase the fees to \$560 for an initial license and \$340 for the license renewal. It is estimated that approximately 700 individuals will apply for a new license each year of the first five years, and



approximately 10,000 license holders will renew each year. However, given the date the proposed rules will take effect if adopted, approximately 230 new applicants can be expected to apply in the remainder of the first fiscal year, and approximately 3,350 license holders can be expected to renew during that same time period. Thus, the expected revenue will be \$128,800 and \$1,139,000 from new and renewal license applications in the first year, and \$389,200 and \$3,400,00 from new and renewal license applications in the second year, for estimated revenue totals of \$1,267,800 in the first year and \$3,789,300 in the second year. The revenue for this license type would have been expected to be approximately \$771,700 and \$2,307,925 for the same time periods at current fee amounts, so the extra revenue from this license type is estimated to be \$496,100 in the first year and \$1,481,275 in the second year.

Special Veterinary license fees are currently \$575 for an initial license and \$209 for a renewal license. The proposed rules increase the fees to \$630 for an initial license and \$250 for the license renewal. It is estimated that approximately six individuals will apply for a new license each year of the first five years, and approximately 50 license holders will renew each year. However, given the date the proposed rules will take effect if adopted, approximately two new applicants can be expected to apply in the remainder of the first fiscal year, and approximately 20 license holders can be expected to renew during that same time period. Thus, the expected revenue will be \$1,260 and \$5,000 from new and renewal license applications in the first year, and \$3,780 and \$12,500 from new and renewal license applications in the second year, for estimated revenue totals of \$6,260 in the first year and \$16,280 in the second year. The revenue for this license type would have been expected to be approximately \$5,330 and \$13,900 for the same time periods at current fee amounts, so the extra revenue from this license type is estimated to be \$930 in the first year and \$2,380 in the second year.

Inactive Veterinary license fee is currently \$109 for an inactive renewal license. The proposed rules increase the fee to \$140 for the inactive license renewal. It is estimated that approximately 530 license holders will renew as inactive each year. However, given the date the proposed rules will take effect if adopted, approximately 175 license holders can be expected to renew as inactive in the remainder of the first fiscal year. Thus, the expected revenue will be \$24,500 from inactive license renewal applications in the first year, and \$74,200 from inactive license renewal applications in the second year. The revenue for this license type would have been expected to be approximately \$19,075 and \$57,770 for the same time periods at current fee amounts, so the extra revenue from this license type is estimated to be \$5,425 in the first year and \$16,430 in the second year.

Veterinary Temporary license fee is currently \$200 for the license. The proposed rules increase the fee to \$220 for the license. It is estimated that approximately 20 individuals will apply each year. However, given the date the proposed rules will take effect if adopted, approximately six license holders can be expected to apply in the remainder of the first fiscal year. Thus, the expected revenue will be \$3,660 from license applications in the first year, and \$12,200 applications in the second year. The revenue for this license type would have been expected to be approximately \$3,600 and \$12,000 for the same time periods at current fee amounts, so the extra revenue from this license type is estimated to be \$60 in the first year and \$200 in the second year.

Veterinary Provisional license fee is currently \$600 for the license. The proposed rules increase the fee to \$610 for the license. There are not expected to be any applications for this license type in this or the upcoming fiscal year, so there will be no revenue increases as a result of this license.

Equine Dental Provider license fees are currently \$100 for an initial license and \$83 for a renewal license. The proposed rules increase the fee to \$125 for an initial license and \$120 for the license renewal. It is estimated that approximately 10 individuals will apply for a new license each year of the first five years, and approximately 55 license holders will renew each year. However, given the date the proposed rules will take effect if adopted, approximately three new applicants can be expected to apply in the remainder of the first fiscal year, and approximately 20 license holders can be expected to renew during that same time period. Thus, the expected revenue will be \$375 and \$2,400 from new and renewal license applications in the first year, and \$1,250 and \$6,600 from new and renewal license applications in the second year, for estimated revenue totals of \$2,275 in the first year and \$7,850 in the second year. The revenue for this license type would have been expected to be approximately \$1,960 and \$5,565 for the same time periods at current fee amounts, so the extra revenue from this license type is estimated to be \$815 in the first year and \$2,285 in the second year.

Inactive Equine Dental Provider license fee is currently \$56 for an inactive renewal license. The proposed rules increase the fee to \$65 for the inactive license renewal. It is estimated that approximately one license holder will renew as inactive each year. However, given the date the proposed rules will take effect if adopted, it is not estimated any license holders can be expected to renew as inactive in the remainder of the first fiscal year. Thus, the expected revenue will be \$0 from inactive license renewal applications in the first year, and \$65 from inactive license renewal applications in the second year. The revenue for this license type would have been expected to be approximately \$0 and \$56 for the same time periods at current fee amounts, so the extra revenue from this license type is estimated to be \$9 in the second year.

Licensed Veterinary Technician license fees are currently \$50 for an initial license and \$50 for a renewal license. The proposed rules increase the fee to \$65 for an initial license and \$80 for the license renewal. It is estimated that approximately 325 individuals will apply for a new license each year of the first five years, and approximately 2,215 license holders will renew each year. However, given the date the proposed rules will take effect if adopted, approximately 110 new applicants can be expected to apply in the remainder of the first fiscal year, and approximately 740 license holders can be expected to renew during that same time period. Thus, the expected revenue will be \$7,150 and \$59,200 from new and renewal license applications in the first year, and \$21,125 and \$177,200 from new and renewal license applications in the second year, for estimated revenue totals of \$66,350 in the first year and \$198,325 in the second year. The revenue for this license type would have been expected to be approximately \$42,500 and \$127,000 for the same time periods at current fee amounts, so the extra revenue from this license type is estimated to be \$23,850 in the first year and \$71,325 in the second year.

Inactive Licensed Veterinary Technician license fee is currently \$26 for an inactive renewal license. The proposed rules increase the fee to \$35 for the inactive license renewal. It is estimated that approximately 200 license holders will renew as inactive each

year. However, given the date the proposed rules will take effect if adopted, approximately 65 license holders can be expected to renew as inactive in the remainder of the first fiscal year. Thus, the expected revenue will be \$2,275 from inactive license renewal applications in the first year, and \$7,000 from inactive license renewal applications in the second year. The revenue for this license type would have been expected to be approximately \$1,690 and \$5,200 for the same time periods at current fee amounts, so the extra revenue from this license type is estimated to be \$585 in the first year and \$1,800 in the second year.

Late fees will increase in proportion to the increases in licensing fees, with a license holder whose license has been expired 90 days or less renewing by paying 1½ times the renewal fee, and a license holder whose license has been expired more than 90 days but less than one year renewing by paying two times the renewal fee. However, the amount of increased revenue that might come from increased late fees cannot be determined because it is unknown how many license holders will allow their licenses to expire in any given year and be required to pay late fees.

The total increased revenue from all license type fee increases is expected to be approximately \$527,765 in the first year and \$1,575,704 in the second year.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

Mr. Couvillon has determined that the proposed rules will not affect a local economy, so the agency is not required to prepare a local economy impact statement under Government Code §2001.022.

#### PUBLIC BENEFITS

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, the public will benefit from allowing the TBVME to meet its obligation to comply with the Appropriations Limited to Revenue Collection requirement in the General Appropriations Act. By meeting this requirement, the TBVME can receive its full appropriation funding, which will allow it to fulfill longstanding needs for such things as a new, modern licensing system, additional needed personnel, and a continued peer assistance program.

#### PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, there will be additional costs to persons who are required to comply with the proposed rules. The additional cost to any individual will depend on which license is being applied for and whether it is for an initial or renewal license. The amount the fees are proposed to be increased should be able to be reduced in the next fiscal biennium.

#### FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES

Mr. Couvillon has determined there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed rules. The veterinarian program regulates individuals, some of whom might be established as a small or micro-business. It is unknown how many of these persons fall within the definitions of a small or micro-business because data regarding which license holders are established as a small or micro-business are not collected by the agency. The fee increases required by the General Appropriations Act will not be large enough to cause an adverse economic effect on any li-

cence holder. The proposed rules will not result in an adverse economic cost to any small or micro-business.

Because the agency has determined that the proposed rules will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, is not required.

#### ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT

The proposed rules have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government. However, the proposed rules fall under the exception for rules that relate to agency procurement under §2001.0045(c)(1) and the exception for rules that are necessary to implement legislation, under §2001.0045(c)(9), unless the legislature specifically states §2001.0045(b) applies. Therefore, the agency is not required to take any further action under Government Code §2001.0045.

#### GOVERNMENT GROWTH IMPACT STATEMENT

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed rules. For each year of the first five years the proposed rules will be in effect, the agency has determined the following:

1. The proposed rules do not create or eliminate a government program.
2. Implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions.
3. Implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency.
4. The proposed rules require an increase or decrease in fees paid to the agency to allow the TBVME to comply with the requirements of the General Appropriations Act.
5. The proposed rules do not create a new regulation.
6. The proposed rules do not expand, limit, or repeal an existing regulation.
7. The proposed rules do not increase or decrease the number of individuals subject to the rules' applicability.
8. The proposed rules do not positively or adversely affect this state's economy.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENTS

Comments on the proposed rules may be submitted by email to [TBVME.Comments@tdlr.texas.gov](mailto:TBVME.Comments@tdlr.texas.gov); by facsimile to (512) 475-3032; or by mail to Monica Nuñez, Legal Assistant, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin,

Texas 78711. The deadline for comments is 30 days after publication in the *Texas Register*.

#### STATUTORY AUTHORITY

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

The legislation that enacted the statutory authority under which the proposed rules are proposed is the General Appropriations Act, House Bill 1, 88th Regular Session (2023) at Article VIII, Section 1.

#### §577.15. Fee Schedule.

The Texas Board of Veterinary Medical Examiners has established the following fixed fees as reasonable and necessary for the administration of its functions. Other variable fees exist, including but not limited to costs as described in §575.10 of this title (relating to Costs of Administrative Hearings), and are not included in this schedule.

##### (1) Application for initial license.

- (A) Veterinary Regular License Application--\$560;
- (B) Veterinary Special License Application--\$630;
- (C) Veterinary Provisional License Application--\$610;
- (D) Veterinary Temporary License Application--\$220;
- (E) Equine Dental Provider Application--\$125; and
- (F) Veterinary Technician License Application--\$65.

##### (2) License Renewals.

- (A) Current License Renewals.
  - (i) Veterinary Regular License--\$340;
  - (ii) Veterinary Special License--\$250;
  - (iii) Veterinary Inactive License--\$140;
  - (iv) Equine Dental Provider License--\$120;
  - (v) Equine Dental Provider Inactive License--\$65;
  - (vi) Veterinary Technician Regular License--\$80;

and

- (vii) Veterinary Technician Inactive License--\$35.
- (B) Expired License Renewals - Less than 90 days

delinquent.

- (i) Veterinary Regular License--\$510;
- (ii) Veterinary Special License--\$375;
- (iii) Veterinary Inactive License--\$210;
- (iv) Equine Dental Provider License--\$180;
- (v) Equine Dental Provider Inactive License--
- (vi) Veterinary Technician Regular License--\$120;

\$97.50;

and

(vii) Veterinary Technician Inactive License--\$52.50.

(C) Expired License Renewals - More than 90 days and less than 1 year delinquent.

(i) Type of License--Board Fees;

(ii) Veterinary Regular License--\$680;

(iii) Veterinary Special License--\$500;

(iv) Veterinary Inactive License--\$280;

(v) Equine Dental Provider License--\$240;

(vi) Equine Dental Provider Inactive License--\$130;

(vii) Veterinary Technician Regular License--\$160;

and

(viii) Veterinary Technician Inactive License--\$70.

##### (3) Specialized License Categories.

(A) Veterinary Reinstatement--\$437.50;

(B) Veterinary Reactivation--\$262.50;

(C) Equine Dental Provider Reactivation--\$43.75; and

(D) Veterinary Technician Reactivation--\$43.75.

##### (4) Other Fees.

(A) Criminal History Evaluation Letter--\$50;

(B) Returned Check Fee--\$45;

(C) Duplication of License--\$40;

(D) Letter of Good Standing--\$45;

(E) Continuing Education Approval Review Process--\$45;

(F) Continuing Education Approval Review submitted less than 30 days prior to the continuing education event--\$100; and

(G) Equine Dental Certification Approval Review Process--\$2,500.

[Figure: 22 TAC §577.15]

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

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

TRD-202402555

Doug Jennings

General Counsel

Texas Board of Veterinary Medical Examiners

Earliest possible date of adoption: July 21, 2024

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

## TITLE 34. PUBLIC FINANCE

### PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

#### CHAPTER 9. PROPERTY TAX ADMINISTRATION

SUBCHAPTER K. ARBITRATION  
OF APPRAISAL REVIEW BOARD  
DETERMINATIONS  
DIVISION 2. LIMITED BINDING  
ARBITRATION FOR PROCEDURAL  
VIOLATIONS

**34 TAC §9.4223**

The Comptroller of Public Accounts proposes an amendment to §9.4223, concerning dismissal for lack of jurisdiction.

The amendment clarifies that dismissals with prejudice for lack of jurisdiction will occur where the individual who files for limited binding arbitration lacks the authority to do so. The amendment also modifies the language of subsection (a)(9) for consistency with §9.4244(a)(7) of this title. The comptroller will modify §9.4244(a)(7) of this title in a separate rulemaking.

The legislation enacted within the last four years that provides the statutory authority for the amendment is House Bill 988, 87th Legislature, R.S., 2021; and Senate Bill 1854, 87th Legislature, R.S., 2021.

Brad Reynolds, Chief Revenue Estimator, has determined that during the first five years that the proposed amended rule is in effect, the rule: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rule's applicability; and will not positively or adversely affect this state's economy.

Mr. Reynolds also has determined that the proposed amendment would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed amended rule would benefit the public by conforming the rule to current statute and improving the clarity and implementation of the section. There would be no significant anticipated economic cost to the public. The proposed amended rule would have no fiscal impact on small businesses or rural communities.

You may submit comments on the proposal to Shannon Murphy, Director, Property Tax Assistance Division, P.O. Box 13528 Austin, Texas 78711 or to the email address: [ptad.rulecomments@cpa.texas.gov](mailto:ptad.rulecomments@cpa.texas.gov). The comptroller must receive your comments no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendment is proposed under Tax Code, §41A.13, which authorizes the comptroller to adopt rules necessary to implement and administer Tax Code, Chapter 41A, concerning appeal through binding arbitration.

The amendment implements Tax Code, Chapter 41A.

§9.4223. *Dismissal for Lack of Jurisdiction.*

(a) Reasons for dismissal. The arbitrator shall dismiss a pending request for LBA with prejudice, for lack of jurisdiction, if:

(1) except as allowed by Tax Code, §41A.10, taxes on the property subject to the appeal are delinquent because, for any prior year, all property taxes due have not been paid or because, for the year at issue, the undisputed tax amount was not paid before the delinquency date set by the applicable section of Tax Code, Chapter 31;

(2) no notice of protest under Tax Code, Chapter 41, was filed prior to the request for LBA being filed under Tax Code, §41A.015(a);

(3) the requestor seeks to compel the ARB or chief appraiser to take an action that is not authorized by Tax Code, §41A.015(a);

(4) the requestor failed to timely provide written notice to the chair of the ARB, the chief appraiser, and the taxpayer liaison officer for the applicable appraisal district by certified mail, return receipt requested, of the procedural requirement(s) with which the property owner alleges the ARB or chief appraiser was required to comply under Tax Code, §41A.015(b)(1);

(5) the requestor failed to timely file the request for LBA under Tax Code, §41A.015(d), which requires filing it no earlier than the 11th day and no later than the 30th day after the date the property owner delivered the notice required by Tax Code, §41A.015(b)(1);

(6) the chief appraiser or ARB chair delivered a written statement to the property owner on or before the 10th day after the notice described by Tax Code, §41A.015(b)(1), was delivered confirming that the ARB or chief appraiser would comply with the requirement or cure a failure to comply with the requirement;

(7) a lawsuit was filed in district court regarding the same issues, for the same properties, and for the same tax year for which the request was filed;

(8) the property owner or the property owner's agent and the appraisal district have executed a written agreement resolving the matter; or

(9) the request for LBA was not filed by the property owner or was filed by an agent without [who does not have] proper authority as described by [to act as an agent for the property owner under] Tax Code, §41A.08 and §9.4205 of this title.

(b) An arbitrator shall dismiss any individual properties for which subsection (a) of this section applies and the case will move forward with only the remaining properties.

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

Filed with the Office of the Secretary of State on June 4, 2024.

TRD-202402478

Victoria North

General Counsel for Fiscal and Agency Affairs

Comptroller of Public Accounts

Earliest possible date of adoption: July 21, 2024

For further information, please call: (512) 475-2220



DIVISION 3. REGULAR BINDING  
ARBITRATION OF APPRAISAL REVIEW  
BOARD DETERMINATIONS

**34 TAC §9.4244**

The Comptroller of Public Accounts proposes an amendment to §9.4244, concerning dismissals for lack of jurisdiction.

The amendment clarifies that dismissals with prejudice for lack of jurisdiction will occur where the individual who files for regular binding arbitration lacks the authority to do so. The amendment

modifies the name of §9.4244 for consistency with §9.4223 of this title. The amendment also modifies the language of subsection (a)(7) for consistency with §9.4223(a)(9) of this title. The comptroller will modify §9.4223(a)(9) of this title in a separate rulemaking.

The legislation enacted within the last four years that provides the statutory authority for the amendment is House Bill 988, 87th Legislature, R.S., 2021; Senate Bill 1854, 87th Legislature, R.S., 2021; and Senate Bill 2355, 88th Legislature, R.S., 2023.

Brad Reynolds, Chief Revenue Estimator, has determined that during the first five years that the proposed amended rule is in effect, the rule: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rule's applicability; and will not positively or adversely affect this state's economy.

Mr. Reynolds also has determined that the proposed amendment would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed amended rule would benefit the public by conforming the rule to current statute and improving the clarity and implementation of the section. There would be no significant anticipated economic cost to the public. The proposed amended rule would have no fiscal impact on small businesses or rural communities.

You may submit comments on the proposal to Shannon Murphy, Director, Property Tax Assistance Division, P.O. Box 13528 Austin, Texas 78711 or to the email address: [ptad.rulecomments@cpa.texas.gov](mailto:ptad.rulecomments@cpa.texas.gov). The comptroller must receive your comments no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendment is proposed under Tax Code, §41A.13, which authorizes the comptroller to adopt rules necessary to implement and administer Tax Code, Chapter 41A, concerning appeal through binding arbitration.

The amendment implements Tax Code, Chapter 41A.

§9.4244. *Dismissal [Dismissals] for Lack of Jurisdiction.*

(a) Reasons for dismissal. For requests for RBA filed under Tax Code, §41A.01, the arbitrator shall dismiss with prejudice a pending request for RBA for lack of jurisdiction, if:

(1) except as allowed by Tax Code, §41A.10, taxes on the property subject to the appeal are delinquent because for any prior year, all property taxes due have not been paid or because, for the year at issue, the undisputed tax amount was not paid before the delinquency date set by the applicable section of Tax Code, Chapter 31;

(2) the ARB order(s) appealed did not determine a protest filed pursuant to Tax Code, §41.41(a)(1), concerning the appraised or market value, or Tax Code, §41.41(a)(2), concerning unequal appraisal of the property;

(3) the appraised or market value of the property as determined in the ARB order was either more than \$5 million or the property did not qualify as the property owner's residence homestead under Tax Code, §11.13;

(4) the request for RBA was filed after the deadline established in Tax Code, §41A.03, which requires submission by not later than the 60th calendar day after the date the property owner or the property owner's agent receives the ARB order determining the protest;

(5) the property owner or the property owner's agent filed an appeal with the district court under Tax Code, Chapter 42, concerning the value of the same property in the same tax year that is at issue in the pending RBA;

(6) the property owner or the property owner's agent and appraisal district have executed a written agreement resolving the matter;

(7) the request for RBA was not filed by the property owner or was filed by an agent without proper authority as described by Tax Code, §41A.08 and §9.4205 of this title; or

(8) an LBA award rescinded the ARB order(s) under Tax Code, §41A.015(j)(2)(B).

(b) Contiguous tracts. When an RBA proceeding is brought pursuant to Tax Code, §41A.03(a-1), involving two or more contiguous tracts of land, the arbitrator shall dismiss from the proceeding any tract of land for which subsection (a) of this section applies. If, after dismissal, two or more tracts are not contiguous, the property owner may select the single or contiguous tracts that will be arbitrated. Otherwise, the arbitrator will determine the single or contiguous tracts that contain the property with the highest appraised or market value.

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

Filed with the Office of the Secretary of State on June 4, 2024.

TRD-202402479

Victoria North

General Counsel for Fiscal and Agency Affairs

Comptroller of Public Accounts

Earliest possible date of adoption: July 21, 2024

For further information, please call: (512) 475-2220



## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### PART 11. TEXAS JUVENILE JUSTICE DEPARTMENT

#### CHAPTER 341. GENERAL STANDARDS FOR JUVENILE PROBATION DEPARTMENTS SUBCHAPTER C. CHIEF ADMINISTRATIVE OFFICER RESPONSIBILITIES

##### 37 TAC §341.304

The Texas Juvenile Justice Department (TJJD) proposes new 37 TAC §341.304, Requirement to Apply for Diversion Funds.

##### SUMMARY OF CHANGES

The new §341.304 will explain that, prior to a court committing a juvenile to TJJD, the chief administrative officer or designee must submit an application for diversion funds to divert a youth from commitment to TJJD. The new section will also describe situations in which the requirement does not apply.

##### FISCAL NOTE

Emily Anderson, Deputy Executive Director: Support Operations and Finance, has determined that, for each year of the first five

years the new section is in effect, there will be no significant fiscal impact for state government or local governments as a result of enforcing or administering the section.

#### PUBLIC BENEFITS/COSTS

Cameron Taylor, Senior Strategic Advisor, has determined that for each year of the first five years the new section is in effect, the public benefit anticipated as a result of administering the section will be to bring TJJD into compliance with statutory requirements.

Ms. Anderson has also determined that there will be no effect on small businesses, micro-businesses, or rural communities. There is no anticipated economic cost to persons who are required to comply with the new section as proposed. No private real property rights are affected by adoption of this section.

#### GOVERNMENT GROWTH IMPACT

TJJD has determined that, during the first five years the new section is in effect, the section will have the following impacts.

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

#### PUBLIC COMMENTS

Comments on the proposal may be submitted within 30 days after publication of this notice to Josh Bauermeister, Policy Writer, Texas Juvenile Justice Department, P.O. Box 12757, Austin, Texas 78711, or via email to [policy.proposals@tjjd.texas.gov](mailto:policy.proposals@tjjd.texas.gov).

#### STATUTORY AUTHORITY

The new section is proposed under §223.001(d-1), Human Resources Code, which requires a juvenile probation department to apply for the placement of a child in a regional specialized program before a juvenile court commits the child to the department's custody and allows for the establishment of exceptions to this requirement.

No other statute, code, or article is affected by this proposal.

#### §341.304. Requirement to Apply for Diversion Funds.

(a) Prior to a court committing a juvenile to TJJD, the chief administrative officer or designee must submit an application for diversion funds to divert a juvenile from commitment to TJJD.

(b) The requirement in subsection (a) does not apply if:

(1) the youth has committed conduct that is eligible for a determinate sentence under §51.031 or §53.045, Family Code, whether or not the petition was approved by the grand jury;

(2) the youth has been previously placed and discharged within the last year from a post-adjudication secure juvenile correctional facility;

(3) the youth is at least 17 years of age on the date of disposition or modification of disposition; or

(4) a juvenile probation department is not recommending commitment.

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

Filed with the Office of the Secretary of State on June 4, 2024.

TRD-202402473

Jana L. Jones

General Counsel

Texas Juvenile Justice Department

Earliest possible date of adoption: July 21, 2024

For further information, please call: (512) 490-7278



## CHAPTER 380. RULES FOR STATE-OPERATED PROGRAMS AND FACILITIES

### SUBCHAPTER B. TREATMENT

### DIVISION 2. PROGRAMMING FOR YOUTH WITH SPECIALIZED TREATMENT NEEDS

#### **37 TAC §380.8789**

As a result of a rule review of Title 37, Texas Administrative Code, Chapter 380, Subchapter B, as published in the February 2, 2024, issue of the *Texas Register* (49 TexReg 571), the Texas Juvenile Justice Department (TJJD) proposes to repeal §380.8789, Use of Clinical Polygraph in the Sexual Behavior Treatment Program.

During the review, TJJD found the original reasons for adopting the rule no longer exist.

#### SUMMARY OF CHANGES

Section 380.8789 is repealed because the practice described in the rule is no longer applicable to current TJJD services.

#### FISCAL NOTE

Emily Anderson, Deputy Executive Director: Support Operations and Finance, has determined that, for each year of the first five years the repeal is in effect, there will be no significant fiscal impact for state government or local governments as a result of enforcing or administering the repeal.

#### PUBLIC BENEFITS/COSTS

Cameron Taylor, Senior Strategic Advisor, has determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of administering the repeal will be to eliminate a rule that no longer aligns with the practices of TJJD's treatment program.

Ms. Anderson has also determined that there will be no effect on small businesses, micro-businesses, or rural communities. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed. No private real property rights are affected by adoption of this repeal.

## GOVERNMENT GROWTH IMPACT

TJJD has determined that, during the first five years the repeal is in effect, the repeal will have the following impacts.

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

## PUBLIC COMMENTS

Comments on the proposal may be submitted within 30 days after publication of this notice to Josh Bauermeister, Policy Writer, Texas Juvenile Justice Department, P.O. Box 12757, Austin, Texas 78711, or via email to [policy.proposals@tjtd.texas.gov](mailto:policy.proposals@tjtd.texas.gov).

## STATUTORY AUTHORITY

The repeal is proposed under §2001.039, Government Code, which requires TJJD to review its rules every four years and to determine whether the original reasons for adopting reviewed rules continue to exist.

No other statute, code, or article is affected by this proposed repeal.

§380.8789. *Use of Clinical Polygraph in the Sexual Behavior Treatment Program.*

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

Filed with the Office of the Secretary of State on June 4, 2024.

TRD-202402471

Jana L. Jones

General Counsel

Texas Juvenile Justice Department

Earliest possible date of adoption: July 21, 2024

For further information, please call: (512) 490-7278



## CHAPTER 385. AGENCY MANAGEMENT AND OPERATIONS

### SUBCHAPTER A. CONTRACTS

#### 37 TAC §385.1101

As a result of a rule review of Title 37, Texas Administrative Code, Chapter 385, Subchapter A, as published in the July 28, 2023, issue of the *Texas Register* (48 TexReg 4137), the Texas Juvenile Justice Department (TJJD) proposes to amend §385.1101, Contract Authority and Responsibilities.

## SUMMARY OF CHANGES

Amendments to §385.1101 include: 1) adding a definition for *total value*; 2) clarifying that TJJD staff must present to the board any change order for a construction contract that exceeds \$150,000 individually or cumulatively, or a dollar amount that causes the total value of the contract to exceed \$300,000; 3) deleting a paragraph pertaining to the approval of contracts involving the expenditure of funds for outside audit services and outside legal services; and 4) deleting paragraphs pertaining to competitive solicitations, consulting services, professional services, construction services, rate setting, exemptions from the competitive bidding process for youth services, iron and steel products, and contracts with businesses that do not boycott Israel. The above deletions are being proposed because it is understood that TJJD is already abiding by the statutes referenced.

## FISCAL NOTE

Emily Anderson, Deputy Executive Director: Support Operations and Finance, has determined that, for each year of the first five years the amended section is in effect, there will be no significant fiscal impact for state government or local governments as a result of enforcing or administering the section.

## PUBLIC BENEFITS/COSTS

Cameron Taylor, Senior Strategic Advisor, has determined that for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of administering the section will be to clarify the process for approving and executing contracts and to eliminate duplicative and unnecessary language from the rule.

Ms. Anderson has also determined that there will be no effect on small businesses, micro-businesses, or rural communities. There is no anticipated economic cost to persons who are required to comply with the amended section as proposed. No private real property rights are affected by adoption of these amendments.

## GOVERNMENT GROWTH IMPACT

TJJD has determined that, during the first five years the amended section is in effect, the amendments will have the following impacts.

- (1) The amended section does not create or eliminate a government program.
- (2) The amended section does not require the creation or elimination of employee positions at TJJD.
- (3) The amended section does not require an increase or decrease in future legislative appropriations to TJJD.
- (4) The amended section does not impact fees paid to TJJD.
- (5) The amended section does not create a new regulation.
- (6) The amended section does not expand, limit, or repeal an existing regulation.
- (7) The amended section does not increase or decrease the number of individuals subject to the section's applicability.
- (8) The amended section will not positively or adversely affect this state's economy.

## PUBLIC COMMENTS

Comments on the proposal may be submitted within 30 days after publication of this notice to Josh Bauermeister, Policy Writer, Texas Juvenile Justice Department, P.O. Box 12757, Austin, Texas 78711, or via email to [policy.proposals@tjjd.texas.gov](mailto:policy.proposals@tjjd.texas.gov).

## STATUTORY AUTHORITY

The amended section is proposed under §2001.039, Government Code, which requires TJJJ to review its rules every four years and to determine whether the original reasons for adopting the reviewed rules continue to exist.

No other statute, code, or article is affected by this proposal.

### §385.1101. *Contract Authority and Responsibilities.*

(a) Purpose. This rule establishes the responsibilities for approving and executing contracts required by the Texas Juvenile Justice Department (TJJJ).

(b) Applicability. This rule applies to all contracts entered into by TJJJ.

(c) Definitions. As used in this chapter, the following terms have the following meanings, unless the context clearly indicates otherwise.

(1) Board--the governing board of TJJJ.

(2) Contract--a written contract between TJJJ and another party, either public or private, for goods or services or for a project as defined by Section 2166.001, Government Code. As used in this chapter, "contract" includes the following: letters of agreement; inter-agency/interlocal agreements with other government entities; memorandums of understanding; and other agreements in which state funds or services are exchanged for the delivery of goods or performance of services.

(3) Total Value--The estimated dollar amount that a state agency may be obligated to pay pursuant to the contract and all executed and proposed amendments, extensions, and renewals of the contract.

(d) Authority to Approve Contracts.

(1) Board Approval. TJJJ staff must present certain contracts to the board for approval, including but not limited to:

(A) any contract with a total value exceeding \$500,000;

(B) any construction contract with a total value exceeding \$300,000;

(C) any change order(s) for a construction contract that exceeds ~~order exceeding~~ \$150,000 individually or cumulatively, or a dollar amount that causes the total value of the contract to exceed \$300,000 ~~for a construction contract~~;

(D) any contract with a total value exceeding \$15,000 for consulting ~~consultant~~ services, as defined in Section 2254.021, Government Code;

(E) any contract for architectural or engineering services;

(F) any contract for start-up residential operations; and

(G) any other contract appropriate for board approval as determined by the executive director.

(2) Agency Approval.

(A) The board delegates authority to the executive director or designee to approve all contracts not listed in paragraph (1) of this subsection.

(B) The board delegates authority to the executive director or designee to approve a contract listed in paragraph (1) of this subsection that is executed in response to an emergency, as defined in 34 TAC §20.210 [§20.32].

~~[(3) Other Approvals]~~

~~[(A) TJJJ complies with Section 321.020, Government Code, which requires that all contracts involving the expenditure of funds for outside audit services must be approved by the Texas State Auditor's Office.]~~

~~[(B) TJJJ complies with Section 402.0212, Government Code, which requires that all contracts involving the expenditure of funds for outside legal services must be approved by the Office of the Attorney General.]~~

(e) Authority to Execute Contracts. The board delegates authority to the executive director to execute all contracts for TJJJ. This authority may be delegated by the executive director ~~[to another member of the executive management team].~~

(f) Annual Contract Plan.

(1) TJJJ staff must present to the board for its review an annual plan that outlines TJJJ's anticipated contracting actions for the next fiscal year.

(2) As deemed necessary by the executive director or designee, updates to the contract plan may be provided to the board for review periodically throughout the fiscal year.

~~[(g) Adoptions by Reference and Statutory Citations Relating to Contracting Responsibilities.]~~

~~[(1) Competitive Solicitations.]~~

~~[(A) TJJJ complies with Chapters 2155 and 2156, Government Code, relating to the competitive bidding process and types of solicitations used and Section 2252.002, Government Code, relating to awards of contracts to nonresident bidders.]~~

~~[(B) TJJJ adopts by reference 34 TAC §20.391, relating to requests for offers.]~~

~~[(g) [(2)] Historically Underutilized Businesses. TJJJ adopts by reference 34 TAC Chapter 20, Subchapter D, Division 1, relating to historically underutilized businesses.~~

~~[(3) Consulting Services.]~~

~~[(A) TJJJ complies with Chapter 2254, Subchapter B, Government Code, relating to consulting services contracts.]~~

~~[(B) TJJJ adopts by reference 34 TAC §5.54, relating to consulting services contracts.]~~

~~[(4) Professional Services. TJJJ complies with Chapter 2254, Subchapter A, Government Code, relating to professional services contracts.]~~

~~[(5) Construction Services. TJJJ awards contracts for the construction of buildings and improvements in accordance with Chapter 2166, Government Code.]~~

~~[(6) Rate Setting. TJJJ complies with Section 2261.151(a), Government Code, relating to payment and reimbursement methods and rates.]~~

~~[(7) Exemptions from Competitive Bidding Process for Youth Services. In accordance with Chapter 2155, Subchapter C, Government Code, relating to certain exemptions from competitive bidding, TJJJ may purchase care and treatment services for youth committed to its care at rates not to exceed any maximum provided~~



by law, based on each provider's qualifications and demonstrated competence.}]

~~[(8) Iron and Steel Products. TJJJ complies with Chapter 2252, Subchapter F, Government Code, relating to the purchase of iron and steel products made in the United States for certain governmental entity projects.]~~

~~[(9) Contracts with Businesses That Do Not Boycott Israel. TJJJ complies with Section 2270.002, Government Code, relating to entering into contracts with only those businesses that have verified in writing that they do not boycott Israel and will not do so for the term of a contract.]~~

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

Filed with the Office of the Secretary of State on June 4, 2024.

TRD-202402472

Jana L. Jones

General Counsel

Texas Juvenile Justice Department

Earliest possible date of adoption: July 21, 2024

For further information, please call: (512) 490-7278

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