

# ADOPTED RULES

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

## TITLE 7. BANKING AND SECURITIES

### PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

#### CHAPTER 83. REGULATED LENDERS AND CREDIT ACCESS BUSINESSES

##### SUBCHAPTER A. RULES FOR REGULATED LENDERS

The Finance Commission of Texas (commission) adopts amendments to §83.503 (relating to Administrative Fee) and §83.605 (relating to Limitation on Acquisition Charge) in 7 TAC Chapter 83, Subchapter A, concerning Rules for Regulated Lenders.

The commission adopts the amendments to §83.503 and §83.605 without changes to the proposed text as published in the March 1, 2024, issue of the *Texas Register* (49 TexReg 1169) The rules will not be republished.

The commission received 828 official comments on the proposed amendments. The official comments were submitted by the American Financial Services Association (AFSA), School Fuel, Wise Area Relief Mission (WARM), the Texas Catholic Conference of Bishops (TCCB), the Texas Consumer Credit Coalition (TCCC), the Texas Consumer Finance Association (TCFA), AARP, Texas Appleseed, and 820 individuals. The comments from AFSA, TCCC, and TCFA generally supported the proposed amendments. The comments from School Fuel, WARM, TCCB, AARP, Texas Appleseed, and the individuals opposed the proposed amendments. Of the official comments from individuals, 819 were from individual AARP members and contain substantially the same body text. The commission's responses to the comments are discussed later in this preamble.

The rules in 7 TAC Chapter 83, Subchapter A govern regulated lenders licensed by the Office of Consumer Credit Commissioner (OCCC) under Texas Finance Code, Chapter 342. In general, the purpose of the adopted rule changes is to adjust the maximum administrative fee and acquisition charge, in order to ensure that the rules reflect administrative costs of closing a loan.

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review, and then held a stakeholder webinar regarding the rule changes. The OCCC received four informal written precomments on the rule text draft. The OCCC also received seven comments after the March 31 deadline for official comments and considers these comments to be informal comments. The OCCC and the commission appreciate the thoughtful input provided by stakeholders.

Adopted amendments to §83.503 adjust the maximum administrative fee for a consumer loan under Texas Finance Code,

Chapter 342, Subchapter E. The amendments also prescribe a method for annually adjusting the administrative fee based on the consumer price index (CPI). The commission is authorized to set the maximum amount of the administrative fee under Texas Finance Code, §342.201(g). Currently, §83.503(a) sets the maximum administrative fee at \$100. The commission adopted the \$100 maximum amount in 2013. As the commission explained in its preamble to the adoption in 2013, the administrative fee "compensates the lender for the administrative costs of closing a loan and providing money to the borrower." (38 TexReg 5705) (August 30, 2013).

Adopted amendments to §83.605 adjust the maximum acquisition charge for a consumer loan under Texas Finance Code, Chapter 342, Subchapter F. The amendments also prescribe a method for annually adjusting the acquisition charge based on CPI. The commission is authorized to set the maximum amount of the acquisition charge under Texas Finance Code, §342.201(g). Currently, §83.605(a) sets the maximum acquisition charge at the lesser of 10% of the cash advance or \$100. The commission adopted the \$100 maximum amount in 2013. As the commission explained in its preamble to the adoption in 2013, the administrative fee "compensates the lender for performing the administrative activities related to making the loan and the risk involved in engaging in the transaction." (38 TexReg 5705) (August 30, 2013).

Under the adopted amendments to §83.503, the maximum administrative fee will be set at \$125 through June 2025 and will then be adjusted annually based on the consumer price index (CPI). Under the adopted amendments to §83.605, the maximum acquisition charge will be set at the lesser of 12.5% of the cash advance or \$125 through June 2025, and the \$125 amount will be adjusted annually based on CPI. CPI is a measure of the change over time in prices paid by consumers. CPI is widely used as a measure of inflation and the overall price level in an economy. The U.S. Bureau of Labor Statistics explains that CPI is "the most widely used measure of inflation" and that CPI is "used to adjust other economic series for price change." U.S. Bureau of Labor Statistics, Consumer Price Indexes Overview (Jan. 23, 2023). The process for adjusting the fee amounts based on CPI is similar to the process that the Texas Legislature has specified to adjust rate bracket amounts under Texas Finance Code, §§341.201-341.204, and to adjust debt management fee amounts under Texas Finance Code, §394.2101. The OCCC and the commission believe that the CPI-based methodology in the amendments provides an effective method for the administrative fee and acquisition charge to keep pace with increases in costs.

The adoption includes a change in §83.605(a)(1) to replace the current 10% maximum for the acquisition charge with 12.5%. Adjusting the 10% maximum to 12.5% (not to exceed \$125) maintains the same proportionate result between a \$1,000 loan

with the proposed increased maximum acquisition charge of \$125 and a loan less than \$1,000. This change ensures that lenders can be compensated for cost changes since 2013 for loan amounts up to \$1,000.

Between September 2013 (when the \$100 administrative fee went into effect) and November 2023, the CPI for Urban Wage Earners and Clerical Workers increased approximately 31% (from 230.537 to 301.224). In addition to CPI, other indexes increased during this period. Comments from lenders suggest that the wages, office space, and technology are significant categories of costs. During this period, the seasonally adjusted Employment Cost Index for private industry workers (a measure of compensation for civilian workers) increased approximately 35% (from 119.0 to 160.7). The Commercial Real Estate Price Index increased approximately 64% (from 212,305 to 348,923). The Producer Price Index for Information Technology Technical Support and Consulting Services increased approximately 24% (from 103.900 to 128.939). Taken as a whole, this information strongly supports the conclusion that costs have increased for lenders since 2013.

The Federal Reserve Board and Fannie Mae have projected that inflation will continue into 2024 and 2025. The Federal Reserve Board has estimated core inflation at a median value of 2.4% for 2024 (with a range from 2.3% to 3.0%) and a median value of 2.2% for 2025 (with a range from 2.0% to 2.6%). Federal Reserve Board, Summary of Economic Projections, p. 2 (Dec. 13, 2023). Similarly, Fannie Mae expects "that core inflation will continue to move toward the Fed's 2-percent target over the next year." Fannie Mae, "Economic Developments - November 2023" (Nov. 17, 2023). This information suggests that costs will continue to increase for lenders in 2024 and 2025, although at a decelerated pace from the high inflation of the last several years.

The adjustment to the maximum administrative fee and acquisition charge (from \$100 to \$125) approximates cost increases between September 2013 and November 2023. This adjustment will ensure that lenders can be compensated for the administrative costs of making a loan, which is the intent of §83.503 and §83.605. The adjustment will achieve an appropriate balance by maintaining loan affordability for consumers while compensating lenders. In addition, the adjustment from 10% to 12.5% in §83.605 will help ensure that lenders can be compensated for cost changes since 2013 for loan amounts of \$1,000 or less. The amount is a maximum, so lenders are free to offer lower administrative fees and acquisition charges in a competitive marketplace.

Since 2020, the OCCC has received several informal and official comments from stakeholders dealing with the maximum administrative fee under §83.503. In 2020, the OCCC received an informal request from the Texas Consumer Credit Coalition (an organization of licensed lenders) to review the maximum administrative fee. The TCCC requested a rule amendment that would increase the maximum administrative fee and provided aggregated cost information purporting to justify this increase. To determine whether a rule amendment would be appropriate, in July 2021, the OCCC requested information about costs from stakeholders, and conducted an initial stakeholder meeting on this issue. Since then, the OCCC has provided stakeholders with four opportunities to provide informal comments on this issue: once in July and August 2021 (in response to the OCCC's initial information request), once in November 2021 (in response to an advance notice of rule review), once in January 2022 (in response to a precomment draft of amendments), and once in

January 2024 (in response to a precomment draft of the current amendments). In addition, during December 2021 and January 2022, stakeholders submitted official comments in response to a published notice of rule review.

In general, lenders have provided informal and official comments that describe increased costs since 2013 and support amending §83.503. In response to the 2021 rule review notice, the TCCC provided an official comment explaining that the costs of originating loans have increased since the \$100 maximum was adopted in 2013. The comment focuses on costs for labor, occupancy, technology, and compliance. The comment states that although improvements in technology have created economies of scale, lenders face increased financial privacy, identity theft, and cybersecurity requirements. In particular, the comment describes recent amendments to the Federal Trade Commission's Safeguards Rule that will require costs to ensure compliance. Other groups of lenders have made similar points in informal precomments. For example, an attorney commenting on behalf of an association of banks explained that costs for overhead, labor, rent, and utilities have increased since 2013, and provided estimated loan origination costs ranging from \$185.35 (with labor making up \$106.35 of this estimate) to \$268. Another group of licensed lenders supported a CPI-based adjustment method, explaining that "[c]hanges in CPI evidence changes in costs, which is why CPI is commonly used for such adjustments." In 2024, TCCC filed an informal precomment expressing general support for a \$125 administrative fee with CPI-based adjustments, explaining that "as origination costs continue to rise, issues critical to consumer protection have increasingly required attention from our members. Efforts by lenders to safeguard financial privacy, to combat identity theft, and ensure cybersecurity have required continued investments. Additionally, large scale federal initiatives, like the Military Lending Act, the CFPB's third party vendor management requirements, and FTC's Safeguard Rule, have all increased up-front lending costs since the previous 2013 fee increase." Also in 2024, an association of Subchapter F lenders filed a written precomment that supported changing the acquisition charge to the lesser of 12.5% of the cash advance or \$150.

Similarly, the 2024 official comments from AFSA, TCCC, and TCFA support the proposed amendments and describe costs that have increased since 2013. AFSA's comment supports the adjustment and explains that using CPI "as a reference to adjust fees ensures that adjustments align with the genuine cost of doing business in Texas, promoting transparency and reliability in regulatory measures." TCCC's comment describes increased costs for labor, software, hardware, and office space. Similarly, TCFA's comment describes increased expenses for employee wages, rent, utilities, information technology, privacy and security compliance, and general office expenses.

In general, consumer groups have provided informal and official comments that express concerns about increased costs for consumers, and argue that the maximum administrative fee should be maintained at \$100 (or decreased due to increased efficiencies in electronic and online loans). In response to the 2021 published rule review notice, the Texas Fair Lending Alliance and Faith Leaders 4 Fair Lending (organizations of community and faith leaders supporting reforms to protect Texas consumers) filed an official comment expressing concerns about increasing the administrative fee, arguing that this is not supported by available data. The comment points out that licensed lenders have experienced profits and certain decreased expenses. The comment argues that if §83.503 is amended, the maximum should be decreased from \$100. Other consumer organizations (sub-

mitting information on behalf of retired Texans and Texans in poverty) have made similar points in informal precomments. In 2024, two consumer organizations filed informal precomments reiterating these concerns about whether an increase to the administrative fee and acquisition charge is appropriate at this time.

Similarly, the 2024 official comments from School Fuel, WARM, TCCB, AARP, Texas Appleseed, and individuals argue that the fees should not be adjusted and express concerns about increased costs for consumers. The comments of School Fuel and WARM emphasize negative effects on poor and low-income consumers. The comments of TCCB, AARP, and Texas Appleseed express similar concerns and argue against an "automatic" or "perpetual" CPI-based adjustment without further review. Regarding the adjustment to the Subchapter F acquisition charge for loans under \$1,000, Texas Appleseed's comment expresses concerns about repeated refinances for Subchapter F loans. One comment from an individual requests reconsidering the rule because it "hurts the people on [the] lower part of the economy" the most. The other 819 individual comments are from AARP members and contain substantially the same body text, opposing the proposed changes because of increased borrowing costs and harm to consumers.

The OCCC and the commission believe that objective measures cited earlier in this preamble (including CPI, Employment Cost Index, and Producer Price Index) strongly indicate that overall costs have increased since 2013. For the same reasons, the OCCC and the commission disagree with the contention that costs have stayed the same or decreased. The OCCC and the commission believe that an adjustment is necessary to ensure that the rules meet their intended purpose of enabling lenders to be compensated for costs of a loan, and therefore disagree with the comments suggesting that the amounts should not be adjusted at this time. Regarding commenters' concerns about the CPI-based adjustments, it is important to note that the amount of any adjustment will not be predetermined. Rather, the adjustments will be based on a particular year's CPI, which is an objective measure of overall costs. For this reason, the OCCC and the commission believe that the CPI adjustment is an appropriate component of the rule changes. Regarding the concern about refinances of Subchapter F loans, the OCCC and the commission believe that the 12.5% limitation on the acquisition charge, together with the rule's existing limitation of one acquisition charge per month, provides an effective way to limit the acquisition charge for smaller loans. The adopted changes achieve an appropriate balance by maintaining loan affordability for consumers while compensating lenders.

## DIVISION 5. INTEREST CHARGES ON LOANS

### 7 TAC §83.503

The rule changes to §83.503 are adopted under Texas Finance Code, §342.201(g), which authorizes the commission to adopt a rule prescribing a reasonable maximum amount of an administrative fee under Chapter 342, Subchapter E. The rule changes to §83.605 are adopted under Texas Finance Code, §342.252(b), which authorizes the commission to adopt a rule prescribing a reasonable maximum amount of an acquisition charge under Chapter 342, Subchapter F. In addition, Texas Finance Code, §342.551, authorizes the commission to adopt rules to enforce Texas Finance Code, Chapter 342, and Texas Finance Code, §11.304 authorizes the commission to adopt

rules necessary to supervise the OCCC and ensure compliance with Texas Finance Code, Title 4.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 342.

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

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For further information, please call: (512) 936-7660



## DIVISION 6. ALTERNATE CHARGES FOR CONSUMER LOANS

### 7 TAC §83.605

The rule changes to §83.605 are adopted under Texas Finance Code, §342.201(g), which authorizes the commission to adopt a rule prescribing a reasonable maximum amount of an administrative fee under Chapter 342, Subchapter E. The rule changes to §83.605 are adopted under Texas Finance Code, §342.252(b), which authorizes the commission to adopt a rule prescribing a reasonable maximum amount of an acquisition charge under Chapter 342, Subchapter F. In addition, Texas Finance Code, §342.551, authorizes the commission to adopt rules to enforce Texas Finance Code, Chapter 342, and Texas Finance Code, §11.304 authorizes the commission to adopt rules necessary to supervise the OCCC and ensure compliance with Texas Finance Code, Title 4.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 342.

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## CHAPTER 84. MOTOR VEHICLE INSTALLMENT SALES

### SUBCHAPTER B. RETAIL INSTALLMENT CONTRACT

### 7 TAC §84.205

The Finance Commission of Texas (commission) adopts amendments to §84.205 (relating to Documentary Fee) in 7 TAC Chapter 84, concerning Motor Vehicle Installment Sales.

The commission adopts the amendments to §84.205 without changes to the proposed text as published in the March 1, 2024, issue of the *Texas Register* (49 TexReg 1172). The rule will not be republished.

The commission received four official comments on the proposed amendments. The official comments were submitted by the Texas Recreational Vehicle Association (TRVA), the Texas Automobile Dealers Association (TADA), the Texas Independent Automobile Dealers Association (TIADA), and the Clay Cooley dealership group. The official comments of TRVA, TADA, and TIADA generally supported the proposed amendments (although the comments of TADA and TIADA recommended additional changes discussed later in this preamble). The official comment of the Clay Cooley group opposed certain portions of the proposed amendments relating to credit reports, sales contracts, and generally accepted accounting principles (GAAP), as discussed later in this preamble.

The rule at §84.205 relates to documentary fees for motor vehicle retail installment transactions. In general, the purposes of the rule changes to 7 TAC §84.205 are: (1) to adjust the documentary fee amount that is presumed reasonable under the rule, and (2) to make technical corrections and updates.

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review, and then held a stakeholder webinar regarding the rule changes. The OCCC received two informal written precomments on the rule text draft. The OCCC and the commission appreciate the thoughtful input provided by stakeholders.

Under Texas Finance Code, §348.006(a), in a motor vehicle retail installment transaction, the retail seller is authorized to charge "a documentary fee for services rendered for or on behalf of the retail buyer in handling and processing documents relating to the motor vehicle sale." Under §348.006(c), the documentary fee "may not exceed a reasonable amount agreed to by the retail seller and retail buyer for the documentary services." Under §348.006(e), before a retail seller increases the maximum amount of the documentary fee that the seller intends to charge, the seller must provide written notice to the OCCC, and the OCCC may review the amount for reasonableness. Under §348.006(f), a documentary fee is considered reasonable if it is less than or equal to the amount presumed reasonable as established by rule of the commission.

Currently, §84.205 describes the requirements for filing a written notification of an increased documentary fee under Texas Finance Code, §348.006, and describes the criteria that the OCCC uses to determine whether a documentary fee is reasonable. Current §84.205(b)(1) explains that a documentary fee of \$150 or less is presumed reasonable. The commission adopted the \$150 amount in 2016.

Amendments throughout §84.205 adjust the documentary fee amount that is presumed reasonable under the rule from \$150 to \$225. The amendments adjust this amount throughout subsections (a), (b), (c), and (d).

The commission and the OCCC periodically adjust the documentary fee to ensure that it adequately represents a reasonable cost for documentary services in the current market. The agency's ongoing review of documentary fee cost analyses has indicated

that most sellers can demonstrate costs related to documentary services of at least \$225. Of the 211 documentary fee filings submitted to the OCCC since 2020, the average filing amount is \$246.30. In 2022, in a contested case before the State Office of Administrative Hearings, an administrative law judge found that a dealership group met its burden of proving that a range of documentary fee amounts was reasonable. Proposal for Decision, *Office of Consumer Credit Commissioner v. Clay Cooley Entities*, SOAH Docket No. 466-22-0322 (Oct. 11, 2022) (hereinafter "Clay Cooley PFD"). The case involved extensive analysis of the dealership group's costs relating to payroll, facilities, software, forms, printing, and postage. The case resulted in a final order that approved a range of fees from \$202.58 to \$267.83 (with an average of \$245) as reasonable. Final Order to Reduce Documentary Fees and Pay Restitution, *Office of Consumer v. Clay Cooley Entities*, SOAH Docket No. 466-22-0322 (Jan. 18, 2023).

Based on the analysis in the contested case regarding the Clay Cooley entities, as well as the OCCC's ongoing review of documentary fee cost analyses, the OCCC and the commission believe that it is appropriate to adjust the amount presumed reasonable from \$150 to \$225. The \$225 amount is well below typical documentary fee amounts in other states. A 2023 survey of 50 states and the District of Columbia reflects an average documentary fee of \$390. CarEdge, "Car Dealer Doc Fee by State in 2023 (Updated)," (rev. Dec. 8, 2023).

The official comments of TRVA, TADA, and TIADA generally support the proposed amendments to increase the reasonable documentary fee amount from \$150 to \$225. However, TIADA's comment requests that the OCCC and the commission consider an additional annual adjustment to the reasonable documentary fee amount based on the Consumer Price Index (CPI). The commission declines to use a recurring CPI-based adjustment to the reasonable documentary fee amount at this time. If documentary costs increase in the future, §84.205 enables dealers to file for a higher documentary fee and provide a cost analysis supporting the higher fee. The commission and the OCCC may periodically review the reasonable documentary fee amount.

The adoption includes additional amendments that clarify requirements for a documentary fee cost analysis and include technical corrections. These clarifying amendments are discussed in the following paragraphs.

An amendment to §84.205(d)(2)(B) specifies that costs must be determined "in accordance with this section" in addition to being determined in accordance with generally accepted accounting principles (GAAP). This is intended to clarify that any costs included in the documentary fee must comply with both §84.205 and GAAP. In other words, if a cost is includable under GAAP but is not includable under §84.205, then it may not be included in the documentary fee. This is consistent with the analysis used by the administrative law judge in the contested case regarding the Clay Cooley entities. See Clay Cooley PFD at 26 (discussing specific timing requirements of the rule that control "rather than the general application of GAAP").

Amendments to §84.205(d)(2)(E)(ii) clarify requirements for including the cost of a credit report in the documentary fee. The amendments explain that a seller may include the cost of a credit report for a buyer who ultimately purchases a motor vehicle, that the seller must incur the cost uniformly in cash and credit transactions, and that the documentary fee may not include the cost of obtaining a credit report in unconsummated transactions. This rule text clarifies an issue that was analyzed by the administra-

tive law judge in the contested case regarding the Clay Cooley entities. See Clay Cooley PFD at 30 (finding that the current text of §84.205 "does not restrict credit report costs to only consummated deals"). The OCCC and the commission believe that it is appropriate for the rule to limit credit report costs to consummated transactions. Credit report costs for unconsummated transactions are an indirect cost, do not directly relate to processing documents for a consummated transactions, and should not be subsidized by buyers in consummated transactions.

The Clay Cooley group's official comment states that the amendment regarding credit reports in §84.205(d)(2)(E)(ii) should not be adopted as proposed. The comment argues that because credit reports are required for all prospective buyers, the cost of a credit report "should be recoverable by the seller whether or not the sale is ultimately consummated." The commission disagrees with this comment. Without the proposed change to §84.205(d)(2)(E)(ii), the rule leaves open the possibility that buyers in consummated transactions will subsidize costs for transactions that are unconsummated. Credit report costs for unconsummated transactions should appropriately be considered an indirect cost, not a cost that directly relates to processing documents for a particular sale.

TADA's official comment explains that a credit report might be obtained for a co-buyer, and that a second or third credit report might be requested because of a block or freeze. TADA "encourages the agency not to foreclose this necessity for a co-buyer as well as when a block or freeze is indicated, by only allowing one credit report to be included in a dealer's reasonableness criteria." The commission disagrees with the suggestion to change the current language in §84.205(d)(2)(E)(ii) that refers to "a credit report" in the singular. Part of the intent of the rule is to ensure that the documentary fee is limited to costs required to comply with the law and that costs arise equally in cash and credit transactions. The commission does not believe that revising the rule to refer to multiple credit reports is consistent with this intent.

An additional change to §84.205(d)(2)(E)(ii) replaces a reference to the USA PATRIOT Act with a reference to regulations of the Office of Foreign Assets Control (OFAC). OFAC rules prohibit sellers from doing business with certain specially designated nationals or blocked persons. See U.S. Department of the Treasury, Office of Foreign Assets Control, "Specially Designated Nationals And Blocked Persons List (SDN) Human Readable Lists" (rev. Dec. 20, 2023). Obtaining a credit report can be a way for sellers to ensure compliance with these OFAC rules. The citation to the OFAC rules is a more appropriate citation for this proposition than the current rule's reference to a provision of the USA PATRIOT Act.

Amendments to §84.205(d)(3)(B)(ii)(I) clarify requirements for including the cost of a sales contract in the documentary fee. The amendments explain that any included cost for a sales contract must be in the form of "only one" of the following: a purchase agreement, a buyer's order, a bill of sale, or a retail installment sales contract (excluding provisions used only in credit transactions). Because only one sales contract is legally required in order to sell a motor vehicle, this text is consistent with the requirement under §84.205(d)(2)(B) that costs must be legally required. This rule text clarifies an ambiguity discussed by the administrative law judge in the contested case regarding the Clay Cooley entities. See Clay Cooley PFD at 15-17 (describing different possible interpretations of §84.205(d)(3)(B)(ii)(I) and an ambiguity regarding whether more than one type of sales contract may be included in the documentary fee).

The Clay Cooley group's official comment states that the amendment regarding sales contracts in §84.205(d)(3)(B)(ii)(I) should not be adopted as proposed. The comment states that a final contract may be "based on different combinations of more than one document," and suggests that the provision "should either be left as it is currently written or amended to allow for recovery of costs related to more than one of the relevant forms, as components of a single, finalized contract for sale." The commission disagrees with this comment. As mentioned in the previous paragraph, the amended text helps ensure that costs are legally required (because only one sales contract is legally required). The amended text also helps ensure that costs arise equally in cash and credit transactions (because a buyer's order would typically be sufficient in a cash transaction).

Other amendments to §84.205(d)(3)(B)(ii) make technical corrections to the list of required forms that may be included in the documentary fee. An amendment removes current §84.205(d)(3)(B)(ii)(III), which allows the documentary fee to include the cost of the County of Title Issuance form (Form VTR-136). The OCCC understands that this form is now obsolete and is no longer used, following the passage of SB 876 (2021) and amendments to Texas Transportation Code, Chapter 501. An amendment at §84.205(d)(3)(B)(ii)(IV) replaces a reference to the USA PATRIOT Act with a reference to regulations of OFAC, as discussed earlier in this preamble. Amendments at §84.205(d)(3)(B)(ii)(VII) and (VIII) make technical corrections to rule references regarding buyer's temporary tags. Other amendments throughout §84.205(d)(3)(B)(ii) would other sub-clauses accordingly.

An amendment to §84.205(d)(3)(B)(v) explains that the documentary fee may not include costs incurred while the dealership is closed, and that the documentary fee may not include costs relating to areas that are not involved in the processing of documents (e.g., common areas, break rooms, bathrooms). This text is consistent with the current requirement in §84.205(d)(2) that costs must directly relate to the seller's preparation and processing of documents for a motor vehicle sale. The amendment will help ensure that any facilities costs included in the documentary fee directly relate to processing documents.

The Clay Cooley group's official comment states that the amendment regarding GAAP in §84.205(d)(2)(B) should not be adopted as proposed, and that the proposed amendments regarding costs while the dealership is closed in §84.205(d)(3)(B)(v) should not be adopted as proposed. The comment argues that under GAAP's "full absorption costing" scheme, "[o]vernight storage of legally required documents is a real, legally required cost that accrues to all businesses that process such documents." The commission disagrees with this comment. The rule at §84.205 is intended to ensure that documentary fee costs are limited to the required costs to process documents relating to a sale, and that costs directly relate to processing documents. In order to carry out this intent, it is important that the rule articulate specific standards of reasonableness and that cost analyses comply with the standards described in the rule. Allowing GAAP to override the rule would be inconsistent with this intent. In addition, if the rule allowed costs incurred while a dealership is closed, this would fail to ensure that all included costs directly relate to processing documents.

The rule amendments are adopted under Texas Finance Code, §348.006(f), which authorizes the Finance Commission to adopt a rule establishing a documentary fee amount that is presumed reasonable, and Texas Finance Code, §348.006(h), which au-

thorizes the commission to adopt rules to enforce Texas Finance Code, §348.006, including rules relating to standards for a documentary fee reasonableness determination. In addition, Texas Finance Code, §11.304 authorizes the commission to adopt rules necessary to supervise the OCCC and ensure compliance with Texas Finance Code, Title 4, and Texas Finance Code, §348.513 authorizes the commission to adopt rules to enforce Texas Finance Code, Chapter 348.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 348.

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

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## TITLE 19. EDUCATION

### PART 2. TEXAS EDUCATION AGENCY

#### CHAPTER 74. CURRICULUM REQUIREMENTS

##### SUBCHAPTER DD. COMMISSIONER'S RULES CONCERNING MATHEMATICS INSTRUCTION

###### 19 TAC §74.2101

The Texas Education Agency (TEA) adopts new §74.2101, concerning the middle school advanced mathematics program. The amendment is adopted with changes to the proposed text as published in the February 23, 2024 issue of the *Texas Register* (49 TexReg 950) and will be republished. The adopted new section implements Senate Bill (SB) 2124, 88th Texas Legislature, Regular Session, 2023, by establishing requirements related to automatic enrollment of certain middle school students into an advanced mathematics program designed to prepare students to enroll in Algebra I in Grade 8.

**REASONED JUSTIFICATION:** SB 2124, passed by the 88th Texas Legislature, Regular Session, 2023, established Texas Education Code (TEC), §28.029, requiring each school district and open-enrollment charter school to automatically enroll in an advanced mathematics course all Grade 6 students who performed in the top 40% on either the Grade 5 mathematics assessment instrument administered under TEC, §39.023(a), or on a local measure that includes the student's Grade 5 class ranking or a demonstrated proficiency in the student's Grade 5 mathematics coursework. The statute includes an opt-out provision for parents or guardians who wish to remove their child from automatic enrollment in the advanced mathematics course.

The adopted rule requires each school district and open-enrollment charter school to develop a middle school advanced mathematics program for students in Grades 6-8 to enable students to enroll in Algebra I in Grade 8. The adopted rule includes requirements for enrollment criteria and parent notification.

The following changes were made to the rule based on public comment.

Subsection (b) was modified to clarify that local education agencies (LEAs) must identify, rather than develop, a local measure for use in determining student eligibility for the middle school advanced mathematics program.

Subsection (c) was modified to clarify that students can qualify for automatic admission for the middle school advanced mathematics program by scoring either in the 60th percentile or higher on statewide scores for the Grade 5 mathematics assessment instrument or in the top 40% on a local measure identified by the LEA.

New subsection (h) was added to establish that LEAs are required to obtain written approval from the parent or guardian to remove a student from the middle school advanced mathematics program.

New subsection (i) was added to require LEAs to annually report to the agency data related to student enrollment and performance in the middle school advanced mathematics program in a manner and time to be determined by TEA.

As proposed, the new rule did not have a data and reporting impact. However, in response to public comment, a reporting requirement was added at adoption. Therefore, the adopted new rule would have a data and reporting impact. New subsection (i) requires each school district and open-enrollment charter school to annually report to TEA data related to student enrollment and performance in the middle school advanced mathematics program in a manner and time to be determined by TEA.

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

**Comment.** One teacher, six administrators, and one community member stated the current accountability system needs to be refined to address Domains 1 and 2 to ensure schools are not negatively impacted when their highest math performers are not included because they are taking Algebra I.

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

**Comment.** Representatives from E3 Alliance, Texas Business Leadership Council, Texas 2036, Commit, Teach Plus, Educate Texas, The Education Trust, Democrats for Education Reform-Texas, Good Reason Houston, Teach for America, and Opportunity Austin requested that TEA conduct oversight on school system participation over time to meet the legislative intent of SB 2124, 88th Texas Legislature, Regular Session, 2024. The commenters stated that non-punitive audits should focus on the implementation of the intended goal of increasing advanced math opportunities for all students and should serve to create a culture of transparency, accountability, and continuous improvement.

**Response.** The agency disagrees and has determined that it does not have statutory authority to monitor compliance with the requirements of SB 2124.

Comment. Representatives from E3 Alliance, Texas Business Leadership Council, Texas 2036, Commit, Teach Plus, Educate Texas, The Education Trust, Democrats for Education Reform-Texas, Good Reason Houston, Teach for America, and Opportunity Austin requested that TEA clarify the agency's intent to collect information or data on which measure school systems are using to determine student placement to meet the legislative intent of SB 2124.

Response. The agency agrees that the collection of data related to implementation of the middle school advanced mathematics programs is important. In response to this and other comments, new subsection (i) was added at adoption to require each school district and open-enrollment charter school to annually report to TEA data related to student enrollment and performance in the middle school advanced mathematics program in a manner and time to be determined by TEA.

Comment. A Texas counselor, a Texas administrator, and a regional education service center specialist stated that more guidance is needed regarding high school expectations for students in middle school advanced mathematics. The commenters expressed concern that students may opt not to enroll in or not be offered advanced math classes during their senior year in high school.

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

Comment. Two Texas teachers expressed opposition to the low bar for automatic enrollment in middle school advanced mathematics programs and suggested revising the criteria for automatic enrollment.

Response. The agency provides the following clarification. TEC, §28.029(b), requires all school districts and open-enrollment charter schools to automatically enroll in an advanced mathematics course each Grade 6 student who performed in the top 40% on the Grade 5 mathematics assessment or on a local measure that includes the student's Grade 5 class ranking or a demonstrated proficiency Grade 5 mathematics coursework.

Comment. A Texas administrator expressed concern there would be an outsize impact on small districts when only a small number of students qualify for the program. The commenters cited changes to student-to-staff ratios, the need for teachers to add additional certifications, and budgetary constraints as consequences of the new requirement.

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

Comment. A Texas administrator expressed full support of the proposed rule and stated that their district currently has local policy that mirrors the proposal.

Response. The agency agrees. The agency made additional changes at adoption to respond to other comments.

Comment. Two Texas administrators and a community member asked if there would be online coursework or textbooks. The commenters expressed concern for schools that would have to create curriculum for a new course with no content standards or curriculum to follow.

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

Comment. A Texas administrator stated that some districts have block scheduling at the high school level, which allows students

to complete eight math courses during high school. The commenter asked if these schools would be able to get a waiver from offering Algebra I in middle school since they have planned the sequence of courses for high school.

Response. The agency provides the following clarification. TEC, §28.029, requires LEAs to develop a middle school advanced mathematics program that is designed to enable students to enroll in Algebra I in Grade 8 and to automatically enroll students who meet certain criteria into the program in Grade 6.

Comment. A Texas administrator requested that districts be allowed to provide the required parent notification within the first 10 days of instruction rather than 14 days prior to instruction.

Response. The agency disagrees and has determined that requiring the written notification no later than 14 days prior to the start of instruction was appropriate as proposed.

Comment. One counselor, three Texas teachers, ten administrators, and two community members expressed concern with the ability of small rural schools with limited teacher positions and scheduling flexibility to implement these requirements.

Response. This comment is outside the scope of the proposed rulemaking. The agency also provides the following clarification. TEA staff will be posting guidance and resources on the agency's advanced mathematics webpage to assist LEAs in implementing middle school advanced mathematics programs.

Comment. A Texas counselor and a Texas administrator asked if Grade 5 State of Texas Assessments of Academic Readiness (STAAR®) math results would be released earlier as a result of these requirements. The commenters stated that LEAs would need time to pull data, adjust schedules, set the notification system in place, and ensure that parents receive the information.

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

Comment. Two Texas administrators and two community members asked when Texas Essential Knowledge and Skills (TEKS) would be published for the advanced middle school mathematics courses.

Response. This comment is outside the scope of the proposed rulemaking. Additionally, the agency provides the following clarification. At this time, the TEKS for Grades 6-8 mathematics are expected to remain in effect and must be used to provide instruction for middle school math. LEAs must provide instruction in all the TEKS for Grades 6-8, and students must demonstrate proficiency in those TEKS prior to enrolling in Algebra I. LEAs have the flexibility to combine or compact the TEKS for multiple grade levels to best serve their students. These are local decisions.

Comment. A Texas teacher and two Texas administrators expressed concern with the criteria for automatically enrolling students in an advanced mathematics program. The commenters stated that there is a large gap in rigor between the TEKS for Grade 5 and Grade 6 and that scoring in the top 60% on the Grade 5 Math STAAR® test is not a true representation of a student's ability to be in an advanced math class in Grade 6.

Response. This comment is outside the scope of the proposed rulemaking. Additionally, the agency provides the following clarification. TEC, §28.029(b), requires all school districts and open-enrollment charter schools to automatically enroll in an advanced mathematics course each Grade 6 student who performed in the top 40% on the Grade 5 mathematics assessment or on a local

measure that includes the student's Grade 5 class ranking or a demonstrated proficiency Grade 5 mathematics coursework.

Comment. Two Texas administrators requested that the EC-6 certification be approved for teaching advanced Grade 6 mathematics. The commenters stated that, if necessary, this could also include district-led professional learning to supplement these teachers' knowledge of the TEKS for Grade 7 and higher.

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

Comment. A Texas administrator asked if the state will provide training supports for districts, campuses, or teachers. The commenter stated that Texas needs to ensure teachers have the tools to support students to stay on the path when the math gets hard rather than dropping to the on-level pathway.

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

Comment. A Texas administrator said there is a critical lack of knowledge in some middle school mathematics teachers who do not know how to teach math at the rigor of their grade level. The commenter stated that all the focus on math instruction is at the lower elementary level, not middle school.

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

Comment. Four Texas administrators and a parent asked for clarification regarding whether a student who does not fall in the 60th percentile or higher but does fall in the top 40% of the local measure must be automatically enrolled in a middle school advanced math program or if it is up to local LEA discretion.

Response. The agency agreed that additional clarification on the requirements for automatic enrollment was necessary. In response to this and other comments, subsection (c) was modified to clarify that students can qualify for automatic admission for the middle school advanced mathematics program by scoring either in the 60th percentile or higher on statewide scores for the Grade 5 mathematics assessment instrument or in the top 40% on a local measure identified by the LEA.

Comment. Two Texas administrators, two Texas teachers, and a community member stated that it is unfair to automatically place a student in a middle school advanced math program. The commenters stated that the school or district should not be eliminated from that decision making.

Response: The agency disagrees and provides the following clarification. TEC, §28.029(b), requires all school districts and open-enrollment charter schools to automatically enroll in an advanced mathematics course each Grade 6 student who performed in the top 40% on the Grade 5 mathematics assessment or on a local measure that includes the student's Grade 5 class ranking or a demonstrated proficiency Grade 5 mathematics coursework.

Comment: Two counselors, a Texas administrator, and two community members stated that policy makers are more concerned in over-preparing students at such a young age and less concerned with their social emotional mental health. They are concerned that students are not mature enough to handle the stress this program may put them under.

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

Comment. A counselor, nine Texas administrators, six teachers, and two community members expressed concern that the 60th percentile on the Grade 5 mathematics assessment is too low a cut-point for placement in advanced mathematics. The commenters proposed the rule specify the criteria be students who performed at the "Meets" or "Masters" level on STAAR®.

Response. The agency provides the following clarification. TEC, §28.029(b), requires all school districts and open-enrollment charter schools to automatically enroll in an advanced mathematics course each Grade 6 student who performed in the top 40% on the Grade 5 mathematics assessment or on a local measure that includes the student's Grade 5 class ranking or a demonstrated proficiency Grade 5 mathematics coursework. Students who score in the 60th or higher percentile are performing in the top 40% statewide.

Comment. A Texas teacher and four Texas administrators stated that the establishment of advanced middle school math courses would be particularly challenging in a small district where the students are divided into only two sections per grade level. The commenters requested more flexibility in the way districts implement a plan to increase student participation in Grade 8 Algebra I.

Response. The agency provides the following clarification. TEC, §28.029, requires LEAs to develop a middle school advanced mathematics program that is designed to enable students to enroll in Algebra I in Grade 8 and to automatically enroll students who meet certain criteria into the program in Grade 6.

Comment. Three Texas administrators, a teacher, and a community member stated that districts should have the ability to give a local assessment to determine placement in an advanced mathematics class that is not based solely on Grade 5 coursework.

Response. The agency agrees and has determined that LEAs may administer a local assessment as a local measure. In response to this and other comments, subsection (b) was modified at adoption to clarify that LEAs must identify, rather than develop, a local measure for use in determining student eligibility for the middle school advanced mathematics program.

Comment: Representatives from E3 Alliance, Texas Business Leadership Council, Texas 2036, Commit, Teach Plus, Educate Texas, The Education Trust, Democrats for Education Reform-Texas, Good Reason Houston, Teach for America, and Opportunity Austin recommend adding a statement regarding the use of student ranking, clarifying that the practice is intended for school systems currently ranking students in Grade 5 based on overall performance. The commenters emphasized that student ranking is not a mandatory or recommended method for identifying students to be entered into advanced math pathways.

Response. The agency disagrees that the suggested clarification is necessary. Additionally, the agency provides the following clarification. TEC, §28.029, requires that the local measure include the student's Grade 5 class ranking or a demonstrated proficiency in the student's Grade 5 mathematics coursework.

Comment. Texas Classroom Teachers Association recommended that subsection (d) be combined with proposed subsection (c) so that it is clear that a district can use either the Grade 5 Math STAAR® results or a local measure in all cases except when no Grade 5 Math STAAR® results are available, in which case a local measure must be used.

Response. The agency disagrees and has determined that the language as proposed would limit a student's ability to qualify



for the program. In response to this and other comments, subsection (c) was modified at adoption to specify that students can qualify for automatic admission for the middle school advanced mathematics program by scoring either in the 60th percentile or higher on statewide scores for the Grade 5 mathematics assessment instrument or in the top 40% on a local measure identified by the LEA.

Comment. A Texas administrator asked how the new requirement would affect honor students.

Response. The agency provides the following clarification. LEAs are responsible for the instructional arrangement and support of various special populations, including honors classes and students.

Comment. A Texas administrator asked if performance on the Algebra I end-of-course assessment could be applied to high school math scores out of concern that the top students would not count toward the high school's accountability.

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

**STATUTORY AUTHORITY.** The new section is adopted under Texas Education Code (TEC), §28.029, as added by Senate Bill 2124, 88th Texas Legislature, Regular Session, 2023, which requires a school district or open-enrollment charter school to automatically enroll in an advanced mathematics course each Grade 6 student who performed in the top 40% on either the Grade 5 mathematics assessment instrument administered under TEC, §39.023(a), or on a local measure that includes the student's Grade 5 class ranking or a demonstrated proficiency in the student's Grade 5 mathematics coursework.

**CROSS REFERENCE TO STATUTE.** The new section implements Texas Education Code, §28.029, as added by Senate Bill 2124, 88th Texas Legislature, Regular Session, 2023.

§74.2101. *Middle School Advanced Mathematics Program.*

(a) Each school district and open-enrollment charter school shall develop a middle school advanced mathematics program for students in Grades 6-8 to enable students to enroll in Algebra I in Grade 8.

(b) Each school district and open-enrollment charter school shall identify a local measure for use in determining student eligibility for automatic enrollment in a middle school advanced mathematics program.

(c) School districts and open-enrollment charter schools shall automatically enroll in a middle school advanced mathematics program each Grade 6 student whose performance was either:

(1) in the 60th percentile or higher on statewide scores for the Grade 5 mathematics assessment instrument administered under Texas Education Code, §39.023(a); or

(2) in the top 40% on a local measure that includes the student's Grade 5 class ranking or a demonstrated proficiency in the student's Grade 5 mathematics coursework.

(d) A local measure shall be used to determine enrollment of Grade 6 students for whom there are no results on the state Grade 5 mathematics assessment.

(e) A school district or open-enrollment charter school shall make public the criteria for automatic enrollment in a middle school advanced mathematics program, including any criteria for a local measure, before the start of each school year.

(f) The parent or guardian of a student who will be automatically enrolled in a middle school advanced mathematics program may opt the student out of automatic enrollment in an advanced mathematics program.

(g) Each school district and open-enrollment charter school shall provide a written notice to the parent or guardian of each student entering Grade 6 who will be automatically enrolled in a middle school advanced mathematics program. The written notification shall be provided no later than 14 days before the first day of instruction for the school year. The required notice shall include a description of:

(1) the purpose of the program;

(2) the middle school advanced mathematics program offered by the school district or open-enrollment charter school, including an overview of the content addressed at each grade level;

(3) resources offered to support student success;

(4) the right of the parent or guardian to opt their child out of the middle school advanced mathematics program; and

(5) the process for a parent or guardian to opt their child out of the program and any associated deadlines.

(h) A school district or open-enrollment charter school shall obtain written approval from the parent or guardian to remove a student from the middle school advanced mathematics program.

(i) Each school district and open-enrollment charter school shall annually report to the Texas Education Agency (TEA) data related to student enrollment and performance in the middle school advanced mathematics program in a manner and time to be determined by TEA.

(j) This section does not prohibit a school district or open-enrollment charter school from establishing a process to initially enroll Grade 7 or 8 students in a middle school advanced mathematics program.

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

Filed with the Office of the Secretary of State on June 18, 2024.

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Texas Education Agency

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



## TITLE 26. HEALTH AND HUMAN SERVICES

### PART 1. HEALTH AND HUMAN SERVICES COMMISSION

#### CHAPTER 559. DAY ACTIVITY AND HEALTH SERVICES REQUIREMENTS

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts amendments to §§559.1, 559.11, 559.81, and 559.91; the repeal of §§559.2, 559.12 - 559.23, 559.61 - 559.64, 559.82 - 559.84, 559.92 - 559.95, and

559.102 - 559.105; and new §§559.3, 559.13, 559.15, 559.17, 559.19, 559.21, 559.23, 559.25, 559.27, 559.29, 559.31, 559.33, 559.35, 559.37, 559.39, 559.50 - 559.53, 559.55, 559.57, 559.59, 559.61, 559.63, 559.65, 559.67, 559.69, 559.71, 559.73, 559.75, 559.77, 559.79, 559.83, 559.85, 559.87, 559.93, 559.95, 559.97, 559.99, 559.101, 559.103, 559.105, and 559.107.

New §559.3 is adopted with changes to the proposed text as published in the March 8, 2024, issue of the *Texas Register* (49 TexReg 1385). This rule will be republished.

The amendments to §§559.1, 559.11, 559.81, and 559.91; the repeal of §§559.2, 559.12 - 559.23, 559.61 - 559.64, 559.82 - 559.84, 559.92 - 559.95, and 559.102 - 559.105; and new §§559.13, 559.15, 559.17, 559.19, 559.21, 559.23, 559.25, 559.27, 559.29, 559.31, 559.33, 559.35, 559.37, 559.39, 559.50 - 559.53, 559.55, 559.57, 559.59, 559.61, 559.63, 559.65, 559.67, 559.69, 559.71, 559.73, 559.75, 559.77, 559.79, 559.83, 559.85, 559.87, 559.93, 559.95, 559.97, 559.99, 559.101, 559.103, 559.105, and 559.107, are adopted without changes to the proposed text as published in the March 8, 2024, issue of the *Texas Register* (49 TexReg 1385). These rules will not be republished.

## BACKGROUND AND JUSTIFICATION

The amendments, new sections, and repeals are necessary to comply with House Bill (H.B.) 1009 and H.B. 4696 from the 88th Legislature, Regular Session, 2023. The amendments, new sections, and repeals also reorganize rule sections so that key topics are easier to find, add clarity and specificity to rules, and update references throughout the chapter.

## COMMENTS

The 31-day comment period ended April 8, 2024.

During this period, HHSC received a comment regarding the proposed rules from one commenter. The commenter expressed appreciation for the reorganization and addition of new rule sections. The commenter indicated that the proposed rules make key topics easier to find.

Minor editorial changes were made to §559.3 to ensure the definitions are listed in alphabetical order.

## SUBCHAPTER A. INTRODUCTION

### 26 TAC §§559.1, §559.3

#### STATUTORY AUTHORITY

The amendment and new section are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Human Resources Code §103.004 and §103.005, which respectively provide that the Executive Commissioner of HHSC shall adopt rules for implementing Texas Human Resources Code, Chapter 103, and adopt rules for licensing and setting standards for facilities licensed under Texas Human Resources Code, Chapter 103.

#### §559.3. Definitions.

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

(1) Abuse-- Negligent or willful infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical or emotional harm or pain to an elderly or disabled person

by the person's caretaker, family member, or other individual who has an ongoing relationship with the person, or sexual abuse of an elderly or disabled person, including any involuntary or nonconsensual sexual conduct that would constitute an offense under Texas Penal Code §21.08 (relating to Indecent Exposure) or Texas Penal Code, Chapter 22 (relating to Assaultive Offenses) committed by the person's caretaker, family member, or other individual who has an ongoing relationship with the person.

(2) Actual harm--A negative outcome that compromises the physical, mental, or emotional well-being of an elderly person or a person with a disability receiving services at a facility.

(3) Adult--A person 18 years of age or older or an emancipated minor.

(4) Affiliate--With respect to a:

(A) partnership, each partner of the partnership;

(B) corporation, each officer, director, principal stockholder, and subsidiary; and each person with a disclosable interest;

(C) natural person, includes each:

(i) person's spouse;

(ii) partnership and each partner thereof, of which said person or any affiliate of said person is a partner; and

(iii) corporation in which the person is an officer, director, principal stockholder, or person with a disclosable interest.

(5) Alzheimer's disease and related disorders--Alzheimer's disease and any other irreversible dementia described by the Centers for Disease Control and Prevention (CDC) or the most current edition of the Diagnostic and Statistical Manual of Mental Disorders.

(6) Ambulatory--Mobility not relying on walker, crutch, cane, or other physical object or use of wheelchair.

(7) Applicant--A person applying for a license under Texas Human Resources Code, Chapter 103.

(8) Change of ownership--An event that results in a change to the federal taxpayer identification number of the license holder of a facility. The substitution of a personal representative for a deceased license holder is not a change of ownership.

(9) Client--An individual receiving day activity and health services.

(10) Construction, existing--See definition of existing building.

(11) Construction, new--Construction begun after April 1, 2007.

(12) Construction, permanent--A building or structure that meets a nationally recognized building code's details for foundations, floors, walls, columns, and roofs.

(13) Controlling person--A person with the ability, acting alone or with others, to directly or indirectly influence, direct, or cause the direction of management, expenditure of money, or policies of a facility or other person. A controlling person includes:

(A) a management company, landlord, or other business entity that operates or contracts with others for the operation of a facility;

(B) any person who is a controlling person of a management company or other business entity that operates a facility or that contracts with another person for the operation of a facility;

(C) an officer or director of a publicly traded corporation that is, or that controls, a facility, management company, or other business entity described in subparagraph (A) of this paragraph but does not include a shareholder or lender of the publicly traded corporation; and

(D) any other individual who, because of a personal, familial, or other relationship with the owner, manager, landlord, tenant, or provider of a facility, is in a position of actual control or authority with respect to the facility, without regard to whether the individual is formally named as an owner, manager, director, officer, provider, consultant, contractor, or employee of the facility, except an employee, lender, secured creditor, landlord, or other person who does not exercise formal or actual influence or control over the operation of a facility.

(14) DADS--The term referred to the Texas Department of Aging and Disability Services; it now refers to HHSC.

(15) DAHS--Day activity and health services. Health, social, and related support services as defined in this section.

(16) DAHS facility--A facility that provides services through a day activity and health services program on a daily or regular basis, but not overnight, to four or more elderly persons or persons with disabilities who are not related to the owner of the facility by blood, marriage, or adoption.

(17) DAHS program--A structured, comprehensive program offered by a DAHS facility that is designed to meet the needs of adults with functional impairments by providing DAHS in accordance with individual plans of care in a protective setting.

(18) Days--Calendar days, unless otherwise specified.

(19) Department--HHSC.

(20) Dietitian consultant--A person licensed as a dietitian by the Texas Department of Licensing and Regulation or a person with a bachelor's degree with major studies in food and nutrition, dietetics, or food service management.

(21) Direct ownership interest--Ownership of equity in the capital, stock, or profits of, or a membership interest in, an applicant or license holder.

(22) Direct service staff--An employee or contractor of a facility who directly provides services to individuals, including the director, a licensed nurse, the activities director, and an attendant. An attendant includes a driver, food service worker, aide, janitor, housekeeper, and laundry worker. A dietitian consultant is not a member of the direct service staff.

(23) Director--The person responsible for the overall operation of a facility.

(24) Disclosable interest--Five percent or more direct or indirect ownership interest in an applicant or license holder.

(25) Elderly person--A person 65 years of age or older

(26) Executive Commissioner--The executive commissioner of HHSC.

(27) Existing building--A building or portion thereof that, at the time of initial inspection by HHSC, is used as an adult day care occupancy, as defined by Life Safety Code, NFPA 101, 2000 edition, Chapter 17, for existing adult day care occupancies; or has been converted from another occupancy or use to an adult day care occupancy, as defined by Chapter 16 for new adult day care occupancies.

(28) Exploitation--An illegal or improper act or process of a caretaker, family member, or other individual who has an ongoing re-

lationship with the elderly person or person with a disability, using the resources of an elderly person or person with a disability for monetary or personal benefit, profit, or gain without the informed consent of the elderly person or person with a disability.

(29) Facility--A licensed DAHS facility.

(30) Fence--A barrier to prevent elopement of an individual or intrusion by an unauthorized person, consisting of posts, columns, or other support members, and vertical or horizontal members of wood, masonry, or metal.

(31) FM--FM Global (formerly known as Factory Mutual). A corporation whose approval of a product indicates a level of testing and certification that is acceptable to HHSC.

(32) Fraud--A deliberate misrepresentation or intentional concealment of information to receive or to be reimbursed for service delivery to which an individual is not entitled.

(33) Functional impairment--A condition that requires assistance with one or more personal care services.

(34) Health assessment--An assessment of an individual by a facility used to develop the individual's plan of care.

(35) Health services--Services that include personal care, nursing, and therapy services.

(A) Personal care services include:

(i) bathing;

(ii) dressing;

(iii) preparing meals;

(iv) feeding;

(v) grooming;

(vi) taking self-administered medication;

(vii) toileting;

(viii) ambulation; and

(ix) assistance with other personal needs or maintenance.

(B) Nursing services may include:

(i) administering medications;

(ii) physician-ordered treatments, such as dressing changes; and

(iii) monitoring the health condition of the individual.

(C) Therapy services may include:

(i) physical therapy;

(ii) occupational therapy; and

(iii) speech therapy.

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

(37) Human service program--An intentional, organized, ongoing effort designed to provide good to others. The characteristics of a human service program are:

(A) dependent on public resources and are planned and provided by the community;

(B) directed toward meeting human needs arising from day-to-day socialization, health care, and developmental experiences; and

(C) used to aid, rehabilitate, or treat people in difficulty or need.

(38) Human services--Include:

(A) personal social services, including:

- (i) DAHS;
- (ii) counseling;
- (iii) in-home care; and
- (iv) protective services;

(B) health services, including:

- (i) home health;
- (ii) family planning;
- (iii) preventive health programs;
- (iv) nursing facility; and
- (v) hospice;

(C) education services, meaning:

- (i) all levels of school;
- (ii) Head Start; and
- (iii) vocational programs;

(D) housing and urban environment services, including public housing;

(E) income transfer services, including:

- (i) Temporary Assistance for Needy Families; and
- (ii) Supplemental Nutrition Assistance Program;

and

(F) justice and public safety services, including:

- (i) parole and probation; and
- (ii) rehabilitation.

(39) Immediate threat to the health or safety of an elderly person or a person with a disability--A situation that causes, or is likely to cause, serious injury, harm, or impairment to, or the death of, an elderly person or a person with a disability receiving services at a facility.

(40) Indirect ownership interest--Any ownership or membership interest in a person who has a direct ownership interest in an applicant or license holder.

(41) Individual--A person who applies for or is receiving services at a facility.

(42) Isolated--When a very limited number of elderly persons, or persons with disabilities, receiving services at a facility are affected and a very limited number of staff are involved, or the situation has occurred only occasionally.

(43) License holder--A person who holds a license to operate a facility.

(44) Life Safety Code, NFPA 101--The Code for Safety to Life from Fire in Buildings and Structures, NFPA 101, a publication of the National Fire Protection Association, Inc. that:

(A) addresses the construction, protection, and occupancy features necessary to minimize danger to life from fire, including smoke, fumes, or panic; and

(B) establishes minimum criteria for the design of egress features to permit prompt escape of occupants from buildings or, where desirable, into safe areas within the building.

(45) Long-term care facility--A facility that provides care and treatment or personal care services to four or more unrelated persons, including:

(A) a nursing facility licensed under Texas Health and Safety Code, Chapter 242;

(B) an assisted living facility licensed under Texas Health and Safety Code, Chapter 247; and

(C) an intermediate care facility serving individuals with an intellectual disability or related conditions licensed under Texas Health and Safety Code, Chapter 252.

(46) LVN--Licensed vocational nurse. A person licensed by the Texas Board of Nursing who works under the supervision of an RN or a physician.

(47) Management services--Services provided under contract between the owner of a facility and a person to provide for operation of a facility, including administration, staffing, maintenance, and delivery of services. Management services do not include contracts solely for maintenance, laundry, or food services.

(48) Manager--A person who has a contractual relationship to provide management services to a facility.

(49) Medically related program--A program providing the services listed in paragraph (37)(B) of this section.

(50) Neglect--Failure to provide for oneself goods or services, including medical services, that are necessary to avoid physical harm, mental anguish, or mental illness; or failure of a caregiver to provide these goods or services.

(51) NFPA--The National Fire Protection Association. The NFPA is an organization that develops codes, standards, recommended practices, and guides through a consensus standards development process approved by the American National Standards Institute.

(52) NFPA 10--Standard for Portable Fire Extinguishers. A standard developed by the NFPA for selection, installation, inspection, maintenance, and testing of portable fire extinguishing equipment.

(53) NFPA 13--Standard for the Installation of Sprinkler Systems. A standard developed by the NFPA for the minimum requirements for design and installation of automatic fire sprinkler systems, including the character and adequacy of water supplies and selection of sprinklers, fittings, pipes, valves, and all maintenance and accessories.

(54) NFPA 70--National Electrical Code. A code developed by the NFPA for installation of electric conductors and equipment.

(55) NFPA 72--National Fire Alarm Code. A code developed by the NFPA for application, installation, performance, and maintenance of fire alarm systems and their components.

(56) NFPA 90A--Standard for the Installation of Air Conditioning and Ventilating Systems. A standard developed by the NFPA for systems for the movement of environmental air in structures that serve spaces over 25,000 cubic feet or buildings of certain heights and construction types, or both.

(57) NFPA 90B--Standard for the Installation of Warm Air Heating and Air-Conditioning Systems. A standard developed by the NFPA for systems for movement of environmental air in one- or two-family dwellings and structures that serve spaces not exceeding 25,000 cubic feet.

(58) NFPA 96--Standard for Ventilation Control and Fire Protection of Commercial Cooking Operations. A standard developed by the NFPA that provides the minimum fire safety requirements related to design, installation, operation, inspection, and maintenance of all public and private cooking operations, except for single-family residential usage.

(59) Nurse--An RN or LVN licensed in the state of Texas.

(60) Nursing services--Services provided by a nurse, including:

- (A) observation;
- (B) promoting and maintaining health;
- (C) preventing illness and disability;
- (D) managing health care during acute and chronic phases of illness;
- (E) guiding and counseling individuals and families; and

(F) referral to physicians, other health care providers, and community resources when appropriate.

(61) Online portal--A secure portal provided on the HHSC website for licensure activities, including for a DAHS facility applicant to submit licensure applications and information.

(62) Pattern of violation--Repeated, but not widespread in scope, failures of a facility to comply with Texas Human Resources Code, Chapter 103, or a rule, standard, or order adopted under Texas Human Resources Code, Chapter 103 that:

(A) result in a violation; and

(B) are found throughout the services provided by the facility or that affect or involve the same elderly persons or persons with disabilities receiving services at the facility or the same facility employees.

(63) Person--An individual, corporation, or association.

(64) Person with a disability--A person whose functioning is sufficiently impaired to require frequent medical attention, counseling, physical therapy, therapeutic or corrective equipment, or another person's attendance and supervision.

(65) Plan of care--A written plan, based on a health assessment and developed jointly by a facility and an individual or the individual's responsible party, that documents the functional impairment of the individual and the DAHS needed by the individual.

(66) Potential for minimal harm--A violation that has the potential for causing no more than a minor negative impact to an individual.

(67) Protective setting--A setting in which an individual's safety is ensured by the physical environment by staff.

(68) Related support services--Services to an individual, family member, or caregiver that may improve the person's ability to assist with an individual's independence and functioning. Services include:

(A) information and referral;

(B) transportation;

(C) teaching caregiver skills;

(D) respite;

(E) counseling;

(F) instruction and training; and

(G) support groups.

(69) Responsible party--A person designated by an individual as the individual's representative.

(70) RN--Registered nurse. A person licensed by the Texas Board of Nursing to practice professional nursing.

(71) Safety--Protection from injury or loss of life due to conditions such as fire, electrical hazard, unsafe building or site conditions, and presence of hazardous materials.

(72) Sanitation--Protection from illness, transmission of disease, or loss of life due to unclean surroundings, the presence of disease transmitting insects or rodents, unhealthful conditions or practices in preparation of food and beverage, or care of personal belongings.

(73) Semi-ambulatory--Mobility relying on a walker, crutch, cane, or other physical object, or independent use of wheelchair.

(74) Serious injury--An injury requiring emergency medical intervention or treatment by medical personnel, either at a facility or at an emergency room or medical office.

(75) Social activities--Therapeutic, educational, cultural enrichment, recreational, and other activities in a facility or in the community provided as part of a planned program to meet the social needs and interests of an individual.

(76) TAC--Texas Administrative Code.

(77) UL--Underwriters Laboratories, Inc. A corporation whose approval of a product indicates a level of testing and certification that is acceptable to HHSC.

(78) Widespread in scope--A violation of Texas Human Resources Code, Chapter 103, or a rule, standard, or order adopted under Texas Human Resources Code, Chapter 103, that:

(A) is pervasive throughout the services provided by the facility; or

(B) represents a systematic failure by the facility that affects or has the potential to affect a large portion or all the elderly persons or persons with disabilities receiving services at the facility.

(79) Willfully interfere--To act or not act to intentionally prevent, interfere with, or impede.

(80) Working with people--Acts involving delivery of services to individuals either directly or indirectly. Experience as a manager would meet this definition; however, experience in an administrative support position such as a bookkeeper does not. Experience does not have to be in a paid capacity.

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

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Chief Counsel  
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## 26 TAC §559.2

### STATUTORY AUTHORITY

The repeal is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Human Resources Code §103.004 and §103.005, which respectively provide that the Executive Commissioner of HHSC shall adopt rules for implementing Texas Human Resources Code, Chapter 103, and adopt rules for licensing and setting standards for facilities licensed under Texas Human Resources Code, Chapter 103.

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

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## SUBCHAPTER B. APPLICATION PROCEDURES

26 TAC §§559.11, 559.13, 559.15, 559.17, 559.19, 559.21, 559.23, 559.25, 559.27, 559.29, 559.31, 559.33, 559.35, 559.37, 559.39

### STATUTORY AUTHORITY

The amendment and new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Human Resources Code §103.004 and §103.005, which respectively provide that the Executive Commissioner of HHSC shall adopt rules for implementing Texas Human Resources Code, Chapter 103, and adopt rules for licensing and setting standards for facilities licensed under Texas Human Resources Code, Chapter 103.

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## 26 TAC §§559.12 - 559.23

### STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Human Resources Code §103.004 and §103.005, which respectively provide that the Executive Commissioner of HHSC shall adopt rules for implementing Texas Human Resources Code, Chapter 103, and adopt rules for licensing and setting standards for facilities licensed under Texas Human Resources Code, Chapter 103.

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

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## SUBCHAPTER D. STANDARDS FOR LICENSURE

26 TAC §§559.50 - 559.53, 559.55, 559.57, 559.59, 559.61, 559.63, 559.65, 559.67, 559.69, 559.71, 559.73, 559.75, 559.77, 559.79

### STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Human Resources Code §103.004 and §103.005, which respectively provide that the Executive Commissioner of HHSC shall adopt rules for implementing Texas Human Resources Code, Chapter 103, and adopt rules for licensing and setting standards for facilities licensed under Texas Human Resources Code, Chapter 103.

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

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## 26 TAC §§559.61 - 559.64

### STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Human Resources Code §103.004 and §103.005, which respectively provide that the Executive Commissioner of HHSC shall adopt rules for implementing Texas Human Resources Code, Chapter 103, and adopt rules for licensing and setting standards for facilities licensed under Texas Human Resources Code, Chapter 103.

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## SUBCHAPTER E. INSPECTIONS, SURVEYS, AND VISITS

### 26 TAC §§559.81, 559.83, 559.85, 559.87

#### STATUTORY AUTHORITY

The amendment and new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Human Resources Code §103.004 and §103.005, which respectively provide that the Executive Commissioner of HHSC shall adopt rules for implementing Texas Human Resources Code, Chapter 103, and adopt rules for licensing and setting standards for facilities licensed under Texas Human Resources Code, Chapter 103.

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## 26 TAC §§559.82 - 559.84

### STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Human Resources Code §103.004 and §103.005, which respectively provide that the Executive Commissioner of HHSC shall adopt rules for implementing Texas Human Resources Code, Chapter 103, and adopt rules for licensing and setting standards for facilities licensed under Texas Human Resources Code, Chapter 103.

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

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## SUBCHAPTER F. ABUSE, NEGLECT, AND EXPLOITATION: COMPLAINT AND INCIDENT REPORTS AND INVESTIGATIONS

### 26 TAC §§559.91, 559.93, 559.95, 559.97, 559.99

#### STATUTORY AUTHORITY

The amendment and new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Human Resources Code §103.004 and §103.005, which respectively provide that the Executive Commissioner of HHSC shall adopt rules for implementing Texas Human Resources Code, Chapter 103, and adopt rules for licensing and setting standards for facilities licensed under Texas Human Resources Code, Chapter 103.

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## 26 TAC §§559.92 - 559.95

### STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Human Resources Code §103.004 and §103.005, which respectively provide that the Executive Commissioner of HHSC shall adopt rules for implementing Texas Human Resources Code, Chapter 103, and adopt rules for licensing and setting standards for facilities licensed under Texas Human Resources Code, Chapter 103.

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

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## SUBCHAPTER G. ENFORCEMENT

### 26 TAC §§559.101, 559.103, 559.105, 559.107

### STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Human Resources Code §103.004 and §103.005, which respectively provide that the Executive Commissioner of HHSC shall adopt rules for implementing Texas Human Resources Code, Chapter 103, and adopt rules for licensing and setting standards for facilities licensed under Texas Human Resources Code, Chapter 103.

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## 26 TAC §§559.102 - 559.105

### STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Human Resources Code §103.004 and §103.005, which respectively provide that the Executive Commissioner of HHSC shall adopt rules for implementing Texas Human Resources Code, Chapter 103, and adopt rules for licensing and setting standards for facilities licensed under Texas Human Resources Code, Chapter 103.

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

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Chief Counsel

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## CHAPTER 744. MINIMUM STANDARDS FOR SCHOOL-AGE AND BEFORE OR AFTER-SCHOOL PROGRAMS

The Texas Health and Human Services Commission (HHSC) adopts amendments to §744.901, concerning What information must I maintain in my personnel records, and §744.1103, concerning What minimum qualifications must each of my employees meet.

The amendments to §744.901 and §744.1103 are adopted without changes to the proposed text as published in the March 15, 2024, issue of the *Texas Register* (49 TexReg 1691). These rules will not be republished.

### BACKGROUND AND JUSTIFICATION

The amendments are necessary to comply with Texas Human Resources Code (HRC) §42.0563, added by Senate Bill (S.B.) 1469, 88th Legislature, Regular Session, 2023. HRC §42.0563 requires an applicant for a position at a child-care facility to complete and submit an affidavit on a form developed by HHSC through which the applicant discloses (1) whether the applicant has a charge, adjudication, or conviction related to having an inappropriate relationship with a minor; (2) all relevant facts pertaining to any charge, adjudication, or conviction disclosed; and (3) if the disclosure is related to a charge, whether the charge



was determined to be true or false. If the applicant discloses a charge, the child-care facility may employ the applicant if the facility determines that the charge was false based on the information disclosed in the affidavit.

#### COMMENTS

The 31-day comment period ended April 15, 2024. During this period, HHSC did not receive any comments regarding the proposed rules.

### SUBCHAPTER C. RECORD KEEPING DIVISION 4. PERSONNEL RECORDS

#### 26 TAC §744.901

##### STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42, including HRC §42.0563.

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

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Karen Ray

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For further information, please call: (512) 438-3269



### SUBCHAPTER D. PERSONNEL DIVISION 2. EMPLOYEES AND CAREGIVERS

#### 26 TAC §744.1103

##### STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42, including HRC §42.0563.

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

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Karen Ray  
Chief Counsel

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For further information, please call: (512) 438-3269



### CHAPTER 745. LICENSING SUBCHAPTER D. APPLICATION PROCESS DIVISION 3. SUBMITTING THE APPLICATION MATERIALS

#### 26 TAC §745.243

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §745.243, concerning What does a completed application for a permit include.

The amendment to §745.243 is adopted without changes to the proposed text as published in the March 15, 2024, issue of the *Texas Register* (49 TexReg 1694). This rule will not be republished.

##### BACKGROUND AND JUSTIFICATION

The amendment is necessary to amend an existing rule in Chapter 745 to delete a reference to a "notarized Affidavit for Applicants for Employment with a Licensed Operation or Registered Child-Care Home" in the list of required application materials for a registered child-care home. The deletion aligns the rule with Texas Human Resources Code (HRC) §42.059, which requires the affidavit for prospective employees, but does not require it with the application.

##### COMMENTS

The 31-day comment period ended April 15, 2024. During this period, HHSC did not receive any comments regarding the proposed rules.

##### STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42, including HRC §42.059.

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

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Karen Ray

Chief Counsel

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For further information, please call: (512) 438-3269

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## CHAPTER 746. MINIMUM STANDARDS FOR CHILD-CARE CENTERS

The Texas Health and Human Services Commission (HHSC) adopts amendments to §746.901, concerning What information must I maintain in my personnel records, and §746.1105, concerning What minimum qualifications must each of my child-care center employees meet.

The amendments to §746.901 and §746.1105 are adopted without changes to the proposed text as published in the March 15, 2024, issue of the *Texas Register* (49 TexReg 1695). These rules will not be republished.

### BACKGROUND AND JUSTIFICATION

The amendments are necessary to comply with Texas Human Resources Code (HRC) §42.0563, added by Senate Bill (S.B.) 1469, 88th Legislature, Regular Session, 2023. HRC §42.0563 requires an applicant for a position at a child-care facility to complete and submit an affidavit on a form developed by HHSC through which the applicant discloses (1) whether the applicant has a charge, adjudication, or conviction related to having an inappropriate relationship with a minor; (2) all relevant facts pertaining to any charge, adjudication, or conviction disclosed; and (3) if the disclosure is related to a charge, whether the charge was determined to be true or false. If the applicant discloses a charge, the child-care facility may employ the applicant if the facility determines that the charge was false based on the information disclosed in the affidavit.

### COMMENTS

The 31-day comment period ended April 15, 2024.

During this period, HHSC received comments regarding the proposed rules from three commenters representing child-care centers. A summary of the comments relating to the rules and HHSC responses follows.

**Comment:** One commenter said that they did not understand the rule proposals.

**Response:** HHSC disagrees with the comment's implication that the rule language is not clear and declines to revise the rules. HHSC notified providers of the statutory requirements by email before the law took effect and will send additional information to providers on complying with the rule changes once adopted.

**Comment:** One commenter said that the rule proposals will add to the workloads of those working in child care.

**Response:** HHSC disagrees with the comment and declines to revise the rules. While the statutorily required affidavit constitutes additional paperwork to complete for new employees and others who will perform employee functions, the affidavit easily aligns with the current background check process.

**Comment:** One commenter expressed support for the rule proposals.

**Response:** HHSC appreciates the support for the rules.

## SUBCHAPTER C. RECORD KEEPING DIVISION 4. PERSONNEL RECORDS

### 26 TAC §746.901

#### STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42, including HRC §42.0563.

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

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Karen Ray

Chief Counsel

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For further information, please call: (512) 438-3269

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## SUBCHAPTER D. PERSONNEL DIVISION 2. CHILD-CARE CENTER EMPLOYEES AND CAREGIVERS

### 26 TAC §746.1105

#### STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42, including HRC §42.0563.

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

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Karen Ray

Chief Counsel

Health and Human Services Commission

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For further information, please call: (512) 438-3269

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## CHAPTER 747. MINIMUM STANDARDS FOR CHILD-CARE HOMES

The Texas Health and Human Services Commission (HHSC) adopts amendments to §747.901, concerning What information must I maintain in my personnel records, and §747.1207, con-

cerning What minimum qualifications must an assistant caregiver meet.

The amendments to §747.901 and §747.1207 are adopted without changes to the proposed text as published in the March 15, 2024, issue of the *Texas Register* (49 TexReg 1697). These rules will not be republished.

#### BACKGROUND AND JUSTIFICATION

The amendments are necessary to comply with Texas Human Resources Code (HRC) §42.0563, added by Senate Bill (S.B.) 1469, 88th Legislature, Regular Session, 2023. HRC §42.0563 requires an applicant for a position at a child-care facility to complete and submit an affidavit on a form developed by HHSC through which the applicant discloses (1) whether the applicant has a charge, adjudication, or conviction related to having an inappropriate relationship with a minor; (2) all relevant facts pertaining to any charge, adjudication, or conviction disclosed; and (3) if the disclosure is related to a charge, whether the charge was determined to be true or false. If the applicant discloses a charge, the child-care facility may employ the applicant if the facility determines that the charge was false based on the information disclosed in the affidavit.

#### COMMENTS

The 31-day comment period ended April 15, 2024.

During this period, HHSC received comments regarding the proposed rules from two commenters, including one licensed child-care home and one registered child-care home. A summary of the comments relating to the rules and HHSC responses follows.

Comment: One commenter said that they did not understand the rule proposals.

Response: HHSC disagrees with the comment's implication that the rule language is not clear and declines to revise the rules. HHSC notified providers of the statutory requirements by email before the law took effect and will send additional information to providers on complying with the rule changes once adopted.

Comment: One commenter said that the rule proposals will add to the workloads of those working in child care and cause a hardship on child-care operations.

Response: HHSC disagrees with the comment and declines to revise the rules. While the statutorily required affidavit constitutes additional paperwork to complete for new employees and others who will perform employee functions, the affidavit easily aligns with the current background check process.

#### SUBCHAPTER C. RECORD KEEPING DIVISION 4. RECORDS ON CAREGIVERS AND HOUSEHOLD MEMBERS

##### 26 TAC §747.901

#### STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42, including HRC §42.0563.

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

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Karen Ray

Chief Counsel

Health and Human Services Commission

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#### SUBCHAPTER D. PERSONNEL DIVISION 3. ASSISTANT CAREGIVERS AND SUBSTITUTE CAREGIVERS

##### 26 TAC §747.1207

#### STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42, including HRC §42.0563.

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

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Karen Ray

Chief Counsel

Health and Human Services Commission

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For further information, please call: (512) 438-3269



#### CHAPTER 748. MINIMUM STANDARDS FOR GENERAL RESIDENTIAL OPERATIONS

The Texas Health and Human Services Commission (HHSC) adopts amendments to §748.363, concerning What information must the personnel record of an employee include, and §748.505, concerning What minimum qualifications must all employees meet.

The amendments to §748.363 and §748.505 are adopted without changes to the proposed text as published in the March 15, 2024, issue of the *Texas Register* (49 TexReg 1699). These rules will not be republished.

#### BACKGROUND AND JUSTIFICATION

The amendments are necessary to comply with Texas Human Resources Code (HRC) §42.0563, added by Senate Bill (S.B.)

1469, 88th Legislature, Regular Session, 2023. HRC §42.0563 requires an applicant for a position at a child-care facility to complete and submit an affidavit on a form developed by HHSC through which the applicant discloses (1) whether the applicant has a charge, adjudication, or conviction related to having an inappropriate relationship with a minor; (2) all relevant facts pertaining to any charge, adjudication, or conviction disclosed; and (3) if the disclosure is related to a charge, whether the charge was determined to be true or false. If the applicant discloses a charge, the child-care facility may employ the applicant if the facility determines that the charge was false based on the information disclosed in the affidavit.

#### COMMENTS

The 31-day comment period ended April 15, 2024.

During this period, HHSC received one comment regarding the proposed rules from one commenter representing the Texas Alliance of Child and Family Services. A summary of the comment relating to the rules and HHSC response follows.

Comment: One commenter recommended a single affidavit to encompass the requirements of HRC §42.0563 and §42.059. The commenter said an additional form represents a separate administrative burden to providers and the potential for an additional citation.

Response: HHSC disagrees with the comment and declines to revise the rules. Each affidavit is statutorily required by a different section of the HRC. Each section requires its own affidavit. HRC §42.0563(a) requires HHSC to adopt the related form with no notarization requirement, while HRC §42.059 does require notarization and requires HHSC to include specific language in the related form. Moreover, the completion of both affidavits only pertains to one residential child-care operation type: general residential operations, not child-placing agencies. If the two affidavits were combined into one, some prospective employees for a child-placing agency may mistakenly complete the portion relating to HRC §42.0563, which is not required for those persons. Therefore, two separate affidavits will continue to be utilized to avoid confusion and comply with statutory requirements.

### SUBCHAPTER D. REPORTS AND RECORD KEEPING

#### DIVISION 3. PERSONNEL RECORDS

##### 26 TAC §748.363

#### STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42, including HRC §42.0563.

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

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Karen Ray  
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Health and Human Services Commission  
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For further information, please call: (512) 438-3269

### SUBCHAPTER E. PERSONNEL DIVISION 1. GENERAL REQUIREMENTS

##### 26 TAC §748.505

#### STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42, including HRC §42.0563.

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

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### TITLE 28. INSURANCE

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

#### CHAPTER 102. PRACTICES AND PROCEDURES--GENERAL PROVISIONS

##### 28 TAC §102.2

INTRODUCTION. The Texas Department of Insurance, Division of Workers' Compensation (DWC) adopts amendments to 28 TAC §102.2, concerning gifts, grants, and donations. The amendments are adopted without changes to the proposed text published in the May 17, 2024, issue of the *Texas Register* (49 TexReg 3483). The rule will not be republished.

REASONED JUSTIFICATION. The amendments update the language in §102.2 and remove obsolete provisions. Amending §102.2 is necessary to reflect the current agency structure to ensure that the rule is clear and accurate. Texas Labor Code §402.062 permits DWC to accept gifts, grants, or donations as provided by DWC rules. The amendments also explain DWC's

process for providing notice of gifts, grants, and donations, and include nonsubstantive editorial and formatting changes that make updates for plain language and agency style to improve the rule's clarity.

#### SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Commenters: DWC received one written comment and no oral comments. The Office of Injured Employee Counsel (OIEC) commented in support of the proposal. Nobody commented against the proposal or suggested changes to it.

Comment on §102.2. OIEC supported DWC's amendments regarding posting gifts, grants, or donations of \$500 or more on its website for five years.

Agency Response to Comment on §102.2. DWC appreciates the comment.

STATUTORY AUTHORITY. The commissioner of workers' compensation adopts the amendments to §102.2 under Labor Code §§402.062, 402.00111, 402.00116, and 402.061.

Labor Code §402.062 permits DWC to accept gifts, grants, or donations as provided by DWC rules.

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

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

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

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

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

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## CHAPTER 147. DISPUTE RESOLUTION- -AGREEMENTS, SETTLEMENTS, COMMUTATIONS

INTRODUCTION. The Texas Department of Insurance, Division of Workers' Compensation (DWC) adopts new 28 TAC §147.1; amended §§147.4, 147.5, 147.7, 147.10, and 147.11; and the repeals of §§147.1 - 147.3, 147.6, 147.8, and 147.9, concerning agreements, settlements, and commutations in the dispute resolution process.

New §147.1; amended §§147.4, 147.5, 147.7, 147.10, and 147.11; and the repeals of §§147.1 - 147.3, 147.6, 147.8, and 147.9 are adopted without changes to the proposed text

published in the April 5, 2024, issue of the *Texas Register* (49 TexReg 2165) and will not be republished.

REASONED JUSTIFICATION. The amendments and repeals condense some sections into others, so the chapter is more organized and easier to navigate; remove some sections and subsections that are outdated and unnecessary; update citations; remove obsolete references; and make plain language updates and agency style editorial changes. The amendments and repeals also remove references to penalties specific to certain violations of agreements and settlements since penalties are addressed in Texas Labor Code Chapter 415 and 28 TAC Chapter 180.

The amended sections, new section, and repeals are necessary to organize the chapter and remove unnecessary rules to update and streamline the dispute resolution process. Some sections were deleted because they repeat the Labor Code or existing rules, or require DWC to perform actions that are unnecessary and not required by statute.

Section 147.1 provides a statutory reference to definitions in the dispute resolution process. The repeal of §147.1 removes the reference to the definitions within the section, which are "agreement" and "settlement" because these definitions exist in Labor Code §401.011. Sections 147.2 and 147.3 move into new §147.1, which replaces the repealed text, to better organize the chapter. Also, §147.1 is renamed to better reflect its purpose.

Section 147.2 provides that agreements and settlements must be on a form prescribed by DWC and specifies which forms to use. DWC has repealed §147.2 and moved former §147.2(a), which requires that an agreement or settlement of the dispute resolution process be on a form prescribed by DWC, to §147.1 to better organize the chapter. Subsections 147.2(b) and 147.2(c), which specify certain DWC forms to use, have been repealed because our website contains these forms, and the website is easy to navigate.

Section 147.3 concerned the execution of agreements and settlements in the dispute resolution process. The existing subsections under §147.3 moved to new §147.1 to better organize the rule, and §147.3 has been repealed.

Section 147.4 concerns filing agreements and effective dates in the dispute resolution process. The amendments remove certain procedures for DWC staff that are not required by statute and do not contribute to the purpose of filing agreements. The amendments also remove §147.4(e), which refers to possible penalties imposed if a breach of an agreement occurs, because Labor Code Chapter 415 and 28 TAC Chapter 180 address these penalties. The amendments also rename §147.4 to better reflect its purpose.

Section 147.5 concerns settlements in the dispute resolution process, including settlement requirements, effective dates, and procedures for informal settlement conferences. The amendments remove subsections 147.5(b), (c), (d), (e), and (g). Those provisions are more appropriate for internal procedures than a rule. Removing them updates and streamlines the settlement process. Subsection 147.5(h) is removed because it exists in Labor Code §408.005(f). Subsection 147.9(c) regarding settlements moved to new subsection 147.5(c). The amendments also rename §147.5 to better reflect its purpose.

Section 147.6 provided that DWC may reject a settlement by an unrepresented employee pending an informal conference. DWC has repealed §147.6 because it is obsolete. Settlements under

old law are now covered under Chapter 56 of this title (relating to Structured Compromised Settlement Agreements).

Section 147.7 concerns the effect of previously entered decisions and orders on agreements and settlements in the dispute resolution process. The amendments rename §147.7 to better reflect its purpose.

Section 147.8 provided the circumstances under which a party can withdraw from a settlement. Section 147.8 has been repealed because it repeats Labor Code subsection 408.005(h).

Section 147.9 concerned the requirements for agreements and settlements in the dispute resolution process. Repealing §147.9 removed subsections (a) and (b) because they repeat the statute. Subsection 147.9(c), regarding settlements, has been moved to subsection 147.5(c) to better organize the rule.

Section 147.10 concerns the commutation of impairment income benefits. The amendments to §147.10 remove subsection (a) because it exists in Labor Code §408.128. Subsection (c) is removed because the DWC form already provides a warning to the employee that commutation terminates the employee's entitlement to additional income benefits, and it exists in Labor Code §408.128. Subsection (d) is removed because it is unnecessary. Subsection (d) states that the employee may contact DWC to get or verify the information required to be included in a request to commute impairment benefits. Employees may contact DWC to get or verify this information without a rule stating so. Therefore, it is unnecessary. The amendments also rename the section to better reflect its purpose.

Section 147.11 concerns notifications to DWC of proposed judgments and settlements within the dispute resolution process. The amendments to §147.11 update the language in subsection (b) and remove subsections (a) and (c) because they exist in Labor Code §410.258. The amendments also remove subsection (d) regarding penalties because Labor Code Chapter 415 and 28 TAC Chapter 180 address these penalties.

In addition, the adopted amendments to Chapter 147 include nonsubstantive editorial and formatting changes to conform the sections to the agency's current style and improve the rule's clarity.

#### SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Commenters: DWC received two written comments, and no oral comments. Commenters in support of the proposal were: Office of Injured Employee Counsel (OIEC) and Liberty Mutual. DWC did not receive comments against the proposal.

Comment on Chapter 147. OIEC commented that they support the proposed amendments.

Agency Response to Comment on Chapter 147. DWC appreciates the comment.

Comment on Chapter 147. Liberty Mutual commented that the changes to the rule are good, making the chapter clearer and should help all parties better understand the process.

Agency Response to Comment on Chapter 147. DWC appreciates the comment.

#### **28 TAC §§147.1 - 147.3, 147.6, 147.8, 147.9**

STATUTORY AUTHORITY. The commissioner of workers' compensation adopts the repeals of 28 TAC §§147.1 - 147.3, 147.6, 147.8, and 147.9 under Labor Code §§401.011, 408.005,

410.029, 410.030, 410.258, 402.00111, 402.00116, and 402.061.

Labor Code §401.011 provides definitions used in workers' compensation.

Labor Code §408.005 concerns the timing, approval, and withdrawal of a settlement in the dispute resolution process.

Labor Code §410.029 provides that a dispute may be resolved either in whole or in part at a benefit review conference. If the conference results in the resolution of some disputed issues by agreement or in a settlement, the benefit review officer must reduce the agreement or the settlement to writing. The benefit review officer and each party or the designated representative of the party must sign the agreement or settlement. Section 410.029 also provides that a settlement takes effect on the date it is approved by DWC in accordance with Labor Code §408.005.

Labor Code §410.030 provides that an agreement signed in accordance with Labor Code §410.029 is binding on the insurance carrier through the conclusion of all matters relating to the claim, unless DWC or a court, on a finding of fraud, newly discovered evidence, or other good and sufficient cause, relieves the insurance carrier of the effect of the agreement. The agreement is binding on the claimant, if represented by an attorney, to the same extent as on the insurance carrier.

Labor Code §410.258 provides that a party must file any proposed judgment or settlement, including a proposed default judgment or proposed agreed judgment, with the division not later than the 30th day before the date on which the court is scheduled to enter the judgment or approve the settlement.

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

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

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

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

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



#### **28 TAC §§147.1, 147.4, 147.5, 147.7, 147.10, 147.11**

STATUTORY AUTHORITY. The commissioner of workers' compensation adopts new 28 TAC §147.1 and amendments to §§147.4, 147.5, 147.7, 147.10, and 147.11 under Labor Code §§408.005, 408.128, 410.029, 410.030, 410.258, 402.00111, 402.00116, and 402.061.

Labor Code §408.005 concerns the timing, approval, and withdrawal of a settlement in the dispute resolution process.

Labor Code §408.128 provides that an employee may elect to commute the remainder of the impairment income benefits to which the employee is entitled if the employee has returned to work for at least three months, earning at least 80% of the employee's average weekly wage. An employee who elects to commute impairment income benefits is not entitled to additional income benefits for the compensable injury.

Labor Code §410.029 provides that a dispute may be resolved either in whole or in part at a benefit review conference. If the conference results in the resolution of some disputed issues by agreement or in a settlement, the benefit review officer must reduce the agreement or the settlement to writing. The benefit review officer and each party or the designated representative of the party must sign the agreement or settlement. Section 410.029 also provides that a settlement takes effect on the date it is approved by DWC in accordance with Labor Code §408.005.

Labor Code §410.030 provides that an agreement signed in accordance with Labor Code §410.029 is binding on the insurance carrier through the conclusion of all matters relating to the claim, unless DWC or a court, on a finding of fraud, newly discovered evidence, or other good and sufficient cause, relieves the insurance carrier of the effect of the agreement. The agreement is binding on the claimant, if represented by an attorney, to the same extent as on the insurance carrier.

Labor Code §410.258 provides that a party must file any proposed judgment or settlement, including a proposed default judgment

or proposed agreed judgment, with the division not later than the 30th day before the date on which the court is scheduled to enter the judgment or approve the settlement.

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

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

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

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

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