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 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 26. POLITICAL AND LEGISLATIVE ADVERTISING

1 TAC §26.1

The Texas Ethics Commission (TEC) adopts amendments to TEC Rules in Chapter 26. Specifically, the TEC adopts amendments to §26.1, regarding the political advertising disclosure statement required on certain political advertising. These amendments are adopted without changes to the proposed text as published in the April 19, 2024, issue of the *Texas Register* (49 TexReg 2376). The rule will not be republished.

This proposed rule amendment narrows the exception for political advertising disclosure statements created by the existing TEC Rule § 26.1.

Political advertising generally needs to include a political advertising disclosure statement that indicates the name of the person who paid for it, or if authorized by a candidate or committee, the candidate or committee who authorized it. Tex. Elec. Code § 255.001. The existing TEC Rule § 26.1 was meant to clarify that a political advertising disclosure requirement is not required on social media posts when no person is paying to post the political advertising. Under existing TEC Rule §26.1, the political advertising disclosure requirement is not required for most social media posts where "the person posting or re-posting" did not make an expenditure exceeding $100 in a reporting period for the post. 1 Tex. Admin. Code §26.1(c)(2). The existing rule clarifies that when no payment is made in excess of $100 by the person posting the political advertising, no disclosure statement is required. The rule makes sense considering that the disclosure identifies "the person who paid for the political advertising." Tex. Elec. Code § 255.001(a)(2)(A). As a typical social media post requires no payment, there is no "person who paid for" it to be disclosed.

However, the actor in the existing rule is "the person posting or re-posting" political advertising on social media. The existing rule does not clearly address a situation where the person physically making the post is being paid to do so. Although the law clearly requires the identification of the person who paid to publish, distribute, or broadcast political advertising containing express advocacy, it is unclear, under the existing rule, whether a political advertising disclosure statement is required when the person making the post is paid to do so.

The adopted amendment makes clear, consistent with Section 255.001, that a political advertising disclosure statement is required when a person is paid to post political advertising on the Internet. *See* Tex. Elec. Code §§ 255.001 (requiring the disclosure of the name of the person who paid for political advertising appearing on the Internet); 251.001(16) (defining political advertising).

The TEC fully considered all written and oral comments on the proposed rule amendment. The following people furnished written comments in support of the proposed amendment: Chris Tomlinson, William Cohen, and Steve Snyder.

The following people submitted comments in opposition to the rule amendment: Pam Pardo and David Keating, president of the Institute for Free Speech. Ms. Pardo expressed concern that the amended rule would infringe on citizens' First Amendment rights and lead to selective enforcement. Both Ms. Pardo and Mr. Keating expressed concern that the term "in return for consideration" used in the rule amendment is too broad. The TEC believes the concerns to be unfounded.

First, the rule amendment simply harmonizes TEC Rule 26.1 with the statutory requirements of Section 255.001. Regardless of personal policy preferences, the TEC is obligated to ensure a rule is not in direct conflict with statute. The disclosure required by statute is also constitutional. *See, e.g., Citizens United v. FEC*, 558 U.S. 310, 369-72 (2010). The scope of the statutory disclosure requirement is narrow, applying to only paid political advertising containing express advocacy. Tex. Elec. Code § 255.001(a). The disclosure requirement, which imposes no limit to speech, is consistent with the First Amendment. *Citizens United,* 558 U.S. at 369-72.

In terms of enforcement, TEC may only accept jurisdiction over a sworn complaint alleging facts that would constitute a violation of law. Mere speculation that a social media post was made in return for consideration would be insufficient for the TEC to accept jurisdiction of a sworn complaint.

Finally, the term "in return for consideration" is not vague or overly board. The amended rule imports the term from the definition of political advertising. Tex. Elec. Code § 251.001(16) (Political advertising includes certain communications that "*in return for consideration*, [are] published in a newspaper, magazine, or other periodical or is broadcast by radio of television."). In doing so, it imports the decades-long understanding of what communications appear in a newspaper, radio, or television "in return for consideration" and therefore require a disclosure statement. For example, it is understood that express electoral advocacy the newspaper person is paid to carry (what are commonly referred to as advertisements) require a disclosure statement, but the newspaper's own news articles or editorials do not. Similarly, a specific message a person is paid to post on social media is done so in return for consideration. A person's own speech is not.

Andrew Cates also submitted written and oral comments. He was generally supportive of the amendment but believed it did

not go far enough to impose liability on the person making the payment for the political advertising. Mr. Cates' comment suggested the TEC should focus on the person making the payment rather than the person receiving the payment to post the advertisement. Whether and under what contexts the law imposes liability on the person who pays for political advertising that does not contain a required disclosure statement is a question that is not necessary to answer with this rule amendment.

This rule amendment makes clear that paid social media posts are not exempt from the disclosure requirement. Establishing that the disclosure is required is the first step. Whether the payor is liable if the person who he pays to post political advertising does not include the disclosure is a next-level question and is not necessary to be addressed in this rule. First, the law attaches liability to a person who "knowingly cause[s] to be published, distributed, or broadcast political advertising containing express advocacy." *Id.* § 255.001(a). Whether the person who pays for others to post political advertising without a disclosure statement knowingly caused it to be published is a fact-intensive inquiry that can be answered through adjudication. If further clarity is required it can be the subject of a future rulemaking.

The amended rule is adopted under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code.

The adopted amended rule affects Title 15 of the Election Code.

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

Filed with the Office of the Secretary of State on July 19, 2024.

TRD-202403204
James Tinley
General Counsel
Texas Ethics Commission
Effective date: August 8, 2024
Proposal publication date: April 19, 2024
For further information, please call: (512) 463-5800

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PART 7. STATE OFFICE OF ADMINISTRATIVE HEARINGS

CHAPTER 159. RULES OF PROCEDURE FOR ADMINISTRATIVE LICENSE SUSPENSION HEARINGS

The State Office of Administrative Hearings (SOAH) adopts amendments and new rules in the following sections of Texas Administrative Code, Title 1, Part 7, Chapter 159, Rules of Procedure for Administrative License Suspension Hearings:

Subchapter A, General, §159.1, Scope; §159.3, Definitions; and §159.7, Other SOAH Rules of Procedure.

Subchapter B, Representation, which is retitled as Case Administration; §159.51, Withdrawal of Counsel, which is replaced with a new §159.51 concerning Jurisdiction; adopting a new §159.53 concerning Filing Documents; adopting a new §159.55 concerning Service of Documents on Parties; adopting a new §159.57 concerning Representation of the Parties; adopting a new §159.59 concerning Withdrawal and Substitution of Counsel; and adopting a new §159.61 concerning Electronic Case Records Access.

Subchapter C, Witnesses and Subpoenas, §159.101, Subpoenas Generally; §159.103, Issuance and Service of Subpoenas; and adopting a new §159.104, concerning Witness Fees.

Subchapter D, Discovery, §159.151 Prehearing Discovery.

Subchapter E, Hearing and Prehearing, §159.201, Scheduling and Notice of Hearing; §159.203, Waiver or Dismissal of Hearing; §159.207, Continuances; §159.209, Participation by Telephone or Videoconference; adopting a new §159.210 concerning Hearing on Written Submission; §159.211 Hearings; and §159.213 Failure to Attend Hearing and Default.

Subchapter F, Disposition of Case, §159.253, Decision of the Judge; adopting a new §159.254 concerning Correction of Final Decision; §159.255 Appeal of Judge's Decision; and adopting a new §159.257 concerning Disposition of Criminal Charges and Expunction of Records.

Some of the new rules are adopted with changes to the proposed text as published in the May 24, 2024, issue of the *Texas Register* (49 TexReg 3647) and they will be republished. The rules adopted with changes are §§159.3, 159.51, 159.53, 159.55, 159.61, 159.103, and 159.207.

Some of the new rules are adopted without changes to the proposed text as published in the May 24, 2024, issue of the *Texas Register* (49 TexReg 3647) and they will not be republished. The rules adopted without changes are §§159.1, 159.7, 159.57, 159.59, 159.101, 159.104, 159.151, 159.201, 159.203, 159.209, 159.210, 159.211, 159.213, 159.253, 159.254, 159.255, and 159.257.

Basis for Rule Adoption

The adopted rule amendments will update and modify the procedural rules for administrative driver's license revocation (ALR) hearings at SOAH by promoting best practices in the handling of ALR cases. The amendments are adopted as part of a continuing effort to align administrative practice before SOAH with modern legal practices and standards utilized by the Texas judiciary.

The proposed rule amendments relate to the transfer of responsibility for the scheduling of ALR hearings from DPS to SOAH; SOAH's implementation of a modern automated case management system that relies on an all-electronic administrative case record; SOAH's adoption of the Texas judiciary's eFile Texas platform for electronic filing and service; the online availability of ALR case records through the Texas judiciary's re:SearchTX platform; and the predominant use of videoconference technology as an efficient and effective means for conducting ALR hearings. Other amendments will conform the rules to standing orders of the Chief Administrative Law Judge and clarify SOAH's current case-handling practices. The adopted amendments are substantially similar to practices already in use.

As finally adopted, the following changes to the rules were made based on public comment.

§159.3, Paragraphs (12), (13), and (14), §159.53, Subsections (b)(1) and (c)(1), and §159.61, Subsection (a) were modified to update references to the use of electronic filing systems "certified by the Office of Court Administration" with references to the use of electronic filing systems "approved by the Texas Supreme Court." This change updates the new rule for consistency with recent amendments to the Texas Rules of Civil Procedure ordered

by the Texas Supreme Court in Misc. Docket No. 24-9030 on May 28, 2024.

§159.103, Subsection (c) concerning the method of serving subpoenas was modified to specifically enumerate the acceptable forms of service that may be used to deliver a subpoena to a witness. The modified rule includes clarification that a subpoena may be electronically transmitted to the last known electronic address of the witness if the witness provides acknowledgment of receipt. The modified rule also specifies what constitutes proof of service depending on the method of service used. Changes to this section are intended to promote greater consistency in ALJ rulings on questions about the service of subpoenas and will provide case participants with an electronic option to reduce the burden and expense of serving a subpoena in an ALR proceeding. The modified rule is consistent with other technology-related enhancements to SOAH's rules of procedure.

Summary of Comments and Agency Responses.

The public comment period began May 24, 2024, and ended June 24, 2024. SOAH received written comments on the proposed rules from SOAH's Chief Clerk and an attorney who regularly appears in ALR cases at SOAH. Each of the comments raised concerns or provided recommendations about specific sections of the rules and are addressed as follows:

Comment: One commenter suggested that §159.101(a)(3) (requiring the party issuing a subpoena to take reasonable steps to avoid imposing undue burden or expense on the person served) should be amended to mutually avoid any undue burden or expense on the person serving the subpoena. In support of this recommendation, the commenter explained how service of subpoenas by email, with acknowledgement of receipt, could provide an effective method of ensuring delivery of service in a way that promotes fairness and reduces the burden and expense to the person serving a subpoena.

Response: This comment is outside the scope of the current rulemaking, as §159.101(a) was not proposed for amendment. Moreover, the language of the current §159.101(a)(3) closely tracks the language of Rule 176.7 of the Texas Rules of Civil Procedure, the purpose of which is limited to avoiding undue burden and expense on the person served. The commenter's suggestions regarding the service of subpoenas by email will be addressed in the adopted amendments to §159.103.

Comment: One commenter stated that while both the current and the proposed §159.103 require a subpoena to be served by delivering a copy to the witness, the manner of delivery is not defined. Because the acceptable forms for service are not clearly defined, there is some inconsistency among ALJs when ruling on objections to the service of subpoenas, particularly with respect to service by email. The commenter proposed consideration of a rule that provides more guidance on what classifies as acceptable forms of service. The commenter cited article 24.04 of the Texas Code of Criminal Procedure as an example, and suggested that the incorporation of a rule allowing electronic service with acknowledgement of receipt would be consistent with the other technology related amendments to SOAH's rules.

The commenter also expressed specific concerns about the proposed §159.103(c)(2). Subsection (c)(2) relates to the service of subpoenas when a witness is a peace officer. The proposed rule would have required peace officers to be served through their law enforcement agency as the primary method of service, rather than as accepted form of alternative service. The commenter expressed concern about a general lack of established local law enforcement policies addressing the alternative service of ALR subpoenas, and how some law enforcement agencies actively discourage the service of ALR subpoenas to their peace officers. The commenter expressed concern that the proposed rule could make the service of ALR subpoenas to peace officers more difficult.

Response: SOAH generally agrees with each of these comments to §159.103. To better clarify the acceptable forms of serving an ALR subpoena, SOAH has modified §159.103(c) for adoption to describe several acceptable methods of service with particularity. The modified rule will also expressly allow electronic service of a subpoena (e.g., by email) if accompanied by an acknowledgement of receipt. SOAH also recognizes how the preferences and practices of law enforcement regarding the service of subpoenas to peace officers may vary widely on a statewide basis. As a result, the rule is modified to retain SOAH's current practice of allowing peace officers to be subpoenaed through their employing law enforcement agency as an acceptable form of alternative service, rather than as the primary method of service. Finally, §159.103(d) concerning the return of service is modified to specify the type of information required to show proof of delivery depending on which of the approved methods of service in §159.103(c) is used.

Comment: Citing the Texas Supreme Court's ruling in Misc. Docket No. 24-9030, one commenter commented that the Supreme Court recently changed all reference in court rules to a "service provider certified by the Office of Court Administration" to "system approved by the Supreme Court." The commenter recommended that SOAH make corresponding updates to the ALR rules for consistency.

Response: SOAH agrees, and has adopted modifications to §159.3, Subsections (12), (13), and (14), §159.53, Subsections (b)(1) and (c)(1), and §159.61, Subsection (a) to incorporate references to the use of electronic filing systems "approved by the Texas Supreme Court."

In addition, the following non-substantive corrections are made to the rules as finally adopted:

§159.3(8) defining "Defense Counsel" is corrected to refer to 1 Texas Administrative Code §155.201(c) to describe the approval process required for non-resident attorneys, not §159.57(d).

§159.3(15)(C) defining a digital signature should refer to a "signer's" identity (singular possessive).

§159.51(relating to Jurisdiction): Subsection (d)(2) is amended to correctly reference §159.213(f) referring to the process for vacating a default, not §159.213(g).

§159.207 (relating Continuances): Subsection (c)(3) referring to the requirements for a certificate of service and a certificate of conference under §159.205 of this title should correctly describe §159.205 as "relating to General Request for Relief" instead of "relating to Service of Documents on Parties."

SUBCHAPTER A. GENERAL

1 TAC §§159.1, 159.3, 159.7

Statutory Authority. The rule amendments are adopted under: (i) Texas Government Code § 2003.050, which provides that the Chief Administrative Law Judge shall adopt rules that govern procedures that relate to hearings conducted by SOAH; (ii) Texas Transportation Code §524.002 and §724.003, which provide that SOAH shall adopt rules to administer those chapters; and (iii) Texas Government Code § 2003.055, which provides

that the Chief Administrative Law Judge shall develop and implement the effective use of technological solutions to improve the agency's ability to perform its functions.

Cross Reference to Statute. The adopted rule amendments affect Chapters 2001 and 2003 of the Texas Government Code, article 55 of the Texas Code of Criminal Procedure, and Chapters 522, 524, and 724 of the Texas Transportation Code.

§159.3. Definitions.

In this chapter, the following terms have the meaning indicated:

(1) Adult--An individual twenty-one years of age or older.

(2) ALR proceeding--A civil administrative proceeding under Texas Transportation Code, Chapters 522, 524 and/or 724 and this chapter relating to a driver's license disqualification, suspension, or denial resulting from an arrest for an offense relating to the operation of a motor vehicle or watercraft while intoxicated or under the influence of alcohol or controlled substances.

(3) Alcohol concentration--Defined in Texas Penal Code §49.01.

(4) Alcohol-related or drug-related enforcement contact--Defined in Texas Transportation Code §524.001.

(5) Certified breath test technical supervisor--A person who has been certified by DPS to maintain and direct the operation of a breath test instrument used to analyze breath specimens of persons suspected of driving while intoxicated.

(6) Contested case--A proceeding brought under Texas Transportation Code, Chapter 522, Subchapter I; Chapter 524, Subchapter D; or Chapter 724, Subchapter D.

(7) Defendant--One who holds a license as defined in Texas Transportation Code, Chapter 521, or an unlicensed driver, whose legal rights, duties, statutory entitlement, or privileges may be affected by the outcome of a contested case under this chapter.

(8) Defense counsel--An attorney who is authorized to participate in an ALR proceeding as a current, former, or prospective representative of a Defendant. Defense counsel does not include a non-attorney representative or an attorney who is not authorized to practice law in Texas and has not obtained permission to appear pursuant to 1 Texas Administrative Code §155.201(c).

(9) Denial--The non-issuance of a license or permit, and loss of the privilege to obtain a license or permit.

(10) DPS or the Department--The Texas Department of Public Safety.

(11) Driver--A person who drives or is in actual physical control of a motor vehicle.

(12) Efile Texas or eFile Texas--An electronic filing service provider approved by the Texas Supreme Court for use in electronically filing and serving documents in cases at SOAH and in judicial courts of record, available at http://www.efiletexas.gov. In these rules, the terms "eFile Texas," "electronic filing service provider," and "electronic filing manager" may be used interchangeably, although they may be assigned more specific meaning as appropriate in a given context.

(13) Electronic filing or filed electronically--The electronic transmission of documents filed in an ALR proceeding by uploading the documents to the case docket using eFile Texas or another electronic filing service provider approved by the Texas Supreme Court. In these rules, the term "electronic filing" may also include the submission of digital audio and video evidence in the manner specified on SOAH's website, but does not include the submission of filings by email, facsimile transmission, or unapproved file sharing platforms.

(14) Electronic Filing Service Provider or Electronic Filing Manager--An online web portal service offered by an independent third-party provider and approved by the Texas Supreme Court for use in electronically filing documents at SOAH and judicial courts of record, and that acts as the intermediary between the filer and eFile-Texas.

(15) Electronic signature or signed electronically--An electronic version of a person's signature that is the legal equivalent of the person's handwritten signature. Electronic signature formats include:

(A) an "/s/" and the person's name typed in the space where the signature would otherwise appear;

(B) an electronic graphical image or scanned image of the signature; or

(C) a "digital signature" based on accepted public key infrastructure technology that guarantees the signer's identity and data integrity.

(16) Electronic service or served electronically--The electronic transmission and delivery of documents to a party or a party's authorized representative by means of an electronic filing service provider.

(17) Filed--The receipt and acceptance for filing by the SOAH Chief Clerk's office.

(18) Final decision--The decision issued by a judge who hears the contested case or another judge who reviewed the record in its entirety and who is authorized under appropriate law to issue final decisions in an ALR case.

(19) Intoxicated--Defined in Texas Penal Code §49.01(2).

(20) Minor--An individual under twenty-one years of age.

(21) Operate--To drive or be in actual physical control of a motor vehicle.

(22) Peace officer--A person elected, employed, or appointed as a peace officer under Texas Criminal Procedure Code §2.12 or other law. A peace officer may also be referred to as an arresting officer.

(23) Public place--Defined in Texas Penal Code §1.07, Chapter 1, and Texas Transportation Code §524.001, Chapter 524.

(24) Research Texas or re:SearchTX--An online repository of court case records in Texas, including records filed in ALR proceedings at SOAH, available at http://research.txcourts.gov.

(25) Test--The taking of blood or breath specimens as set out in Texas Transportation Code, Chapters 522, 524 and 724.

(26) Videoconference--Technology that provides for a conference of individuals in different locations, connected by electronic means through audio and video signals transmitted over the Internet, where all participants have an opportunity to communicate and participate in the conference.

(27) The following terms are defined in 1 Texas Administrative Code §155.5 (relating to Definitions): Administrative Law Judge or judge; APA; authorized representative; business day; confidential information; Chief Judge; discovery; evidence; exhibits; ex parte communication; party; person; personal identifying information; TRCP; and SOAH.

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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Shane Linkous
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State Office of Administrative Hearings
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For further information, please call: (512) 936-6624

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SUBCHAPTER B. CASE ADMINISTRATION

1 TAC §§159.51, 159.53, 159.55, 159.57, 159.59, 159.61

Statutory Authority. The rule amendments are adopted under: (i) Texas Government Code § 2003.050, which provides that the Chief Administrative Law Judge shall adopt rules that govern procedures that relate to hearings conducted by SOAH; (ii) Texas Transportation Code §524.002 and §724.003, which provide that SOAH shall adopt rules to administer those chapters; and (iii) Texas Government Code § 2003.055, which provides that the Chief Administrative Law Judge shall develop and implement the effective use of technological solutions to improve the agency's ability to perform its functions.

Cross Reference to Statute. The sdopted rule amendments affect Chapters 2001 and 2003 of the Texas Government Code, and Chapters 522, 524, and 724 of the Texas Transportation Code.

§159.51. Jurisdiction.

(a) Acquisition of jurisdiction. SOAH acquires jurisdiction over a case involving a particular hearing request on the date when sufficient information required by SOAH for the scheduling of an ALR proceeding is electronically transmitted by DPS to the SOAH Chief Clerk's Office.

(b) Effect of acquisition of jurisdiction by SOAH. Once SOAH acquires jurisdiction, SOAH shall promptly schedule the hearing in accordance with §159.201 of this title (relating to Scheduling and Notice of Hearing), and DPS and the defendant may initiate discovery or move for appropriate relief.

(c) Commencement of time periods. A period of time established by these rules shall not begin to run until the hearing is initially scheduled by SOAH.

(d) Cessation of Jurisdiction. SOAH jurisdiction over a case involving a particular hearing request ends upon the date the SOAH judge issues a final decision or order of dismissal, and if applicable, the deadline for any post-judgement motions has passed. Thereafter, jurisdiction may only be extended by order of the judge to:

(1) reinstate a case as provided by §159.203(c) of this title (relating to Involuntary Dismissal);

(2) vacate a default as provided by §159.213(f) of this title (relating to Failure to Attend Hearing and Default); or

(3) correct a decision as provided by §159.254 of this title (relating to Correction of Final Decision).

(e) After the cessation of jurisdiction, SOAH has concluded its involvement in the matter and has no continuing jurisdiction, including that SOAH has no authority to enforce or correct the Department's administration of a suspension, revocation, or reinstatement of a driver's license.

§159.53. Filing Documents.

(a) All notices, pleadings, motions, exhibits, and other documents for ALR proceedings must be filed in the manner specified by this section and in compliance with 1 Texas Administrative Code §§155.101-.103.

(b) Methods of Filing.

(1) Electronic Filing. Defense counsel and the Department shall electronically file all notices, pleadings, motions, exhibits, and other documents for an ALR proceeding at SOAH by use of eFile Texas or another electronic filing service provider approved by the Texas Supreme Court. Parties not represented by an attorney are strongly encouraged to electronically file documents but may use alternative methods of filing described in paragraph (2) of this subsection.

(A) Party Information. As soon as practicable after the initial docketing of an ALR proceeding at SOAH, each party or attorney of record shall ensure that the electronic filing manager contains complete and accurate party contact information known to the parties at the time, including the entry and verification of the mailing address, phone number, and email address of each party.

(B) Designation of Lead Counsel. If the party will be represented by an attorney, the lead counsel who is primarily responsible for the representation shall ensure that the information entered into the electronic filing manager includes the designation of lead counsel and lead counsel's state bar identification number.

(C) Service Contact Information. Each party, or lead counsel if the party will be represented by an attorney, shall ensure that the electronic filing manager contains complete and accurate service contact information known to the parties at the time of filing, including the entry and verification of the email address of each party or attorney who is required to be served.

(i) The service contact information maintained in the electronic filing manager must be sufficient to allow SOAH and the parties to electronically serve documents through eFile Texas.

(ii) SOAH may rely on the service contact information on file in eFile Texas for electronic delivery of orders, decisions, and other case-related communications from SOAH. SOAH is not required to deliver copies of orders, decisions, or other case related communications to persons who are not identified as a party, lead counsel, or service contact for the case within eFile Texas.

(iii) Failure to enter and verify service contact information within eFile Texas may result in a failure to comply with legal requirements for service of process.

(D) Document Titles and Use of Proper Filing Codes. All documents submitted for electronic filing must be properly titled or described in the electronic filing manager in a manner that permits SOAH and the parties to reasonably ascertain its contents, including through use of the correct filing code for the type of document.

(2) Filing by Self-represented Parties. Defendants without an attorney are strongly encouraged, but not required, to file electronically in the manner described in paragraph (1) of this subsection. Self-represented parties may use approved alternative methods of email, facsimile transmission, mail, or hand-delivery in the manner specified on SOAH's website.

(3) Alternative Filing Methods. For good cause, a judge may permit a party to file documents in paper or another acceptable form in a particular case.

(c) Requirements for All Filers.

(1) Address of Record Required. The defendant, the Department, and lead counsel for each party shall provide and maintain a current mailing address and email address on file with SOAH during the pendency of the proceeding. SOAH and the parties may maintain the parties' address information on file as part of the electronic record in eFile Texas.

(2) Pleadings and Motions. All pleadings, motions, or applications to the judge for an order, whether in the form of a motion, plea, or other form of request, must be filed with the SOAH Chief Clerk's Office in writing and signed by the party, unless presented orally during a hearing.

(3) Separate Submissions Required. Different document types cannot be combined into a single submission for filing. A party may not combine motions requesting different types of relief or action into a single filing but must submit each motion separately. If the document submitted for filing is an exhibit, it must be properly identified as an exhibit and submitted separately from motions, pleadings, or other filings, unless the exhibit is attached as a necessary supporting document to a pleading.

(4) Confidential Filing Required. To avoid the public disclosure or redaction of confidential information or personal identifying information necessary for the resolution of an ALR proceeding, all documents submitted for filing shall be designated as "confidential" at the time of submission. Failure to correctly submit documents as "confidential" may result in the record being publicly-accessible through the re:SearchTX court records portal.

(5) Exhibit Submission.

(A) Prefiling Required. All exhibits shall be prefiled at least two days before the hearing to avoid unnecessary surprise or delay. The judge, in his or her discretion, may grant or deny the presentation and admission of exhibits that were not timely prefiled in accordance with this section.

(B) Organization of Exhibits. Exhibits should be numbered sequentially, and multipage documents shall be paginated or Bates stamped. If multiple exhibits are combined into a single document for submission, then the document must be bookmarked to allow the judge and parties to locate each exhibit within the record.

(C) DPS Notice of Hearing. The Department must file a copy of the notice of hearing and any amended or corrected notices of hearing.

(D) Audio and Video Evidence. Evidentiary exhibits in the form of audio or video recordings shall be filed electronically in the manner specified on SOAH's website. Audiovisual evidence may only be submitted in a common, non-proprietary file format (e.g., MP4, WMV, AVI, MPEG) that can be reviewed by the judge and presented at the hearing without the need for special equipment or software.

(E) Supplemental Exhibits. Any exhibits admitted at a hearing that were not prefiled as required by this section, shall be filed electronically by the party who offered the exhibit by no later than the next business day after the conclusion of the hearing. The parties may only supplement the record with exhibits that were offered and admitted as evidence, or for which an offer of proof was presented at the hearing.

§159.55. Service of Documents on Parties.

(a) Service Required. On the same date a document is filed at SOAH, a copy shall also be sent to each party or the party's lead counsel if the party is represented by an attorney. Documents shall be served in the manner specified by this section and in compliance with 1 Texas Administrative Code §155.105.

(b) Service Contact Information. It is the responsibility of DPS and defense counsel, if the defendant is represented by counsel, to ensure that complete and accurate service contact information is entered in the electronic filing manager for each party or attorney who is required to be served. SOAH or the Department may assist an unrepresented defendant with entering the defendant's service contact information into eFile Texas.

(c) Method of Service.

(1) Electronic Service. A document filed electronically at SOAH must be served electronically through the use of eFile Texas or another electronic filing service provider approved by the Texas Supreme Court if the email address of the party or attorney to be served is on file with the record of the case. If the email address of the party to be served is not on file with the electronic filing manager, the document may be served on that party or attorney under paragraph (2) of this subsection.

(2) Alternative Service. If the email address of the party to be served is on not file with the record of the case, then the document may be served in person, by mail, by commercial delivery service, by fax, or by such other manner as directed by the judge. Self-represented parties may use approved alternative methods of email, facsimile transmission, mail, or hand-delivery to serve documents to the Department.

(3) Service of Audio and Video Exhibits. The requirement to serve audio and video exhibits to the other party may be satisfied if the audio or video recordings are filed electronically at SOAH in the manner specified under §159.53 (relating to Filing Documents), and an electronic copy or online access to such exhibits is provided to the party or attorney to be served.

(d) Certificate of Service. A person filing a document shall include a certificate of service that certifies compliance with this section and 1 Texas Administrative Code §155.105. A certificate of service shall be sufficient if it substantially complies with the following example: "Certificate of Service: I certify that on {date} , a true and correct copy of this {name of document} has been sent to {name of opposing party or authorized representative for the opposing party} by {specify method of delivery, e.g., electronic filing, regular mail, hand-delivery, fax, certified mail.} {Signature}"

(e) Proof of Service. Proof of service may be established by evidence that the document required to be served was electronically served to the party, or if party has legal representation, to party's counsel, at email address of record on file in the electronic filing manager. Alternatively, proof of service may be established by evidence that the document was served in accordance with subparagraph (c)(2) of this subsection to the last known address, as reflected on defendant's notice of suspension, request for hearing, driving record or similar documentation.

(f) Delivery of SOAH Orders. All orders issued by the SOAH judge are considered received by the party upon SOAH's electronic transmission of the order to eFile Texas, if the recipient's email address is on file as part of the electronic record in eFile Texas.

§159.61. Electronic Case Records Access.

(a) Electronic Document Repository. The case records for ALR proceedings at SOAH are available online through re:SearchTX, an electronic court records system approved by the Texas Supreme

Court. This system serves as an official repository for SOAH case records.

(b) Accuracy and Completeness of Records. The electronic records available through re:SearchTX are automatically updated with the filing or issuance of any new documents in the ALR proceeding through eFile Texas. Case records available through re:SearchTX may be relied upon in the same manner as an original or certified copy. The repository includes file stamped copies of all current case records, but does not necessarily include:

(1) The electronic recording of the hearing;

(2) Evidentiary exhibits in the form of audio or video recordings; and

(3) The written transcript of the hearing, if any.

(c) Access to Records. Users of re:SearchTX must establish an eFile Texas account or a re:SearchTX account. Access to ALR case records is determined by the security role assigned to the individual within eFile Texas for the particular case. To access ALR case records at SOAH through re:SearchTX, users must be properly designated within the eFile Texas system as one of the following:

(1) A defendant who has used eFile Texas to file at least one document in the case and is listed as a party to the case;

(2) Lead counsel for the case, with a Texas state bar number that is electronically linked with the case in eFile Texas; or

(3) A member of lead counsel's eFile Texas firm profile, where lead counsel's Texas state bar number is electronically linked with the case in eFile Texas.

(d) Attorney use of re:SearchTX. Attorneys shall establish access to re:SearchTX, and are expected to obtain and maintain a sufficient level of technical competency to monitor case activity and obtain their own case records through the use of eFileTexas and re:SearchTX for the ALR cases in which they are authorized to appear.

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 July 15, 2024.

TRD-202403110
Shane Linkous
General Counsel
State Office of Administrative Hearings
Effective date: August 4, 2024
Proposal publication date: May 24, 2024
For further information, please call: (512) 936-6624

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SUBCHAPTER C. WITNESSESSES AND SUBPOENAS

1 TAC §§159.101, 159.103, 159.104

Statutory Authority. The rule amendments are adopted under: (i) Texas Government Code § 2003.050, which provides that the Chief Administrative Law Judge shall adopt rules that govern procedures that relate to hearings conducted by SOAH; (ii) Texas Transportation Code §524.002 and §724.003, which provide that SOAH shall adopt rules to administer those chapters; and (iii) Texas Government Code § 2003.055, which provides that the Chief Administrative Law Judge shall develop and implement the effective use of technological solutions to improve the agency's ability to perform its functions.

Cross Reference to Statute. The adopted rule amendments affect Chapters 2001 and 2003 of the Texas Government Code, and Chapters 522, 524, and 724 of the Texas Transportation Code.

§159.103. Issuance and Service of Subpoenas.

(a) A party that issues or is granted a subpoena duces tecum shall be responsible for having the subpoena served, and may be required to advance the reasonable costs of reproducing any documents or tangible things requested.

(b) A subpoena must be served at least five days before the hearing, and must include a copy of the notice of hearing or other information that is sufficient to notify the witness of how to appear, including instructions and information for joining a videoconference or telephone conference call if applicable.

(c) Method of Service. A subpoena must be served by delivering a copy to the witness. The subpoena may be served at any place within the State of Texas by any sheriff or constable of the State of Texas, or any person who is not a party to the case and is 18 years of age or older. A subpoena is served by:

(1) hand-delivering a copy of the subpoena to the witness in-person;

(2) electronically transmitting a copy of the subpoena to the last known electronic address of the witness, with acknowledgment of receipt; or

(3) mailing a copy of the subpoena by certified mail with return receipt requested, or delivering a copy of the subpoena by express delivery service with signature required, to the last known address of the witness unless:

(A) the applicant for the subpoena requests in writing that the subpoena not be served by certified mail or express delivery; or

(B) there is insufficient time to ensure delivery of the subpoena to the witness five days before the hearing for which the witness is being subpoenaed.

(4) If the witness is a party and is represented by an attorney of record in the proceeding, then the subpoena may be served to the witness's attorney by a method described in this section.

(5) If the witness is a peace officer, then the subpoena may be served by an accepted method of alternative service established by a peace officer's law enforcement agency.

(d) After a subpoena is served upon a witness, the subpoena and the return of service of the subpoena must be filed at SOAH at least three days prior to the hearing. The return must show:

(1) the date, time, and manner of service, if served by hand delivery;

(2) the acknowledgment of receipt, if served by email;

(3) the return receipt if served by certified mail;

(4) the signed proof of delivery, if served by express delivery service; or

(5) other confirmation as appropriate, if served to a party's attorney or a peace officer's law enforcement agency.

(e) A subpoenaed witness whose assigned work location or residence is more than 150 miles from the designated hearing location is entitled to appear by telephone or videoconference.

(f) A party seeking the admission of subpoenaed documents or audiovisual evidence at the hearing must prefile the exhibits in advance of the hearing in the manner specified by §159.53 of this chapter.

(g) Service upon opposing party.

(1) A party that issues a subpoena must serve the opposing party with a copy of the subpoena on the same date it is issued.

(2) A party that requests a subpoena from a SOAH judge must serve the opposing party with a copy of the request at the time it is filed with SOAH.

(3) When a subpoena has been served, and not less than three days prior to the hearing, a party that has served a subpoena must provide the opposing party with a copy of the return of service.

(4) If a party fails to serve a copy of a subpoena or a subpoena return on the opposing party, the subpoena may be rendered unenforceable by the judge.

(h) Continuing effect. A properly issued subpoena remains in effect until the judge releases the witness or grants a motion to quash or for protective order. If a hearing is rescheduled and a subpoena is extended, and unless the judge specifically directs otherwise, the party that requested the continuance shall promptly notify any subpoenaed witnesses of the new hearing date and serve a copy of the notice on the opposing party.

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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TRD-202403111
Shane Linkous
General Counsel
State Office of Administrative Hearings
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For further information, please call: (512) 936-6624

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SUBCHAPTER D. DISCOVERY

1 TAC §159.151

Statutory Authority. The rule amendments are adopted under: (i) Texas Government Code § 2003.050, which provides that the Chief Administrative Law Judge shall adopt rules that govern procedures that relate to hearings conducted by SOAH; (ii) Texas Transportation Code §524.002 and §724.003, which provide that SOAH shall adopt rules to administer those chapters; and (iii) Texas Government Code § 2003.055, which provides that the Chief Administrative Law Judge shall develop and implement the effective use of technological solutions to improve the agency's ability to perform its functions.

Cross Reference to Statute. The adopted rule amendments affect Chapters 2001 and 2003 of the Texas Government Code, and Chapters 522, 524, and 724 of the Texas Transportation Code.

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

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TRD-202403112
Shane Linkous
General Counsel
State Office of Administrative Hearings
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For further information, please call: (512) 936-6624

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SUBCHAPTER E. HEARING AND PREHEARING

1 TAC §§159.201, 159.203, 159.207, 159.209 - 159.211, 159.213

Statutory Authority. The rule amendments are adopted under: (i) Texas Government Code § 2003.050, which provides that the Chief Administrative Law Judge shall adopt rules that govern procedures that relate to hearings conducted by SOAH; (ii) Texas Transportation Code §524.002 and §724.003, which provide that SOAH shall adopt rules to administer those chapters; and (iii) Texas Government Code § 2003.055, which provides that the Chief Administrative Law Judge shall develop and implement the effective use of technological solutions to improve the agency's ability to perform its functions.

Cross Reference to Statute. The adopted rule amendments affect Chapters 2001 and 2003 of the Texas Government Code, and Chapters 522, 524, and 724 of the Texas Transportation Code.

§159.207. Continuances.

(a) A request for continuance will be considered in accordance with the provisions of Texas Transportation Code § 524.032(b) and (c) (relating to rescheduling a hearing upon a defendant's request), § 524.039 (relating to appearance of technicians), and Texas Transportation Code § 724.041(g).

(b) A judge may grant a continuance if the motion is supported by good cause, consent of the parties, or operation of law.

(c) With the exception of a hearing that is rescheduled in accordance with Texas Transportation Code § 524.032(b), the granting of continuances shall be in the sound discretion of the judge, provided, however, that the judge shall expedite the hearings whenever possible. A party requesting a continuance may file a written motion or present the motion orally at the hearing. The motion shall include:

(1) the specific reason for the continuance;

(2) a statement of the number of motions for continuance previously filed in the case by each party; and

(3) for written motions, a certificate of service and a certificate of conference as required by §159.205 of this title (relating to General Request for Relief). Failure to include a certificate of service and a certificate of conference when filing a motion for continuance may result in denial of the continuance request or subsequent continuance requests in the same case.

(d) With the exception of a hearing that is rescheduled in accordance with Texas Transportation Code § 524.032(b), no party is ex-

cused from appearing at a hearing until notified by SOAH that a motion for continuance has been granted.

(e) Responses to a motion for continuance, if any, should be promptly submitted in writing, except a response to a motion for continuance made on the date of the hearing may be presented orally at the hearing.

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 July 15, 2024.

TRD-202403113
Shane Linkous
General Counsel
State Office of Administrative Hearings
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For further information, please call: (512) 936-6624

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SUBCHAPTER F. DISPOSITION OF CASE

1 TAC §§159.253 - 159.255, 159.257

Statutory Authority. The rule amendments are adopted under: (i) Texas Government Code § 2003.050, which provides that the Chief Administrative Law Judge shall adopt rules that govern procedures that relate to hearings conducted by SOAH; (ii) Texas Transportation Code §524.002 and §724.003, which provide that SOAH shall adopt rules to administer those chapters; and (iii) Texas Government Code § 2003.055, which provides that the Chief Administrative Law Judge shall develop and implement the effective use of technological solutions to improve the agency's ability to perform its functions.

Cross Reference to Statute. The adopted rule amendments affect Chapters 2001 and 2003 of the Texas Government Code, and Chapters 522, 524, and 724 of the Texas Transportation Code.

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

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Shane Linkous
General Counsel
State Office of Administrative Hearings
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For further information, please call: (512) 936-6624

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CHAPTER 167. DISPUTE RESOLUTION PROCESSES APPLICABLE TO CERTAIN CONSUMER HEALTH BENEFIT DISPUTES

The State Office of Administrative Hearings (SOAH) adopts the repeal of Title I, Chapter 167 in its entirety concerning the Dispute Resolution Process Applicable to Certain Consumer Health Benefits Disputes. This includes the repeal of Subchapter A, General, §167.1 and §167.3; Subchapter B, Initiating Appointment of a Mediator, §167.51; Subchapter C, Mediator, §§167.101, 167.103, 167.105, 167.107, and 167.109; Subchapter D, Post Mediation Reports, §167.151; and Subchapter E, Special Judges, §§167.201, 167.203, 167.205, 167.207, and 167.209.

The repeal is adopted without changes to the proposed text as published in the May 24, 2024, issue of the *Texas Register* (49 TexReg 3667), and the repeals will not be republished. The public comment period closed on June 24, 2024, and SOAH did not receive any comments.

Reasoned Justification. The repeal of Chapter 167 in its entirety is necessary to implement Senate Bill 1264, 86th R.S. (2019), which amended chapter 1467 of the Insurance Code to establish a revised out-of-network claim dispute resolution program at the Texas Department of Insurance. Section 3.03 of S.B. 1264 repealed relevant sections of Insurance Code, Chapter 1467 pertaining to SOAH's balance billing mediation program. Section 5.01 of S.B. 1264 included a transition provision stating that "The changes in law made by this Act apply only to a health care or medical service or supply provided on or after January 1, 2020. A health care or medical service or supply provided before January 1, 2020, is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose." This transition provision required SOAH to continue to administer balance billing mediations for both existing and new disputes regarding pre-2020 out-of-network health benefit claims that were eligible under the repealed Insurance Code provisions and SOAH rules.

On or about December 18, 2023, SOAH referred all of the remaining pre-2020 health benefit claims dispute cases that could not be successfully resolved by mediation to a special judge for trial in accordance with the requirements of the former Insurance Code §1467.057. Now that SOAH's administrative duties under the former law have been concluded, the repeal of SOAH's rules in Title 1, Chapter 167 is necessary to fully-implement S.B. 1264.

SUBCHAPTER A. GENERAL

1 TAC §167.1, §167.3

Statutory Authority. The repeal is adopted pursuant to Texas Government Code, Chapter 2003, §2003.050, which authorizes SOAH to establish procedural rules for hearings and alternative dispute resolution proceedings conducted by SOAH.

Cross Reference to Statute. The repeal affects 2003 of the Texas Government Code, and Chapter 1467 of the Texas Insurance Code. No other statutes, articles, or codes are affected by the repeal.

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 July 17, 2024.

TRD-202403166
Shane Linkous
General Counsel
State Office of Administrative Hearings
Effective date: August 6, 2024
Proposal publication date: May 24, 2024
For further information, please call: (512) 475-4993

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SUBCHAPTER B. INITIATING APPOINTMENT OF A MEDIATOR

1 TAC §167.51

Statutory Authority. The repeal is adopted pursuant to Texas Government Code, Chapter 2003, §2003.050, which authorizes SOAH to establish procedural rules for hearings and alternative dispute resolution proceedings conducted by SOAH.

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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Shane Linkous
General Counsel
State Office of Administrative Hearings
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For further information, please call: (512) 475-4993

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SUBCHAPTER C. MEDIATOR

1 TAC §§167.101, 167.103, 167.105, 167.107, 167.109

Statutory Authority. The repeal is adopted pursuant to Texas Government Code, Chapter 2003, §2003.050, which authorizes SOAH to establish procedural rules for hearings and alternative dispute resolution proceedings conducted by SOAH.

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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Shane Linkous
General Counsel
State Office of Administrative Hearings
Effective date: August 6, 2024
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For further information, please call: (512) 475-4993

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SUBCHAPTER D. POST MEDIATION REPORTS

1 TAC §167.151

Statutory Authority. The repeal is adopted pursuant to Texas Government Code, Chapter 2003, §2003.050, which authorizes SOAH to establish procedural rules for hearings and alternative dispute resolution proceedings conducted by SOAH.

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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Shane Linkous
General Counsel
State Office of Administrative Hearings
Effective date: August 6, 2024
Proposal publication date: May 24, 2024
For further information, please call: (512) 475-4993

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SUBCHAPTER E. SPECIAL JUDGES

1 TAC §§167.201, 167.203, 167.205, 167.207, 167.209

Statutory Authority. The repeal is adopted pursuant to Texas Government Code, Chapter 2003, §2003.050, which authorizes SOAH to establish procedural rules for hearings and alternative dispute resolution proceedings conducted by SOAH.

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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Shane Linkous
General Counsel
State Office of Administrative Hearings
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For further information, please call: (512) 475-4993

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PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 371. MEDICAID AND OTHER HEALTH AND HUMAN SERVICES FRAUD AND ABUSE PROGRAM INTEGRITY

SUBCHAPTER G. ADMINISTRATIVE ACTIONS AND SANCTIONS

DIVISION 3. ADMINISTRATIVE ACTIONS AND SANCTIONS

1 TAC §371.1723

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Office of Inspector General (OIG), adopts in the Texas Administrative Code (TAC), Title 1, Part 15, Chapter 371, Subchapter G, Division 3, new §371.1723, concerning Recoupment of Overpayments Identified by Retrospective Payment Review.

New §371.1723 is adopted without changes to the proposed text as published in the February 16, 2024, issue of the *Texas Register* (49 TexReg 827). This rule will not be republished.

BACKGROUND AND JUSTIFICATION

New §371.1723 describes the OIG's retrospective payment review procedures related to records requests, review processes, notices, and due process.

Texas Government Code §531.102 authorizes OIG to conduct reviews related to the provision and delivery of all health and human services in Texas to identify fraud, waste, or abuse.

COMMENTS

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

During this period, OIG received several comments regarding the proposed rule from three commenters: MD Anderson, Texas Medical Association, and Teaching Hospitals of Texas. A summary of comments relating to §371.1723 and OIG's responses follow.

Comment: One commenter requested that the statutory or regulatory basis for OIG retrospective payment reviews be included in the rule text.

Response: OIG declines to revise the rule in response to this comment. The Statutory Authority section of this Adoption Preamble describes the statutory authority and HHSC rulemaking authority for §371.1723. Additionally, Title 42 Code of Federal Regulations §456.3 requires the Medicaid state agency to implement a statewide surveillance and utilization control program that safeguards against unnecessary or inappropriate use of Medicaid services and against excess payments.

Comment: Two commenters requested that the rule should allow more time to provide records in response to a records request.

Response: OIG declines to revise the rule in response to these comments. The rule requires a provider to provide records within the time period requested by OIG or ten calendar days from the date of receipt of the request, whichever is later. An OIG record request may provide for a due date beyond ten days, but not less than ten days. OIG retrospective payment reviews typically involve a request for fewer records than an audit or investigation. Additionally, OIG is receptive to requests for extension when an extension is warranted.

Comment: Two commenters asked whether records or notarized record affidavits may be submitted electronically and by paper to OIG.

Response: At this time, OIG does not intend to request a business records affidavit for retrospective payment (RP) reviews. Additionally, OIG's records request letter for an RP review will request submission of records by uploading to Microsoft SharePoint. The OIG records request letter will provide instructions for uploading records to SharePoint. If a provider's circumstances justify an exception to electronic submission, OIG would allow the provider to submit paper records. No changes were made to the rule in response to this comment.

Comment: A commenter expressed concern that the rule requirements for a business records affidavit could place persons in a compliance catch-22 situation if the requested document did not qualify as a business record under the Texas Rules of Evidence. The commenter was also concerned about requiring a person to sign and notarize a document that was prepared by OIG and not the person's legal counsel. Additionally, the commenter recommended that the requirements in subsection (b) relating to the records affidavit be removed.

Response: OIG declines to revise the rule in response to this comment. At this time, OIG does not intend to request a business records affidavit for retrospective payment reviews. If the "catch-22" scenario described in the comment occurred, OIG would consider the person's objection that the requested record in the person's possession was not, in fact, a business record under the Texas Rules of Evidence Rule. The OIG-approved business records affidavit was prepared by OIG and based on the "Form of Affidavit" provided in the Texas Rules of Evidence Rule. If the person who received the OIG records request preferred to have the person's attorney prepare the affidavit, OIG would assess whether the affidavit met the requirements specified in the Texas Rules of Evidence.

Comment: Two commenters asked about findings, scope, or circumstances within and under which OIG would conduct retrospective payment (RP) reviews. One of the two commenters asked which persons are subject to RP reviews.

Response: The OIG Acute Care Services and Targeted Queries units conduct RP reviews related to the provision and delivery of all health and human services in Texas. RP reviews may be conducted on any "person," as that term is defined in §371.1. Additionally, RP reviews have a dollar limit for overpayment recoveries. No changes were made to the rule in response to this comment.

Comment: One commenter stated that OIG overpayment recoveries resulting from retrospective payment (RP) reviews must be based on contract language between the managed care organizations and providers.

Response: OIG disagrees and declines to revise the rule in response to this comment. OIG may recover overpayments identified in an RP review. "Overpayment" is defined in §371.1.

Comment: Two commenters requested that OIG establish a mechanism or registration process to eliminate electronic notices sent to incorrect individuals at an organization or to a single individual. One of the two commenters requested that notification be sent to a group mailbox. A third commenter recommended that the rule be amended so that email notices must be consented to by the recipient and that the rule be revised to include, by reference, OIG's other methods of service in §371.1609.

Response: OIG declines to revise the rule in response to these comments. OIG will send RP review notices using RightFax, a digital fax solution. Electronic mail, including secure or encrypted email for confidential or HIPAA information, is also an appropriate and reliable alternative method to send notices. Should OIG begin using email to send RP review notices, OIG would likely use either the provider's email address on file with HHSC, which providers are required to submit when they enroll with Medicaid, or an alternate email address designated by the provider.

Comment: One commenter stated that neither level of appeal described in the proposed rule contains any language indicating that the person requesting the appeal would be allowed to present additional evidence, witnesses, or other arguments regarding the overpayments at issue. The commenter also expressed concerns that the due process in the proposed rule does not include a contested administrative hearing and opportunity for judicial review required under Texas Government Code §531.1201. The commenter stated that the rule does not indicate that the findings of the retrospective payment (RP) review would fall outside of the Texas Supreme Court decision in *Philips v. McNeill (2021).* The commenter recommended that the rule be revised to align with the due process requirements in Texas Government Code Chapter 531.

Response: OIG declines to revise the rule in response to this comment. Section 371.1723(c)(1)(D) permits a person subject to

an RP review to produce records and documentation to address any finding found during the review by the date specified by the OIG. At this time, OIG intends that subsection (c)(1)(D) would allow a person requesting a first level appeal to produce records and documentation regarding the overpayments at issue.

Additionally, OIG believes the Texas Supreme Court decision in *Phillips v. McNeill* is limited to the particular facts of that case.

RP reviews are usually less complex and identify smaller overpayment amounts than OIG investigations, for example. Additionally, §371.1723(c)(1)(C) limits the overpayment recovery amount for an RP review. For these reasons, the adopted two-level appeal process is appropriate for RP reviews.

Comment: Two commenters requested that the rule be changed to allow 45 calendar days after receipt of a final notice to review, assess, and complete next level appeal requests.

Response: OIG declines to revise the rule in response to these comments. According to §371.1723(e)(4), the deadline to request a first or second level appeal is specified in the notice of review results or first level appeal results. OIG believes 30 calendar days is sufficient time to request a first-level or second-level appeal for an RP review case.

Comment: Two commenters requested that the rule be modified to allow 90 days after receipt of a final notice to pay the overpayment or request and execute a final payment plan.

Response: OIG declines to revise the rule in response to these comments. OIG believes 60 days is sufficient time to pay the overpayment or execute a final payment plan agreement.

STATUTORY AUTHORITY

The new rule 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 system; Texas Government Code §531.102(a), which grants the HHSC OIG the responsibility for the prevention, detection, audit, inspection, review, and investigation of fraud, waste, and abuse in the provision and delivery of all health and human services in the state, including services through any state-administered health or human services program that is wholly or partly federally funded, and which provides the HHSC OIG with the authority to obtain any information or technology necessary to enable it to meet its responsibilities; Texas Government Code §531.102(a-2), which requires the Executive Commissioner of HHSC to work in consultation with the Office of the Inspector General to adopt rules necessary to implement a power or duty of the office; Texas Government Code §531.102(x), which requires the Executive Commissioner of HHSC, in consultation with the Office of Inspector General, to adopt rules establishing criteria for determining enforcement and punitive actions with regard to a provider who has violated state law, program rules, or the provider's Medicaid provider agreement; Texas Government Code §531.033, which requires the Executive Commissioner of HHSC to adopt rules necessary to carry out the commission's duties under Chapter 531; Texas Human Resources Code §32.021, which provides HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas and adopt rules necessary for the proper and efficient operation of the Medicaid program; Texas Government Code §531.021(a), which provides HHSC with the authority to administer Medicaid funds; Texas Government Code §531.1131(e), which requires the Executive Commissioner of HHSC to adopt rules necessary to implement §531.1131, including rules establishing due process procedures that must be followed by managed care organizations when engaging in payment recovery efforts as provided by §531.1131; and Texas Human Resources Code §32.039, which provides authority to assess administrative penalties and damages and provides due process for persons potentially subject to damages and penalties.

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 July 18, 2024.

TRD-202403192
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Effective date: August 7, 2024
Proposal publication date: February 16, 2024
For further information, please call: (512) 221-7320

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TITLE 10. COMMUNITY DEVELOPMENT

PART 8. TEXAS SPACE COMMISSION

CHAPTER 320. COMMISSION GOVERNANCE

SUBCHAPTER A. COMMISSION STANDARDS ON CONFLICTS OF INTEREST AND CODE OF CONDUCT

10 TAC §§320.1 - 320.7

The Texas Space Commission ("Commission") adopts new 10 TAC §§320.1 - 320.7, Subchapter A, concerning Commission Standards on Conflicts of Interest and Code Of Conduct. The rules are being adopted without changes to the proposed text as published in the June 14, 2024, issue of the *Texas Register* (49 TexReg 4125) and will not be republished. The adopted rules set forth the conflict of interest and code of conduct policies the Board of Directors ("Board") and staff of the Texas Space Commission will follow.

REASONED JUSTIFICATION OF ADOPTED RULES

In May 2023, the 88th Texas Legislature passed House Bill 3447, which, in part, created the Texas Space Commission, an agency administratively attached to the Office of the Governor. The Commission was established to strengthen Texas's proven leadership in civil, commercial, and military aerospace activity and to promote innovation in the fields of space exploration and commercial aerospace opportunities. House Bill 3447 directed the Board to adopt conflict-of-interest rules to govern members of the Board and Commission employees. The adopted rules fulfill the Board's desire to establish a robust policy to safeguard the appropriate usage of funds entrusted to the Commission, ensure the fair assessment of grant applications, and fulfill the duties placed upon the Commission by the legislature.

SUMMARY OF COMMENTS AND AGENCY RESPONSE

The Commission received no comments in response to this rulemaking.

TAKINGS IMPACT ASSESSMENT

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

STATUTORY AUTHORITY

Section 482.401, Texas Government Code, authorizes the Commission to adopt conflict-of-interest rules to govern the members of the Board and Commission employees. Section 482.403, Texas Government Code, also requires the Commission to adopt rules governing the waiver of conflict-of-interest rules required under section 482.401, Texas Government Code, as well as the investigation and consequences of unreported conflicts of interest.

CROSS REFERENCE TO STATUTE

Chapter 482, Texas Government Code. No other statutes, articles, or codes are affected by the proposed rules.

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 July 17, 2024.

TRD-202403165
Gwen Griffin
Chair, Texas Space Commission
Texas Space Commission
Effective date: August 6, 2024
Proposal publication date: June 14, 2024
For further information, please call: (512) 463-8554

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS
SUBCHAPTER CC. COMMISSIONER'S RULES CONCERNING SCHOOL FACILITIES

19 TAC §61.1031

The Texas Education Agency (TEA) adopts an amendment to §61.1031, concerning school safety requirements. The amendment is adopted with changes to the proposed text as published in the May 24, 2024, issue of the *Texas Register* (49 TexReg 3684) and will be republished. The adopted amendment implements Senate Bill 838 and House Bill (HB) 3, 88th Texas Legislature, Regular Session, 2023, and clarifies requirements for school safety to ensure a safe and secure environment in Texas public schools.

REASONED JUSTIFICATION: Section 61.1031 prescribes minimum school safety standards to address the safety of students and staff in Texas public schools.

Legislation from the 88th Texas Legislature, Regular Session, 2023, added and amended school safety requirements in Texas Education Code (TEC), §§7.061, 37.1083, 37.117, 37.351, and 37.355. The adopted amendment to §61.1031 implements legislation and clarifies existing requirements, as follows.

The adopted amendment modifies the definition of "exterior secure area" in subsection (a)(2)(A) to establish that an exterior secure area is utilized when keeping doors closed, latched, and locked is not operationally practicable.

The adopted amendment to subsection (a)(7)(C) clarifies the functionality of a "secure vestibule."

The adopted amendment to subsection (c)(1) adds information related to door numbering requirements in compliance with International Fire Code, §505, and removes the phrase "campus-wide."

The adopted amendment to subsection (c)(3)(A) modifies the requirements for exterior doors by removing the phrase "by default."

The adopted amendment to subsection (c)(8) clarifies the intent of the requirement. The language outlines that roof access doors should remain closed, latched, and locked when not actively in use.

Subsection (c)(11) is modified to specify that school systems must ensure compliance with federal and state Kari's Laws and RAY BAUM's Act related to 9-1-1 for school telephone systems.

In response to public comment, subsection (d)(1)(A) is modified at adoption to remove the words "by default" to align with subsection (c)(3)(A).

Subsection (d)(2)(C) is modified in accordance with new statutory requirements in TEC, §37.117, as added by HB 3, 88th Texas Legislature, Regular Session, 2023. This statute requires that each school district and open-enrollment charter school provide the Department of Public Safety, local law enforcement, and emergency first responders an accurate map of each district campus and school campus. These entities must also be provided an opportunity to conduct a walk-through of facilities utilizing the maps provided.

The adopted amendment to subsection (d)(3)(A)(iv) removes the requirement that video surveillance monitoring systems trigger an alert. Artificial intelligence is not intended to be a minimal safety standard.

Adopted new subsection (i) is added to address the confidentiality requirements of TEC, §37.355, as added by HB 3, 88th Texas Legislature, Regular Session, 2023.

The adopted amendment to re-lettered subsection (j)(1) aligns school safety initiatives, including vulnerability assessments, with the responsibility of TEA rather than the Texas School Safety Center.

The adopted amendment removes provisional language set to expire on August 31, 2024.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began May 24, 2024, and ended June 24, 2024. Following is a summary of public comments received and agency responses.

Comment: A school administrator recommended that the words "by default" be removed or re-worded in subsection (d)(1)(A) to coincide with the proposed removal of the same words in subsection (c)(3)(A).

Response: The agency agrees and has modified subparagraph (d)(1)(A) at adoption to remove the phrase "by default."

Comment: A Texas community member expressed concern related to subsection (c)(1), which references International Fire Code, §505, and accessibility requirements. The commenter stated that "accessibility requirements" implies that interior and exterior door numbering must conform to the Americans with Disabilities Act, which requires specific guidelines for signage. The commenter stated that the purpose of International Fire Code, §505, is to ensure letters are large enough for visibility, but the reference to "accessibility requirements" creates confusion regarding building numbering, what it must entail, and where it must be placed.

Response: The agency disagrees and has determined that in subsection (c)(1), "All instructional facilities, including modular, portable buildings, must include the addition of graphically represented alpha-numerical characters on both the interior and exterior of each exterior door location" provides the clarification of applicability related to International Fire Code.

Comment: The Texas Society of Architects (TxA) recommended the addition of the good cause exception in the rule, as no provision of the proposed rule amendment reflects the good cause exception language included in HB 3 for school system facilities requirements.

Response: The agency disagrees and has determined that the language is sufficient as proposed.

Comment: TxA recommended language in subsection (j)(2) should be removed to reflect the changes made by HB 3 that require a school system to annually certify (rather than TEA certifying) compliance with school safety standards.

Response: The agency disagrees and has determined that the language is sufficient as proposed.

Comment: TxA recommended that the agency further amend the rule to reflect more of the provisions of HB 3. TxA also suggested that additional clarification for school systems should be included in subsection (j) to ensure clear directives and treatment for school system compliance requirements and the agency's related compliance monitoring and support.

Response: The agency provides the following clarification. In accordance with TEC, §7.061, the commissioner of education shall adopt or amend rules as necessary to ensure that facilities standards for new and existing instructional facilities and other school district and open-enrollment charter school facilities, including construction quality, performance, operational, and other standards related to safety and security. Not later than September 1 of each even-numbered year, the commissioner shall review all rules adopted or amended under TEC, §7.061, and amend the rules as necessary. Accordingly, rulemaking will be an ongoing process. Future proposals will be more inclusive of additional requirements.

Comment: TxA recommended amending subsection (c)(3)(B), (5), and (6) to include functional performance standards pertaining to glass doors and adjacent glass windows.

Response: The agency disagrees and has determined that the language is sufficient as proposed.

Comment: TxA recommended adding language concerning the prohibited use of razor wire on perimeter fencing.

Response: The agency disagrees. Fencing is not mandated in §61.1031. Fencing is intended to add operational flexibility when it is not practicable to leave doors closed, latched, and locked. Additionally, TEC, §48.115 (School Safety Allotment) addresses the use or installation of perimeter fencing, which may not include razor wire.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §7.061, as amended by House Bill (HB) 3, 88th Texas Legislature, Regular Session, 2023, which requires the commissioner of education to adopt and amend rules to ensure a safe and secure environment for public schools, which includes best practices for design and construction of new facilities and improving, renovating, and retrofitting existing facilities. The section requires the commissioner to review all rules by September 1 of each even-numbered year and take action as necessary to ensure school facilities for school districts and open-enrollment charter schools continue to provide a safe and secure environment; TEC, §37.1083, as added by HB 3, 88th Texas Legislature, Regular Session, 2023, which establishes the Office of School Safety and Security within the Texas Education Agency (TEA) and charges TEA with monitoring the implementation and operation requirements of school district safety and security. Monitoring efforts must include technical assistance related to multihazard emergency operations plans and safety and security audits. Further, the statute establishes that any document or information collected, identified, developed, or produced related to the monitoring of district safety and security is confidential under Texas Government Code, §418.177 and §418.181, making them not subject to disclosure under Texas Government Code, Chapter 552. Subsection (k) allows the commissioner to adopt rules as necessary to implement the section; TEC, §37.115(b), which allows Texas Education Agency (TEA), in coordination with the Texas School Safety Center, to adopt rules to establish a safe and supportive school program, including providing for physical and psychological safety; TEC, §37.117, as added by Senate Bill 838, 88th Texas Legislature, Regular Session, 2023, which requires that each school district or open-enrollment charter school have silent alert panic technology allowing for immediate contact with district or school emergency services and emergency services agencies, law enforcement agencies, health departments, and fire departments; TEC, §37.117, as added by HB 3, 88th Texas Legislature, Regular Session, 2023, which requires that each school district and open-enrollment charter school provide the Department of Public Safety, local law enforcement, and emergency first responders an accurate map of each district campus and school campus, in accordance with standards outlined in TEC, §37.351. Additionally, school systems must provide these emergency services personnel an opportunity to conduct a walk-through of each campus and school building using the map provided; TEC, §37.351, as added by HB 3, 88th Texas Legislature, Regular Session, 2023, which requires school districts to comply with each school facilities standard, including performance standards and operational requirements, related to safety and security adopted under TEC, §7.061, or provided by other law or TEA rule. Additionally, school districts must develop and maintain documentation of the district's implementation of and compliance with school safety and security facilities standards for each district facility; and TEC, §37.355, as added by HB 3, 88th Texas Legislature, Regular Session, 2023, which outlines that any document or information collected, identified, developed, or produced relating to a safety or security requirement under TEC, Chapter 37, Subchapter J, is confidential under Texas Government Code, §418.177 and §418.181, and not subject to disclosure under Texas Government Code, Chapter 552.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §7.061, as amended by House

Bill (HB) 3, 88th Texas Legislature, Regular Session, 2023; §37.1083, as added by HB 3, 88th Texas Legislature, Regular Session, 2023; §37.115(b); §37.117, as added by Senate Bill 838 and HB 3, 88th Texas Legislature, Regular Session, 2023; and §37.351 and §37.355, as added by HB 3, 88th Texas Legislature, Regular Session, 2023.

§61.1031. School Safety Requirements.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings.

(1) Actively monitored--supervised by an adult who can visibly review visitors prior to entrance, who can take immediate action to close and/or lock the door, and whose duties allow for sufficient attention to monitoring.

(2) Exterior secured area--an area fully enclosed by a fence and/or wall that:

(A) is utilized when keeping doors closed, locked, and latched is not operationally practicable;

(B) if enclosed by a fence or wall, utilizes a fence or wall at least 6 feet high with design features that prevent it from being easily scalable, such as stone, wrought iron, chain link with slats or wind screen, or chain link topped with an anti-scaling device, or utilizes a fence or wall at least 8 feet high;

(C) is well maintained; and

(D) if gated, features locked gates with emergency egress hardware and has features to prevent opening from the exterior without a key or combination mechanism.

(3) Instructional facility--this term has the meaning assigned in Texas Education Code (TEC), §46.001, and includes any real property, an improvement to real property, or a necessary fixture of an improvement to real property that is used predominantly for teaching curriculum under TEC, §28.002. For purposes of this section, an instructional facility does not include real property, improvements to real property, or necessary fixtures of an improvement to real property that are part of a federal, state, or private correctional facility or facility of an institution of higher education, medical provider, or other provider of professional or social services over which a school system has no control.

(4) Modular, portable building--

(A) an industrialized building as defined by Texas Occupations Code (TOC), §1202.002 and §1202.003;

(B) any relocatable educational facility as defined by TOC, §1202.004, regardless of the location of construction of the facility; or

(C) any other manufactured or site-built building that is capable of being relocated and is used as a school facility.

(5) Primary entrance--

(A) the main entrance to an instructional facility that is closest to or directly connected to the reception area; or

(B) any exterior door the school system intends to allow visitors to use to enter the facility during school hours either through policy or practice.

(6) School system--a public independent school district or public open-enrollment charter school.

(7) Secure vestibule--a secured space with two or more sets of doors and an office sign-in area where all but the exterior doors shall:

(A) remain closed, latched, and locked;

(B) comply with subsection (c)(3)(B) of this section; and

(C) only unlock once the visitor has been visually verified.

(b) The provisions of this section apply to all school instructional facilities owned, operated, or leased by a school system, regardless of the date of construction or date of lease. The provisions of this section ensure that all school system instructional facilities have access points that are:

(1) secured by design;

(2) maintained to operate as intended; and

(3) appropriately monitored.

(c) A school system shall implement the following safety and security standards compliance requirements to all school instructional facilities owned, operated, or leased by the school system.

(1) All instructional facilities, including modular, portable buildings, must include the addition of graphically represented alpha-numerical characters on both the interior and exterior of each exterior door location. The characters may be installed on the door, or on at least one door at locations where more than one door leads from the exterior to the same room inside the facility, or on the wall immediately adjacent to or above the door location. Characters shall comply with the International Fire Code, §505, which requires numbers to be a minimum of four inches in height. The primary entrance of an instructional facility shall always be the first in the entire sequence and is the only door location that does not require numbering. The numbering sequence shall be clockwise and may be sequenced for the entire campus or for each facility individually. The door-numbering process must comply with any and all accessibility requirements related to signage.

(2) Unless a secure vestibule is present, a primary entrance shall:

(A) meet all standards for exterior doors;

(B) include a means to allow an individual located within the building to visually identify an individual seeking to enter the primary entrance when the entrance is closed and locked, including, but not limited to, windows, camera systems, and/or intercoms;

(C) feature a physical barrier that prevents unassisted access to the facility by a visitor; and

(D) feature a location for a visitor check-in and check-out process.

(3) All exterior doors shall:

(A) be set to a closed, latched, and locked status, except that:

(i) a door may be unlocked if it is actively monitored or within an exterior secured area; and

(ii) for the purposes of ventilation, a school system may designate in writing as part of its multi-hazard emergency operations plan under TEC, §37.108, specific exterior doors that are allowed to remain open for specified periods of time if explicitly authorized by the school safety and security committee established by TEC, §37.109, when a quorum of members are present, and only if it is actively monitored or within an exterior secured area;

(B) be constructed, both for the door and door frame and their components, of materials and in a manner that make them

resistant to entry by intruders. Unless inside an exterior secured area, doors constructed of glass or containing glass shall be constructed or modified such that the glass cannot be easily broken and allow an intruder to open or otherwise enter through the door (for example, using forced entry-resistant film);

(C) include:

(i) a mechanism that fully closes and engages locking hardware automatically after entry or egress without manual intervention, regardless of air pressure within or outside of the facility; and

(ii) a mechanism that allows the door to be opened from the inside when locked to allow for emergency egress while remaining locked; and

(D) if keyed for re-entry, be capable of being unlocked with a single (or a small set of) master key(s), whether physical key, punch code, or key-fob or similar electronic device.

(4) Except when inside an exterior secured area, classrooms with exterior entry doors shall include a means to allow an individual located in the classroom to visually identify an individual seeking to enter the classroom when the door is closed and locked, including, but not limited to, windows, camera systems, and/or intercoms.

(5) Except when inside an exterior secured area, all windows that are adjacent to an exterior door and that are of a size and position that, if broken, would easily permit an individual to reach in and open the door from the inside shall be constructed or modified such that the glass cannot be easily broken.

(6) Except when inside an exterior secured area, all ground-level windows near exterior doors that are of a size and position that permits entry from the exterior if broken shall be constructed or modified such that the glass cannot be easily broken and allow an intruder to enter through the window frame (for example, using forced entry-resistant film).

(7) If designed to be opened, all ground-level windows shall have functional locking mechanisms that allow for the windows to be locked from the inside and, if large enough for an individual to enter when opened or if adjacent to a door, be closed and locked when staff are not present.

(8) Roof access doors should remain closed, latched, and locked when not actively in use.

(9) All facilities must:

(A) include one or more distinctive, exterior secure master key box(es) designed to permit emergency access to both law enforcement agencies and emergency responder agencies from the exterior (for example, a Knox box) at a location designated by the local authorities with applicable jurisdiction; or

(B) provide all local law enforcement electronic or physical master key access to the building(s).

(10) A communications infrastructure shall be implemented that must:

(A) ensure equipment is in place such that law enforcement and emergency responder two-way radios can function within most portions of the building(s); and

(B) include a panic alert button, duress, or equivalent alarm system, via standalone hardware, software, or integrated into other telecommunications devices or online applications, that includes the following functionality.

(i) An alert must be capable of being triggered by campus staff, including temporary or substitute staff, from an integrated or enabled device.

(ii) An alert must be triggered automatically in the event a district employee makes a 9-1-1 call using the hardware or integrated telecommunications devices described in this subparagraph from any location within the school system.

(iii) With any alert generated, the location of where the alert originated shall be included.

(iv) The alert must notify a set of designated school administrators as needed to provide confirmation of response, and, if confirmed, notice must be issued to the 9-1-1 center of an emergency situation requiring a law enforcement and/or emergency response and must include the location of where the alert originated. A notice can simultaneously be issued to all school staff of the need to follow appropriate emergency procedures.

(v) For any exterior doors that feature electronic locking mechanisms that allow for remote locking, the alert system will trigger those doors to automatically lock.

(11) School systems shall ensure compliance with state and federal Kari's Laws and federal RAY BAUM's Act and corresponding rules and regulations pertaining to 9-1-1 service for school telephone systems, including a multi-line telephone system.

(d) Certain operating requirements. A school system shall implement the following.

(1) Access control. The board of trustees or the governing board shall adopt a policy requiring the following continued auditing of building access:

(A) conduct at least weekly inspections during school hours of all exterior doors of all instructional facilities to certify that all doors are set to a closed, latched, and locked status and cannot be opened from the outside without a key as required in subsection (c)(3)(A) of this section;

(B) report the findings of weekly inspections required by subparagraph (A) of this paragraph to the school system's safety and security committee as required by TEC, §37.109, and ensure the results are kept for review as part of the safety and security audit as required by TEC, §37.108;

(C) report the findings of weekly inspections required by subparagraph (A) of this paragraph to the principal or leader of the instructional facility to ensure awareness of any deficiencies identified and who must take action to reduce the likelihood of similar deficiencies in the future; and

(D) include a provision in the school system's applicable policy stating that nothing in a school system's access control procedures will be interpreted as discouraging parents, once properly verified as authorized campus visitors, from visiting campuses they are authorized to visit.

(2) Exterior and interior door numbering site plan.

(A) A school system must develop and maintain an accurate site layout and exterior and interior door designation document for each instructional facility school system-wide that identifies all exterior and interior doors in the instructional facility and depicts all exterior doors on a floor plan with an alpha-numeric designation, in accordance with the door numbering specifications established in subsection (c)(1) of this section.

(B) Copies of exterior and interior door numbering site plans shall be readily available in each campus main office.

(C) Electronic copies of exterior and interior door numbering site plans shall be provided to the local 9-1-1 administrative entity, the Department of Public Safety, local law enforcement agencies, and emergency first responders in accordance with TEC, §37.117. These entities shall be afforded an opportunity to conduct a walk-through of facilities utilizing the site plans provided.

(D) The site layout and exterior and interior door designation document should be oriented in a manner that depicts true north.

(3) Maintenance.

(A) A school system shall perform at least twice-yearly maintenance checks to ensure the facility components required in subsection (c) of this section function as required. At a minimum, maintenance checks shall ensure the following:

(i) instructional facility exterior doors function properly, including meeting the requirements in subsection (c)(3)(A) and (C) of this section;

(ii) the locking mechanism for any ground-level windows that can be opened function properly;

(iii) any perimeter barriers and related gates function properly;

(iv) all panic alert or similar emergency notification systems in classrooms and campus central offices function properly, which includes at least verification from multiple campus staff and classroom locations that a notification can be issued and received by the appropriately designated personnel and that the alert is successfully broadcast to all campus staff and to appropriate law enforcement and emergency responders;

(v) all school telephone systems and communications infrastructure provide accurate location information when a 9-1-1 call is made in accordance with state and federal laws and rules and when an alert is triggered in accordance with this section;

(vi) all exterior master key boxes function properly and the keys they contain function properly;

(vii) law enforcement and emergency responder two-way radios operate effectively within each instructional facility; and

(viii) two-way radios used by school system peace officers, school resource officers, or school marshals properly communicate with local law enforcement and emergency response services.

(B) A school system shall ensure procedures are in place to require that staff who become aware of a facility component functionality deficiency that would be identified during the twice-yearly maintenance review described by subparagraph (A) of this paragraph immediately report the deficiency to the school system's administration, regardless of the status of the twice-yearly maintenance review.

(C) A school system shall promptly remedy any deficiencies discovered as a consequence of maintenance checks required by subparagraph (A) of this paragraph or reports made under subparagraph (B) of this paragraph.

(e) In implementing the requirements of this section, school systems shall comply with the provisions of §61.1040(j) of this title (relating to School Facilities Standards for Construction on or after November 1, 2021).

(f) To the extent that any provisions of this section conflict with rules adopted in Chapter 61, Subchapter CC, of this title (relating to Commissioner's Rules Concerning School Facilities), including terms defined by this section or standards established by this section, the provisions of this section prevail.

(g) In implementing the requirements of this section, school systems shall comply with the standards adopted under Texas Government Code, §469.052.

(h) In implementing the requirements of this section, school systems must adopt a 3-year records control schedule that complies with the minimum requirements established by the Texas State Library and Archives Commission schedule, record series item number 5.4.017, as referenced in Texas Government Code, §441.169, and Texas Local Government Code, §203.041.

(i) Any document or information collected, identified, developed, or produced relating to the monitoring of school district safety and security requirements is confidential under Texas Government Code, §418.177 and §418.181, and is not subject to disclosure under Texas Government Code, Chapter 552.

(j) Certification.

(1) A school system must annually certify compliance with subsections (c) and (d) of this section as part of ongoing security audits under TEC, §37.108(b); maintain the certification locally; and provide documentation upon request by TEA. Non-compliance with subsections (c) and (d) of this section and all information received upon completion of a district vulnerability assessment under TEC, §37.1083, shall be reported to the school system's safety and security committee, the school system's board, and TEA, as applicable.

(2) TEA may modify rule requirements or grant provisional certification for individual site needs as determined by TEA.

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 July 22, 2024.

TRD-202403207
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: August 11, 2024
Proposal publication date: May 24, 2024
For further information, please call: (512) 475-1497

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CHAPTER 102. EDUCATIONAL PROGRAMS
SUBCHAPTER BB. COMMISSIONER RULES CONCERNING THE RURAL PATHWAY EXCELLENCE PARTNERSHIP (R-PEP) PROGRAM

19 TAC §102.1021

The Texas Education Agency (TEA) adopts new §102.1021, concerning the rural pathway excellence partnership (R-PEP) program. The new section is adopted with changes to the proposed text as published in the April 12, 2024 issue of the *Texas Register* (49 TexReg 2239) and will be republished. The adopted new

rule implements House Bill (HB) 2209, 88th Texas Legislature, Regular Session, 2023, by establishing the R-PEP program.

REASONED JUSTIFICATION: HB 2209, 88th Texas Legislature, Regular Session, 2023, established the R-PEP program and created an allotment and outcomes bonus under the Foundation School Program to support the program.

New §102.1021 implements HB 2209 by defining the requirements of the R-PEP program.

New subsection (a) specifies the applicability of the new section.

New subsection (b) establishes a school district's eligibility for R-PEP benefits. Based on public comment, language has been added to subsection (b) at adoption to state that open-enrollment charter schools are not eligible for R-PEP designation.

New subsection (c) defines key words and concepts related to R-PEP.

Based on public comment, the definition of "school district" in proposed subsection (c)(5), which specified the inclusion of open-enrollment charter schools, was removed.

New subsection (d) outlines the requirements of the performance agreement required to be approved by the school boards of each participating district and the proposed R-PEP coordinating entity in order to be designated by TEA as an R-PEP.

Based on public comment, subsection (d)(2) was modified at adoption to include a requirement for biannual updates to district boards.

New subsection (e) outlines the application process the coordinating entity must follow in order to be designated by TEA. This process includes submitting a letter of intent; a description of the pathways offered by the partnership that align with high-wage, high-demand careers in the region; the approved performance agreement between districts and coordinating entity; letters of support from relevant organizations; and scoring criteria TEA will use to make designation decisions.

Conforming edits were made to subsection (e) at adoption to align with the addition of new subsection (f), which addresses the application process to expand or modify a designated R-PEP. Specifically, the following changes were made. Subsection (e)(2) was amended at adoption to specify that an application may be submitted to modify a previously designated R-PEP. Subsection (e)(3)(A) was modified at adoption to remove the requirement that a letter of intent be submitted before applying for an expansion of an existing R-PEP since that information will be included in new subsection (f)(3)(A). Subsection (e)(4)(D) was amended at adoption to remove reference to expansion materials received as part of the application process.

Based on public comment, new subsection (f) was added at adoption to specify the R-PEP expansion and modification process.

New subsection (g) outlines the performance standards for R-PEP renewal and revocation, including the timeline for TEA to make renewal and revocation decisions, the content of the renewal application package, and the criteria by which TEA will make renewal or revocation decisions.

Based on public comment, subsection (g)(2)(D) has been added to require outcome measures to include progress toward goals.

Based on public comment, subsection (g)(4) was added at adoption to clarify ongoing benefit eligibility, specifying that if student enrollment meets or exceeds the threshold of 1,600, districts will receive benefits for the current school year and will be deemed ineligible for subsequent school years if enrollment meets or exceeds enrollment requirements in subsequent school years.

New subsection (h) outlines the process by which TEA will award R-PEP planning and implementation grants as funds are available. Subsection (h)(1) was amended at adoption to reflect that grant funds may be used to modify partnerships.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period began April 12, 2024, and ended May 13, 2024. Following is a summary of public comments received and agency responses.

Comment: The Permian Basin Innovation Zone (PBIZ) requested a policy update requiring R-PEP directors to provide mandatory biannual updates to district school boards, one at an in-person meeting and one delivered as a report, to ensure they are apprised of the work of the R-PEP.

Response: The agency agrees that biannual updates to district school boards would help ensure they are apprised of the work of the R-PEP. Subsection (d)(2) has been modified at adoption to include biannual updates to district boards as a requirement.

Comment: Texas Charter Schools Association (TCSA) questioned the application and expansion processes under §102.1021(e)(2), which refers to two types of applications: new R-PEP programs and expansions of existing programs. TCSA stated that the proposed rule for expansion includes information already provided in the initial new R-PEP program application and requested a more streamlined process for programs in good standing. Similarly, Empower, also representing a group of practitioners and technical assistance providers, requested a more accelerated process for expansion of existing R-PEPs.

Response: The agency agrees and has added new subsection (f) at adoption to define the expansion application requirements in a more streamlined process for existing R-PEPs in good standing. Conforming edits were made in subsection (e) to clarify that the requirements in that subsection relate to initial R-PEP designation.

Comment: TCSA questioned the process for determining annual eligibility requirements for R-PEPs and requested a subsection that outlines ongoing benefit eligibility requirements. Specifically, TCSA requested clarification regarding how TEA will utilize district average daily attendance projections early in the school years to determine funding eligibility and the funding implications if a district exceeds the 1,600-student enrollment threshold during the school year.

Response: The agency agrees that clarification regarding ongoing benefit eligibility would provide clarity. At adoption, subsection (g)(4) was added to state that if student enrollment meets or exceeds the 1,600-student threshold, districts will receive benefits for the current school year and will be deemed ineligible for subsequent school years if enrollment meets or exceeds enrollment requirements in subsequent school years.

Comment: The Rural Schools Innovation Zone (RSIZ) requested clarity regarding language that includes charter schools, stating that their inclusion is out of alignment with the intent of the HB 2209 and would divert funds from rural Texas students.

Response: The agency agrees that clarification was needed. At adoption, the definition of "school district," which specified the inclusion of open-enrollment charter schools, was removed.

A statement was added in subsection (b) to clarify that charter schools are not eligible for R-PEP designation.

Comment: RSIZ proposed that subsection (d)(1)(A)-(D), regarding staffing authority, be modified to limit the coordinating entity's authority to the pathways instead of the entire employment, compensation, evaluation, and development plans for their non-pathway roles. RSIZ stated that the proposed rule does not take into account the unique structure of shared roles at rural school districts where staff regularly have multiple roles in the district. Empower, also representing a group of practitioners and technical assistance providers, suggested the rule be modified to limit the coordinating entity's authority to the pathways within the partnership agreement.

Response: The agency disagrees that the rule should be modified to limit the coordinating entity's authority to the pathways within the partnership agreement. Per statute, the R-PEP coordinating entity must have control over pathway employees. Addressing any non-pathway duties would be a matter for the R-PEP coordinating entity to address with its member districts on a case-by-case basis.

Comment: Regarding subsections (d)(2) and (f)(2)(D), re-lettered as (g)(2)(D) at adoption, Empower, also representing a group of practitioners and technical assistance providers, proposed the alignment of renewal standards with the requirements for student outcomes in the performance agreements, which would extend the high bar for longitudinal college, career, and military outcomes across both the initial agreement and the ongoing renewal decision.

Response: The agency agrees that alignment of renewal standards with the requirements for student outcomes in the performance agreement would extend college, career, and military outcomes. Subsection (g)(2)(D) has been modified at adoption with updated language specifying progress toward goals as part of outcome measures.

STATUTORY AUTHORITY. The new section is adopted under Texas Education Code (TEC), §29.912, as added by House Bill (HB) 2209, 88th Texas Legislature, Regular Session, 2023, which requires the commissioner of education to establish and administer the R-PEP program to incentivize and support multidistrict, cross-sector, rural college and career pathway partnerships that expand opportunities for underserved students to succeed in school and life while promoting economic development in rural areas; TEC, §29.912(k), which requires the commissioner to adopt rules as necessary to implement the program; and TEC, §48.118, as added by HB 2209, 88th Texas Legislature, Regular Session, 2023, which establishes an additional average daily attendance allotment, an outcomes bonus, and a grant program to support R-PEPs.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §29.912 and §48.118, as added by House Bill 2209, 88th Texas Legislature, Regular Session, 2023.

§102.1021. Rural Pathway Excellence Partnership Program.

(a) Applicability. This section applies only to an eligible school district that intends to establish a rural pathway excellence partnership (R-PEP) under Texas Education Code (TEC), §29.912.

(b) Eligibility for R-PEP benefits. A school district is eligible for R-PEP program benefits if it has fewer than 1,600 students in average daily attendance and enters into a partnership with at least one other school district, irrespective of the number of students in average daily attendance in the other district, located within a distance of 100 miles. Open-enrollment charter schools are not eligible for R-PEP designation.

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

(1) Coordinating entity--An entity that has the capacity to effectively coordinate a multi-district partnership that includes at least one district eligible for benefits under subsection (b) of this section, has entered into a performance agreement approved by the board of trustees of each partnering school district, is an eligible entity as defined by TEC, §12.101(a), and has a governing or advisory board that meets all membership requirements defined in TEC, §29.912.

(2) Institution of higher education--An institution of higher education has the meaning assigned by TEC, §61.003.

(3) Pathway--A program of study or endorsement described by TEC, §28.025(c-1), that:

(A) aligns with regional labor market projections for high-wage, high-demand careers with advancement opportunities; and

(B) incorporates:

(i) Texas Education Agency (TEA)-approved career and technical education programs of study, as defined in TEC, §48.106, and/or Texas College and Career Readiness School Models, including Pathways in Technology Early College High School (P-TECH) and Early College High School (ECHS);

(ii) college and career advising; and

(iii) a continuum of work-based learning experiences that allow students to reflect on and apply what they have learned.

(4) Performance agreement--A legally binding agreement between the board of trustees of each partnering school district and the coordinating entity that confers specific authority to the coordinating entity over the R-PEP pathways as defined in TEC, §29.912.

(d) Performance agreement. To contract with the coordinating entity to operate under TEC, §29.912, the board of trustees of each partnering school district must approve a legally binding agreement with the coordinating entity. The R-PEP performance agreement must:

(1) confer to the coordinating entity the same authority with respect to pathways offered under the partnership provided to an entity that contracts to operate a district campus under TEC, §11.174. The coordinating entity must have:

(A) authority to employ and manage the staff member responsible for the pathways at each partner campus, including initial and final non-delegable authority to hire, supervise, manage, assign, evaluate, develop, advance, compensate, continue employment, and establish any other terms of employment;

(B) authority over the employees in each pathway, including initial and final non-delegable authority for the operating partner to employ and/or manage all of the operating partner's own administrators, educators, contractors, or other staff. Such authority includes the authority to hire, supervise, manage, assign, evaluate, develop, advance, compensate, continue employment, and establish any other terms of employment;

(C) initial, final, and sole authority to supervise, manage, evaluate, and rescind the assignment of any district employee or district contractor from the pathway. If the coordinating entity rescinds

the assignment of any district employee or district contractor, the district must grant the request within 20 working days;

(D) authority to and must directly manage the staff member responsible for the pathways at each partner campus, including having the sole responsibility for evaluating their performance;

(E) initial, final, and sole authority over educational programs within each pathway for specific, identified student groups, such as gifted and talented students, emergent bilingual students, students at risk of dropping out of school, special education students, and other statutorily defined populations;

(F) initial, final, and sole authority to set the school calendar and the daily schedule; and

(G) authority to develop and exercise final approval of pathway budgets, which must include at least 80% of the state and local funding to which each partnering school district is entitled under TEC, §§48.106, 48.110, and 48.118, for each student participating in a pathway;

(2) include ambitious and measurable performance goals and progress measures tied to current college, career, and military readiness outcomes bonus standards and longitudinal postsecondary completion and employment-related outcomes and a timeline to report progress to district school boards at least biannually;

(3) allocate responsibilities for accessing and managing progress and outcome information and annually publishing that information on the Internet website of each partnering district and the coordinating entity;

(4) authorize the coordinating entity to optimize the value of each college and career pathway offered through the partnership by:

(A) determining scheduling;

(B) adding or removing a pathway;

(C) selecting and assigning pathway-specific personnel;

(D) developing and exercising final approval of pathway budgets, which must include at least 80% of the state and local funding to which each partnering school district is entitled under TEC, §§48.106, 48.110, and 48.118, for each student participating in a pathway; and

(E) determining any other matter critical to the efficacy of the pathways; and

(5) provide that any eligible student enrolled in a partnering school district may participate in a college or career pathway offered through the partnership.

(e) Applying for designation of an R-PEP.

(1) Applicant eligibility. A coordinating entity must submit a single application on behalf of each district and campus it requests to designate as eligible for R-PEP benefits.

(2) Types of applications. A coordinating entity may submit an application to start a new R-PEP or an application to expand or modify a previously designated R-PEP in good standing with all applicable R-PEP requirements.

(3) Application contents. The following provisions apply to an R-PEP application submitted to the commissioner of education.

(A) A coordinating entity must submit a letter of intent prior to applying for an R-PEP in accordance with the procedures determined by the commissioner.

(B) The application package shall contain, but is not limited to, any of the following:

(i) an application form;

(ii) a description of R-PEP pathways, including a list of pathways offered at each R-PEP district and evidence that the college and career pathways offered align with regional labor market projections for high-wage, high-demand careers;

(iii) a description of the R-PEP organizational structure, including a staffing plan that outlines roles and responsibilities related to operating and coordinating the R-PEP pathways and includes at least two full-time equivalent roles that:

(I) are under the control of the coordinating entity to the extent required to fulfill responsibilities related to R-PEP;

(II) may be distributed among more than two employees or contractors, including employees or contractors of the district with time allocated for duties managed by the coordinating entity; and

(III) will be engaged and begin fulfillment of their roles within 30 days of approval by the commissioner;

(iv) a proposed budget demonstrating the use of funds allocated to the coordinating entity from the partner districts and ensuring that the coordinating entity exercises final approval over at least 80% of the state and local funding to which each partnering school district is entitled under TEC, §§48.106, 48.110, and 48.118;

(v) an approved performance agreement in alignment with subsection (d) of this section; and

(vi) letters of support from relevant organizations, including institutions of higher education, workforce development organizations, and school districts in the region.

(C) TEA shall review application packages submitted under this section. If TEA determines that an application package is not complete and/or the applicant does not meet the eligibility criteria in TEC, §29.912, TEA shall notify the applicant and allow 10 business days for the applicant to submit any missing or explanatory documents.

(i) If, after giving the applicant the opportunity to provide supplementary documents, TEA determines that the eligibility approval request remains incomplete and/or the eligibility requirements of TEC, §29.912, have not been met, the eligibility approval request will be denied.

(ii) If the documents are not timely submitted, TEA shall remove the eligibility approval request without further processing. TEA shall establish procedures and schedules for returning eligibility approval requests without further processing.

(iii) Failure of TEA to identify any deficiency or notify an applicant thereof does not constitute a waiver of the requirement and does not bind the commissioner.

(D) Upon written notice to TEA, an applicant may withdraw an application package.

(4) Application review.

(A) Applicants with complete application packages satisfying the requirements in paragraph (3) of this subsection will be reviewed by a panel selected by the commissioner.

(B) The panel may include TEA staff or external stakeholders. The panel shall review application packages in accordance with the procedures and criteria established in the application package

and guidance form. Review panel members shall not discuss eligibility approval requests with anyone except TEA staff.

(C) TEA may perform additional due diligence on R-PEP applicants, including, but not limited to:

(i) interviewing applicants, including individuals from the district, coordinating entity, and institutions of higher education, and requiring the submission of additional information and documentation prior to and after the interview;

(ii) interviewing other entities that have contracted with the proposed coordinating entity to assist TEA in determining the past success of a coordinating entity in meeting program-aligned goals; and

(iii) collecting additional data and information not submitted in the application that demonstrates the likelihood of success in meeting R-PEP program goals.

(D) TEA will notify each applicant of its selection or non-selection for R-PEP designation no later than the 60th day after the date the commissioner receives all R-PEP application materials.

(E) In order to qualify for ongoing benefits subsequent to initial eligibility validation or approval, the eligible partnership campus must comply with all information requests deemed necessary by TEA staff to determine the ongoing eligibility of the R-PEP program.

(F) To receive benefits under TEC, §48.118, the district must continuously meet the requirements in this subsection and subsection (d) of this section.

(f) Applying to expand or modify a designated R-PEP.

(1) Eligibility for expansion or modification. A coordinating entity may apply to expand or modify a designated R-PEP any year after initial designation or subsequent renewal. Applications must be submitted to TEA prior to July 1 of the school year in which the change will be effective.

(2) Types of expansions/modifications. A complete expansion/modification amendment packet must be submitted any time there is a change in partnership districts and/or pathways by selecting and completing one of the following options:

(A) the R-PEP will add or remove participating districts with no change in pathways offered;

(B) the R-PEP will add or remove pathways offered with no change in districts; or

(C) the R-PEP will add or remove pathways offered and add or remove participating districts.

(3) Expansion and modification amendment application contents. The following provisions apply to an R-PEP expansion and modification amendment application submitted to the commissioner.

(A) A coordinating entity must submit a letter of intent prior to applying to expand or modify an existing R-PEP in accordance with the procedures determined by the commissioner.

(B) The application package shall contain, but is not limited to, the following:

(i) an application form outlining any relevant changes to the R-PEP and/or coordinating entity structure or supports;

(ii) an updated budget demonstrating the use of funds allocated to the coordinating entity from the partner districts and ensuring that the coordinating entity exercises final approval over at least 80% of the state and local funding to which each partnering school district is entitled under TEC, §§48.106, 48.110, and 48.118; and

(iii) an updated approved performance agreement in alignment with subsection (d) of this section.

(4) Expansion and modification amendment application review.

(A) Applicants with complete application packages satisfying the requirements in paragraph (3) of this subsection will be reviewed by a panel selected by the commissioner.

(B) The panel may include TEA staff or external stakeholders. The panel shall review application packages in accordance with the procedures and criteria established in the application package and guidance form. Review panel members shall not discuss eligibility approval requests with anyone except TEA staff.

(C) TEA may perform additional due diligence on R-PEP expansion or modification applicants, including, but not limited to:

(i) interviewing applicants, including individuals from the district, coordinating entity, and institutions of higher education, and requiring the submission of additional information and documentation prior to and after the interview;

(ii) interviewing other entities that have contracted with the proposed coordinating entity to assist TEA in determining the past success of a coordinating entity in meeting program-aligned goals; and

(iii) collecting additional data and information not submitted in the application that demonstrates the likelihood of success in meeting R-PEP program goals.

(D) TEA will notify each applicant of its approval for the R-PEP expansion or modification no later than the 60th day after the date the commissioner receives all R-PEP expansion or modification materials.

(E) In order to qualify for ongoing benefits subsequent to initial eligibility validation or approval, the eligible partnership campus must comply with all information requests deemed necessary by TEA staff to determine the ongoing eligibility of the R-PEP program.

(F) To continue to receive benefits under TEC, §48.118, the district must continuously meet the requirements in this subsection and subsection (d) of this section.

(g) Performance standards for R-PEP renewal.

(1) No less than three years after an R-PEP designation is approved or renewed, each R-PEP coordinating entity must submit for TEA review a renewal package to determine continued eligibility for R-PEP allocations.

(2) The renewal package may contain, but is not limited to, any of the following:

(A) a renewal form;

(B) assurance from the R-PEP coordinating entity and school board of trustees for each participating R-PEP district that the performance agreement continues to meet TEA criteria and is being implemented in accordance with TEC, §29.912, and this section;

(C) budgets for the R-PEP demonstrating alignment with TEC, §29.912, and this section; and

(D) outcome measures as evidenced by progress reports and program data, including, but not limited to, progress toward goals outlined in the R-PEP performance agreement.

(3) The commissioner may deny renewal of the authorization of a designated R-PEP program based on any or all of the following factors:

(A) noncompliance with application assurances and/or the provisions of this section;

(B) lack of program success as evidenced by progress reports and program data;

(C) failure to meet performance standards specified in the application and/or R-PEP performance contract; and

(D) failure to provide accurate, timely, and complete information as required by TEA to evaluate the effectiveness of the R-PEP program.

(4) If a school district starts a school year with fewer than 1,600 students but meets or exceeds that enrollment by the end of the school year, that district will be entitled to R-PEP benefits outlined in TEC, §48.118, for the current school year and will be deemed ineligible for the subsequent school year if enrollment meets or exceeds 1,600 students.

(h) R-PEP grants.

(1) TEA will announce and execute an open application for R-PEP planning and implementation grants pursuant to TEC, §48.118, to assist school districts and coordinating entities in planning, development, establishment, or expansion/modification of partnerships as funds are available.

(2) TEA will make publicly available the R-PEP grant application, eligibility criteria, and scoring rubric. Priority will be given to coordinating entities that have entered into a performance agreement or, if in the planning stage, have entered into a memorandum of understanding to enter into a performance agreement, unless the source of funds does not permit a grant to the coordinating entity, in which case the grant shall be made to a participating school district acting as fiscal agent.

(3) Submitted applications will be scored according to the published scoring rubric, and grants will be awarded by TEA to the applicants whose applications are scored highest under the rubric.

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 July 17, 2024.

TRD-202403133
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: August 6, 2024
Proposal publication date: April 12, 2024
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 10. TEXAS FUNERAL SERVICE COMMISSION

CHAPTER 203. LICENSING AND ENFORCEMENT--SPECIFIC SUBSTANTIVE RULES

SUBCHAPTER D. LICENSING PROVISIONS RELATED TO MILITARY SERVICE MEMBERS, MILITARY VETERANS, AND MILITARY SPOUSES

22 TAC §§203.55 - 203.61

The Texas Funeral Service Commission ("Commission") adopts new 22 TAC §§203.55 - 203.61 regarding the occupational licensure of military service members, military veterans, and military spouses in funeral directing and/or embalming.

New §§203.55 - 203.61 are adopted without changes to the proposed text published in the May 10, 2024, issue of the *Texas Register* (49 TexReg 3101). These rules will not be republished.

REASONED JUSTIFICATION: The new rules add provisions that are necessary to bring the Commission into compliance with Texas Occupations Code chapter 55, and streamline all provisions regarding the funeral director and embalmer license application process, review, and approval of military service members, military veterans, and military spouses into a single subchapter in the Commission rules, making it easy for the public and potential and actual licensees to locate.

SUMMARY OF COMMENTS AND AGENCY RESPONSE. The Commission received no written or oral comments during the public comment period.

STATUTORY AUTHORITY.

The new rules are adopted under Texas Occupations Code §651.152, which authorizes the Texas Funeral Service Commission to adopt rules as necessary to administer and enforce that chapter.

The new rules are also adopted under Texas Occupations Code §55.002, which authorizes the Commission to adopt rules to exempt a license holder from increased fees or penalties for failing to renew the individual's license if the individual can provide satisfactory proof that the individual was serving as a military service member at the time the Commission-issued license expired.

The new rules are adopted under Texas Occupations Code §55.004(a), which authorizes the Commission to adopt rules to for issuing a funeral director or embalmer license to military service members, military veterans, or military spouses who hold a current license in another jurisdiction with licensing requirements substantially equivalent to those for a funeral director or embalmer license in Texas or within the five years preceding the individual's application, held the same license in Texas. §55.004(c) authorizes the Commission to adopt rules that establish alternate methods for military service members, military veterans, and military spouse to demonstrate competency to satisfy the requirements for obtaining a funeral director or embalmer license, including receiving appropriate credit for training, education, and clinical and professional experience.

These rules are adopted under §55.0041(e), which gives the Commission the necessary authority to adopt rules to implement §55.0041, Texas Occupations Code, for recognizing a military service member or military spouse to practice funeral directing or embalming in Texas without first obtaining the required license

if the member or spouse is currently licensed in good standing by another jurisdiction with substantially equivalent licensing requirements to Texas.

Furthermore, §55.0041(e) gives the Commission authority to adopt rules that 1) establish how such applicants are to notify the Commission of their intent to practice funeral directing or embalming in Texas; 2) submit proof to the Commission of the service member's or spouse's residency in Texas, as well as their military identification card; 3) method for the Commission to provide confirmation to the military service member or spouse applicant that the Commission has verified the applicant's license is in good standing with the other jurisdiction and authorize the applicant to practice funeral directing or embalming in Texas; 4) establish how the Commission will determine if another jurisdiction has substantially equivalent licensing requirements to Texas; and 5) creates a process for verifying the applicant's license is in good standing within 30 days of receiving all of the necessary information from the applicant.

The rules are adopted under §55.007, Texas Occupations Code, which provides the necessary authority to the Commission to adopt rules to credit verified military service, training, or education toward the funeral director or embalmer, full or provisional, licensing requirements for applicants who are a military service member or veteran. §55.007 further authorizes the Commission to limit its rules from applying to military service member or veteran license applicants who hold a restricted licensed issued by another jurisdiction or have an unacceptable criminal history pursuant to applicable law.

In addition, the new rules are adopted under §55.008, Texas Occupations Code, which gives the Commission the authority to adopt rules to credit verified military service, training, or education that is relevant to funeral directing or embalming to provisional funeral director or provisional embalmer licensing requirements.

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 July 17, 2024.

TRD-202403164
Sarah Hartsfield
Interim Executive Director/Staff Attorney
Texas Funeral Service Commission
Effective date: August 6, 2024
Proposal publication date: May 10, 2024
For further information, please call: (512) 936-2474

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TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 745. LICENSING

SUBCHAPTER K. INSPECTIONS, INVESTIGATIONS, AND CONFIDENTIALITY

DIVISION 3. CONFIDENTIAL RECORDS

26 TAC §745.8483, §745.8497

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §745.8483, concerning What portions of a child care record are confidential, and new §745.8497, concerning What confidentiality requirements apply to a person who is an applicant for a permit, a permit holder, or a former permit holder.

The amendment to §745.8483 and new §745.8497 are adopted without changes to the proposed text as published in the May 3, 2024, issue of the *Texas Register* (49 TexReg 2954). The rules will not be republished.

BACKGROUND AND JUSTIFICATION

The amendment and new section are necessary to implement Senate Bill (S.B.) 510 and a portion of House Bill (H.B.) 4696, 88th Legislature, Regular Session, 2023.

S.B. 510 added §552.11765 to Texas Government Code to require a state licensing authority to make confidential certain information regarding an applicant for a permit, permit holder, or former permit holder. Accordingly, HHSC Child Care Regulation (CCR) is adopting (1) a new rule that describes the confidentiality requirements that apply to an applicant for a permit, a permit holder, or a former permit holder; and (2) an amended rule that describes the confidential portions of a child care record to include a cross-reference to the new rule.

H.B. 4696 amended Texas Health and Safety Code §253.001(4) and Texas Human Resources Code §48.251(a)(3) and §48.252(b) and (c) to specify that HHSC Long-Term Care Regulation Provider Investigations (HHSC PI) is responsible for investigating an allegation of abuse, neglect, and exploitation of an elderly person or adult with a disability who resides in a residential child-care facility. Accordingly, CCR is adopting an amended rule to add to the list of confidential information in a child care record any information that would interfere with an HHSC PI investigation if the information were released. Only a portion of H.B. 4696 is being implemented as part of this rule project; a separate project will complete the rule development to implement the bill.

COMMENTS

The 31-day comment period ended June 3, 2024. During this period, HHSC received two comments from two commenters: an applicant to operate a listed family home and a representative of a licensed child-care center. A summary of comments relating to the rules and HHSC's responses follows.

Comment: One commenter appeared to ask how the rules will affect her recent background check and application to operate a listed family home.

Response: To the extent that the comment implies that the rule language is not clear, HHSC disagrees with that implication and declines to revise the rules. With respect to background information related to background checks, §745.8483(3), already addresses the confidentiality of such information. With respect to information in an application for a permit, §745.8487 straightforwardly identifies information that is confidential, as well as exceptions that apply to home operations, such as listed family homes, and email addresses. Moreover, §745.8487 implements statutory language that is already effective. HHSC has previously communicated the statutory requirements to stakeholders and will send additional information to providers regarding the rule changes once adopted.

Comment: One commenter expressed support for the rule proposals.

Response: HHSC appreciates the support for the rules.

STATUTORY AUTHORITY

The amendment and new section are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out the duties of HHSC under Texas Government Code Chapter 531.

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 July 16, 2024.

TRD-202403120
Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: October 9, 2024
Proposal publication date: May 3, 2024
For further information, please call: (512) 438-3269

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TITLE 34. PUBLIC FINANCE

PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

CHAPTER 41. HEALTH CARE AND INSURANCE PROGRAMS

SUBCHAPTER A. RETIREE HEALTH CARE BENEFITS (TRS-CARE)

34 TAC §41.17

The Board of Trustees of the Teacher Retirement System of Texas (TRS) adopts new §41.17 (relating to Limited-time Enrollment Opportunity for Medicare-eligible Retirees) under Subchapter A (relating to Retiree Health Care Benefits (TRS-CARE)) of Chapter 41 in Part 3 of Title 34 of the Texas Administrative Code without changes to the text as originally published in the May 31, 2024, issue of the *Texas Register* (49 TexReg 3917). The rule will not be republished.

REASONED JUSTIFICATION

The trust fund of the Texas Public School Retired Employees Group Benefits Program ("TRS-Care"), administered under Chapter 1575 of the Insurance Code, experienced growth in recent years stemming from federal changes to Medicare, TRS' improved contracts with Medicare Advantage and Part D drug benefits, and other factors.

TRS received correspondence from legislative leadership directing TRS to use TRS-Care fund growth to reduce premiums and offer a one-time enrollment opportunity for eligible TRS-Care Medicare Advantage participants. TRS evaluated how to maximize its fund balance to accomplish these goals while preserving the fund's long-term stability. TRS developed the new §41.17 in furtherance of the legislative direction and TRS' evaluation of the fund.

TRS is adopting new §41.17 to provide a limited-time enrollment opportunity for unenrolled retirees, dependents, surviving spouses, and surviving dependent children in anticipation of the upcoming TRS-Care open enrollment period (which begins on October 1, 2024) and the reduced premiums that would take effect on the next plan year, which begins January 1, 2025.

New §41.17 implements details of this limited-time enrollment opportunity, for example, specifying who is eligible, when eligible individuals may enroll, and when coverage will be effective. Eligible retirees, dependents, surviving spouses, and surviving dependent children will be eligible to enroll beginning October 1, 2024, through March 31, 2026.

COMMENTS

No comments on the proposed adoption were received.

STATUTORY AUTHORITY

This new §41.17 is being adopted under the authority of Chapter 1575, Insurance Code, which establishes the Texas Public School Retired Employees Group Benefits Act (TRS-Care), §1575.052, which allows the TRS Board of Trustees to adopt rules, plans, procedures, and orders reasonably necessary to implement Chapter 1575, including periods of enrollment and selection of coverage and procedures for enrolling and exercising options under the group program; Chapter 825 of the Government Code, which governs the administration of TRS; §825.102 of the Government Code, which authorizes the TRS Board of Trustees to adopt rules for the transaction of the business of the Board.

CROSS-REFERENCE TO STATUTE

The adopted new §41.17 affects Chapter 1575, Insurance Code, which establishes the Texas Public School Retired Employees Group Benefits Program (TRS-Care), §1575.052, which allows the TRS Board of Trustees to adopt rules, plans, procedures, and orders for periods of enrollment and selection of coverage and procedures for enrolling and exercising options under the group program.

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 July 22, 2024.

TRD-202403213
Don Green
Chief Financial Officer
Teacher Retirement System of Texas
Effective date: August 11, 2024
Proposal publication date: May 31, 2024
For further information, please call: (512) 542-3528

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TITLE 43. TRANSPORTATION

PART 3. MOTOR VEHICLE CRIME PREVENTION AUTHORITY

CHAPTER 57. MOTOR VEHICLE CRIME PREVENTION AUTHORITY

43 TAC §57.36

INTRODUCTION. The Motor Vehicle Crime Prevention Authority (MVCPA) adopts amendments to 43 Texas Administrative Code (TAC) §57.36 concerning level of funding for grant projects. The board adopts amendments to 43 TAC §57.36 without changes to the proposed text as published in the April 19, 2024, issue of the *Texas Register* (49 TexReg 2457). The rule will not be republished.

REASONED JUSTIFICATION.

Transportation Code §1006.151(a) and §1006.154 provide the MVCPA with authority to issue grants in its own name by providing funding to law enforcement agencies for economic motor vehicle theft and fraud-related motor vehicle crime enforcement teams; to law enforcement agencies, local prosecutors, judicial agencies, and neighborhood, community, business and non-profit organizations for the programs designed to reduce the incidence of economic motor vehicle theft and fraud-related motor vehicle crime; for conducting educational programs designed to inform motor vehicle owners of methods of preventing motor vehicle burglary or theft and fraud-related motor vehicle crime; for equipment, for experimental purposes, to assist motor vehicle owners in preventing motor vehicle burglary or theft; and funding to establish a uniform program to prevent stolen motor vehicles from entering Mexico. Under current 43 TAC §57.36, a grantee must contribute a cash match of 20% of the total MVCPA award for each year of funding to be eligible for MVCPA grant funds.

The amendments to 43 TAC §57.36 are adopted to provide the MVCPA board with authority to address unforeseen grantee budgetary shortfalls by providing the board with greater flexibility in adjusting the cash match percentage required of law enforcement grantees seeking MVCPA grant funding. The adopted amendments would allow the MVCPA board to exercise its discretion in setting the percentage of cash match in each grant funding cycle by considering grantee budgetary factors. By providing the MVCPA board with discretion to set the percentage of cash match or waive the cash match requirement for a given fiscal year, the board can ensure that law enforcement agencies with decreased financial resources will have a realistic opportunity to apply for and secure MVCPA grant funding in furtherance of the MVCPA statutory mandates.

SUMMARY OF PUBLIC COMMENTS.

The MVCPA received one comment from a taskforce member in favor of the amendment.

STATUTORY AUTHORITY. The amendments are adopted under Transportation Code §1006.101. Transportation Code §1006.101 authorizes the MVCPA to adopt rules that are necessary and appropriate to implement the powers and duties of the authority.

CROSS REFERENCE TO STATUTE. Art. 4413(37) §6.

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 July 22, 2024.

TRD-202403208
David Richards
General Counsel
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