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# TEXAS REGISTER

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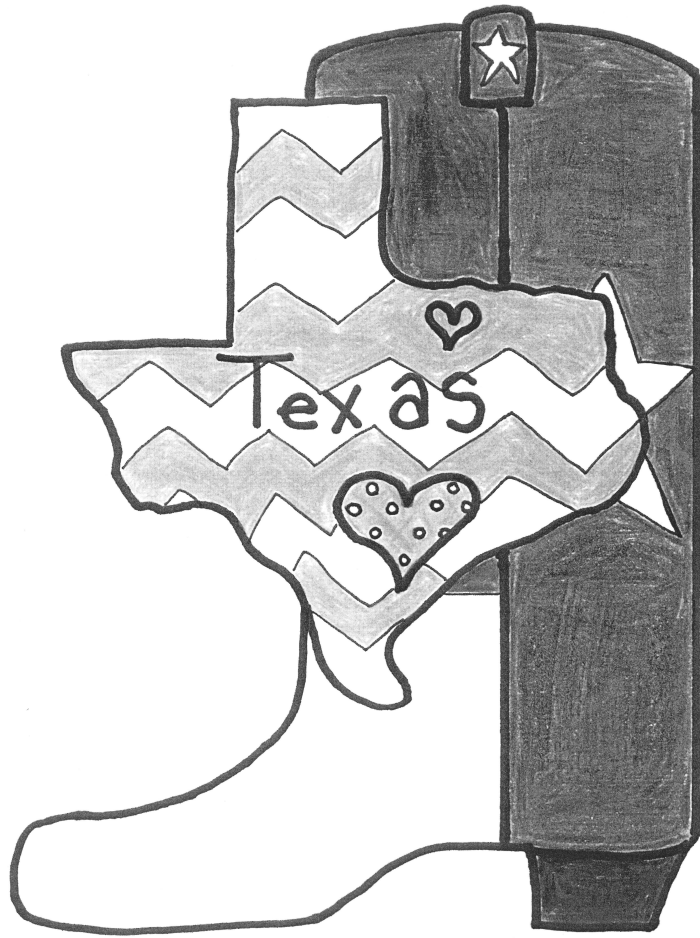
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# THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

## Appointments

### Appointments for September 12, 2024

Pursuant to HB 3474, 88th Legislature, Regular Session, appointed as Judge of the 494th Judicial District Court, Collin County, for a term until December 31, 2026, or until her successor shall be duly elected and qualified, Kathryn Lanigan Pruitt of Frisco, Texas.

Appointed to the Texas State Board of Public Accountancy for a term to expire January 31, 2025, Christopher G. "Grant" Coates of Fort Worth, Texas (replacing Himesh M. Gandhi of Sugar Land, who resigned).

Appointed to the Texas State Board of Public Accountancy for a term to expire January 31, 2025, James M. "Jim" Trippon of Houston, Texas (replacing Kevin J. Koch of Temple, who resigned).

Appointed to the Department of Information Resources for a term to expire February 1, 2025, Walter F. "Frank" Coppersmith, III of Round Rock, Texas (replacing Kara J. Thompson of San Marcos, who resigned).

Appointed to the Department of Information Resources for a term to expire February 1, 2029, Catherine Bellah Keller of Dallas, Texas (replacing Michael D. "Mike" Bell of Spring, who resigned).

### Appointments for September 13, 2024

Appointed to the Task Force on Infectious Disease Preparedness and Response for a term to expire at the pleasure of the Governor, Andrew R. Cortez of Corpus Christi, Texas (replacing Anthony M. "Tony" Marquardt of Austin, who resigned).

Appointed to the Task Force on Infectious Disease Preparedness and Response for a term to expire at the pleasure of the Governor, Jack P. Franklin, Jr. M.D. of Llano, Texas (replacing Dorothy N. "Dottie" Overman, M.D. of New Braunfels, who resigned).

Appointed to the Texas Medical Board District Four Review Committee for a term to expire January 15, 2028, Glenna W. Yates of Horseshoe Bay, Texas (replacing Walton "Boyd" Bush, Jr. of Bee Cave, who resigned).

Appointed to the Texas Medical Board District Four Review Committee for a term to expire January 15, 2030, Mary K. "Kelly" Green, M.D. of Marble Falls, Texas (replacing Leanne Burnett, M.D. of Fresno, whose term expired).

Appointed to the Texas Medical Board District Four Review Committee for a term to expire January 15, 2030, John C. "Chris" Putnam, Ph.D. of Spicewood, Texas (replacing Phillip W. "Phil" Worley of Hebbronville, whose term expired).

Appointed to the Texas Medical Board District Four Review Committee for a term to expire January 15, 2030, Shirlene J. Samuel, D.O. of Austin, Texas (Dr. Samuel is being reappointed).

### Appointments for September 16, 2024

Appointed to the Firefighters' Star of Texas Award Advisory Committee for a term to expire at the pleasure of the Governor, Stephen D.

"Steve" Eck of Fort Worth, Texas (replacing Samuel S. "Sam" McGee of Boerne, who resigned).

Appointed as presiding officer of the Hidalgo County Regional Mobility Authority for a term to expire February 1, 2026, Roel "Roy" Rodriguez of McAllen, Texas (replacing Samuel D. "David" Deanda, Jr. of Mission, whose term expired).

Appointed to the Texas Water Development Board for a term to expire February 1, 2027, Tonya R. Miller of Austin, Texas (replacing George B. Peyton, V of West Lake Hills, who resigned).

### Appointments for September 17, 2024

Appointed to the Texas Medical Board District One Review Committee for a term to expire January 15, 2028, Laurel E.P. Simmons of Houston, Texas (replacing Laurel E. Coles of Houston, who resigned).

Appointed to the Texas Medical Board District One Review Committee for a term to expire January 15, 2030, David D. Davila, D.O. of Cypress, Texas (Dr. Davila is being reappointed).

Appointed to the Texas Medical Board District One Review Committee for a term to expire January 15, 2030, Mark L. Hobson of Houston, Texas (replacing Aundrea Young of Houston, whose term expired).

Appointed to the Texas Medical Board District One Review Committee for a term to expire January 15, 2030, Rajesh G. Shenava, M.D. of Houston, Texas (replacing Courtney M. Townsend, Jr., M.D. of Galveston, whose term expired).

Appointed to the Board of the Texas Department of Motor Vehicles for a term to expire February 1, 2029, Mark G. Jones of Mansfield, Texas (replacing Paul R. Scott of Lubbock, who resigned).

Greg Abbott, Governor

TRD-202404481



## Proclamation 41-4140

### TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, Greg Abbott, Governor of Texas, issued a disaster proclamation on May 31, 2021, certifying under Section 418.014 of the Texas Government Code that the surge of individuals unlawfully crossing the Texas-Mexico border posed an ongoing and imminent threat of disaster for a number of Texas counties and for all state agencies affected by the disaster; and

WHEREAS, at my direction, the State of Texas has taken unprecedented steps under Operation Lone Star to mitigate this threat, including apprehending over half a million illegal immigrants, deterring more than one hundred thousand illegal entries, and effectively reducing illegal immigration into Texas by 87 percent over the past three years; and

WHEREAS, despite the extraordinary success achieved through Operation Lone Star initiatives, the federal government's failure to secure the entirety of our southern border has allowed the surge of individuals

crossing the border to continue, resulting in more than 11 million people—a number larger than the population of 40 different States—entering this country illegally in less than four years; and

WHEREAS, the federal government's open-border policies have predictably resulted in the unchecked entry of transnational criminal foot soldiers, as predicted by former Federal Bureau of Investigation (FBI) officials who warned earlier this year that "the surge in numbers of single, military aged males" from hostile nations and regions "appears to be an accelerated and strategic penetration, a soft invasion, designed to gain internal access to" the United States and "inflict catastrophic damage" on this country; and

WHEREAS, Tren de Aragua is a transnational criminal organization with thousands of members across the globe, who operate a sweeping criminal enterprise that traffics human beings for sex, smuggles drugs and weapons, and tortures and dismembers victims; and

WHEREAS, Tren de Aragua, which originated in a Venezuela prison where leaders ran the criminal enterprise with the comforts of a pool, a night club, and a zoo, quickly moved its activity into surrounding countries like Colombia, Peru, and Chile, before eventually expanding operations to the United States; and

WHEREAS, FBI officials in Texas confirm that "members of Tren de Aragua have crossed into the United States," and a recent memorandum from the U.S. Department of Homeland Security reveals that the group's leaders have given members "a 'green light' to fire on or attack law enforcement"; and

WHEREAS, reports indicate that, since being released into the country, suspected members of Tren de Aragua have unleashed a scourge of crime and terror across the United States, from murdering a nursing student in Georgia out on a morning jog, to shooting police officers trying to stop a robbery in New York, to sexually assaulting a mother and her minor daughter in Wisconsin, to forcibly assuming operational control to establish large-scale operations in once-quiet suburbs in Colorado; and

WHEREAS, reports confirm that Tren de Aragua has established criminal operations in Texas, including in El Paso where it has recently converted hotels to house gang members, imprison human smuggling victims, and stage criminal operations, resulting in nearly 700 phone calls to local law enforcement; and

WHEREAS, on June 8, 2023, I, Greg Abbott, Governor of Texas, signed into law Senate Bill No. 1900, which strengthened the tools to combat transnational criminal organizations like Tren de Aragua operating in Texas; and

WHEREAS, Texas Penal Code § 71.01(e) now provides that a Foreign Terrorist Organization "means three or more persons operating as an organization at least partially outside the United States who engage in criminal activity and threaten the security of this state or its residents, including but not limited to a drug cartel"; and

WHEREAS, Texas Civil Practice and Remedies Code § 125.065 authorizes suit against a Foreign Terrorist Organization for a court order enjoining its operations and "imposing other reasonable requirements to prevent the ... organization from engaging in future gang activities"; and

WHEREAS, Texas Civil Practice and Remedies Code § 125.066 provides that violation of a court order enjoining such operations and activities is punishable by contempt sanctions, including monetary fines and imprisonment; and

WHEREAS, Texas Civil Practice and Remedies Code § 125.064(b) and § 125.069 further authorize suit against "[a]ny person who owns or is responsible for maintaining a place that is habitually used for engaging in gang activity" by a Foreign Terrorist Organization, and provide that such a person may be subject to the same court order and penalties; and

WHEREAS, Texas Penal Code § 71.02, § 71.022, and § 71.023 impose heightened criminal penalties by making it a crime to engage in, conspire to engage in, solicit, or direct the criminal activities of a Foreign Terrorist Organization;

NOW, THEREFORE, I, GREG ABBOTT, Governor of Texas, under the authority vested in me by the Constitution and Statutes of the State of Texas, do hereby designate Tren de Aragua as a Foreign Terrorist Organization and thereby subject Tren de Aragua, and any persons harboring or facilitating its criminal activities in Texas, to the heightened penalties authorized by Senate Bill No. 1900.

I HEREBY DIRECT that a copy of this proclamation be filed in the office of the Secretary of State.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 16th day of September, 2024.

Greg Abbott, Governor

TRD-202404457





# PROPOSED RULES

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

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

## TITLE 16. ECONOMIC REGULATION

### PART 9. TEXAS LOTTERY COMMISSION

#### CHAPTER 401. ADMINISTRATION OF STATE LOTTERY ACT

##### SUBCHAPTER B. LICENSING OF SALES AGENTS

###### 16 TAC §401.158, §401.160

The Texas Lottery Commission (Commission) proposes amendments to 16 TAC §401.158 (Suspension or Revocation of License) and §401.160 (Standard Penalty Chart). The purpose of the proposed amendments is to reinforce the Commission's zero tolerance policy regarding a Texas Lottery sales agent (retailer) selling lottery tickets to a minor by requiring revocation of the retailer's license in all cases involving a violation of a law or Commission rule where the licensee intentionally or knowingly sells or offers to sell a lottery ticket to a person that the licensee knows is younger than 18 years of age. See Texas Government Code §466.3051(a) (Sale of Ticket to or Purchase of Ticket by Person Younger Than 18 Years of Age).

Robert Tirloni, Lottery Operations Director, has determined that for each year of the first five years the proposed amendments will be in effect, the public benefit expected is that Texas Lottery retailers will clearly understand that the penalty for selling or offering to sell a Texas Lottery ticket to a person younger than 18 years is license revocation, which is anticipated to result in enhanced protection against the sale of lottery tickets to minors.

Sergio Rey, Controller, has determined that for each year of the first five years the amendments will be in effect, there will be no significant fiscal impact for state or local governments as a result of the proposed amendments. There will be no adverse effect on small businesses or rural communities, micro businesses, or local or state employment. There will be no additional economic cost to persons required to comply with the amendments, as proposed. Furthermore, an Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amendments will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

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

(1) The proposed amendments do not create or eliminate a government program.

(2) Implementation of the proposed amendments does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of the proposed amendments does not require an increase or decrease in future legislative appropriations to the Commission.

(4) The proposed amendments do not require an increase or decrease in fees paid to the Commission.

(5) The proposed amendments do not create a new regulation.

(6) The proposed amendments do not expand or limit an existing regulation.

(7) The proposed amendments do not increase or decrease the number of individuals subject to the rule's applicability.

(8) The proposed amendments do not positively or adversely affect this state's economy.

The Commission requests comments on the proposed amendments from any interested person. Comments may be submitted to Bob Biard, General Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at [legal.input@lottery.state.tx.us](mailto:legal.input@lottery.state.tx.us). Comments must be received within 30 days after publication of this proposal in the *Texas Register* to be considered.

These amendments are proposed under Texas Government Code §466.015(b)(3), which requires the Commission to adopt rules governing the enforcement of prohibitions on the sale of tickets to or by an individual younger than 18 years of age, and §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

This proposal is intended to implement Texas Government Code, Chapter 466.

§401.158. *Suspension or Revocation of License.*

(a) (No change.)

(b) Without limiting the commission's ability to consider factors listed in §401.153(b) of this title as grounds for suspension or revocation of a license issued under this subchapter, the commission may also suspend or revoke a license for reasons including, but not limited to, any of the following:

(1) - (25) (No change.)

[(26) licensee intentionally or knowingly sells a ticket to a person that the licensee knows is younger than 18 years;]

(26) [(27)] licensee intentionally or knowingly sells a ticket and accepts anything for payment not specifically allowed under the State Lottery Act;

(27) [(28)] licensee sells tickets over the telephone or via mail order sales, establishes or promotes a group purchase or pooling arrangement under which tickets are purchased on behalf of the group or pool and any prize is divided among the members of the group or pool, and the licensee intentionally or knowingly:

(A) - (B) (No change.)

(28) [(29)] licensee intentionally or knowingly alters or forges a ticket;

(29) [(30)] licensee intentionally or knowingly influences or attempts to influence the selection of a winner of a lottery game;

(30) [(31)] licensee intentionally or knowingly claims a lottery prize or a share of a lottery prize by means of fraud, deceit, or misrepresentation; or aids or agrees to aid another person or persons to claim a lottery prize or a share of a lottery prize by means of fraud, deceit, or misrepresentation;

(31) [(32)] licensee intentionally or knowingly tampers with, damages, defaces, or renders inoperable any vending machine, electronic computer terminal, or other mechanical device used in a lottery game, or fails to exercise due care in the treatment of commission property;

(32) [(33)] licensee:

(A) - (D) (No change.)

(33) [(34)] licensee intentionally or knowingly makes a statement or entry that the person knows to be false or misleading on a required report;

(34) [(35)] licensee fails to maintain or make an entry the licensee knows is required to be maintained or made for a required report;

(35) [(36)] licensee knowingly refuses to permit the director of the Lottery Operations Division, the executive director, commission, the lottery operator, the employees or agents of the lottery operator, or the state auditor to examine the agent's books, records, papers or other objects, or refuses to answer any question authorized under the State Lottery Act;

(36) [(37)] licensee intentionally or knowingly makes a material and false or incorrect, or deceptive statement, written or oral, to a person conducting an investigation under the State Lottery Act or a commission rule;

(37) [(38)] licensee commits an offense of conspiracy as defined in the State Lottery Act;

(38) [(39)] licensee sells or offers for sale any interest in a lottery of another state or state government or an Indian tribe or tribal government, including an interest in an actual lottery ticket, receipt, contingent promise to pay, order to purchase, or other record of the interest;

(39) licensee intentionally or knowingly sells or offers to sell a ticket to a person that the licensee knows is younger than 18 years (revocation only);

(40) - (42) (No change.)

§401.160. Standard Penalty Chart.

(a) - (g) (No change.)

(h) Standard Penalty Chart.

Figure 16 TAC §401.160(h)

[Figure 16 TAC §401.160(h)]

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

Filed with the Office of the Secretary of State on September 11, 2024.

TRD-202404413

Bob Biard

General Counsel

Texas Lottery Commission

Earliest possible date of adoption: October 27, 2024

For further information, please call: (512) 344-5392



## TITLE 22. EXAMINING BOARDS

### PART 9. TEXAS MEDICAL BOARD

#### CHAPTER 160. MEDICAL PHYSICISTS

The Texas Medical Board (Board) proposes the repeal of current Chapter 160, concerning Medical Physicists, §§160.1 - 160.5 and §160.7 - 160.31.

The Board also proposes new Chapter 160, concerning General Provisions, §§160.1 - 160.7, 160.10 and 160.11.

Also, the Board contemporaneously proposes the repeal of current Chapter 161, concerning General Provisions, §§161.1 - 161.7, 161.10, and 161.11.

The Board has determined that due to the extensive reorganization of Chapters 160-200, the repeal of Chapter 160 is more efficient than proposing multiple amendments to make the required changes.

The proposed new sections are as follows:

#### SUBCHAPTER A. GENERAL.

New §160.1, Definitions, defines terms used throughout the Boards rules.

New §160.2, Functions and Duties, explains the functions and duties of the Board and its members.

New §160.3, Officers of the Board, explains the roles and duties of the Board President, Vice-President, and Secretary-Treasurer.

New §160.4, Meetings, explains how Board meetings are conducted.

New §160.5, Committees, explains the four standing committees of the Board. It also explains when other committees may be appointed.

New §160.6, District Review Committees, explains the four districts of the Board established by the Medical Practice Act, as well as the Texas counties belonging to each.

New §160.7, Memorandum of Understanding with Texas Physician Health Program, explains the authority for the agreement between the Board and the Texas Physician Health Program (TX PHP).

#### SUBCHAPTER B. RULEMAKING.

New §160.10, Petition for Rulemaking, describes the process used by the Board when a member of the public initiates a petition for rulemaking under the Administrative Procedures Act.

New §160.11, Input in Rulemaking, describes public input in the Board's rulemaking process.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the proposed repeals and new sections are in effect, the public benefit anticipated as a result of enforcing these proposed sections will be to remove redundant language from rules, simplify the rules, and make the rules easier to understand.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect, there will be no fiscal impact or effect on government growth as a result of enforcing the proposed sections.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect there will be no probable economic cost to individuals required to comply with these proposed sections.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for these proposed repeals and new sections and determined that for each year of the first five years these proposed repeals and new sections will be in effect there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of these proposed repeals and new sections and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years these proposed repeals and new sections are in effect:

- (1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering these proposed repeals and new sections;
- (2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections;
- (3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections; and
- (4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering these proposed repeals and new sections.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years these proposed repeals and new sections will be in effect, there will be no effect on local economy and local employment.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for these proposed repeals and new sections. For each year of the first five years these proposed repeals and new sections will be in effect, Mr. Freshour has determined the following:

- (1) These proposed repeals and new sections do not create or eliminate a government program.

(2) Implementation of these proposed repeals and new sections does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of these proposed repeals and new sections does not require an increase or decrease in future legislative appropriations to the agency.

(4) These proposed sections do not require an increase or decrease in fees paid to the agency.

(5) These proposed repeals and new sections do not create new regulations.

(6) These proposed repeals and new sections do repeal existing regulations as described above. These proposed new sections do not expand or limit an existing regulation.

(7) These proposed repeals and new sections do not increase the number of individuals subject to the sections applicability.

(8) These proposed repeals and new sections do not positively or adversely affect this state's economy.

Comments on the proposal may be submitted using this link: <https://forms.office.com/g/fKF0p6vbfY>. A public hearing will be held at a later date. Comments on the proposal will be accepted for 30 days following publication.

## 22 TAC §§160.1 - 160.5, 160.7 - 160.31

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years.

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

- §160.1. *Purpose.*
- §160.2. *Definitions.*
- §160.3. *Meetings.*
- §160.4. *Specialty License.*
- §160.5. *Exemptions from License Requirement.*
- §160.7. *Qualifications for Licensure.*
- §160.8. *Application Procedures.*
- §160.9. *Licensure Documentation.*
- §160.10. *Temporary Licensure.*
- §160.11. *Provisional License.*
- §160.12. *License Renewal.*
- §160.13. *Criminal History Record Information Required for Renewal.*
- §160.14. *Relicensure.*
- §160.15. *Licenses and License Holder Duties.*
- §160.16. *Continuing Education Requirements.*
- §160.17. *Medical Physicist Scope of Practice.*
- §160.18. *Complaints and Complaint Procedure Notification.*
- §160.19. *Subpoenas; Confidentiality of Information.*
- §160.20. *Grounds for Denial of Licensure and for Disciplinary Action.*
- §160.21. *Disciplinary Guidelines.*
- §160.22. *Procedural Rules for Hearings.*
- §160.23. *Disciplinary Process or Discipline of Medical Physicists.*
- §160.24. *Code of Ethics.*
- §160.25. *Impaired Medical Physicists.*
- §160.26. *Compliance.*

§160.27. *Voluntary Relinquishment or Surrender of a License.*

§160.28. *Administrative Procedure.*

§160.29. *Criminal Convictions Related to Profession of Medical Physics.*

§160.30. *Construction.*

§160.31. *Exemption from Licensure for Certain Military Spouses.*

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

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

TRD-202404222

Scott Freshour

General Counsel

Texas Medical Board

Earliest possible date of adoption: October 27, 2024

For further information, please call: (512) 305-7030



## CHAPTER 160. GENERAL PROVISIONS

### SUBCHAPTER A. GENERAL

#### 22 TAC §§160.1 - 160.7

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The new rules are also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for reoption, reoption with amendments, or repeal every four years.

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

#### §160.1. *Definitions.*

The following words and terms used in this Part shall have the following meaning:

(1) Act--Tex. Occ. Code Ann. Title 3 Subtitle B, also known as the Medical Practice Act.

(2) Board--Texas Medical Board.

(3) Licensee--A person to whom the board has issued a license, permit, certificate, approved registration, or similar form of permission to practice in the state of Texas as authorized by law.

#### §160.2. *Functions and Duties.*

(a) The board duties and functions include:

(1) establishing standards for the practice of medicine;

(2) regulating the practice of medicine through the licensure and discipline of physicians;

(3) reviewing, modifying, proposing, and adopting rules, including those for advisory boards and advisory committees subject to the board oversight;

(4) considering, reviewing, and approving policy and changes as necessary; and

(5) acting as a resource concerning proposed legislation.

(b) Individual Duties and Obligations. Board members are required to:

(1) identify and disclose any conflicts of interest that may interfere with carrying out their duties and functions or that may impede their ability to be fair and impartial, and recuse from such matters;

(2) comply with Chapter 152 of the Act;

(3) maintain the highest levels of professional and ethical conduct;

(4) refrain from making any statement that implies that the board member is speaking for the board unless the board has given the board member such authority; and

(5) immediately disclose if they are subject to a non-disciplinary or disciplinary action by any health care facility or professional licensing entity.

(c) Failure to comply with any of the requirements set forth in Chapter 152 of the Act or this section of the rules will be reported to the office of the Governor.

#### §160.3. *Officers of the Board.*

(a) Officers are selected through a process beginning with nomination, including self-nomination, followed by an election. A simple majority vote of board members is required for election.

(b) Duties of the President include:

(1) presiding at board meetings;

(2) reviewing the board agenda;

(3) appearing in legislative matters;

(4) appointing committee chairs and members, including advisory committees of the board;

(5) conducting the annual performance review of the executive director; and

(6) performing other duties pertaining to the office of President.

(c) Duties of the Vice President include:

(1) acting in the absence or incapacity of the President;

(2) serving as President in the event of a vacancy; and

(3) performing other duties as assigned by the board.

(d) Duties of the Secretary-Treasurer include:

(1) acting in the absence or incapacity of the President and Vice President;

(2) serving as President in event of President and Vice President vacancies; and

(3) performing other duties as assigned by the board.

(e) In the event that all officers are absent or incapacitated, the board may elect another member to serve as interim President for the duration of the absence or incapacity.

(f) The board shall hold an election to fill any vacant officer position.

#### §160.4. *Meetings.*

(a) Board meetings are conducted:

(1) in accordance with Chapter 551 of the Tex. Gov't. Code; and

(2) in general accordance with Robert's Rules of Order Newly Revised.

(b) Special meetings maybe called by the President, by resolution of the board, or upon written request by five members of the board.

(c) The board may only act upon a simple majority vote of its members present and voting. No proxy votes allowed.

§160.5. Committees.

(a) There are four standing committees of the board.

(1) Executive Committee:

(A) acts on urgent matters between board meetings as needed;

(B) recommends, reviews and develops agency goals, objectives, rules, policies, procedure, legislative issues, and other matters brought to their attention;

(C) delegates tasks to other committees; and

(D) assists in preparation and presentation of information before the legislature as needed.

(2) Finance Committee reviews and makes recommendations regarding finances and the budget.

(3) Disciplinary Process Review Committee:

(A) reviews and makes recommendations to resolve complaints, investigations, and cases, and to hear complainant appeals;

(B) recommends, reviews, and develops improvements of the disciplinary process, rules, policies, and other related matters; and

(C) receives reports on enforcement activities and statistical information.

(4) Licensure Committee:

(A) reviews applications and makes recommendations for licensure, certification, and permits of physicians, physicians in training, Acudetox Specialists, Surgical Assistants, Medical Perfusionists, Medical Physicists, and non-profit health organizations; and

(B) recommends, reviews, and develops changes to the licensure process, rules, policies, and other related matters as necessary

(b) The President, in consultation with the board, may appoint other committees as deemed necessary.

§160.6. District Review Committees.

(a) Members of District Review Committees shall comply with Chapter 163 of the Act.

(b) District Review Committee regions are designated as follows:

(1) District 1 - Brazoria, Galveston, and Harris counties.

(2) District 2 - Anderson, Angelina, Austin, Bowie, Brazos, Camp, Cass, Chambers, Cherokee, Collin, Cooke, Dallas, Delta, Denton, Ellis, Fannin, Franklin, Freestone, Grayson, Gregg, Grimes, Hardin, Harrison, Henderson, Hill, Hopkins, Houston, Hunt, Jasper, Jefferson, Kaufman, Lamar, Leon, Liberty, Limestone, Madison, Marion, Montgomery, Morris, Nacogdoches, Navarro, Newton, Orange, Panola, Polk, Rains, Red River, Robertson, Rockwall, Rusk, Sabine, San Augustine, San Jacinto, Shelby, Smith, Titus, Tyler, Trinity, Upshur, Van Zandt, Walker, Waller, and Wood counties.

(3) District 3 - Andrews, Archer, Armstrong, Bailey, Baylor, Borden, Brewster, Briscoe, Brown, Callahan, Carson, Castro,

Childress, Clay, Cochran, Coke, Coleman, Collinsworth, Comanche, Concho, Cottle, Crane, Crockett, Crosby, Culberson, Dallas, Dawson, Deaf Smith, Dickens, Donley, Eastland, Ector, El Paso, Erath, Fisher, Floyd, Foard, Gaines, Garza, Glasscock, Gray, Hale, Hall, Hansford, Hardeman, Hartley, Haskell, Hemphill, Hockley, Hood, Howard, Hudspeth, Hutchinson, Irion, Jack, Jeff Davis, Johnson, Jones, Kent, Kimble, King, Knox, Lamb, Lipscomb, Loving, Lubbock, Lynn, Martin, Mason, Menard, McCulloch, Midland, Mills, Mitchell, Montague, Moore, Motley, Nolan, Ochiltree, Oldham, Palo Pinto, Parker, Parmer, Pecos, Potter, Presidio, Randall, Reagan, Reeves, Roberts, Runnels, San Saba, Schleicher, Scurry, Shackelford, Sherman, Somervell, Stephens, Sterling, Stonewall, Sutton, Swisher, Tarrant, Taylor, Terrell, Terry, Throckmorton, Tom Green, Upton, Ward, Wheeler, Wichita, Wilbarger, Winkler, Wise, Yoakum, and Young counties.

(4) District 4 - Aransas, Atascosa, Bandera, Bastrop, Basque, Bee, Bell, Bexar, Blanco, Brooks, Burlson, Burnet, Caldwell, Calhoun, Cameron, Colorado, Comal, Coryell, Dewitt, Dimmit, Duval, Edwards, Falls, Fayette, Fort Bend, Frio, Gillespie, Goliad, Gonzales, Guadalupe, Hamilton, Hayes, Hidalgo, Jackson, Jim Hogg, Jim Wells, Karnes, Kendall, Kenedy, Kerr, Kinney, Kleburg, Lampasas, LaSalle, Lavaca, Lee, Live Oak, Llano, Matagorda, Maverick, McLennan, McMullen, Medina, Milam, Nueces, Real, Refugio, San Patricio, Starr, Travis, Uvalde, Valverde, Victoria, Washington, Webb, Wharton, Willacy, Williamson, Wilson, Zapata, and Zavala counties.

§160.7. Memorandum of Understanding with Texas Physician Health Program.

By rule, the board and the Texas Physician Health Program (TXPHP) shall adopt a memorandum of understanding (MOU) in accordance with §167.012 of the Act.

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

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

TRD-202404223

Scott Freshour

General Counsel

Texas Medical Board

Earliest possible date of adoption: October 27, 2024

For further information, please call: (512) 305-7030



## SUBCHAPTER B. RULEMAKING

### 22 TAC §160.10, §160.11

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The new rules are also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years.

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

§160.10 Petition for Rulemaking.

(a) As authorized by §2001.021(a) of the Texas Government Code, an interested person by petition to the board may request the adoption of a rule.

(b) A person must submit a petition for adoption of rules in writing via mail or hand-delivery (addressed to the Executive Director or General Counsel of the board) or email (sent to rules.development@tmb.state.tx.us).

(c) The petition shall contain the following information as applicable and except as may be waived by the board:

(1) the name and contact information of the petitioning party and their interest in the adoption of the rule;

(2) a statement of the legal authority and jurisdiction under which the petition is filed;

(3) the exact language of the proposed rule requested to be adopted;

(4) a statement and legal references regarding whether, to the petitioner's knowledge, the requested rule is in conflict with any existing rule, ruling, order or opinion of the board or any other rules or statutes; and

(5) a statement of the purpose of the requested rule.

(d) During the sixty (60) day period following receipt of the petition by the board, the board or one of its committees shall meet to consider the petition. Not less than ten (10) days prior to such meeting, the board shall notify the petitioning party in writing of the date, time, and place the petition shall be considered.

(1) At this meeting, the petitioning party may be given an opportunity to present matters to the board or its committee, at the board's or committee's discretion.

(2) If the request is considered by the full board, the board shall decide whether to deny the petition or to publish the requested rule in the *Texas Register* for comment. If the petition is denied, the board shall state its reasons for denial in writing to the petitioning party. Publication of the requested rule for comment shall constitute initiation of rulemaking for purposes of §2001.021(c)(2) of the Texas Government Code.

(3) If the request is considered by a committee of the board, the committee shall decide whether to deny the petition or to recommend to the full board at its next meeting to publish the requested rule in the *Texas Register* for comment. If the petition is denied, the committee shall state its reasons for denial in writing to the petitioning party. A committee's recommendation to the full board to publish the requested rule for comment shall constitute initiation of rulemaking for purposes of §2001.021(c)(2) of the Texas Government Code.

(4) At the next board meeting following the committee's recommendation to publish the requested rule for comment, the board shall consider the committee's recommendation. The board shall then decide whether to deny the petition or to publish the requested rule in the *Texas Register* for comment. If the board decides to deny the petition, the board shall state its reasons for denial in writing to the petitioning party.

#### §160.11. Input in Rulemaking.

(a) When engaged in rulemaking the board will ensure:

(1) adequate stakeholder input through notice of proposed rules on the TMB website;

(2) a comment form is provided, when needed, on the TMB website; and

(3) compliance with the applicable provisions of the Texas Administrative Procedures Act.

(b) For rules impacting other licensed occupations of advisory boards overseen by the board, the board will follow the process for rulemaking as set out in subsection (a) of this section and in:

(1) applicable sections of the Texas Occupations Code for the specific regulated occupation; and

(2) the Medical Practice Act.

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

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Scott Freshour

General Counsel

Texas Medical Board

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For further information, please call: (512) 305-7030



## CHAPTER 161. GENERAL PROVISIONS

The Texas Medical Board (Board) proposes the repeal of current Chapter 161, concerning General Provisions, 22 TAC §§161.1 - 161.7, 161.10 and 161.11.

The Board also proposes new Chapter 161, concerning Physician Licensure. This includes new Subchapter A, concerning Pre-Licensure Criminal History Evaluations, §161.1; Subchapter B, concerning General Licensure Requirements, §§161.5 - 161.7; Subchapter C, concerning U.S. and Canadian Medical Graduates, §161.10; Subchapter D, concerning Foreign Medical Graduates, §§161.15 - 161.17; Subchapter E, concerning Licensure For Military Service Members, Veterans, and Spouses, §161.20; Subchapter F, concerning Application Procedure, §161.25; Subchapter G, concerning Registration of License, §161.30 and §161.31; Subchapter H, concerning Continuing Medical Education Requirements for License Renewal, §161.35; Subchapter I, concerning Full Medical License, §161.40; Subchapter J, concerning Limited Licenses, §§161.45 - 161.47; Subchapter K, concerning Temporary Licenses, §§161.50 - 161.52; Subchapter L, concerning Physician-In-Training Permits, §§161.55 - 161.58; Subchapter M, concerning Fellowship Program Approval, §161.65; and Subchapter N, concerning Emergency Practice Authorization, §§161.70 - 161.73.

Also, the Board contemporaneously proposes the repeal of the following current chapters:

Chapter 163, concerning Licensure, §§163.1 - 163.6, 163.8 - 163.11, and 163.13;

Chapter 166, concerning Physician Registration, §§166.1 - 166.7;

Chapter 167, concerning Reinstatement and Reissuance, §§167.1 - 167.8;

Chapter 168, concerning Criminal History Evaluation Letters, §168.1, and §168.2;

Chapter 171, concerning Postgraduate Training Permits, §§171.1 - 171.6;

Chapter 172, concerning Temporary And Limited Licenses. This includes Subchapter A, concerning General Provisions and Definitions, §172.1, and §172.2; Subchapter B, concerning Temporary Licenses, §§172.3 - 172.11; Subchapter C, concerning Limited Licenses, §§172.12, 172.13, 172.15 - 172.19; and Subchapter D, concerning Disaster Emergency Rule, §172.20 and §172.21; and

Chapter 175, concerning Fees and Penalties, §§175.1 - 175.5.

The Board has determined that due to the extensive reorganization of Chapters 160-200, repeal of Chapter 161 is more efficient than proposing multiple amendments to make the required changes.

The proposed new subchapters and sections are as follows:

#### SUBCHAPTER A. PRE-LICENSURE CRIMINAL HISTORY EVALUATIONS.

New §161.1, Pre-Licensure Criminal History Evaluation, describes the process for a potential applicant to obtain a criminal history evaluation letter to determine potential ineligibility for a license.

#### SUBCHAPTER B. GENERAL LICENSURE REQUIREMENTS.

New §161.5, Definitions, defines terms used throughout new Chapter 161.

New §161.6, General Requirements for Licensure, outlines the general requirements for licensure for a Texas medical license.

New §161.7, Examination Requirements, outlines the examinations required for licensure, in accordance with Sections 155.051, 155.0511 and 155.054 of the Medical Practice Act ("the Act").

#### SUBCHAPTER C. U.S. AND CANADIAN MEDICAL GRADUATES.

New §161.10, Specific Requirements for U.S. and Canadian Medical School Graduates, explains that all U.S. and Canadian medical school graduates must the requirements set forth in Section 155.003 of the Act for licensure.

#### SUBCHAPTER D. FOREIGN MEDICAL GRADUATES.

New §161.15, Specific Requirements for Foreign Medical Graduates, sets forth specific licensure requirements for Foreign Medical Graduates from substantially equivalent medical schools.

New §161.16, Foreign Medical Graduates of a Medical School That Is Not Substantially Equivalent, sets forth specific licensure requirements for Foreign Medical Graduates from non-substantially equivalent medical schools.

New §161.17, Other Foreign Medical Graduates, explains how Foreign Medical Graduates of a medical school who are not substantially equivalent and do not meet the criteria in §161.15 and §161.16 of this title can demonstrate substantial equivalence.

#### SUBCHAPTER E. LICENSURE FOR MILITARY SERVICE MEMBERS, VETERANS AND SPOUSES.

New §161.20, Alternative License Procedures for Military Service Members, Military Veterans, and Military Spouses, describes the licensure process for military service members, veterans, and spouses.

#### SUBCHAPTER F. APPLICATION PROCEDURE.

New §161.25, Procedural Rules for Licensure Applicants, explains the sections of the Act that apply to how licensure applications are processed.

#### SUBCHAPTER G. REGISTRATION OF LICENSE.

New §161.30, Registration and Renewal, explains the registration and renewal process for a physician license.

New §161.31, Exceptions from Certain Renewal Requirements, explains the exceptions from certain renewal requirements for Texas-licensed military service members, retired physicians, and voluntary charity care physicians.

#### SUBCHAPTER H. CONTINUING MEDICAL EDUCATION REQUIREMENTS FOR LICENSE RENEWAL.

New §161.35, Continuing Medical Education (CME) Requirements for License Renewal, explains the continuing medical education requirements physicians must meet for license renewal. It also explains how to correct any deficiencies in CME requirements and how CME may be carried forward between licensure renewals.

#### SUBCHAPTER I. FULL MEDICAL LICENSE.

New §161.40, Medical License, explains that all physicians practicing in Texas, with limited named exceptions, must hold a full Texas medical license.

#### SUBCHAPTER J. LIMITED LICENSES.

New §161.45, Conceded Eminence License, explains the requirements and process for seeking a conceded eminence license.

New §161.46, Administrative Medicine License, explains the requirements and process for seeking an administrative medicine license. It also explains the limitations of that type of license.

New §161.47, Military Volunteer License, explains the requirements and process for seeking a military volunteer license.

#### SUBCHAPTER K. TEMPORARY LICENSES.

New §161.50, Regular Temporary License, explains the purpose of the regular temporary license.

New §161.51, Faculty Temporary License, explains the requirements and application process for a Faculty Temporary License.

New §161.52, Visiting Physician Temporary Permit, explains the purpose, requirements, and application process for a Visiting Physician Temporary Permit. It also explains the limitations of such a permit.

#### SUBCHAPTER L. PHYSICIAN-IN-TRAINING PERMITS.

New §161.55, Physician-In-Training Permit (PIT), explains the purpose, requirements, and application process for PIT permits. It also explains the limitations of such a permit.

New §161.56, Rotator PIT Permits, explains the purpose, requirements, and application process for Rotator PIT permits.

New §161.57, Duties of Permit Holders to Report, explains the reporting obligations of the permit holder to the board and the time period to make a required report.

New §161.58, Duties of Program Directors to Report, explains the reporting obligations of the training program directors to the board and the time period to make a required report.

#### SUBCHAPTER M. FELLOWSHIP PROGRAM APPROVAL.

New §161.65, Process for Board-Approval of Fellowships, explains the requirements and application process for board approval of fellowships.

#### SUBCHAPTER N. EMERGENCY PRACTICE AUTHORIZATION.

New §161.70, Emergency Practice Authorization (EPA), explains when certain licensure requirements can be waived by the board in event of a disaster or emergency.

New §161.71, Emergency Practice Authorization (EPA) Requirements and Procedures for Healthcare Professionals, explains the purpose, requirements, and authorization process for healthcare professionals not licensed in Texas to practice in Texas during a disaster or emergency.

New §161.72, Board Regulation of Emergency Practice Authorization, explains the board's authority and jurisdiction over individuals practicing under an Emergency Practice Authorization.

New §161.73, Confidentiality, explains that confidentiality under §164.007 (c) of the Act applies to all board files, information, or investigative materials for healthcare providers practicing in Texas under an Emergency Practice Authorization.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the proposed repeals and new sections are in effect, the public benefit anticipated as a result of enforcing these proposed sections will be to remove redundant language from rules, simplify the rules, and make the rules easier to understand.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect, there will be no fiscal impact or effect on government growth as a result of enforcing the proposed sections.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect there will be no probable economic cost to individuals required to comply with these proposed sections.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for these proposed repeals and new sections and determined that for each year of the first five years these proposed repeals and new sections will be in effect there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of these proposed repeals and new sections and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years these proposed repeals and new sections are in effect:

- (1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering these proposed repeals and new sections;
- (2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections;
- (3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections; and

(4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering these proposed repeals and new sections.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years these proposed repeals and new sections will be in effect, there will be no effect on local economy and local employment.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for these proposed repeals and new sections. For each year of the first five years these proposed repeals and new sections will be in effect, Mr. Freshour has determined the following:

- (1) These proposed repeals and new sections do not create or eliminate a government program.
- (2) Implementation of these proposed repeals and new sections does not require the creation of new employee positions or the elimination of existing employee positions.
- (3) Implementation of these proposed repeals and new sections does not require an increase or decrease in future legislative appropriations to the agency.
- (4) These proposed sections do not require an increase or decrease in fees paid to the agency.
- (5) These proposed repeals and new sections do not create new regulations.
- (6) These proposed repeals and new sections do repeal existing regulations as described above. These proposed new sections do not expand or limit an existing regulation.
- (7) These proposed repeals and new sections do not increase the number of individuals subject to the sections' applicability.
- (8) These proposed repeals and new sections do not positively or adversely affect this state's economy.

Comments on the proposal may be submitted using this link: <https://forms.office.com/g/7w0wqZgqvU>. A public hearing will be held at a later date. Comments on the proposal will be accepted for 30 days following publication.

#### **22 TAC §§161.1 - 161.7, 161.10, 161.11**

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for re-adoption, re-adoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this proposal.

*§161.1. Introduction.*

*§161.2. Purpose and Functions.*

*§161.3. Organization and Structure.*

*§161.4. Officers of the Board.*

*§161.5. Meetings.*

*§161.6. Committees of the Board.*

*§161.7. Executive Director.*

*§161.10. General Counsel.*

*§161.11. Memorandum of Understanding between Texas Medical Board (TMB) and Texas Physician Health Program (TXPHP).*



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

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Scott Freshour  
General Counsel  
Texas Medical Board

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## CHAPTER 161. PHYSICIAN LICENSURE SUBCHAPTER A. PRE-LICENSURE CRIMINAL HISTORY EVALUATIONS

### 22 TAC §161.1

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle and establish rules related to licensure and registration of the license. The new rules are also proposed in accordance with the requirements of Chapters 53, 155, and 156 of the Texas Occupations Code. The new rules are also proposed in accordance with the requirements of the Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for re-adoption, re-adoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this proposal.

#### §161.1. Pre-Licensure Criminal History Evaluation.

(a) In accordance with §53.102 of the Texas Occupations Code, an individual may request a criminal history evaluation letter to determine potential ineligibility for a license based on the person's criminal history.

(1) Requestors must submit a completed board form along with a \$100 fee.

(2) Additional documentation, including a set of fingerprints, may be required.

(b) The board will notify the requestor of the determination.

(c) An individual may still apply for licensure regardless of the criminal history evaluation determination.

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## SUBCHAPTER B. GENERAL LICENSURE REQUIREMENTS

### 22 TAC §§161.5 - 161.7

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle and establish rules related to licensure and registration of the license. The new rules are also proposed in accordance with the requirements of Chapters 53, 155, and 156 of the Texas Occupations Code. The new rules are also proposed in accordance with the requirements of the Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for re-adoption, re-adoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this proposal.

#### §161.5. Definitions.

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

(1) Acceptable approved medical school--A medical school or college located in the United States or Canada that has been accredited by the Liaison Committee on Medical Education or the American Osteopathic Association Bureau of Professional Education.

(2) Approved graduate medical training program--A program that is approved by the board and is:

(A) accepted for certification by a specialty board that is a member of the American Board of Medical Specialties or the Bureau of Osteopathic Specialists; or

(B) accredited by one of the following:

(i) the Accreditation Council for Graduate Medical Education, or its predecessor;

(ii) the American Osteopathic Association;

(iii) the Committee on Accreditation of Preregistration Physician Training Programs, Federation of Provincial Medical Licensing Authorities of Canada;

(iv) the Royal College of Physicians and Surgeons of Canada;

(v) the College of Family Physicians of Canada; or

(C) a board-approved fellowship performed in Texas; or

(D) a U.S. or Canadian graduate medical education training program, that subsequently received accreditation by the Accreditation Council for Graduate Medical Education (ACGME), American Osteopathic Association (AOA) or Royal College of Physicians, and was accepted by a specialty board that is a member of the American Board of Medical Specialties, the Bureau of Osteopathic Specialists, or the Royal College of Physicians for board certification purposes.

(3) Substantially equivalent medical school--A medical school or college that is accredited by an agency recognized by the World Federation of Medical Education (WFME) Recognition Programme, or that is recognized by the board.

#### §161.6. General Requirements for Licensure.

(a) All applicants for a Texas medical license must meet the general eligibility requirements set forth in §155.003 of the Act.

(b) All applicants must submit a completed application for licensure and all documents and information necessary to complete an applicant's request for licensure including, but not limited to:

- (1) the required fee of \$817;
- (2) additional fees and surcharges as applicable;
- (3) Dean's Certification of Graduation form;
- (4) certified transcript of Examination Scores;
- (5) birth certificate or other similar proof of age;
- (6) graduate training verification;
- (7) Professional or Work History Evaluation forms demonstrating or relating to the practice of medicine for the preceding 5 years from the date of the application;
- (8) FBI/DPS Fingerprint Report;
- (9) documentation of alternate name or name change, if applicable;
- (10) medical school transcript, if requested;
- (11) specialty board certification, if applicable;
- (12) arrest records, if applicable;
- (13) malpractice records, if applicable;
- (14) treatment records for alcohol or substance use disorder or any physical or mental illness impacting the ability to practice, if applicable;
- (15) military orders or DD214, if applicable;
- (16) evidence of passage of the Texas Jurisprudence examination with at least a score of 75; and
- (17) any other documentation deemed necessary to process an application.

(c) Applications are valid for one year from the date of submission. The one-year period can be extended for the following reasons:

- (1) delay in processing application;
- (2) referral of the applicant to the Licensure Committee;
- (3) unanticipated military assignments, medical reasons, or catastrophic events; or
- (4) other extenuating circumstances.

§161.7. Examination Requirements.

(a) Applicants must take and pass examinations in accordance with §§155.051, 155.0511, and 155.054 of the Act.

(b) Required Examinations:

- (1) United States Medical Licensing Examination (USMLE), or its successor, with a score of 75 or better, or a passing grade if applicable, on each step;
- (2) COMLEX-USA, or its successor, with a score of 75 or better, or a passing grade if applicable, on each step;
- (3) Federation Licensing Examination (FLEX), on or after July 1, 1985, passage of both components with a score of 75 or better on each component;
- (4) Federation Licensing Examination (FLEX), before July 1, 1985, with a FLEX weighted average of 75 or better in one sitting;
- (5) National Board of Medical Examiners Examination (NBME) or its successor;

(6) National Board of Osteopathic Medical Examiners Examination (NBOME) or its successor;

(7) Medical Council of Canada Examination (LMCC) or its successor; or

(8) state board licensing examination.

(c) The following examination combinations are acceptable with a score of 75 or better on each part, level, component, or step:

(1) FLEX I plus USMLE 3;

(2) USMLE 1 and USMLE 2, plus FLEX II;

(3) NBME I or USMLE 1, plus NBME II or USMLE 2, plus NBME III or USMLE 3;

(4) NBME I or USMLE 1, plus NBME II or USMLE 2, plus FLEX II;

(5) The NBOME Part I or COMLEX Level I, plus NBOME Part II or COMLEX Level II, plus NBOME Part III or COMLEX Level III; or

(6) other examination combination acceptable to the board.

(d) Examination Attempt Limits and Time Limits. Each part of an examination must be passed in accordance with §155.051 and §155.056 of the Act, unless the applicant meets an exception described in §155.0561 of the Act.

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Scott Freshour

General Counsel

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## SUBCHAPTER C. U.S. AND CANADIAN MEDICAL GRADUATES

### 22 TAC §161.10

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle and establish rules related to licensure and registration of the license. The new rules are also proposed in accordance with the requirements of Chapters 53, 155, and 156 of the Texas Occupations Code. The new rules are also proposed in accordance with the requirements of the Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this proposal.

§161.10. Specific Requirements for U.S. and Canadian Medical School Graduates.

All U.S. and Canadian medical school graduates must meet the requirements set forth in §155.003 of the Act.

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## SUBCHAPTER D. FOREIGN MEDICAL GRADUATES

### 22 TAC §§161.15 - 161.17

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle and establish rules related to licensure and registration of the license. The new rules are also proposed in accordance with the requirements of Chapters 53, 155, and 156 of the Texas Occupations Code. The new rules are also proposed in accordance with the requirements of the Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for re-adoption, re-adoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this proposal.

#### §161.15. Specific Requirements for Foreign Medical Graduates.

(a) Foreign Medical Graduates from substantially equivalent medical schools must provide:

(1) an Educational Commission for Foreign Medical Graduates (ECFMG) status report; and

(2) proof of one of the following:

(A) successful completion of two years of approved medical graduate training that is progressive in nature; or

(B) board certification from a member board of the American Board of Medical Specialties or the Bureau of Osteopathic Specialists.

(b) Alternative approved training may be demonstrated by practicing within the teaching confines of the applying institution under a Faculty Temporary License. Each year in a teaching faculty position under a Faculty Temporary License shall be considered the equivalent of one year of approved postgraduate training.

#### §161.16. Foreign Medical Graduates of a Medical School That Is Not Substantially Equivalent.

Foreign Medical Graduates of a medical school that is not substantially equivalent must provide:

(1) an Educational Commission for Foreign Medical Graduate (ECFMG) status report; and

(2) proof of one of the following:

(A) completion of at least two years of an approved medical graduate training program that is progressive in nature, along with an International Credential Evaluation from the Foreign Credential Service of America (FCSA) determining the foreign medical education program is equivalent to a U.S. medical education;

(B) successful completion of an approved medical graduate training program;

(C) board eligibility or certification by the American Board of Medical Specialties or the Bureau of Osteopathic Specialists; or

(D) practice under an unrestricted full license issued in the U.S. for at least five years, without any disciplinary action in any state.

#### §161.17. Other Foreign Medical Graduates.

Foreign Medical Graduates of a medical school that is not substantially equivalent and do not meet the criteria set forth in §161.15 and §161.16 of this chapter (relating to Specific Requirements for Foreign Medical Graduates and relating to Foreign Medical Graduates of a Medical School That Is Not Substantially Equivalent) must demonstrate substantial equivalence through alternate means as set by the board.

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## SUBCHAPTER E. LICENSURE FOR MILITARY SERVICE MEMBERS, VETERANS, AND SPOUSES

### 22 TAC §161.20

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle and establish rules related to licensure and registration of the license. The new rules are also proposed in accordance with the requirements of Chapters 53, 155, and 156 of the Texas Occupations Code. The new rules are also proposed in accordance with the requirements of the Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for re-adoption, re-adoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this proposal.

#### §161.20. Alternative License Procedures for Military Service Members, Military Veterans, and Military Spouses.

In accordance with Chapter 55 of the Texas Occupations Code, military service members, veterans, and spouses must:

(1) meet the general requirements for licensure as set forth in §161.6 of this chapter (relating to General Requirements for Licensure); and

(2) submit a completed application on the board-approved form and all additional documentation as required, with the exception of application fee.

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## SUBCHAPTER F. APPLICATION PROCEDURE

### 22 TAC §161.25

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle and establish rules related to licensure and registration of the license. The new rules are also proposed in accordance with the requirements of Chapters 53, 155, and 156 of the Texas Occupations Code. The new rules are also proposed in accordance with the requirements of the Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this proposal.

#### §161.25. Procedural Rules for Licensure Applicants.

(a) Applications will be processed in accordance with §155.007 of the Act.

(b) Applicants seeking reinstatement or reissuance of a license will be reviewed and processed in accordance with §§164.151 through 164.153 of the Act.

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## SUBCHAPTER G. REGISTRATION OF LICENSE

### 22 TAC §161.30, §161.31

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle and establish rules related to licensure and registration of the license. The new rules are also proposed in accordance with the requirements of Chapters 53, 155, and 156 of the Texas Occupations Code. The new rules are also proposed in accordance with the requirements of the Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this proposal.

#### §161.30. Registration and Renewal.

(a) In accordance with Chapter 156 of the Act, a physician license must be registered with the board and renewed every two years after it is issued.

(b) A renewal notice will be sent to the physician's address of record at least 60 days prior to the expiration date of the registration.

(c) The physician must:

(1) complete the renewal form;

(2) pay the renewal fee and any additional fees, as applicable:

(A) initial biennial permit - \$456.00;

(B) subsequent biennial permit - \$452.00;

(3) verify and update their physician profile; and

(4) provide any other relevant information requested.

#### §161.31. Exceptions From Certain Renewal Requirements.

(a) Texas-licensed military service members are allowed two additional years to complete biennial continuing medical education requirements.

(b) Officially Retired Physicians are exempt from renewal registration fees and continuing medical education requirements upon the filing of a board-approved form certifying that they:

(1) have ceased practicing medicine in Texas; and

(2) are not under investigation or current board order.

(c) Voluntary Charity Care Physicians are exempt from the biennial registration fee upon the filing of a board-approved form certifying that they:

(1) provide medical care only:

(A) to indigent populations;

(B) in medically underserved areas; or

(C) for a disaster relief organization;

(2) do not provide any medical services to family members:

and

(3) receive no compensation for services rendered, with the exception of payment or reimbursement of reasonably necessary travel and related expenses.

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Texas Medical Board

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## SUBCHAPTER H. CONTINUING MEDICAL EDUCATION REQUIREMENTS FOR LICENSE RENEWAL

### 22 TAC §161.35

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority

for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle and establish rules related to licensure and registration of the license. The new rules are also proposed in accordance with the requirements of Chapters 53, 155, and 156 of the Texas Occupations Code. The new rules are also proposed in accordance with the requirements of the Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this proposal.

§161.35. Continuing Medical Education (CME) Requirements for License Renewal.

(a) Forty-eight total CME credits are required, biennially, as follows:

(1) Minimum of 24 formal credits of AMA/PRA Category 1 designated by:

(A) the Accreditation Council for Continuing Medical Education;

(B) a state medical society recognized by the Committee for Review and Recognition of the Accreditation Council for Continuing Medical Education;

(C) the American Academy of Family Physicians;

(D) the AOA Category 1-A;

(E) the Texas Medical Association;

(F) the board, but only as it applies to medical ethics and/or professional responsibility; or

(G) a board-appointed physician performing a competency evaluation or practice monitoring of another physician, which may receive one (1) formal CME credit for each hour of time spent on these duties up to 12 hours.

(2) As part of the 24 formal credits, the following are required:

(A) a human trafficking prevention course, in accordance with §156.060 of the Act;

(B) two credits in the topic of medical ethics and/or professional responsibility; and

(C) two credits in accordance with §156.055 of the Act.

(3) Informal CME credits may include:

(A) informal self-study; or

(B) attendance at hospital lectures, grand rounds, or case conferences.

(b) Alternate proof of CME compliance is presumed if the physician:

(1) meets the criteria set forth in §156.052 of the Act;

(2) is currently in a residency/fellowship training; or

(3) completed residency/fellowship training within six months prior to obtaining licensure.

(c) CME Deficiencies and Carry Forward Procedures:

(1) Any CME deficiency can be remedied within 30 days after registration renewal due;

(2) A maximum of 48 total excess credits may be carried forward only to the next registration period; and

(3) Required formal credits described in subsection (a)(2) of this section cannot be carried forward.

(d) In accordance with §156.053 of the Act, exemptions from CME may be allowed upon a written request at least 30 days before renewal is due.

(e) Voluntary Charity Care CME requirements are reduced to twelve informal CME credits per biennium.

(f) In accordance with §323.0045 of the Health and Safety Code, recognized forensic examination CME must be:

(1) a formal category 1 course; or

(2) approved or recognized by the Texas Board of Nursing.

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Scott Freshour

General Counsel

Texas Medical Board

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## SUBCHAPTER I. FULL MEDICAL LICENSE

### 22 TAC §161.40

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle and establish rules related to licensure and registration of the license. The new rules are also proposed in accordance with the requirements of Chapters 53, 155, and 156 of the Texas Occupations Code. The new rules are also proposed in accordance with the requirements of the Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this proposal.

§161.40. Medical License.

(a) In accordance with §§155.001 and 151.056 of the Act, all physicians must hold a full Texas medical license to practice in Texas, including physicians practicing telemedicine.

(b) Subsection (a) of this section does not apply to the following:

(1) physicians who meet the exceptions set forth in §151.056(b) of the Act;

(2) physicians who are exempt pursuant to §151.0521 of the Act; and

(3) physicians who hold a temporary or limited license issued under Chapter 155 of the Act.

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## SUBCHAPTER J. LIMITED LICENSES

### 22 TAC §§161.45 - 161.47

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle and establish rules related to licensure and registration of the license. The new rules are also proposed in accordance with the requirements of Chapters 53, 155, and 156 of the Texas Occupations Code. The new rules are also proposed in accordance with the requirements of the Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this proposal.

#### §161.45. Conceded Eminence License.

All applicants for a conceded eminence license must meet the requirements of §155.006 of the Act, and submit:

- (1) a completed board-required application form;
- (2) the required fee of \$817.00;
- (3) additional fees and surcharges as applicable; and
- (4) the following documentation:

(A) proof of conceded eminence and authority in the applicant's specialty including, but not limited to:

(i) a high level of academic or professional recognition, domestically or internationally, for excellence in research, teaching, or the practice of medicine within the applicant's specialty;

(ii) professional honors, awards, and recognition in the international or domestic medical community for achievements, contributions, or advancements in the field of medicine, or medical research publications in recognized scientific, medical, or medical research journals;

(iii) acknowledgement of expertise from recognized U.S. authorities in the applicant's field of medical specialty; and

(iv) other meritorious considerations.

(B) letters of recommendation from five renowned specialists including three Texas-licensed physicians who practice in the same specialty;

(C) proof of successful completion of an acceptable licensing examination as set forth in §161.7 of this chapter (relating to Examination Requirements);

(D) evidence of the practice of medicine for at least 10 years, 5 years of which occurred immediately preceding the date of application; and

(E) an acceptable disciplinary and criminal history.

#### §161.46. Administrative Medicine License.

(a) All applicants for an administrative medicine license must meet the requirements of §155.009 of the Act, and must:

(1) meet the general requirements set forth in §161.6 of this chapter (relating to General Requirements for Licensure);

(2) submit a completed application on the board-approved form;

(3) pay the required fee of \$817.00 and any additional fees and surcharges, as applicable; and

(4) submit any additional documentation as requested.

(b) An administrative medicine license:

(1) is limited to administration or management that utilizes the medical and clinical knowledge, skill, and judgment of a licensed physician and is capable of affecting the health and safety of the public or any person; and

(2) does not grant authority to do the following:

(A) the practice of clinical medicine;

(B) direct patient care, treatment, or diagnosis;

(C) the prescribing of dangerous drugs or controlled substances; and

(D) supervision and delegation.

#### §161.47. Military Volunteer License.

(a) All applicants for a Military Volunteer License must meet the requirements of §155.103 of the Act, and must submit:

(1) proof of active or retired military status; and

(2) a completed board required application form.

(b) A Military Volunteer License is valid for two years.

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## SUBCHAPTER K. TEMPORARY LICENSES

### 22 TAC §§161.50 - 161.52

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle and establish rules related to licensure and registration of the license. The new rules are also proposed in accordance with the requirements of Chapters 53, 155, and 156 of the Texas Occupations Code. The new rules are also proposed in accordance with the requirements of the Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this proposal.

#### §161.50. Regular Temporary License.

In accordance with §155.104 (a) of the Act, temporary licenses may be issued to applicants approved for full licensure pending final board approval.

§161.51. Faculty Temporary License.

(a) All applicants for a Faculty Temporary License must meet the requirements of §§155.104(b) and (c) of the Act, as applicable, and must submit:

(1) a completed board-required application form at least 45 days prior to the effective date of the appointment of the physician, in accordance with §155.104(h) of the Act;

(2) the required fee of \$552.00;

(3) any additional fees and surcharges, as applicable; and

(4) documentation of:

(A) an acceptable disciplinary and criminal history; and

(B) required statements and affidavits from the applying institution, in accordance with §§155.104(d) and (e) of the Act.

(b) A Faculty Temporary License is valid for one year.

(c) Each year practicing under a Faculty Temporary License may be treated as equivalent to one year of approved postgraduate training for purposes of license eligibility.

§161.52. Visiting Physician Temporary Permit.

(a) In accordance with §155.104(a) of the Act, the Executive Director may issue a Visiting Physician Temporary Permit (VPTP) for the following:

(1) educational purposes, including short-term medical faculty teaching positions not to exceed 6 months;

(2) to practice charity care for underserved populations in Texas;

(3) in cases of declared emergency disasters;

(4) for the provision of forensic psychiatric examinations related to criminal matters; or

(5) for the provision of specialized medical care for which the applying physician has demonstrated good cause for the issuance of the permit.

(b) A VPTP cannot be used for training in a postgraduate medical training program or fellowship.

(c) Applicants for a VPTP must submit:

(1) a completed board-required application form at least 30 days prior to the effective date of the appointment of the physician;

(2) documentation of:

(A) a current and unrestricted medical license in another state, territory, Canadian province, or country;

(B) an acceptable disciplinary and criminal history, and no current or pending complaints, investigations, or disciplinary actions; and

(C) supervision by a physician who has:

(i) a current and unrestricted medical license in Texas; and

(ii) an acceptable disciplinary and criminal history, and no current or pending complaints, investigations, or disciplinary actions in any jurisdiction.

(d) Texas supervising physicians must provide written verification:

(1) agreeing to supervise the applicant; and

(2) listing the specified location and purpose requiring the VPTP.

(e) A VPTP is valid for ten working days, unless otherwise approved by the Executive Director, except as provided in subsection (a)(1) of this section.

(f) A VPTP necessary to participate in the Texas A&M KSTAR program will be issued for the length of the program upon receipt of written verification from the KSTAR program of acceptance into the program and the dates of the program.

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**SUBCHAPTER L. PHYSICIAN-IN-TRAINING PERMITS**

**22 TAC §§161.55 - 161.58**

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle and establish rules related to licensure and registration of the license. The new rules are also proposed in accordance with the requirements of Chapters 53, 155, and 156 of the Texas Occupations Code. The new rules are also proposed in accordance with the requirements of the Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this proposal.

§161.55. Physician-in-Training Permits.

(a) In accordance with §155.105 of the Act, the Executive Director or board may issue a Physician-in-Training (PIT) permit.

(b) A PIT permit may be issued only after receipt of certification from an approved graduate medical training program that:

(1) the program is an approved program;

(2) the applicant has been accepted into the program; and

(3) the applicant is graduating from medical school prior to the start of the training program.

(c) Applicants for a PIT permit must submit:

(1) a board-required application form;

(2) the required fee of \$200.00;

(3) additional fees and surcharges as applicable; and

(4) documentation of the following:

(A) all US or Canadian approved graduate medical training programs attended;

(B) documentation of alternate name or name change, if applicable;

(C) arrest records, if applicable;

(D) malpractice records, if applicable;

(E) treatment records for alcohol or substance use disorder or any physical or mental illness impacting the ability to practice, if applicable; and

(F) other documentation deemed necessary to process an application.

(d) PIT permit applications should be submitted at least 60 days prior to the start of the training program and no more than 120 days before training begins.

(e) A PIT permit is valid for participation in an approved graduate medical training program for the duration of the training program.

(f) PIT permits expire upon any of the following, whichever occurs first:

(1) the end date of the approved graduate medical training program;

(2) the permit holder's termination or release from the approved graduate medical training program; or

(3) on the date a full, limited, or temporary physician license is issued.

(g) PIT permit holders are limited to the practice of medicine within the training program for which it was approved.

(h) A PIT permit holder is restricted to the supervised practice of medicine that is part of and approved by the training program and does not allow for the practice of medicine outside of the approved program.

(i) A transfer to a new approved graduate medical training program requires the applicant to submit a new PIT permit application, required documentation, and the following fees, as applicable:

(1) \$141.00, if transferring to a program not within same institution; and

(2) \$200.00, if transfer application is made after current PIT permit is expired.

(j) The board may allow substitute documents where exhaustive efforts on the applicant's part to secure the required documents are presented.

§161.56. Rotator PIT Permits.

Out-of-state or military PIT applicants completing a rotation in Texas of less than 60 consecutive days as part of an approved graduate medical training program must:

(1) submit an application and required documentation described in §161.55 of this title;

(2) pay a required fee of \$131.00; and

(3) have the Texas Licensed physician supervising the Texas rotations submit certification of the following:

(A) the facility at which the rotation will be completed;

(B) the dates the rotations will be completed in Texas; and

(C) that the Texas on-site preceptor physician will supervise and be responsible for the applicant during the rotations.

§161.57. Duties of Permit Holders to Report.

PIT permit holders must report the following to the board within 30 days:

(1) an investigation or disciplinary action by any licensing entity other than the board;

(2) an arrest (excluding traffic tickets, unless drugs or alcohol were involved);

(3) any criminal charge or conviction, including disposition;

(4) any indictment;

(5) imprisonment; and

(6) any diagnosis or treatment of a physical, mental, or emotional condition that affects the ability to practice medicine.

§161.58. Duties of Program Directors to Report.

In accordance with §§160.002 and 160.003 of the Act, Program Directors must report the following to the board within 30 days:

(1) a PIT permit holder who did not begin the training program for any reason, including failure to graduate from medical school;

(2) a PIT permit holder who is absent from the program for more than 21 consecutive days (excluding vacation, military, or family leave not related to the participant's medical condition) and the reason(s) why;

(3) a PIT permit holder who has been arrested;

(4) a PIT permit holder who poses a continuing threat to the public welfare, as defined by §151.002(a)(2) of the Act;

(5) any final action against a PIT permit holder that adversely affects the permit holder's status or privileges for a period longer than 30 days;

(6) a PIT permit holder who is suspended from the program; or

(7) a PIT permit holder who is released, terminated, withdraws, or resigns from the program.

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General Counsel

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## SUBCHAPTER M. FELLOWSHIP PROGRAM APPROVAL

### 22 TAC §161.65

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle and establish rules related to licensure and registration of the license. The new rules are also proposed in accordance with the requirements of Chapters 53, 155, and 156 of the Texas Occupations Code. The new rules are also proposed in accordance with the requirements of the Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for read-



option, readoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this proposal.

§161.65. Process for Board-Approval of Fellowships.

(a) To obtain board approval of a fellowship, the institution, through its designated institutional official (DIO) and chair of the Graduate Medical Education Committee (GMEC), must submit:

- (1) a completed board application form;
- (2) required fee of \$250.00; and
- (3) documentation demonstrating:
  - (A) goals and objectives;
  - (B) documented curriculum;

(C) qualifications of the program director and program faculty including, but not limited to, current Texas medical license, certification by the appropriate specialty board, and/or appropriate educational qualifications;

(D) candidate selection process including prerequisite requirements;

(E) duties and responsibilities of the fellows in the program;

(F) supervision of the fellows;

(G) progressive nature of the training program;

(H) evaluation of the fellows;

(I) duration of the fellowship training program for fellows; and

(J) other information as requested by the board.

(b) The application must be submitted a minimum of 120 days prior to the beginning date of the program.

(c) Renewals for fellowship approval must be submitted at least 120 days before the expiration of the approval.

(d) The approval period of the fellowship program may not exceed five years.

(e) If the program subsequently becomes approved by the ACGME, AOA, ABMS, or BOS, the program must notify the board within 30 days of approval, as fellowship programs may not be dually approved.

(f) Changes to a board-approved program may require submission of a new application.

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## SUBCHAPTER N. EMERGENCY PRACTICE AUTHORIZATION

22 TAC §§161.70 - 161.73

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle and establish rules related to licensure and registration of the license. The new rules are also proposed in accordance with the requirements of Chapters 53, 155, and 156 of the Texas Occupations Code. The new rules are also proposed in accordance with the requirements of the Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this proposal.

§161.70. Emergency Practice Authorization (EPA).

(a) The board may waive requirements for licensure for the board and its advisory boards and committees and issue an Emergency Practice Authorization (EPA):

(1) pursuant to a lawful emergency or disaster for which the Governor of the State of Texas has declared a state of emergency or state of disaster, in accordance with the Texas Government Code;

(2) in the event of an occurrence for which a county or municipality has declared a state of emergency or state of disaster; or

(3) to protect the public health, safety, or welfare of the citizens of Texas.

(b) For the purposes of this subchapter, "healthcare professional" means an out-of-state individual that holds a valid and current license, permit, or certificate type that is issued by a state licensing board.

§161.71. Emergency Practice Authorization (EPA) Requirements and Procedures for Healthcare Professionals.

(a) Hospital-to-Hospital Practice Authorization: A healthcare professional may practice within the scope of their license, permit, or certificate at a Texas hospital upon demonstration of the following:

(1) The healthcare professional:

(A) holds a full, unlimited, and unrestricted license, certificate, or permit to practice in another U.S. state, territory, or district; and

(B) has unrestricted hospital credentials and privileges in any U.S. state, territory, or district.

(2) The licensed Texas hospital:

(A) shall verify each healthcare professional's credentials and privileges;

(B) shall keep a list of all healthcare professionals coming to practice at that facility;

(C) must provide this list to the board within ten days of each healthcare professional starting practice at the facility; and

(D) must provide the board a list of when each healthcare professional has stopped practicing in Texas under this section within ten days after each healthcare professional has stopped practicing under this section.

(b) Non-Hospital Practice Authorization:

(1) The sponsored healthcare professional must:

(A) hold a full, unlimited, and unrestricted license, certificate, or permit to practice in another U.S. state, territory, or district;

(B) have no disciplinary actions in any jurisdiction; and

(C) be sponsored by a Texas-licensed physician.

(2) The Texas-licensed sponsoring physician:

(A) must hold a full unrestricted Texas medical license;

(B) must provide a written statement describing how the sponsored healthcare professional will assist directly in response to the declared emergency or disaster; and

(C) shall be considered the supervising physician for the sponsored healthcare professional.

(3) The board may limit the sponsored healthcare professional's practice locale and scope of practice.

§161.72. Board Regulation of Emergency Practice Authorization (EPA).

(a) The board shall have jurisdiction over healthcare professionals practicing under this subchapter.

(b) Each healthcare professional must comply with all applicable provisions of the Texas Occupations Code and all other applicable state and federal laws.

(c) The board's jurisdiction over the healthcare professional and the care provided in Texas during the emergency continues even after the healthcare professional ceases practicing in Texas.

(d) An EPA is valid for no more than thirty (30) days unless otherwise indicated by the continued emergency or disaster, as determined by the board.

(e) Healthcare professionals practicing under this subchapter shall not receive any compensation outside of their usual compensation for the provision of healthcare services during a disaster or emergency.

§161.73. Confidentiality.

In accordance with §164.007(c) of the Act, all board files, information, or investigative materials regarding healthcare professionals practicing under this chapter are confidential.

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## CHAPTER 162. SUPERVISION OF MEDICAL SCHOOL STUDENTS

The Texas Medical Board (Board) proposes the repeal of current Chapter 162, concerning Supervision of Medical Students, §162.1 and §162.2.

The Board also proposes new Chapter 162, concerning Physician Profiles, §§162.1 - 162.3.

Also, the Board contemporaneously proposes the repeal of current Chapter 173, concerning Physician Profiles, §§173.1 - 173.5, and §173.7.

The Board has determined that due to the extensive reorganization of Chapters 160-200, the repeal of Chapter 162 is more

efficient than proposing multiple amendments to make the required changes.

The proposed new sections are as follows:

New §162.1, Profile Contents, provides a description of the content of a physician's public profile.

New §162.2, Profile Updates, provides a description of mandatory updates required to be reported by a physician to the board.

New §162.3, Profile Disputes, explains the process by which a physician may dispute their public profile information.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the proposed repeals and new sections are in effect, the public benefit anticipated as a result of enforcing these proposed sections will be to remove redundant language from rules, simplify the rules, and make the rules easier to understand.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect, there will be no fiscal impact or effect on government growth as a result of enforcing the proposed sections.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect there will be no probable economic cost to individuals required to comply with these proposed sections.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for these proposed repeals and new sections and determined that for each year of the first five years these proposed repeals and new sections there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of these proposed repeals and new sections and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years these proposed repeals and new sections are in effect:

(1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering these proposed repeals and new sections;

(2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections;

(3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections; and

(4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering these proposed repeals and new sections.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years these proposed repeals and new sections will be in effect, there will be no effect on local economy and local employment.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for these proposed repeals and new sections. For each year of the first five years these proposed repeals and new sections will be in effect, Mr. Freshour has determined the following:

- (1) These proposed repeals and new sections do not create or eliminate a government program.
- (2) Implementation of these proposed repeals and new sections does not require the creation of new employee positions or the elimination of existing employee positions.
- (3) Implementation of these proposed repeals and new sections does not require an increase or decrease in future legislative appropriations to the agency.
- (4) These proposed repeals and new sections do not require an increase or decrease in fees paid to the agency.
- (5) These proposed repeals and new sections do not create new regulations.
- (6) These proposed repeals and new sections do repeal existing regulations as described above. These proposed new sections do not expand or limit an existing regulation.
- (7) These proposed repeal and new sections do not increase the number of individuals subject to the sections' applicability.
- (8) These proposed repeals and new sections do not positively or adversely affect this state's economy.

Comments on the proposal may be submitted using this link: <https://forms.office.com/g/9KcRP3vMGq>. A public hearing will be held at a later date. Comments on the proposal will be accepted for 30 days following publication.

## 22 TAC §162.1, §162.2

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for re-adoption, re-adoption with amendments, or repeal every four years.

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

*§162.1. Supervision of Medical Students.*

*§162.2. Physician Supervision of a Student Physician Assistant.*

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

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## CHAPTER 162. PHYSICIAN PROFILES

### 22 TAC §§162.1 - 162.3

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority

for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The new rules are also proposed in accordance with the requirements of §§154.006(h) and 156.001. The new rules are also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for re-adoption, re-adoption with amendments, or repeal every four years.

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

#### §162.1. Profile Contents.

In addition to the information required by §154.006(b) of the Act, a physician's public profile shall include:

- (1) full name as displayed on the physician license;
- (2) the original date of issuance of the physician's Texas medical license;
- (3) the expiration date of the physician's current registration permit;
- (4) a mailing address (street or P.O. Box address, city, state, and zip code), if the physician does not have a primary practice location;
- (5) primary and secondary areas of practice, as designated by the physician;
- (6) a description of a maximum of five awards, honors, publications or academic appointments submitted by the physician, each no longer than 120 characters; and
- (7) utilization review services for an insurance company other than utilization review in relation to worker's compensation claims.

#### §162.2. Profile Updates.

(a) Upon renewal, physician updates to the board must be completed as required by §§156.001(c) and (e) of the Act.

(b) Mandatory Updates shall be reported by a physician within 10 business days of the event, including:

- (1) A description of any charges reported to the board to which the physician has pleaded no contest, for which the physician is the subject of deferred adjudication or pretrial diversion, or in which sufficient facts of guilt were found and the matter was continued by a court;
- (2) change of mailing or practice address;
- (3) incarceration in a state or federal penitentiary;
- (4) conviction described in §154.006(b)(9) of the Act;
- (5) any charges as described in §154.006(b)(10) of the Act;
- (6) An initial finding of guilt for a crime set forth in §164.057 of the Act;
- (7) any disciplinary action described in §§154.006(b)(12) and (13) of the Act;
- (8) any medical malpractice claim listed in §154.006(b)(16) of the Act; or
- (9) changes in the physician's American Board of Medical Specialties or the Bureau of Osteopathic Specialists specialty certification.

(c) A physician may submit any other corrections as they occur.

§162.3. Profile Disputes.

A physician may dispute public profile information by submitting a written description of the dispute and any supporting information to the General Counsel's office for review, consideration, and resolution of the dispute.

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

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Scott Freshour

General Counsel

Texas Medical Board

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For further information, please call: (512) 305-7030



## CHAPTER 163. LICENSURE

The Texas Medical Board (Board) proposes the repeal of current Chapter 163, concerning Licensure, §§163.1 - 163.6, 163.8 - 163.11 and 163.13.

The Board also proposes new Chapter 163, concerning Medical Records. This includes new Subchapter A, concerning General Documentation Provisions, §§163.1 - 163.5; and Subchapter B, concerning Abortion Documentation, §§163.10 - 163.13.

Also, the Board contemporaneously proposes the repeal of current Chapter 165, concerning Medical Records, §§165.1 - 165.9.

The Board has determined that due to the extensive reorganization of Chapters 160-200, repeal of Chapter 163 is more efficient than proposing multiple amendments to make the required changes.

The proposed new subchapters and sections are as follows:

### SUBCHAPTER A. GENERAL PROVISIONS.

New §163.1, Medical Records, describes the necessary content of a medical record and the appropriate method for documenting each patient encounter.

New §163.2, Medical Record Retention, explains providers responsible for retaining medical records and the amount of time those providers must retain medical records.

New §163.3, Requests for Medical Records, explains a provider's responsibility for providing medical records to patients upon request. It also explains allowable charges for responding to requests for medical records or diagnostic imaging.

New §163.4, Physician Responsibilities when Leaving a Practice, explains a provider must provide notice to patients when they leave, retire, or terminate a practice.

New §163.5, Appointment of Record Custodian of a Physician's Records, explains who the appropriate records custodian is of medical records in certain situations. It also explains the process by which a records custodian is appointed and outlines the custodian's responsibilities.

### SUBCHAPTER B. ABORTION DOCUMENTATION.

New §163.10, Definitions, describes the specific definitions for certain terms used in this subchapter.

New §163.11, Required Form Regarding an Abortion on an Unemancipated Minor, details the required disclosure and consent form to be completed when performing an abortion or related procedure on an unemancipated minor.

New §163.12, Abortion Ban Exception Performance and Documentation, explains that physicians need to comply with all applicable laws, rules, and court opinions related to abortion and its exceptions in Texas. The rules also provide the minimum required information that must be included in the medical record.

New §163.13, Complaints Regarding Abortions Performed, explains the procedures that the Board will utilize in the event a complaint is received. The rule also explains the limitation of any Board decision and that possible criminal or civil action under the law is separate and independent of any Board decision.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the proposed repeals and new sections are in effect, the public benefit anticipated as a result of enforcing these proposed sections will be to remove redundant language from rules, simplify the rules, and make the rules easier to understand.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect, there will be no fiscal impact or effect on government growth as a result of enforcing the proposed sections.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect there will be no probable economic cost to individuals required to comply with these proposed sections.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for these proposed repeals and new sections and determined that for each year of the first five years these proposed repeals and new sections will be in effect there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of these proposed repeals and new sections and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years these proposed repeals and new sections are in effect:

(1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering these proposed repeals and new sections;

(2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections;

(3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections; and

(4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering these proposed repeals and new sections.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the

first five years these proposed repeals and new sections will be in effect, there will be no effect on local economy and local employment.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for these proposed repeals and new sections. For each year of the first five years these proposed repeals and new sections will be in effect, Mr. Freshour has determined the following:

- (1) These proposed repeals and new sections do not create or eliminate a government program.
- (2) Implementation of these proposed repeals and new sections does not require the creation of new employee positions or the elimination of existing employee positions.
- (3) Implementation of these proposed repeals and new sections does not require an increase or decrease in future legislative appropriations to the agency.
- (4) These proposed sections do not require an increase or decrease in fees paid to the agency.
- (5) These proposed repeals and new sections do not create new regulations.
- (6) These proposed repeals and new sections do repeal existing regulations as described above. These proposed new sections do not expand or limit an existing regulation.
- (7) These proposed repeals and new sections do not increase the number of individuals subject to the sections' applicability.
- (8) These proposed repeals and new sections do not positively or adversely affect this state's economy.

Comments on the proposal may be submitted using this link: <https://forms.office.com/g/ENi91rHrTG>. A public hearing will be held at a later date. Comments on the proposal will be accepted for 30 days following publication.

## 22 TAC §§163.1 - 163.6, 163.8 - 163.11, 163.13

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this proposal.

§163.1. *Definitions.*

§163.2. *Full Texas Medical License.*

§163.3. *Exemption from Licensure for Certain Military Spouses.*

§163.4. *Procedural Rules for Licensure Applicants.*

§163.5. *Licensure Documentation.*

§163.6. *Examinations Accepted for Licensure.*

§163.8. *Authorization to Take Professional Licensing Examination.*

§163.9. *Only One License.*

§163.10. *Relicensure.*

§163.11. *Active Practice of Medicine.*

§163.13. *Expedited Licensure.*

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

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## CHAPTER 163. MEDICAL RECORDS SUBCHAPTER A. GENERAL DOCUMENTATION PROVISIONS

### 22 TAC §§163.1 - 163.5

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The new rules are also proposed in accordance with the requirements of §164.052(c). The new rules are also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this proposal.

#### §163.1. Medical Records.

(a) The medical record must be a complete, contemporaneous, and legible documented account of each patient encounter by a physician or delegate.

(b) A medical record must include, at a minimum:

(1) a reason for the encounter, relevant history, physical examination findings (ensuring any pre-populated fields contain current and accurate patient information), and any diagnostic test results;

(2) an assessment, clinical impression, and diagnosis;

(3) a plan for care (including diagnostics, risk factors, consultations, referrals, ancillary services, discharge plan if appropriate, patient/family education, disclosures, and follow-up instructions), treatments, and medications (including amount, frequency, number of refills, and dosage);

(4) late entries, if any, that indicate the time and date entered, as well as the identity of the person who made the late entry;

(5) summary or documentation of communications with the patient;

(6) sufficient documentation of requests for records from other providers and any records received;

(7) clear identification of any amendment or correction to the medical record, including the date it was amended or corrected and the identity of the author of the amendment or correction, with the original text remaining legible; and

(8) documentation of a review of the patient's Texas Prescription Monitoring Program (PMP) prescribing history.

#### §163.2. Medical Record Retention.

(a) Medical records must be retained by a physician or a physician's employer, including group practices, professional associations, and non-profit health organizations, consistent with this chapter.

(b) Providers must maintain access to medical records for the duration of the required retention period.

(c) Retention periods.

(1) The standard retention period is at least seven years from the date of last treatment by the physician or longer if required by other federal or state law.

(2) The retention period for a patient under 18 years old is until the patient reaches age 21 years old or seven years from the date of last treatment, whichever is longer.

(d) Forensic medical examinations for sexual assault must be retained in accordance with §153.003 of the Act.

#### §163.3. Requests for Medical Records.

(a) Upon receipt of a request for medical records that complies with §159.005 of the Act, a physician must provide the information within 15 days of the request and in accordance with Chapter 159 of the Act.

(b) Requests for diagnostic imaging, including static films, non-static films, and imaging studies, must specify whether a copy or the original of the study is sought.

(c) Allowable charges for records:

(1) paper records - the maximum fee may be \$25.00 for the first twenty pages and \$.50 per page thereafter

(2) electronic records - the maximum fee may be \$25.00 for 500 pages or less and \$50.00 for more than 500 pages;

(3) hybrid records (part paper and electronic) - the fee for each different format may be utilized, including diagnostic studies;

(4) if an affidavit is requested for the records, the maximum fee may be \$15.00;

(5) if a narrative is provided in lieu of records, the maximum fee may be \$20.00;

(6) requests that all records be in paper format even though available as electronic records - the paper record fee may be charged; and

(7) if records are mailed to the requestor - actual postage cost may be charged.

(d) A provider cannot deny a request for medical records due to a delinquent account or amounts owed to the provider.

(e) A provider cannot require a subpoena for the records if a proper request is made in accordance with §159.005 of the Act.

(f) A denial of a request for records must be in accordance with §159.006(e) of the Act.

#### §163.4. Physician Responsibilities when Leaving a Practice.

(a) Upon retirement, termination of employment, or leaving a medical practice, a physician must provide patients reasonable notice to obtain copies of their records or arrange for the transfer of their medical records by:

(1) letter or email to each patient seen in the last two years by the departing physician; and

(2) posting a notice in a conspicuous location in the physician's/practice office and on the practice website at least 30 days prior to the termination, leaving, or sale or relocation of practice.

(b) The notice must include:

(1) the date of the termination, retirement, or departure;

(2) instructions as to how patients may obtain or transfer their medical records;

(3) the name and location of new practice, if any; and

(4) the name of another licensed physician, practice, or custodian if ownership of records is changing.

(c) If the physician's license is surrendered or revoked, the notice must be provided immediately in accordance with this section.

(d) The following physicians are exempt from providing notice to patients:

(1) a locum tenens physician at a practice location for less than six months;

(2) a physician who only treated the patient in the following settings:

(A) a hospital, as defined under §157.051(6) of the Act;

(B) an emergency room;

(C) a birthing center; or

(D) an ambulatory surgery center; or

(3) a physician who only provided the following service:

(A) anesthesia;

(B) radiology; or

(C) pathology.

(e) Responsibilities of Practice:

(1) A physician, physician group, or practice must provide a list of patients seen by the departing physician in the last two years for the purposes of providing notice to patients.

(2) A departing physician's group or practice is not required to provide the requisite notice to patients.

(3) If the departing physician's group or practice agrees to provide the requisite notices to patients, they must do so in accordance with this section.

(4) No physician remaining at the group or practice may prevent or interfere with the departing physician's duties to provide notices described by this section.

#### §163.5. Appointment of Record Custodian of a Physician's Records.

(a) In accordance with §159.0061 of the Act, a custodian of records is as follows:

(1) physician death - the administrator, executor of the estate, or other court appointed individual, unless part of a group practice or pre-existing appointments/instructions are in place;

(2) physician mental or physical incapacity - individual with Power of Attorney, court appointed individual, or legally appointed representative of the physician;

(3) other circumstances or abandonment of records - custodian is determined on a case-by-case basis.

(b) A records custodian must:

(1) maintain the confidentiality of the medical records;

(2) within 30 days of appointment, provide notice of the custodianship of the records to the board and patients by:

(A) posting visible notice in physician's/practice office, if accessible;

(B) posting notice on a physician or practice website, if accessible; or

(C) posting notice in a newspaper of greatest general circulation in county where physician practice was located.

(3) retain the medical records in accordance with state and federal law for at least 90 days before destroying any records, including the 30-day notice period;

(4) include the following information in the notice:

(A) the name of custodian and contact information;

(B) instructions as to how patients can obtain or request transfer of medical records to another provider;

(C) all applicable fees to be charged for the records, in accordance with this chapter, including an additional \$25.00 custodial fee as applicable; and

(D) a statement that the records may be destroyed after 90 days and provide destruction date.

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

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Scott Freshour

General Counsel

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## SUBCHAPTER B. ABORTION DOCUMENTATION

### 22 TAC §§163.10 - 163.13

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The new rules are also proposed in accordance with the requirements of §164.052(c). The new rules are also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this proposal.

#### §163.10. Definitions.

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

(1) "Abortion" means the act of using or prescribing an instrument, a drug, a medicine, or any other substance, device, or means with the intent to cause the death of an unborn child of a woman known to be pregnant. The term does not include birth control devices or oral

contraceptives. An act is not an abortion if the act is done with the intent to:

(A) save the life or preserve the health of an unborn child;

(B) remove a dead, unborn child whose death was caused by spontaneous abortion; or

(C) remove an ectopic pregnancy.

This definition is found at Chapter 245, §245.002(1) of the Texas Health and Safety Code.

(2) "Reasonable medical judgment" means medical judgment made by a reasonably prudent physician, knowledgeable about a case and the treatment possibilities for the medical conditions involved. This definition is found at Chapter 170A, §170A.001(4) of the Texas Health and Safety Code.

(3) "Medical emergency" means a life-threatening physical condition aggravated by, caused by, or arising from a pregnancy that, as certified by a physician, places the woman in danger of death or a serious risk of substantial impairment of a major bodily function unless an abortion is performed. This definition is found at Chapter 171, §171.002(3) of the Texas Health and Safety Code.

(4) "Major bodily function" includes but is not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. This definition is found at Chapter 21, §21.002(11-a) of the Texas Labor Code.

#### §163.11 Required Form Regarding an Abortion on an Unemancipated Minor.

In accordance with §164.052(c) of the Act, a physician must obtain the consent for an abortion to be performed on an unemancipated minor using the following form:

Figure 1:22 TAC §163.11

#### §163.12. Abortion Ban Exception Performance and Documentation.

(a) An abortion shall not be performed in this state unless it is performed in compliance with all provisions of Texas Health and Safety Code, Chapters 170, 170A, and 171, in addition to any other applicable federal and state statutes, rules, and court opinions.

(b) In addition to the requirements above, the physician must document in the patient's medical record:

(1) that the abortion is performed in response to a medical emergency;

(A) that places the woman in danger of death unless the abortion is performed or induced; or

(B) to prevent a serious risk of substantial impairment of a major bodily function of the patient unless the abortion is performed or induced;

(2) the major bodily function(s) at serious risk of substantial impairment;

(3) what placed the woman in danger of death, or what was the serious risk of substantial impairment;

(4) how the danger of death or serious risk was determined;

(5) if applicable, the rationale on why the abortion was performed pursuant to §170A.002 (b)(3) of the Texas Health and Safety Code; and

(6) if applicable, that the treatment was in response to an ectopic pregnancy at any location or a previable premature rupture of

membranes, as those terms are used in §74.552 of the Texas Civil Practice and Remedies Code.

(c) The above documentation must be made before and/or after performing the procedure, but the initial documentation must be made within 7 days of the procedure.

(d) Imminence of the threat to life or impairment of a major bodily function is not required.

§163.13. Complaints Regarding Abortions Performed.

(a) The Texas Medical Board will review complaints and perform investigations regarding abortions using the Board's standard complaint process.

(b) If a complaint is determined to be jurisdictional to the Board, the Board will use independent expert physicians, as provided in §154.0561 of the Texas Occupations Code, to review the available information, including the patient's medical record.

(c) As done in other complaints, the independent expert physicians may review all relevant information including one or more of the following:

(1) how the decision was made to proceed with an abortion based on reasonable medical judgement including:

(A) what diagnostic imaging, test results, medical literature, second opinions, and/or medical ethics committees that were used or consulted; and

(B) what alternative treatments were attempted and failed or were ruled out; and

(2) whether there was adequate time to transfer the patient to a facility or physician with a higher level of care or expertise to avoid performing an abortion.

(d) Any decision by the Board, to either dismiss the complaint or discipline the physician who is the subject of a complaint, is separate and independent of any other possible criminal or civil action under the law. If the Board is aware the licensee is subject to a pending criminal or civil action, then the Board may defer or delay action. Depending on the outcome of criminal or civil action, the Board retains authority to investigate and potentially take disciplinary action.

(e) The Board shall not take any disciplinary action against a physician who exercised reasonable medical judgment in providing medical treatment to a pregnant woman as described by §74.552 of the Texas Civil Practice and Remedies Code.

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

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

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Scott Freshour

General Counsel

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For further information, please call: (512) 305-7030



## CHAPTER 164. PHYSICIAN ADVERTISING

The Texas Medical Board (Board) proposes the repeal of current Chapter 164, concerning Physician Advertising, §§164.1 - 164.6.

The Board also proposes new Chapter 164, concerning Physician Advertising, §§164.1 - 164.4.

The Board has determined that due to the extensive reorganization of Chapters 160-200, the repeal of Chapter 164 is more efficient than proposing multiple amendments to make the required changes.

The proposed new sections are as follows:

New §164.1, Definitions, gives definitions of terms used in this chapter.

New §164.2, Physician Responsibilities, explains the physician's responsibilities as to form and content of advertisement of the practice of medicine.

New §164.3, Prohibited Acts or Omissions in Advertising, describes what is permissible or prohibited in advertising by physicians.

New §164.4, Advertising Board Certification, explains the permissible use of the term "board certified" in advertising. The new section also details the process for a physician or physician-based certifying organization to apply for recognition to advertise as "board certified."

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the proposed repeals and new sections are in effect, the public benefit anticipated as a result of enforcing these proposed sections will be to remove redundant language from rules, simplify the rules, and make the rules easier to understand.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect, there will be no fiscal impact or effect on government growth as a result of enforcing the proposed sections.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect there will be no probable economic cost to individuals required to comply with these proposed sections.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for these proposed repeals and new sections and determined that for each year of the first five years these proposed repeals and new sections will be in effect there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of these proposed repeals and new sections and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years these proposed repeals and new sections are in effect:

(1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering these proposed repeals and new sections;

(2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections;

(3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections; and



(4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering these proposed repeals and new sections.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years these proposed repeals and new sections will be in effect, there will be no effect on local economy and local employment.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for these proposed repeals and new sections. For each year of the first five years these proposed repeal and new sections will be in effect, Mr. Freshour has determined the following:

- (1) These proposed repeal and new sections do not create or eliminate a government program.
- (2) Implementation of these proposed repeal and new sections does not require the creation of new employee positions or the elimination of existing employee positions.
- (3) Implementation of these proposed repeal and new sections does not require an increase or decrease in future legislative appropriations to the agency.
- (4) These proposed sections do not require an increase or decrease in fees paid to the agency.
- (5) These proposed repeal and new sections do not create new regulations.
- (6) These proposed repeal and new sections do repeal existing regulations as described above. These proposed new sections do not expand or limit an existing regulation.
- (7) These proposed repeal and new sections do not increase the number of individuals subject to the sections' applicability.
- (8) These proposed repeal and new sections do not positively or adversely affect this state's economy.

Comments on the proposal may be submitted using this link: <https://forms.office.com/g/T7zq3qSM1i>. A public hearing will be held at a later date. Comments on the proposal will be accepted for 30 days following publication.

## 22 TAC §§164.1 - 164.6

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for re-adoption, re-adoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this proposal.

§164.1. *Purpose.*

§164.2. *Definitions.*

§164.3. *Misleading or Deceptive Advertising.*

§164.4. *Board Certification.*

§164.5. *Advertising Records and Responsibility.*

§164.6. *Required Disclosures on Websites.*

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

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## 22 TAC §§164.1 - 164.4

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The new rules are also proposed in accordance with the requirements of Texas Occupations Code, §101.201. The new rules are also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for re-adoption, re-adoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this proposal.

### §164.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the contents clearly indicate otherwise.

(1) Advertising and advertisement--Any communication designed to attract attention to the practice of a physician.

(2) Testimonial--Statement about a physician's competence, services, treatments, or practice generally. Also includes expressions of appreciation or esteem, a character reference, or a statement of benefits received.

### §164.2. Physician Responsibilities.

(a) Every physician is:

(1) responsible for the form and content of any advertisement for their individual practice or group practice; and

(2) deemed to have reviewed and approved any and all advertisements.

(b) Patients must consent prior to any use of photographs or other representations in any advertising by a physician, practice, or entity.

(c) A recording or copy of any advertisement shall be retained by the physician for a period of two years from the last date of communication.

### §164.3. Prohibited Acts or Omissions in Advertising.

(a) Advertising regarding the practice of medicine, professional credentials, and qualifications is permissible. However, the information provided in the advertisement cannot be false, deceptive, or misleading.

(b) In addition to those items listed in §101.201 of the Texas Occupations Code, the following are also deemed false, deceptive, or misleading advertising:

(1) using the term "board eligible," "board qualified," or any similar language calculated to convey the same meaning as "board certified;"

(2) offering a permanent cure for an incurable disease, sickness, and/or illness;

(3) providing a testimonial without:

(A) a disclaimer or warning as to the credentials of the person making the testimonial; and

(B) a disclosure of compensation provided in exchange for the testimonial;

(4) failing to explicitly identify individuals as models or actors instead of actual patients;

(5) providing untruthful or deceptive claims regarding costs and fees, including claims of free service if a third-party is billed;

(6) claiming a unique or exclusive skill without substantiation and basis for such claim;

(7) failing to disclose that the advertisement, article, or infomercial is a "paid for" presentation; or

(8) failing to disclose medical directorship, supervision of, or delegation to non-physicians at a location that is not the physician's primary practice location and where care is delivered pursuant to standing orders and protocols.

§164.4. Advertising Board Certification.

(a) The use of the term "board certified" may be used by a physician if they are currently certified by a member board of:

(1) the American Board of Medical Specialties (ABMS);

(2) the American Osteopathic Association Bureau of Osteopathic Specialists (BOS);

(3) the American Board of Oral and Maxillofacial Surgery;  
or

(4) other certifying board certification as approved by the board under subsection (b) of this section.

(b) Physicians, or physician-based certifying organizations seeking approval on behalf of their members, to advertise other board certification not listed in subsection (a) of this section, must:

(1) submit a completed board application that is valid for one year; and

(2) submit payment of a \$200.00 application fee; and

(3) submit documentation that the certifying entity/board:

(A) has certification requirements that are substantially equivalent to the requirements of the ABMS or BOS; and

(B) requires members to complete an examination that has been psychometrically evaluated for validation and has been administered by a testing organization that tests knowledge and skills in the specialty or subspecialty;

(C) requires members successfully completed post-graduate training accredited by ACGME or AOA, with training in the specialty or subspecialty;

(D) utilizes appropriate peer-review processes;

(E) has a total membership of at least 100 duly licensed members, fellows, diplomates, or certificate holders from at least one-third of the states; and

(F) is tax exempt under the Internal Revenue Code pursuant to §501(c) with a permanent headquarters and staff.

(c) A certifying organization approved by the board under subsection (b) of this section must be reviewed every five years from the date of initial approval. As part of this review, the certifying organization must:

(1) submit payment of the \$200.00 renewal fee, and

(2) submit to the board, information of any substantive changes in the certifying organization's requirements for diplomates since the certifying board was last reviewed by the board.

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

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

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Scott Freshour

General Counsel

Texas Medical Board

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For further information, please call: (512) 305-7030



## CHAPTER 165. MEDICAL RECORDS

### 22 TAC §§165.1 - 165.9

The Texas Medical Board (Board) proposes the repeal of current Chapter 165, concerning Medical Records, §§165.1 - 165.9.

The Board has determined that due to the extensive reorganization of Chapters 160-200 as part of the Board's rule review, repeal of Chapter 165 in its entirety is more efficient than proposing multiple amendments to make the required changes.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the proposed repeals are in effect, the public benefit anticipated as a result of enforcing these proposed sections will be to remove redundant language from rules, simplify the rules, and make the rules easier to understand.

Mr. Freshour has also determined that for the first five-year period these proposed repeals are in effect, there will be no fiscal impact or effect on government growth as a result of enforcing the proposed repeals.

Mr. Freshour has also determined that for the first five-year period these proposed repeals are in effect there will be no probable economic cost to individuals required to comply with these proposed repeals.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for these proposed repeals and determined that for each year of the first five years these proposed repeals there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of these proposed repeals and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the

agency has determined that for each year of the first five years these proposed repeals are in effect:

- (1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering these proposed repeals;
- (2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering these proposed repeals;
- (3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering these proposed repeals; and
- (4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering these proposed repeals.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years these proposed repeals will be in effect, there will be no effect on local economy and local employment.

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

- (1) These proposed repeals do not create or eliminate a government program.
- (2) Implementation of these proposed repeals does not require the creation of new employee positions or the elimination of existing employee positions.
- (3) Implementation of these proposed repeals does not require an increase or decrease in future legislative appropriations to the agency.
- (4) These proposed repeals do not require an increase or decrease in fees paid to the agency.
- (5) These proposed repeals do not create new regulations.
- (6) These proposed repeals do repeal existing regulations as described above.
- (7) These proposed repeals do not increase the number of individuals subject to the sections' applicability.
- (8) These proposed repeals do not positively or adversely affect this state's economy.

Comments on the Repeal may be submitted using this link: <https://forms.office.com/g/DibuGXnyfE>. A public hearing will be held at a later date. Comments on the proposal will be accepted for 30 days following publication.

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for reoption, reoption with amendments, or repeal every four years.

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

§165.1. *Medical Records.*

§165.2. *Medical Record Release and Charges.*

§165.3. *Patient Access to Diagnostic Imaging Studies in Physician's Office.*

§165.4. *Appointment of Record Custodian of a Physician's Records.*

§165.5. *Transfer and Disposal of Medical Records.*

§165.6. *Medical Records Regarding an Abortion on an Unemancipated Minor.*

§165.7. *Definitions.*

§165.8. *Abortion Ban Exception Performance and Documentation.*

§165.9. *Complaints Regarding Abortions Performed.*

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

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Scott Freshour

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## CHAPTER 166. PHYSICIAN REGISTRATION

### 22 TAC §§166.1 - 166.7

The Texas Medical Board (Board) proposes the repeal of current Chapter 166, concerning Physician Registration, §§166.1 - 166.7.

The Board has determined that due to the extensive reorganization of Chapters 160-200 as part of the Board's rule review, repeal of Chapter 166 in its entirety is more efficient than proposing multiple amendments to make the required changes.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the proposed repeals are in effect, the public benefit anticipated as a result of enforcing these proposed sections will be to remove redundant language from rules, simplify the rules, and make the rules easier to understand.

Mr. Freshour has also determined that for the first five-year period these proposed repeals are in effect, there will be no fiscal impact or effect on government growth as a result of enforcing the proposed sections.

Mr. Freshour has also determined that for the first five-year period these proposed repeals are in effect there will be no probable economic cost to individuals required to comply with these proposed sections.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for these proposed repeals and determined that for each year of the first five years these proposed repeals there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of these proposed repeals and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the

agency has determined that for each year of the first five years these proposed repeals are in effect:

(1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering these proposed repeals;

(2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering these proposed repeals;

(3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering these proposed repeals; and

(4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering these proposed repeals.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years these proposed repeals will be in effect, there will be no effect on local economy and local employment.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for these proposed repeals. For each year of the first five years these proposed repeals and new sections will be in effect, Mr. Freshour has determined the following:

(1) These proposed repeals do not create or eliminate a government program.

(2) Implementation of these proposed repeals does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of these proposed repeals does not require an increase or decrease in future legislative appropriations to the agency.

(4) These proposed sections do not require an increase or decrease in fees paid to the agency.

(5) These proposed repeals do not create new regulations.

(6) These proposed repeals do repeal existing regulations as described above.

(7) These proposed repeals do not increase the number of individuals subject to the sections' applicability.

(8) These proposed repeals do not positively or adversely affect this state's economy.

Comments on the Repeal may be submitted using this link: <https://forms.office.com/g/DibuGXnyfE>. A public hearing will be held at a later date. Comments on the proposal will be accepted for 30 days following publication.

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for re-adoption, re-adoption with amendments, or repeal every four years.

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

§166.1. *Physician Registration.*

§166.2. *Continuing Medical Education.*

§166.3. *Retired Physician Exception.*

§166.4. *Expired Registration Permits.*

§166.5. *Relicensure.*

§166.6. *Exemption from Registration Fee for Retired Physician Providing Voluntary Charity Care.*

§166.7. *Report of Impairment on Registration Form.*

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

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Scott Freshour

General Counsel

Texas Medical Board

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## CHAPTER 167. REINSTATEMENT AND REISSUANCE

### 22 TAC §§167.1 - 167.8

The Texas Medical Board (Board) proposes the repeal of current Chapter 167, concerning Reinstatement and Reissuance, §§167.1 - 167.8.

The Board has determined that due to the extensive reorganization of Chapters 160-200 as part of the Board's rule review, repeal of Chapter 167 in its entirety is more efficient than proposing multiple amendments to make the required changes.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the proposed repeals are in effect, the public benefit anticipated as a result of enforcing these proposed sections will be to remove redundant language from rules, simplify the rules, and make the rules easier to understand.

Mr. Freshour has also determined that for the first five-year period these proposed repeals are in effect, there will be no fiscal impact or effect on government growth as a result of enforcing the proposed sections.

Mr. Freshour has also determined that for the first five-year period these proposed repeals are in effect there will be no probable economic cost to individuals required to comply with these proposed sections.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for these proposed repeals and determined that for each year of the first five years these proposed repeals there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of these proposed repeals and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years these proposed repeals are in effect:

(1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering these proposed repeals;

(2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering these proposed repeals;

(3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering these proposed repeals; and

(4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering these proposed repeals.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years these proposed repeals will be in effect, there will be no effect on local economy and local employment.

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

(1) These proposed repeals do not create or eliminate a government program.

(2) Implementation of these proposed repeals does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of these proposed repeals does not require an increase or decrease in future legislative appropriations to the agency.

(4) These proposed sections do not require an increase or decrease in fees paid to the agency.

(5) These proposed repeals do not create new regulations.

(6) These proposed repeals do repeal existing regulations as described above.

(7) These proposed repeals do not increase the number of individuals subject to the sections' applicability.

(8) These proposed repeals do not positively or adversely affect this state's economy.

Comments on the Repeal may be submitted using this link: <https://forms.office.com/g/DibuGXnyfE>. A public hearing will be held at a later date. Comments on the proposal will be accepted for 30 days following publication.

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for re-adoption, re-adoption with amendments, or repeal every four years.

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

§167.1. *Reinstatement or Reissuance of Medical License Following Suspension or Revocation.*

§167.2. *Procedure for Requests for Reinstatement.*

§167.3. *Disposition of Application for Request for Reissuance of a Revoked License.*

§167.4. *Best Interests of the Public.*

§167.5. *Best Interests of Physician.*

§167.6. *Final Action.*

§167.7. *Judicial Review.*

§167.8. *Certain Persons Ineligible for Reinstatement or Reissuance of License.*

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

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Scott Freshour

General Counsel

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## CHAPTER 168. CRIMINAL HISTORY EVALUATION LETTERS

### 22 TAC §168.1, §168.2

The Texas Medical Board (Board) proposes the repeal of current Chapter 168, concerning Criminal History Evaluation Letters, §168.1 and §168.2.

The Board has determined that due to the extensive reorganization of Chapters 160-200 as part of the Board's rule review, repeal of Chapter 168 in its entirety is more efficient than proposing multiple amendments to make the required changes.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the proposed repeals are in effect, the public benefit anticipated as a result of enforcing these proposed sections will be to remove redundant language from rules, simplify the rules, and make the rules easier to understand.

Mr. Freshour has also determined that for the first five-year period these proposed repeals are in effect, there will be no fiscal impact or effect on government growth as a result of enforcing the proposed sections.

Mr. Freshour has also determined that for the first five-year period these proposed repeals are in effect there will be no probable economic cost to individuals required to comply with these proposed sections.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for these proposed repeals and determined that for each year of the first five years these proposed repeals are in effect there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of these proposed repeals and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the

agency has determined that for each year of the first five years these proposed repeals are in effect:

- (1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering these proposed repeals;
- (2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering these proposed repeals;
- (3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering these proposed repeals; and
- (4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering these proposed repeals.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years these proposed repeals will be in effect, there will be no effect on local economy and local employment.

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

- (1) These proposed repeals do not create or eliminate a government program.
- (2) Implementation of these proposed repeals does not require the creation of new employee positions or the elimination of existing employee positions.
- (3) Implementation of these proposed repeals does not require an increase or decrease in future legislative appropriations to the agency.
- (4) These proposed repeals do not require an increase or decrease in fees paid to the agency.
- (5) These proposed repeals do not create new regulations.
- (6) These proposed repeals do repeal existing regulations as described above.
- (7) These proposed repeals do not increase the number of individuals subject to the sections' applicability.
- (8) These proposed repeals do not positively or adversely affect this state's economy.

Comments on the Repeal may be submitted using this link: <https://forms.office.com/g/DibuGXnyfE>. A public hearing will be held at a later date. Comments on the proposal will be accepted for 30 days following publication.

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for re-adoption, re-adoption with amendments, or repeal every four years.

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

§168.1. *Purpose.*

§168.2. *Criminal History Evaluation Letters.*

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

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Scott Freshour

General Counsel

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## CHAPTER 169. AUTHORITY OF PHYSICIANS TO SUPPLY DRUGS

The Texas Medical Board (Board) proposes the repeal of current Chapter 169, concerning Authority of Physicians to Supply Drugs, §§169.1 - 169.8.

The Board also proposes new Chapter 169, concerning Delegation. This includes new Subchapter A, concerning Definitions and General Provisions, §169.1 and §169.2; Subchapter B, concerning Physician Assistants and Advanced Practice Registered Nurses, §169.5; Subchapter C, concerning Emergency Medical Services, §§169.10 - 169.15; Subchapter D, concerning Pharmacists, §169.20; and Subchapter E, concerning Other Delegated Acts, §§169.25 - 169.28.

Also, the Board contemporaneously proposes the repeal of current Chapter 193, concerning Standing Delegation Orders, §§193.1 - 193.13, and current Chapter 197, concerning Emergency Medical Services, §§197.1 - 197.7.

The Board has determined that due to the extensive reorganization of Chapters 160-200, repeal of Chapter 169 is more efficient than proposing multiple amendments to make the required changes.

The proposed new subchapters and section are as follows:

### SUBCHAPTER A. DEFINITIONS AND GENERAL PROVISIONS.

New §169.1, Definitions, explains words and terms used in new Chapter 169.

New §169.2, General Responsibilities of Delegating Physician, explains what is required of a physician delegating any medical act.

### SUBCHAPTER B. PHYSICIAN ASSISTANTS AND ADVANCED PRACTICE REGISTERED NURSES.

New §169.5, Delegation to a Physician Assistant or Advanced Practice Registered Nurse, explains requirements for a physician delegating medical acts to a physician assistant or an advanced practice registered nurse.

### SUBCHAPTER C. EMERGENCY MEDICAL SERVICES.

New §169.10, Definitions, explains the resources for definitions of words and terms used in Subchapter C of new Chapter 169, as applied to physician supervision of emergency medical service (EMS) personnel.

New §169.11, Medical Supervision, explains the statutory authority physicians providing medical control and medical supervision of EMS providers must adhere to.

New §169.12, Medical Director Qualifications, explains the requirements for a physician to be a medical director of EMS services.

New §169.13, Medical Director Responsibilities, explains the responsibilities of a physician acting as medical director of EMS services.

New §169.14, Limits on Off-Line Medical Control, explains the limit on the number of EMS providers an off-line medical director may supervise.

New §169.15, Other Physician Presence at Medical Emergency, explains how care should be provided by another physician, other than an EMS medical director, at the scene of an emergency.

#### SUBCHAPTER D. PHARMACISTS.

New §169.20, General Standards, explains the general standards expected when a physician delegates to a licensed pharmacist in Texas. Drug therapy management, immunizations, and vaccinations may be authorized by the physician to be performed by the pharmacist under an order, standing medical order, standing delegation order, or protocol.

#### SUBCHAPTER E. OTHER DELEGATED ACTS.

New §169.25, Other Delegation, explains that delegation is required for non-surgical cosmetic procedures and other medical practices involving administration of other substances for human consumption.

New §169.26, General Standards, explains the responsibilities relating to the delegating physician for other medical procedures.

New §169.27, Physician Responsibilities related to Written Order, explains minimum requirements for orders provided to a non-physician performing delegated acts involving administration of substances for human consumption.

New §169.28, Notice and Identification Provisions, explains notice and identification requirements when performing these other delegated acts.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the proposed repeals and new sections are in effect, the public benefit anticipated as a result of enforcing these proposed sections will be to remove redundant language in the rules, simplify the rules, and make the rules easier to understand.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect, there will be no fiscal impact or effect on government growth as a result of enforcing the proposed sections.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect there will be no probable economic cost to individuals required to comply with these proposed sections.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for these proposed repeals and new sections and determined that for each year of the first five years these proposed repeals and new sections will be in effect there will be no effect on small businesses, micro businesses, or rural communities. The agency has con-

sidered alternative methods of achieving the purpose of these proposed repeals and new sections and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years these proposed repeals and new sections are in effect:

(1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering these proposed repeals and new sections;

(2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections;

(3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections; and

(4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering these proposed repeals and new sections.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years these proposed repeals and new sections will be in effect, there will be no effect on local economy and local employment.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for these proposed repeals and new sections. For each year of the first five years these proposed repeals and new sections will be in effect, Mr. Freshour has determined the following:

(1) These proposed repeals and new sections do not create or eliminate a government program.

(2) Implementation of these proposed repeals and new sections does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of these proposed repeals and new sections does not require an increase or decrease in future legislative appropriations to the agency.

(4) These proposed sections do not require an increase or decrease in fees paid to the agency.

(5) These proposed repeals and new sections do not create new regulations.

(6) These proposed repeals and new sections do repeal existing regulations as described above. These proposed new sections do not expand or limit an existing regulation.

(7) These proposed repeals and new sections do increase the number of individuals subject to the sections' applicability.

(8) These proposed repeals and new sections do not positively or adversely affect this state's economy.

Comments on the proposal may be submitted using this link: <https://forms.office.com/g/9LtjNnzmD>. A public hearing will be held at a later date. Comments on the proposal will be accepted for 30 days following publication.

#### **22 TAC §§169.1 - 169.8**

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-

laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for reoption, reoption with amendments, or repeal every four years.

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

§169.1. *Purpose.*

§169.2. *Definitions.*

§169.3. *Administration of Drugs.*

§169.4. *Providing, Dispensing, or Distributing Drugs.*

§169.5. *Exceptions.*

§169.6. *Administration or Provision of Drugs in Licensed Facilities.*

§169.7. *Record Keeping.*

§169.8. *Policy.*

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

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Scott Freshour

General Counsel

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For further information, please call: (512) 305-7030



## CHAPTER 169. DELEGATION

### SUBCHAPTER A. DEFINITIONS AND GENERAL PROVISIONS

#### 22 TAC §169.1, §169.2

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. Additionally, the new rules are also proposed in accordance with Texas Occupations Code, Chapter 157 (concerning Authority of Physician to Delegate Certain Medical Acts) and Chapter 158 (concerning Authority of Physician to Provide Certain Drugs and Supplies). The new rules are also proposed in accordance with the requirements of the Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for reoption, reoption with amendments, or repeal every four years.

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

§169.1. *Definitions.*

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

(1) Administer--To directly apply a prescription drug to the body of a patient by any means, including injection, inhalation, or ingestion, by a physician or an individual acting under the delegation and supervision of a physician.

(2) Controlled substance--A substance, including a drug, an adulterant, and a dilutant, listed in and as described under the Texas Health and Safety Code, Chapter 481 (Texas Controlled Substances Act). The term includes the aggregate weight of any mixture, solution, or other substance containing a controlled substance.

(3) Dangerous drug--A device or a drug that is unsafe for self-medication and that is not included in the Texas Health and Safety Code, Chapter 481 (Texas Controlled Substances Act). The term includes a device or a drug that bears or is required to bear the legend: "Caution: federal law prohibits dispensing without prescription."

(4) Device--Means an instrument, apparatus, or contrivance, or a component, part, or accessory of an instrument, apparatus, or contrivance, that is designed or intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or that is designed or intended to affect the structure or any function of the body of a human.

(5) Drug therapy management--The performance of patient specific acts by pharmacists as authorized by a physician through a written protocol. Drug therapy management does not include the selection of drug products not prescribed by the physician unless the drug product is named in the physician-initiated protocol.

(6) Human consumption--The injection, inhalation, ingestion, or application of a substance to or into a human body.

(7) Medication order--An order from a practitioner or a practitioner's designated agent for administration of a drug or device, as defined by §551.003 of the Occupations Code, or an order from a practitioner to dispense a drug to a patient in a hospital for immediate administration while the patient is in the hospital or for emergency use on the patient's release from the hospital, as defined by Texas Health and Safety Code, §481.002.

(8) Midlevel practitioner--A physician assistant or advanced practice registered nurse.

(9) Nonprescription drug--A nonnarcotic drug or device that may be sold without a prescription and that is labeled and packaged in compliance with state and federal law.

(10) Prescribe or order a drug or device--Prescribing or ordering a drug or device, including the issuing of a prescription drug order or medication order.

(11) Prescription medical device--A device that the federal Food and Drug Administration has designated as a prescription medical device and can be sold only to persons with prescriptive authority in the state in which they reside.

(12) Protocols--Written authorization delegating authority to initiate medical aspects of patient care, including delegation of the act of prescribing or ordering a drug or device at a facility-based practice. Prescriptive authority agreements may reference or include the terms of a protocol(s).

(13) Standing delegation order--Written instructions, orders, rules, or procedures designed for a patient population with specific diseases, disorders, health problems, or sets of symptoms. This type of order provides a general set of conditions and circumstances when action can be instituted prior to being examined or evaluated by a physician. Standing delegation orders may permit the administering or providing of the following types of dangerous drugs if specifically ordered by or using a pre-signed prescription from the delegating physician:

(A) oral contraceptives;

(B) diaphragms and contraceptive creams and jellies;



- (C) topical anti-infectives for vaginal use;
- (D) oral anti-parasitic drugs for treatment of pinworms;
- (E) topical anti-parasitic drugs;
- (F) antibiotic drugs for treatment of venereal disease; or
- (G) immunizations.

(14) Standing medical orders--Generally applicable orders, which are used as a guide in preparation for and carrying out medical acts or surgical procedures or both after patients have been evaluated by the physician or midlevel provider under delegation.

(15) Written protocol --A physician's order, standing medical order, standing delegation order, or other physician order or protocol.

§169.2. General Responsibilities of Delegating Physician.

(a) When delegating any medical act, a delegating physician must comply with Chapter 157 of the Act. Delegation must be through written protocols or prescriptive authority agreements depending on the type of delegate and the medical acts being delegated.

(b) General standards for Standing Delegation Orders, Standing Medical Orders, and Protocols require:

- (1) development and approval by the delegating physician or in accordance with facility bylaws and policies;
- (2) the order or protocol to be in writing and signed by the delegating physician;
- (3) a description of the specific instructions, orders, protocols, or procedures to be followed;
- (4) a notation of the level of supervision required, unless specified by other law;
- (5) plans for addressing patient emergencies;
- (6) annual review signed by the delegating physician; and
- (7) maintenance at the facility or practice site.

(c) These requirements may be different or modified as set out in the specific subchapters below. The specific provisions in a subchapter control over the general standards.

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

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**SUBCHAPTER B. PHYSICIAN ASSISTANTS AND ADVANCED PRACTICE REGISTERED NURSES**

**22 TAC §169.5**

The new rule is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. Additionally, the new rules are also proposed in accordance with Texas Occupations Code, Chapter 157 (concerning Authority of Physician to Delegate Certain Medical Acts) and Chapter 158 (concerning Authority of Physician to Provide Certain Drugs and Supplies). The new rules are also proposed in accordance with the requirements of the Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years.

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

§169.5. Delegation to a Physician Assistant or Advanced Practice Registered Nurse.

(a) When delegating to a physician assistant or an advanced practice registered nurse, a physician must comply with Chapter 157 of the Act.

(b) In accordance with §157.0511(b-2), a delegating physician must register with the board the following information within 30 calendar days of the delegation:

- (1) the name and license number of the physician assistant or advanced practice registered nurse;
- (2) the beginning date of the delegation; and
- (3) the location(s) where the delegate(s) practice.

(c) The delegating physician must notify the board in writing of the termination of delegation authority within 30 calendar days of termination. Any party to the agreement may submit the notice of termination.

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

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**SUBCHAPTER C. EMERGENCY MEDICAL SERVICES**

**22 TAC §§169.10 - 169.15**

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. Additionally, the new rules are also proposed in accordance with Texas Occupations Code, Chapter 157 (concerning Authority of Physician to Delegate Certain Medical Acts) and Chapter 158 (concerning Authority of Physician to Provide Certain Drugs and Supplies). The new rules are also proposed in accordance with

the requirements of the Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for re-adoption, re-adoption with amendments, or repeal every four years.

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

§169.10. Definitions.

The definitions found in the Health and Safety Code, Chapter 773, and Title 25, Texas Administrative Code, Chapter 157, including medical control, medical direction, medical oversight, medical supervision, and off-line medical direction, apply to physician supervision of emergency medical service (EMS) personnel under this subchapter.

§169.11. Medical Supervision.

Physicians providing medical control and medical supervision of emergency medical service (EMS) providers are subject to Chapter 157 of the Act and the board rules related to physician supervision and delegation.

§169.12. Medical Director Qualifications.

(a) In addition to holding an active Texas medical license, a medical director must meet all applicable standards as set forth in Title 25, Texas Administrative Code, Chapter 157 (related to Emergency Medical Care) for the emergency medical service (EMS) services being provided, training, education, and other delineated responsibilities.

(b) A medical director must complete one of the following requirements:

(1) a minimum of 12 hours of formal continuing medical education (CME), in the area of EMS medical direction within two years of initial notification to the Board of becoming a medical director;

(2) board certification in Emergency Medical Services by either the American Board of Medical Specialties or American Osteopathic Association; or

(3) a Texas Department of State Health Services (DSHS) approved EMS medical director course.

(c) A medical director must complete one hour of formal CME in the area of EMS medical direction in each subsequent biennial renewal of the registration.

§169.13. Medical Director Responsibilities.

A Medical Director must:

(1) register with the board on an approved form and provide all required documentation requested;

(2) review, approve, and sign protocols and/or standing delegation orders of emergency medical service (EMS) providers regarding:

(A) prehospital care, to be provided by EMS personnel;

(B) patient transport standards (voluntary and involuntary);

(C) criteria for selection of a patient's destination; and

(D) standard of care to be provided, patient care incidents, patient complaints, and deviations from established protocols.

(3) assist in developing, implementing, and revising protocols and/or standing delegation orders, as appropriate; and

(4) monitor compliance with protocols and standing orders by EMS providers.

§169.14. Limits on Off-Line Medical Control.

(a) If the medical control is provided as an off-line medical director, the medical director may not supervise more than 20 emergency medical service (EMS) providers unless a written request for a waiver is submitted to the board on the board approved form.

(b) Once received, the board will forward the waiver request to the Texas Department of State Health Services (DSHS). If approved, the board will update the registration as appropriate.

§169.15. Other Physician Presence at Medical Emergency.

(a) In the event a physician who is not the medical director is present at the scene of an emergency, the care provided by that physician must be appropriate for the circumstances.

(b) The medical director and physician present must communicate and coordinate care as appropriate under the circumstances.

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

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## SUBCHAPTER D. PHARMACISTS

### 22 TAC §169.20

The new rule is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. Additionally, the new rules are also proposed in accordance with Texas Occupations Code, Chapter 157 (concerning Authority of Physician to Delegate Certain Medical Acts) and Chapter 158 (concerning Authority of Physician to Provide Certain Drugs and Supplies). The new rules are also proposed in accordance with the requirements of the Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for re-adoption, re-adoption with amendments, or repeal every four years.

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

§169.20. General Standards.

(a) In accordance with §157.001 and §157.101 of the Act, a physician licensed to practice medicine in Texas may delegate to a properly qualified and trained pharmacist acting under adequate supervision the performance of specific acts of drug therapy management, immunizations and vaccinations authorized by the physician through the physician's order, standing medical order, standing delegation order, other order, or protocol.

(b) A written protocol or order for drug therapy management must contain at a minimum:

(1) the identity of the physician and the pharmacist engaging in drug therapy management;

(2) the condition requiring drug therapy;

(3) the drugs to be used drug therapy management authorized, including allowing generically equivalent drug selection unless otherwise indicated; and

(4) the procedures, decision criteria, or plan the pharmacist shall follow when exercising drug therapy management authority, including maintaining a record for each patient.

(c) A written protocol or order for immunizations and vaccination must contain at a minimum:

(1) the location(s) at which the pharmacist may administer immunizations or vaccinations;

(2) the immunizations or vaccinations that may be administered;

(3) procedures to follow when administering immunizations or vaccinations including:

(A) a requirement that if the patient is under 14 years of age, they have a physician referral;

(B) procedures if adverse reactions occur; and

(C) a requirement to report to the delegating physician the administration of the immunization or vaccination within 24 hours after administration.

(D) A periodic review and update, if necessary, of a written protocol for drug therapy management, immunizations, and vaccinations are required.

(E) A physician who provides care to persons over 65 years of age must comply with Chapter 161.0052 of the Texas Health and Safety Code regarding pneumococcal and influenza vaccines.

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

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## SUBCHAPTER E. OTHER DELEGATED ACTS

### 22 TAC §§169.25 - 169.28

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. Additionally, the new rules are also proposed in accordance with Texas Occupations Code, Chapter 157 (concerning Authority of Physician to Delegate Certain Medical Acts) and Chapter 158 (concerning Authority of Physician to Provide Certain Drugs and Supplies). The new rules are also proposed in accordance with the requirements of the Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years.

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

#### §169.25. Other Delegation.

(a) In accordance with §157.001 of the Act, the board determined the following to be the practice of medicine and such medical acts can be properly delegated and supervised:

(1) nonsurgical medical cosmetic procedures, including but not limited to the injection of medication or substances for cosmetic purposes, the administration of colonic irrigations, and the use of a prescription medical device for cosmetic purposes; and

(2) using a device to administer for human consumption a nonprescription drug, dangerous drug, or controlled substance.

(b) This does not include those delegations specifically authorized and described in Chapter 157 of Act or to procedures performed at a physician's practice by the physician or midlevel practitioners acting under the physician's supervision.

#### §169.26. General Standards.

(a) The delegating physician must ensure the individual performing these medical acts:

(1) has appropriate training regarding:

(A) techniques for the delegated act including pre-procedural care, post-procedural care, and infectious disease control;

(B) contraindications for the delegated act; and

(C) recognition and acute management of potential complications; and

(2) signs and dates a written protocol.

(b) A physician must either be appropriately trained or be familiar with and able to perform the delegated medical act according to the standard of care;

(c) Prior to performance of the delegated act, a physician, or a midlevel practitioner acting under the delegation of a physician, must:

(1) establish a practitioner-patient relationship;

(2) complete and maintain an adequate medical record in accordance with Chapter 163 of this title;

(3) disclose the identity and title of the individual who will perform the delegated act; and

(4) ensure at least one person trained in basic life support is present while the patient is onsite.

(d) A physician or midlevel practitioner must either:

(1) be onsite during the procedure; or

(2) be immediately available for emergency consultation in the event of an adverse outcome; and

(3) if necessary, the physician must be able to conduct an emergency appointment with the patient.

#### §169.27. Physician Responsibilities Related to Written Order.

(a) A physician may delegate acts under this subsection only if the physician has either:

(1) reviewed and approved in writing the business' or facility's existing written order; or

(2) developed their own written orders for the delegated acts.

(b) The written order must include:

(1) the identity of the delegating physician responsible for the delegation of the procedure;

(2) selection criteria for screening patients;

(3) a description of appropriate care; and

(4) procedures for common complications, serious injuries, or emergencies, including communication or feedback to the delegating physician or midlevel practitioner.

§169.28. Notice and Identification Provisions.

(a) Any individual, business, or facility providing any of the delegated acts under this subsection must post the following in each public area and treatment room:

(1) the notice of how to file a complaint with the board required under §177.2 of this title (relating to Mandatory Complaint Notification); and

(2) the name(s) of the delegating physician(s) including their Texas medical license number.

(b) Each person performing a delegated act under this subsection must be readily identified by a name tag or similar means that clearly delineates the identity and credentials of the person.

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

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## CHAPTER 170. PRESCRIPTION OF CONTROLLED SUBSTANCES

The Texas Medical Board (Board) proposes the repeal of current Chapter 170, concerning Prescription of Controlled Substances. This includes Subchapter A, concerning Pain Management, §§170.1 - 170.3; Subchapter B, concerning Utilization of Opioid Antagonists, §§170.4 - 170.8; Subchapter C, concerning Prescription Monitoring Program Check, §170.9; and Subchapter D, concerning Electronic Prescribing of Controlled Substances, §170.10.

The Board also proposes new Chapter 170, concerning Standards for Use of Investigational Agents. This includes new Subchapter A, concerning Standards for Use of Investigational Drugs, Biological Products, or Devices, §170.1, and Subchapter B, concerning Investigational Stem Cell Treatments for Patients with Certain Severe Chronic Diseases or Terminal Illnesses, §170.5 and §170.6.

Also, the Board contemporaneously proposes the repeal of current Chapter 198, concerning Standards For Use of Investigational Agents. This includes Subchapter A, concerning Standards For Use of Investigational Drugs, Biological Products, Or Devices, §§198.1 - 198.4; and Subchapter B, concerning Investi-

gational Stem Cell Treatments For Patients With Certain Severe Chronic Diseases Or Terminal Illnesses, §198.5 and §198.6.

The Board has determined that due to the extensive reorganization of Chapters 160-200, repeal of Chapter 170 is more efficient than proposing multiple amendments to make the required changes.

The proposed new subchapters and sections are as follows:

### SUBCHAPTER A. STANDARDS FOR USE OF INVESTIGATIONAL DRUGS, BIOLOGICAL PRODUCTS, OR DEVICES.

New §170.1, General Standards for Use of Investigational Agents, explains the standards required of a physician who administers or provides for the use of investigational agents, drugs, biological products, or devices.

### SUBCHAPTER B. INVESTIGATIONAL STEM CELL TREATMENTS FOR PATIENTS WITH CERTAIN SEVERE CHRONIC DISEASES OR TERMINAL ILLNESSES.

New §170.5, General Standards for the Use of Investigational Stem Cell Treatments for Patients with Severe Chronic Diseases or Terminal Illnesses, explains the standard required of a physician who administers or provides for the use of Investigational Stem Cell treatments in patients.

New §170.6, Annual Reporting of Clinical Trial of Investigational Stem Cell Treatments, outlines reports required to be submitted to the board by IRBs overseeing clinical trials of investigational stem cell treatments.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the proposed repeals and new sections are in effect, the public benefit anticipated as a result of enforcing these proposed repeals and new sections will be to remove redundant language from rules, simplify the rules, and make the rules easier to understand.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect, there will be no fiscal impact or effect on government growth as a result of enforcing the proposed sections.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect there will be no probable economic cost to individuals required to comply with these proposed sections.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for these proposed repeals and new sections and determined that for each year of the first five years these proposed repeals and new sections will be in effect there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of these proposed repeals and new sections and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years these proposed repeals and new sections are in effect:

(1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering these proposed repeals and new sections;

(2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections;

(3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections; and

(4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering these proposed repeals and new sections.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years these proposed repeals and new sections will be in effect, there will be no effect on local economy and local employment.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for these proposed repeals and new sections. For each year of the first five years these proposed repeals and new sections will be in effect, Mr. Freshour has determined the following:

(1) These proposed repeals and new sections do not create or eliminate a government program.

(2) Implementation of these proposed repeals and new sections does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of these proposed repeals and new sections does not require an increase or decrease in future legislative appropriations to the agency.

(4) These proposed sections do not require an increase or decrease in fees paid to the agency.

(5) These proposed repeals and new sections do not create new regulations.

(6) These proposed repeals and new sections do repeal existing regulations as described above. These proposed new sections do not expand or limit an existing regulation.

(7) These proposed repeals and new sections do not increase the number of individuals subject to the sections' applicability.

(8) These proposed repeals and new sections do not positively or adversely affect this state's economy.

Comments on the proposal may be submitted using this link: <https://forms.office.com/g/dN5CVcxeKm>. A public hearing will be held at a later date. Comments on the proposal will be accepted for 30 days following publication.

## SUBCHAPTER A. PAIN MANAGEMENT

### 22 TAC §§170.1 - 170.3

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years.

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

§170.1. *Purpose.*

§170.2. *Definitions.*

§170.3. *Minimum Requirements for the Treatment of Chronic Pain.*

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

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Scott Freshour

General Counsel

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## SUBCHAPTER B. UTILIZATION OF OPIOID ANTAGONISTS

### 22 TAC §§170.4 - 170.8

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years.

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

§170.4. *Purpose.*

§170.5. *Definitions.*

§170.6. *Opioid Antagonist Prescription Guidelines.*

§170.7. *Liability for Act or Omission with Respect to Prescribing an Opioid Antagonist.*

§170.8. *Documentation.*

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

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## SUBCHAPTER C. PRESCRIPTION MONITORING PROGRAM CHECK

### 22 TAC §170.9

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for re-adoption, readoption with amendments, or repeal every four years.

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

*§170.9. Prescription Monitoring Program Check.*

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

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## SUBCHAPTER D. ELECTRONIC PRESCRIBING OF CONTROLLED SUBSTANCES

### 22 TAC §170.10

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for re-adoption, readoption with amendments, or repeal every four years.

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

*§170.10. Electronic Prescribing of Controlled Substances.*

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

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## CHAPTER 170. STANDARDS FOR USE OF INVESTIGATIONAL AGENTS

## SUBCHAPTER A. STANDARDS FOR USE OF INVESTIGATIONAL DRUGS, BIOLOGICAL PRODUCTS, OR DEVICES

### 22 TAC §170.1

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The new rules are also proposed in accordance with the requirements of the Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for re-adoption, readoption with amendments, or repeal every four years.

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

*§170.1. General Standards for Use of Investigational Agents.*

(a) Pursuant to Chapter 489 of the Texas Health and Safety Code, a physician who administers or provides for the use of investigational drugs, biological products, or devices must:

(1) comply with all applicable state and federal laws and rules;

(2) meet the standard of care;

(3) comply with ethical standards including Declaration of Helsinki and the Belmont Report;

(4) maintain adequate medical records; and

(5) document the proposed investigational agent to be used:

(A) is included in an FDA/NIH approved protocol or study; or

(B) is approved by an Institutional Review Board (IRB) meeting standards under subsection (b) of this section.

(b) The approving IRB must be:

(1) affiliated with an academic setting or a Texas-licensed hospital;

(2) accredited by the Association for the Accreditation of Human Research Protection Programs, Inc.

(3) registered by the U.S. Department of Health and Human Services Office for Human Research Protection, pursuant to 21 CFR Part 56; or

(4) accredited by a national accrediting organization recognized by the board.

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

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## SUBCHAPTER B. INVESTIGATIONAL STEM CELL TREATMENTS FOR PATIENTS WITH CERTAIN SEVERE CHRONIC DISEASES OR TERMINAL ILLNESSES

### 22 TAC §170.5, §170.6

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The new rules are also proposed in accordance with the requirements of the Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years.

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

§170.5. General Standards for the Use of Investigational Stem Cell Treatments for Patients with Certain Severe Chronic Diseases or Terminal Illnesses.

In accordance with Chapter 1003 of the Texas Health and Safety Code, physicians who administer or provide for the use of investigational stem cell treatments must:

- (1) comply with all applicable state and federal laws and rules;
- (2) be certified to administer stem cell in accordance with §1003.055 of the Texas Health and Safety Code;
- (3) ensure the patient is enrolled in a clinical trial investigating the use of adult stem cells in humans;
- (4) maintain adequate medical records including documentation of the patient's qualifying severe chronic disease or terminal illness;
- (5) obtain a signed written informed consent including the patient eligibility determination found in §1003.053(2)(a) of the Texas Health and Safety Code; and
- (6) provide stem cells in a qualifying facility.

§170.6. Annual Reporting of Clinical Trial of Investigational Stem Cell Treatments.

(a) In accordance with Chapter 1003 of the Texas Health and Safety Code, each IRB overseeing clinical trials of investigational stem cell treatments must submit an annual report to the board that:

- (1) sets forth the study's current findings;
- (2) specifies the number of patients participating in the trial(s);
- (3) documents the treatment results for patients, as applicable;
- (4) generally describes the effects of the treatments including all adverse events;
- (5) outlines the study's findings to date;
- (6) identifies the medical school or hospital the IRB is affiliated with;
- (7) provides the location where the patients' treatments were provided in accordance with §1003.055 of the Texas Health and Safety Code; and

(8) includes the names of all physicians certified by the IRB or the affiliated entity and the time-period of that certification.

(b) The annual report shall not include any patient identifying information.

(c) The annual report shall cover the time period beginning September 1 and ending on August 31.

(d) The report must be submitted to the board before the end of the calendar year in which the reporting time period ends.

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

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## CHAPTER 171. POSTGRADUATE TRAINING PERMITS

The Texas Medical Board (Board) proposes the repeal of current Chapter 171, concerning Postgraduate Training Permits, §§171.1 - 171.6.

The Board also proposes new Chapter 171, concerning New Complementary and Alternative Medicine Standards, §171.1 and §171.2.

Also, the Board contemporaneously proposes the repeal of current Chapter 200, concerning Standards For Physicians Practicing Complementary And Alternative Medicine, §§200.1 - 200.3.

The Board has determined that due to the extensive reorganization of Chapters 160-200, repeal of Chapter 171 is more efficient than proposing multiple amendments to make the required changes.

The proposed new sections are as follows:

New §171.1, Definitions, defines terms used in the chapter.

New §171.2, Required Consent and Disclosure, details the required written consent and disclosure form required prior to the patient's treatment by the physician using complementary or alternative medicine.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the proposed repeals and new sections are in effect, the public benefit anticipated as a result of enforcing these proposed sections will be to remove redundant language from rules, simplify the rules, and make the rules easier to understand.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect, there will be no fiscal impact or effect on government growth as a result of enforcing the proposed sections.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect there

will be no probable economic cost to individuals required to comply with these proposed sections.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for these proposed repeals and new sections and determined that for each year of the first five years these proposed repeals and new sections will be in effect there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of these proposed repeals and new sections and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years these proposed repeals and new sections are in effect:

(1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering these proposed repeals and new sections;

(2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections;

(3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections; an

(4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering these proposed repeals and new sections.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years these proposed repeals and new sections will be in effect, there will be no effect on local economy and local employment.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for these proposed repeals and new sections. For each year of the first five years these proposed repeals and new sections will be in effect, Mr. Freshour has determined the following:

(1) These proposed repeals and new sections do not create or eliminate a government program.

(2) Implementation of these proposed repeals and new sections does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of these proposed repeals and new sections does not require an increase or decrease in future legislative appropriations to the agency.

(4) These proposed sections do not require an increase or decrease in fees paid to the agency.

(5) These proposed repeals and new sections do not create new regulations.

(6) These proposed repeals and new sections do repeal existing regulations as described above. These proposed new sections do not expand or limit an existing regulation.

(7) These proposed repeal and new sections do not increase the number of individuals subject to the sections' applicability.

(8) These proposed repeals and new sections do not positively or adversely affect this state's economy.

Comments on the proposal may be submitted using this link: <https://forms.office.com/g/sytKBdXtLz>. A public hearing will be held at a later date. Comments on the proposal will be accepted for 30 days following publication.

## 22 TAC §§171.1 - 171.6

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for re-adoption, re-adoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this proposal.

§171.1. *Purpose.*

§171.2. *Construction.*

§171.3. *Physician-in-Training Permits.*

§171.4. *Board Approved Fellowships.*

§171.5. *Duties of PIT Holders to Report.*

§171.6. *Duties of Program Directors to Report.*

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

Filed with the Office of the Secretary of State on September 9, 2024.

TRD-202404258

Scott Freshour

General Counsel

Texas Medical Board

Earliest possible date of adoption: October 27, 2024

For further information, please call: (512) 305-7030



## CHAPTER 171. NEW COMPLEMENTARY AND ALTERNATIVE MEDICINE STANDARDS

### 22 TAC §171.1, §171.2

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The new rules are also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for re-adoption, re-adoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this proposal.

§171.1. *Definitions.*

The following words and terms, when used in this chapter, shall have the following meanings, unless the contents clearly indicate otherwise

(1) Alternative medicine--methods of diagnosis, treatment, or interventions that are not generally considered as conventional treatment or medicine and may or may not be regulated by the FDA. These



treatments may be offered for potential for therapeutic gain that are not unreasonably outweighed by the risk of such methods.

(2) Complementary medicine--the use of a combination of conventional medicine and some form of alternative medicine.

(3) Conventional medicine--methods of diagnosis, treatment, or interventions are generally considered routine treatments and medicine by the majority of licensed physicians.

(4) Off-label usage--use of an FDA approved drug, treatment, or device in a manner that has not been approved, or proven safe and effective, by the FDA or to treat a disease or medical condition for which it is being offered. Off-label use may be alternative, complementary, or conventional medicine.

§171.2. Required Consent and Disclosure.

(a) Prior to providing any complementary or alternative drug, treatment, device, or intervention, the physician and patient must review and execute the below disclosure and consent form. The fully-executed form must be included in the patient's medical records. Other than translation into another language or format for the patient, this form may not be changed, modified, or altered in any manner other than by adding additional pages with supplemental information as necessary.

(b) The physician practicing complementary and alternative medicine must follow all statutes and rules including requirements for maintaining adequate medical records. Physicians must also document and maintain within the medical record the information either as set forth in the form below or in an alternate format that contains at least the information requested in the form below:

Figure: 22 TAC §171.2(b)

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

Filed with the Office of the Secretary of State on September 9, 2024.

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Scott Freshour

General Counsel

Texas Medical Board

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For further information, please call: (512) 305-7030



## CHAPTER 172. TEMPORARY AND LIMITED LICENSES

The Texas Medical Board (Board) proposes the repeal of current Chapter 172, concerning Temporary and Limited Licenses. This includes Subchapter A, concerning General Provisions and Definitions, §172.1 and §172.2; Subchapter B, concerning Temporary Licenses, §§172.3 - 172.11; Subchapter C, concerning Limited Licenses, §§172.12, 172.13, 172.15 - 172.19; Subchapter D, concerning Disaster Emergency Rule, §172.20 and §172.21.

The Board also proposes new Chapter 172, concerning Pain Management Clinics, §§172.1 - 172.5.

Also the Board contemporaneously proposes the repeal of current Chapter 195, concerning Pain Management Clinics, §§195.1 - 195.5.

The Board has determined that due to the extensive reorganization of Chapters 160-200, repeal of Chapter 172 is more efficient than proposing multiple amendments to make the required changes.

The proposed new sections are as follows:

New §172.1, Definitions, defines the various forms of pain that implicates need of Pain Management Clinic Registration.

New §172.2, Gold Designated Practice, explains the eligibility criteria and application process for the Gold Practice designation.

New §172.3, Certification of a Pain Management Clinic, explains which clinics must register as a Pain Management Clinic and the procedures and information needed for processing certificate applications.

New §172.4, Minimum Operational Standards, explains minimum standards for any physician treating a pain patient.

New §172.5, Audits, Inspections, and Investigations, explains the board's regulatory actions of audits, inspections, and investigations. It details the information requested and the process followed by the board during these actions.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the proposed repeals and new sections are in effect, the public benefit anticipated as a result of enforcing these proposed sections will be to remove redundant language from rules, simplify the rules, and make the rules easier to understand.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect, there will be no fiscal impact or effect on government growth as a result of enforcing the proposed sections.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect there will be no probable economic cost to individuals required to comply with these proposed sections.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for these proposed repeals and new sections and determined that for each year of the first five years these proposed repeals and new sections will be in effect there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of these proposed repeals and new sections and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years these proposed repeals and new sections are in effect:

(1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering these proposed repeals and new sections;

(2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections;

(3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections; and

(4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering these proposed repeals and new sections.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years these proposed repeals and new sections will be in effect, there will be no effect on local economy and local employment.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for these proposed repeals and new sections. For each year of the first five years these proposed repeal and new sections will be in effect, Mr. Freshour has determined the following:

- (1) These proposed repeals and new sections do not create or eliminate a government program.
- (2) Implementation of these proposed repeals and new sections does not require the creation of new employee positions or the elimination of existing employee positions.
- (3) Implementation of these proposed repeals and new sections does not require an increase or decrease in future legislative appropriations to the agency.
- (4) These proposed sections do not require an increase or decrease in fees paid to the agency.
- (5) These proposed repeals and new sections do not create new regulations.
- (6) These proposed repeals and new sections do repeal existing regulations as described above. These proposed new sections do not expand or limit an existing regulation.
- (7) These proposed repeals and new sections do not increase the number of individuals subject to the sections' applicability.
- (8) These proposed repeals and new sections do not positively or adversely affect this state's economy.

Comments on the proposal may be submitted using this link: <https://forms.office.com/g/7RY3QA7SbK>. A public hearing will be held at a later date. Comments on the proposal will be accepted for 30 days following publication.

## SUBCHAPTER A. GENERAL PROVISIONS AND DEFINITIONS

### 22 TAC §§172.1, §172.2

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years.

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

§172.1. *Purpose.*

§172.2. *Construction and Definitions.*

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

Filed with the Office of the Secretary of State on September 9, 2024.

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Scott Freshour

General Counsel

Texas Medical Board

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For further information, please call: (512) 305-7030



## SUBCHAPTER B. TEMPORARY LICENSES

### 22 TAC §§172.3 - 172.11

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years.

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

§172.3. *Distinguished Professors Temporary License.*

§172.4. *State Health Agency Temporary License.*

§172.5. *Visiting Physician Temporary Permit.*

§172.6. *Visiting Professor Temporary License.*

§172.7. *National Health Service Corps Temporary License.*

§172.8. *Faculty Temporary License.*

§172.9. *Postgraduate Research Temporary License.*

§172.10. *Department of State Health Services Medically Underserved Area (DSHS-MUA) Temporary License.*

§172.11. *Temporary Licensure--Regular.*

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

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Scott Freshour

General Counsel

Texas Medical Board

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For further information, please call: (512) 305-7030



## SUBCHAPTER C. LIMITED LICENSES

### 22 TAC §§172.12, 172.13, 172.15 - 172.19

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with

the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for reoption, reoption with amendments, or repeal every four years.

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

§172.12. *Out-of-State Telemedicine License.*

§172.13. *Conceded Eminence.*

§172.15. *Public Health License.*

§172.16. *Provisional Licenses for Medically Underserved Areas.*

§172.17. *Limited License for Practice of Administrative Medicine.*

§172.18. *Military Limited Volunteer License.*

§172.19. *Sports Team Physician Limited License.*

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

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## SUBCHAPTER D. DISASTER EMERGENCY RULE

### 22 TAC §172.20, §172.21

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for reoption, reoption with amendments, or repeal every four years.

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

§172.20. *Physician Practice and Limited License for Disasters and Emergencies.*

§172.21. *Other Health Care Providers Practice and Limited License for Disasters and Emergencies.*

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

Filed with the Office of the Secretary of State on September 13, 2024.

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General Counsel

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## CHAPTER 172. PAIN MANAGEMENT CLINICS

### 22 TAC §§172.1 - 172.5

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The new rules are also proposed in accordance with the requirements of Chapter 168 of the Texas Occupations Code. The new rules are also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for reoption, reoption with amendments, or repeal every four years.

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

#### §172.1. *Definitions.*

Pain management clinics at which a majority of patients are treated for chronic pain are subject to Chapter 168 of the Act, unless otherwise exempted. In determining if the clinic is treating a majority of patients for chronic pain, one of the primary indicators is the prescribing of opioids. The board will utilize the following definitions in making that determination:

(1) Acute pain--the normal, predicted, physiological response to a stimulus such as trauma, disease, and operative procedures. Acute pain is time limited to no later than 30 days from the date of the initial prescription for opioids during a period of treatment related to the acute condition or injury. Acute pain does not include, chronic pain, pain being treated as part of cancer care; pain being treated as part of hospice or other end-of-life care; pain being treated as part of palliative care; or post-surgical, post-procedure, or persistent non-chronic pain.

(2) Chronic pain--pain that is not relieved with acute, post-surgical, post-procedure, or persistent non-chronic pain treatment. This type of pain is associated with a chronic pathological process that causes continuous or intermittent pain for no less than 91 days from the date of the initial prescription for opioids. Medical practices treating this type of pain patient may be subject to Chapter 168 of the Act.

(3) Post-surgical, post-procedure, persistent non-chronic pain--pain that occurs due to trauma caused by the surgery or procedure; or an underlying condition, disease, or injury causing persistent non-chronic pain. These types of pain last 90 days or less, but more than 30 days, from the date of initial prescriptions for opioids during a period of treatment.

#### §172.2. *Gold Designated Practice.*

(a) A clinic may apply to be designated as a "Gold Designated Practice." In order to be eligible for a "Gold Designated Practice" status, a clinic must:

(1) complete a board-approved application form;

(2) provide a Medical Home Agreement, written collaborative, coordinated care agreement or memorandum of understanding to provide management and treatments of pain, that describes measures that it provides and may be used for reduction of pain such as, but not limited to:

(A) multimodal treatment such as surgery, injections, pain pumps, osteopathic manipulation, epidurals, trigger point injections, dry needling, and topical creams or patches;

(B) multi-disciplinary practices such as medication assisted tapering and weaning, computer-based training pain coaching, acupuncture, chiropractic, physical therapy, massage, and exercise/movement; or

(C) collaborative care or other behavioral health integration services such as evidenced-based cognitive behavioral therapy interventions for mental health and pain reduction, medication management and opioid weaning, patient-centered education, regular monitoring and assessments of clinical status using validated tools, assessment of treatment adherence, motivational interviewing, and a structured approach to improving the biopsychosocial aspects of pain management; and

(3) In addition to providing a Medical Home Agreement, written collaborative, coordinated care agreement, or memorandum of understanding to provide management and treatments of pain described above, the clinic must either:

(A) meet the standards for exemption under §168.002(7) of the Act, including the clinic being operated by a majority of physicians who currently hold or previously held ABMS or AOA board-certification or subspecialty certification in pain management; and

(i) have a majority of physicians performing or properly supervising delegates in providing other forms of treatment besides qualifying pain management prescriptions to a majority of the patients at the clinic;

(ii) utilization by the clinic's providers of a Medical Home Agreement signed by the primary prescriber and the patient; or

(iii) have a written collaborative, coordinated care agreement or a memorandum of understanding with the patient's primary physician for treating and managing the patient; or

(B) be a Certified Pain Management Clinic (PMC) that is operated by physicians who previously held an ABMS or AOA Board-certification or sub-specialty in pain management or hold an ABMS or AOA Board-certification in an area that is eligible for a pain management subspecialty; and

(i) have a Medical Home Agreement signed by the primary prescriber and the patient; or

(ii) have a written collaborative, coordinated care agreement or memorandum of understanding providing that each physician who prescribes qualifying prescriptions will consult with a pain specialist for the patient.

(b) The designation may be verified by an initial audit and is valid for five years.

(c) No further audits or inspections will be conducted during the five-year "Gold Designated Practice" period, unless:

(1) a complaint is received or initiated by the board concerning operation of the clinic or operators at the clinic;

(2) the clinic changes location; or

(3) the clinic's ownership structure changes to a majority of new owners.

(d) Practices that only treat pain patients as part of cancer care or that provide only palliative care, hospice, or other end-of-life care are exempt under the Act from certification requirements as a PMC, but do not qualify for the "Gold Designated Practice" status.

§172.3. Certification of Pain Management Clinics.

(a) Any clinic meeting the definition of a pain management clinic under §168.001 of the Act must be certified.

(b) Certification requires:

(1) a board-approved application filed by a physician owner of the clinic. If there are multiple physician owners, the application must be filed by one of the majority of owners, or if there are no majority owners, then each physician owner is responsible for designating one physician owner to file an application.

(2) submission of the following documentation:

(A) proof of ownership of the clinic, which may include filing with county clerks, the Comptroller and Secretary of State, as applicable;

(B) days and hours of operation;

(C) name of medical director;

(D) list of employees, including contract physicians and other healthcare providers, and their applicable education, qualifications, training and professional licenses;

(E) protocols and standing delegation orders issued by licensed physicians to healthcare providers; and

(F) proof of payment of the required filing fee.

(c) The Executive Director (ED) or the ED's designee reviews all applications. After reviewing the applications, the ED will send a notice of determination to the applicant which includes the ED's determination. If the application is denied, then the ED will provide the information regarding the right to appeal.

(d) Before 180 days after the expiration of the clinic's certificate, a clinic seeking renewal must submit:

(1) a board-approved application;

(2) documentation that establishes all providers at the clinic involved in any part of patient care have completed at least ten hours of continuing education related to pain management in the preceding two years; and

(3) the required renewal fees.

(e) If there is any investigation pending with the board against any owner or certificate holder at the time of renewal, a provisional renewal will be issued until the investigation is resolved.

(f) Initial applications are valid for one year from the date filed, unless expressly extended by board staff.

(g) All records relating to an application or renewal of certification are considered investigative information and are confidential under §164.007 of the Act.

(h) A request to cancel a certificate must be accompanied by proof that the clinic no longer meets the definition of a pain management clinic under §168.001 of the Act.

§172.4. Minimum Operational Standards for the Treatment of Pain Patients.

(a) Physicians treating a pain patient must:

(1) operate in compliance with provisions of all applicable federal and state laws;

(2) follow the standard of care; and

(3) maintain complete, contemporaneous, and legible medical records, in the same manner as a non-pain patient, and include documentation of:

(A) monitoring efficacy, daily functionality, description of pain relief;

(B) mandatory PMP checks;

(C) pain contracts, if applicable;

(D) support for billing; and

(E) drug testing results and other forms of monitoring for patient compliance with treatment recommendations.

(b) For pain patients transferring their care to a new treating physician at a Gold Designated Practice, the following applies:

(1) The new treating physician must:

(A) document an initial problem focused exam;

(B) document a PMP check; and

(C) request medical records from the prior treating physician(s) within 15 business days of seeing the patient.

(2) The new physician may provide only a one-time 30-day maximum non-refillable prescription of pain medication at the initial visit.

(3) If the requested medical records are not received within 15 business days after the initial request, the physician must perform the following before issuing any other prescriptions for pain treatment to the patient:

(A) a complete history and physical, including assessment of abuse or diversion potential;

(B) diagnostic testing and obtain the results to verify pain sources or etiology, if applicable;

(C) drug testing; and

(D) a PMP check.

#### §172.5. Audits, Inspections, and Investigations.

(a) Audits.

(1) Audits are non-disciplinary reviews:

(A) conducted as an off-site document review; and

(B) initiated by a board subpoena request for documents as necessary to determine or verify:

(i) exemption from application of Chapter 168 of the Act;

(ii) need to certify as a PMC; or

(iii) no certification requirement.

(2) A total of 30 patients' records will be reviewed during an audit. The relevant portions of the 30 records to be reviewed are the initial visit; last two office visits; referrals; procedures notes/logs; consultation requests; consult notes, and prior authorization records, if any. These records will be a combination of new patients seen in one of the last two calendar months and established patients seen in the previous six calendar months with a minimum of 10 records for each type.

(3) Documents requested may also include those used to verify personnel training, qualifications, and general compliance with Chapter 168 of the Act and related rules.

(4) Upon completion of the audit, the board will issue a notice of determination to the audited clinic owner. The notice of determination will specify:

(A) Deficiencies, if any; and

(B) If necessary, any corrective actions the clinic must take, including a requirement to apply for certification.

(b) Inspections.

(1) Inspections are non-disciplinary reviews:

(A) done on both certified and non-certified clinics in accordance with §168.052 of the Act; and

(B) usually conducted on-site but may also be off-site, as determined by board staff.

(2) The following patient records will be reviewed during an inspection, as determined by board staff: patients seen during two calendar months out of the previous eight months from the date of the inspection.

(3) For certified pain management clinics, inspections are conducted to verify compliance with Chapter 168 of the Act and the applicable laws and rules.

(4) For non-certified clinics, inspections are conducted to determine if the clinic is subject to be certified under Chapter 168 of the Act.

(5) In accordance with §168.052(b) of the Act, to initiate an inspection the board has determined the following grounds can be utilized, but are not limited to:

(A) PMP reports;

(B) patient population analysis, including review of patients coming from outside the immediate geographic location of the clinic;

(C) common addresses for multiple patients;

(D) notices to providers from the Pharmacy Board regarding a patient having multiple prescribing providers;

(E) complaints about the clinic and its operation; and

(F) law enforcement reports regarding providers or patients.

(6) Notice of intent to inspect will be provided at least five days in advance unless such timing would compromise the inspection.

(7) Notice of inspection results will be provided in writing to the clinic.

(8) If the inspection determines instances of non-compliance, the board will determine appropriate action to obtain compliance.

(c) Investigations may be conducted due to a complaint received or initiated by the board. An investigation will be conducted in accordance with the provisions of this Title and all applicable board rules.

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

Filed with the Office of the Secretary of State on September 9, 2024.

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Scott Freshour  
General Counsel  
Texas Medical Board

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For further information, please call: (512) 305-7030



## CHAPTER 173. PHYSICIAN PROFILES

The Texas Medical Board (Board) proposes the repeal of current Chapter 173, concerning Physician Profiles, §§173.1 - 173.5, and §173.7.

The Board also proposes new Chapter 173, concerning Office-Based Anesthesia Services, §§173.1 - 173.5.

Also, the Board contemporaneously proposes the repeal of current Chapter 192, concerning Office-Based Anesthesia Services, §§192.1 - 192.6.

The Board has determined that due to the extensive reorganization of Chapters 160-200, repeal of Chapter 173 is more efficient than proposing multiple amendments to make the required changes.

The proposed new sections are as follows:

New §173.1, General Definitions, defines terms used in new Chapter 173.

New §173.2, Standards for Anesthesia Services, explains the standards and minimum equipment requirements when providing anesthesia services in an outpatient setting.

New §173.3, Specific Requirements Based on Level of Anesthesia Provided, explains the additional standards applicable to outpatient settings based upon the level of anesthesia being provided in Level I, Level II, Level III, and Level IV anesthesia services.

New §173.4, Registration, explains the process in which a physician providing anesthesia services or performing a procedure for anesthesia services are provided in an outpatient setting (excluding Level I services) must register with the board.

New §173.5, Inspections, explains that the board may conduct inspections for the purpose of enforcing Office-Based Anesthesia rules.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the proposed repeals and new sections are in effect, the public benefit anticipated as a result of enforcing these proposed sections will be to remove redundant language from rules, simplify the rules, and make the rules easier to understand.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect, there will be no fiscal impact or effect on government growth as a result of enforcing the proposed sections.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect there will be no probable economic cost to individuals required to comply with these proposed sections.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for these proposed repeals and new sections and determined that for each

year of the first five years these proposed repeals and new sections will be in effect there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of these proposed repeals and new sections and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years these proposed repeals and new sections are in effect:

(1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering these proposed repeals and new sections;

(2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections;

(3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections; and

(4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering these proposed repeals and new sections.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years these proposed repeals and new sections will be in effect, there will be no effect on local economy and local employment.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for these proposed repeals and new sections. For each year of the first five years these proposed repeals and new sections will be in effect, Mr. Freshour has determined the following:

(1) These proposed repeals and new sections do not create or eliminate a government program.

(2) Implementation of these proposed repeals and new sections does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of these proposed repeals and new sections does not require an increase or decrease in future legislative appropriations to the agency.

(4) These proposed sections do not require an increase or decrease in fees paid to the agency.

(5) These proposed repeals and new sections do not create new regulations.

(6) These proposed repeals and new sections do repeal existing regulations as described above. These proposed new sections do not expand or limit an existing regulation.

(7) These proposed repeals and new sections do not increase the number of individuals subject to the sections' applicability.

(8) These proposed repeals and new sections do not positively or adversely affect this state's economy.

Comments on the proposal may be submitted using this link: <https://forms.office.com/g/OJHZyixFBb>. A public hearing will be held at a later date. Comments on the proposal will be accepted for 30 days following publication.

**22 TAC §§173.1 - 173.5, 173.7**

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for re-adoption, re-adoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this proposal.

§173.1. *Profile Contents.*

§173.2. *Profile Update and Correction Form.*

§173.3. *Physician-Initiated Updates.*

§173.4. *Updates to the Physician's Profile Due to Board Action.*

§173.5. *Updates to the Physician's Profile Due to Information Received by a Third Party.*

§173.7. *Corrections and the Dispute Process.*

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

Filed with the Office of the Secretary of State on September 9, 2024.

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Scott Freshour

General Counsel

Texas Medical Board

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For further information, please call: (512) 305-7030



## CHAPTER 173. OFFICE-BASED ANESTHESIA SERVICES

### 22 TAC §§173.1 - 173.5

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The new rules are also proposed under the authority of §162; and in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for re-adoption, re-adoption with amendments, or repeal every four years. No other statutes, articles, or codes are affected by this proposal.

§173.1. *General Definitions.*

The following words and terms when used in this chapter shall have the following meanings, unless the contents indicate otherwise:

(1) ACLS--Advanced Cardiac Life Support, as defined by the AHA.

(2) AED--Automatic External Defibrillator.

(3) AHA--American Heart Association.

(4) Analgesics--Dangerous or scheduled drugs that alleviate pain, but not including non-opioid based drugs such as acetaminophen or non-steroidal anti-inflammatory drugs (NSAIDs).

(5) Anesthesia--Use of local anesthetics (in amounts that generate the effect of general anesthesia, regional anesthesia, or monitored anesthesia care), analgesics, anxiolytics, or hypnotics to create a loss of feeling or sensation by interrupting or depressing nerve function.

(6) Anesthesia Services--The use of anesthesia for the performance of Level II- IV services.

(7) Anxiolytics--Dangerous or scheduled drugs used to provide sedation or to treat episodes of anxiety.

(8) ASHI--American Safety and Health Institute.

(9) ASA--American Society of Anesthesiologists.

(10) BLS--Basic Life Support, as defined by the AHA.

(11) Certified registered nurse anesthetist (CRNA)--A person licensed by the Texas Board of Nursing (TBON) as a certified registered nurse anesthetist.

(12) Dangerous drugs--Medications defined by Chapter 483, Texas Health and Safety Code. Dangerous drugs require a prescription but are not included in the list of scheduled drugs. A dangerous drug bears the legend "Caution: federal law prohibits dispensing without a prescription" or "Prescription Only."

(13) Hypnotics--Dangerous or scheduled drugs used to induce unconsciousness. This includes inhaled anesthetics and nonvolatile anesthetic agents such as Barbiturates, Benzodiazepines, Opioids, Etomidate, Propofol, and Ketamine.

(14) Level I services.

(A) Delivery of analgesics or anxiolytics by mouth, as prescribed for the patient on order of a physician, at a dose level low enough to allow the patient to remain ambulatory; or

(B) Delivery of nitrous oxide/oxygen inhalation sedation.

(15) Level II services.

(A) The administration of tumescent anesthesia;

(B) The delivery of analgesics or anxiolytics by mouth in dosages greater than allowed at Level I, as prescribed for the patient on order of a physician; or

(C) Except for the performance of Mohs micrographic surgery, the administration of local anesthesia, peripheral nerve blocks, or both in a total dosage amount that exceeds 50 percent of the recommended maximum safe dosage per outpatient visit.

(16) Level III services--Parenteral delivery of analgesics or anxiolytics.

(17) Level IV services--Delivery of general anesthetics, including regional anesthetics and monitored anesthesia care; spinal, epidural, or caudal blocks for the purposes of providing anesthesia or monitored anesthesia care.

(18) Local anesthetics--Dangerous drugs administered topically or by injection, which interrupt nerve conduction, temporarily creating a loss of sensation to an affected area and that generate the effect of general anesthesia, regional anesthesia, or monitored anesthesia care.

(19) Monitored anesthesia care--Includes all aspects of anesthesia care by an anesthesiologist or member of the anesthesia care team including the administration of sedatives, analgesics, hypnotics and other anesthesia agents or medications necessary to ensure patient safety and comfort. May include situations where a patient

undergoing a diagnostic or therapeutic procedure receives doses of medication that create a risk of loss of normal protective reflexes or loss of consciousness and the patient remains able to protect the airway during the procedure. If the patient is rendered unconscious and loses normal protective reflexes, then anesthesia care shall be considered a general anesthetic.

(20) Outpatient setting--Any facility, clinic, center, office, or other setting that is not a part of a licensed hospital or a licensed ambulatory surgical center with the exception of the following:

(A) a clinic located on land recognized as tribal land by the federal government and maintained or operated by a federally recognized Indian tribe or tribal organization as listed by the United States secretary of the interior under 25 U.S.C. §479-1 or as listed under a successor federal statute or regulation;

(B) a facility maintained or operated by a state or governmental entity;

(C) a clinic directly maintained or operated by the United States or by any of its departments, officers, or agencies; and

(D) an outpatient setting where the facility itself is accredited by either The Joint Commission relating to ambulatory surgical centers, the American Association for Accreditation of Ambulatory Surgery Facilities, or the Accreditation Association for Ambulatory Health Care.

(21) PALS--Pediatric Advanced Life Support, as defined by the AHA.

(22) Peripheral nerve block--The injection of local anesthetics into an area of the body directly adjacent to a peripheral nerve, for the purpose of blocking the response to pain in the distribution of sensation of that nerve.

(23) Scheduled drugs--Medications defined by the Texas Controlled Substances Act, Chapter 481, Texas Health and Safety Code.

(24) Tumescence anesthesia--A specialized type of subcutaneous infiltration of a dilute mixture of local anesthetic and epinephrine known as tumescence solution.

§173.2. Standards for Anesthesia Services.

(a) General Standards. When providing anesthesia services in an outpatient setting, physicians must:

(1) comply with delegation and supervision laws under Chapter 157 of the Act, including §157.058, regarding CRNAs;

(2) counsel and prepare patients for anesthesia per ASA standards;

(3) perform:

(A) a pre-anesthetic evaluation; and

(B) a pre-sedation evaluation, that includes at a minimum an airway evaluation and an ASA physical status classification;

(4) obtain informed consent in accordance with state law, which includes communicating with the patient any sharing of responsibility for a patient's care with other physicians or non-physician anesthesia providers; and

(5) provide continuous appropriate physiologic monitoring of the patient, determined by the type of anesthesia and individual patient needs, both during and post procedure until ready for discharge, with continuous monitoring of:

(A) ventilation,

(B) oxygenation; and

(C) cardiovascular status.

(b) Minimum Equipment Requirements and Standards.

(1) Minimum equipment required. The outpatient setting must have the following equipment and drugs onsite for the handling of emergencies:

(A) monitoring equipment for Level II through Level IV procedures:

(i) pulse oximetry;

(ii) continuous EKG;

(iii) non-invasive blood pressure measured at least every five minutes; and

(iv) if general anesthesia is utilized, an O2 analyzer and end-tidal CO2 analyzer;

(B) appropriate intravenous therapy equipment;

(C) a precordial stethoscope or similar device, and non-electrical blood pressure measuring device, for use in the event of an electrical outage;

(D) emergency equipment appropriate for the purpose of cardiopulmonary resuscitation;

(E) AED or other defibrillator, difficult airway equipment, as well as the drugs and equipment necessary for the treatment of malignant hyperthermia, if using triggering agents associated with malignant hyperthermia or if the patient is at risk for malignant hyperthermia; and

(F) a means to measure temperature, which shall be readily available and utilized for continuous monitoring when indicated per current ASA standards.

(2) Equipment Standards.

(A) Equipment must be appropriately sized for the patient population being served.

(B) All anesthesia-related equipment and monitors must be maintained to current operating room standards.

(C) Regular service or maintenance checks must be completed by appropriately qualified biomedical personnel, at least annually or per manufacturer recommendations.

(D) A separate equipment maintenance log must contain:

(i) service check information including date performed;

(ii) a clear description of any equipment problems and the corrective action; and

(iii) if substandard equipment was utilized without corrective action, a description of how patient safety was protected.

(E) The equipment maintenance log must be retained for seven years from the date of inspection.

(F) An audible signal alarm device capable of detecting disconnection of any component of the breathing system shall be utilized.

(3) Emergency Supplies.



(A) All required emergency supplies must be maintained and inspected by qualified personnel for presence and proper function intervals established by protocol.

(B) All medication, drugs, and supplies must not be expired.

(C) Personnel must be trained on the use of emergency equipment and supplies.

(D) A separate emergency supply log must include dates of inspections. The log must be retained for seven years from the date of inspection.

(4) Emergency Power Supply and Communication Source.

(A) Outpatient settings must have a secondary power source as appropriate for equipment in use, in case of power failure.

(B) A two-way communication source not dependent on electrical current shall be available.

(5) Protocols.

(A) The outpatient setting must have written protocols regarding:

(i) patient selection criteria;

(ii) patients or providers with latex allergy;

(iii) pediatric drug dosage calculations, where applicable;

(iv) ACLS or PALS algorithms;

(v) infection control;

(vi) documentation and tracking use of pharmaceuticals, including controlled substances, expired drugs and wasting of drugs; and

(vii) discharge criteria.

(B) The outpatient setting must have written protocols regarding emergency transfer procedures for cardiopulmonary emergencies that include:

(i) a specific plan for securing a patient's airway pending EMS transfer to the hospital; and

(ii) have appropriate ACLS measures in the office for patient stabilization until EMS arrives.

(C) For outpatient settings that are located in counties lacking 9-1-1 service entities supported by EMS providers licensed at the advanced life support level, physicians must enter into emergency transfer agreements with a local licensed EMS provider or accredited hospital-based EMS. The agreement's terms must require EMS to bring staff and equipment necessary for advanced airway management equal to or exceeding that which is in place at the outpatient setting.

(D) The written protocols, including the emergency transfer agreements, must be evaluated and reviewed at least annually.

§173.3. Specific Requirements Based on Level of Anesthesia Provided.

In addition to the general standards that apply to all outpatient settings, the following standards are required for outpatient settings, based upon the level of anesthesia being administered. If personnel and equipment meet the requirements of a higher-level, lower-level anesthesia services may also be provided.

(1) Level I Services:

(A) A physician and at least one other personnel must be present during the procedure. Both the physician and the personnel must be currently certified by AHA or ASHI, at a minimum in BLS.

(B) The following age-appropriate equipment must be present:

(i) a bag mask valve; and

(ii) oxygen.

(2) Level II services:

(A) A physician and at least one other personnel must be present during the procedure and recovery until ready for discharge. The physician must be currently certified by AHA or ASHI, at a minimum in ACLS or PALS, as appropriate. The additional personnel member(s) must be currently certified by AHA or ASHI, at a minimum in BLS.

(B) A crash cart must be present containing drugs and equipment necessary to carry out ACLS protocols, including, but not limited to:

(i) the age-appropriate monitoring and emergency equipment required under paragraph (1)(B) of this section;

(ii) pre-measured doses of first line cardiac medications, including epinephrine, atropine, adreno-corticoids, and antihistamines;

(iii) benzodiazepines for intravenous or intramuscular administration;

(iv) lipid emulsion if, administering local anesthesia, peripheral nerve blocks, or both in a total dosage amount that exceeds 50 percent of the recommended maximum safe dosage per outpatient visit (except for Mohs micrographic surgery), or if administering tumescent anesthesia, for treating local anesthetic systemic toxicity; and

(v) specific reversal agents, Flumazenil and Naloxone, if benzodiazepines or narcotics are used for sedation.

(3) Level III services:

(A) A physician and at least one other personnel must be present during the procedure and recovery until ready for discharge. The physician must be currently certified by AHA or ASHI, at a minimum in ACLS or PALS, as appropriate. The additional personnel member(s) must be currently certified by AHA or ASHI, at a minimum in BLS.

(B) A crash cart must be present containing the same drugs and equipment required for Level II, except for lipid emulsion.

(C) A working intravenous feed must be established.

(D) Providers must adhere to ASA Standards for Post Anesthesia Care.

(4) Level IV services: Level IV services do not require physicians to maintain a stock of lipid emulsion. Physicians who provide Level IV anesthesia services in outpatient settings shall follow current, applicable standards and guidelines as put forth by the American Society of Anesthesiologists (ASA) including, but not limited to, the following:

(A) Basic Standards for Preanesthetic Care;

(B) Standards for Basic Anesthetic Monitoring;

(C) Standards for Post Anesthesia Care;

(D) Position on Monitored Anesthesia Care;

- (E) The ASA Physical Status Classification System;
- (F) Guidelines for Nonoperating Room Anesthetizing Locations;
- (G) Guidelines for Ambulatory Anesthesia and Surgery; and
- (H) Guidelines for Office-Based Anesthesia.

§173.4. Registration.

Each physician who provides anesthesia services or performs a procedure for which anesthesia services are provided in an outpatient setting, excluding Level I services, shall register with and pay a fee in an amount established by the board.

§173.5. Inspections.

The board may conduct inspections to enforce these rules, including inspections of an operating surgeon's office site or a mobile anesthesia provider's practice and procedures related to storage, transport, and setup of necessary equipment. The board may contract with another state agency or qualified person to conduct these inspections.

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

Filed with the Office of the Secretary of State on September 9, 2024.

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Scott Freshour  
General Counsel

Texas Medical Board

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For further information, please call: (512) 305-7030



## CHAPTER 174. TELEMEDICINE

The Texas Medical Board (Board) proposes the repeal of current Chapter 174 concerning Telemedicine. This includes Subchapter A, concerning Telemedicine, §§174.1 - 174.8; and Subchapter B, concerning Mental Health Services, §§174.9.

The Board also proposes new Chapter 174, concerning Business Organizations. This includes new Subchapter A, concerning Non-Profit Health Organizations, §§174.1 and 174.2; Subchapter B, concerning Jointly Owned Entities; §174.5; and Subchapter C, concerning Physician Call Coverage Arrangements, §174.10.

Also, the Board contemporaneously proposes the repeal of current Chapter 177, concerning Business Organizations and Agreements. This includes Subchapter A, concerning Definitions, §177.1; Subchapter B, concerning Non-Profit Health Organizations, §§177.2 - 177.13; Subchapter C, concerning Jointly Owned Entities, §§177.14 - 177.16; Subchapter D, concerning Employment of Physicians, §177.17; and Subchapter E, concerning Physician Call Coverage Medical Services, §177.18 and §177.20.

The Board has determined that due to the extensive reorganization of Chapters 160-200, repeal of Chapter 174 is more efficient than proposing multiple amendments to make the required changes.

The proposed new subchapters and sections are as follows:

### SUBCHAPTER A. NON-PROFIT HEALTH ORGANIZATIONS.

New §174.1, Definitions, gives definitions for terms used in new Chapter 174.

New §174.2, Certification of a Non-Profit Health Organization, describes the process of certification of a Non-Profit Health Organization.

### SUBCHAPTER B. JOINTLY OWNED ENTITIES.

New Section 174.5. Joint Ownership, provides the requirements for the Physician and Physician Assistant's joint ownership in compliance with Chapter 301, Texas Business Organizations Code.

### SUBCHAPTER C. CALL COVERAGE AGREEMENTS.

New Section 174.10. Call Coverage Agreement Minimum Requirements, sets forth minimum requirements for a physician to follow regarding a call coverage agreement for another physician.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the proposed repeals and new sections are in effect, the public benefit anticipated as a result of enforcing these proposed sections will be to remove redundant language from rules, simplify the rules, and make the rules easier to understand.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect, there will be no fiscal impact or effect on government growth as a result of enforcing the proposed sections.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect there will be no probable economic cost to individuals required to comply with these proposed sections.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for these proposed repeals and new sections and determined that for each year of the first five years these proposed repeals and new sections will be in effect there will be no effect on small businesses, micro businesses, or rural communities. (The agency has considered alternative methods of achieving the purpose of these proposed repeals and new sections and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years these proposed repeals and new sections are in effect:

- (1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering these proposed repeals and new sections;
- (2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections;
- (3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections; and
- (4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering these proposed repeals and new sections.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the

first five years these proposed repeals and new sections will be in effect, there will be no effect on local economy and local employment.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for these proposed repeals and new sections. For each year of the first five years these proposed repeals and new sections will be in effect, Mr. Freshour has determined the following:

- (1) These proposed repeals and new sections do not create or eliminate a government program.
- (2) Implementation of these proposed repeals and new sections *does not* require the creation of new employee positions or the elimination of existing employee positions.
- (3) Implementation of these proposed repeals and new sections *does not* require an increase or decrease in future legislative appropriations to the agency.
- (4) These proposed sections do not require an increase or decrease in fees paid to the agency.
- (5) These proposed repeals and new sections do not create new regulations.
- (6) These proposed repeals and new sections do repeal existing regulations as described above. These proposed new sections do not expand or limit an existing regulation.
- (7) These proposed repeals and new sections do not increase the number of individuals subject to the sections' applicability.
- (8) These proposed repeals and new sections do not positively or adversely affect this state's economy.

Comments on the proposal may be submitted using this link: <https://forms.office.com/g/jq6GtK5RFJ>. A public hearing will be held at a later date. Comments on the proposal will be accepted for 30 days following publication.

## SUBCHAPTER A. TELEMEDICINE

### 22 TAC §§174.1 - 174.8

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this proposal.

- §174.1. *Purpose.*
- §174.2. *Definitions.*
- §174.3. *Prevention of Fraud and Abuse.*
- §174.4. *Notice to Patients.*
- §174.5. *Issuance of Prescriptions.*
- §174.6. *Minimum Standards for the Provision of Telemedicine Medical Services.*
- §174.7. *Enforcement Authority.*
- §174.8. *State Licensure.*

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

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## SUBCHAPTER B. MENTAL HEALTH SERVICES

### 22 TAC §174.9

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this proposal.

§174.9. *Provision of Mental Health Services.*

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

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## CHAPTER 174. BUSINESS ORGANIZATIONS SUBCHAPTER A. NON-PROFIT HEALTH ORGANIZATIONS

### 22 TAC §174.1, §174.2

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The new rules are also proposed in accordance with the requirements of Chapter 162. The new rules are also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this proposal.

§174.1. *Definitions.*

The following word and term when used in this chapter shall have the following meaning, unless the contents clearly indicate otherwise: Actively engaged in the practice of medicine--currently licensed by the board to practice medicine and has no restrictions.

§174.2. Certification of a Non-Profit Health Organization.

(a) The board shall certify a Non-Profit Health Organization in accordance with §162.001(b) of the Act upon:

(1) submission of the required application and supporting documentation;

(2) the board's receipt of the \$2,500 non-refundable application fee; and

(3) verification by the board that the organization meets the requirements of §162.001(b) of the Act, including the requisite number of Board of Directors in accordance with Title 2, §22.204 of the Texas Business Organizations Code.

(b) The board shall certify a Non-Profit Health Organization to contract with or employ physicians in accordance with §162.001(c) or (c-4) of the Act upon:

(1) submission of the required application and supporting documentation; and

(2) verification by the board that the organization meets the requirements for certification under the Act.

(c) A certified Non-Profit Health Organization must file a biennial report with the board in accordance with §162.006 of the Act. The board shall renew the certification of a Non-Profit Health Organization upon:

(1) submission of the required biennial report, recertification application and supporting documentation;

(2) the board's receipt of the \$1,125 non-refundable biennial application fee, except those certified under §162.001(c) or (c-4) do not pay a fee; and

(3) verification by the board that the organization meets the requirements for recertification under the Act.

(d) The failure of a certified health organization to timely submit a biennial report and/or required renewal fee within 90 days of its due date may result in decertification.

(e) If a certified health organization has been decertified, it will be required to submit a new application for certification in accordance with Chapter 162 of the Act.

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

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## SUBCHAPTER B. JOINTLY OWNED ENTITIES

## 22 TAC §174.5

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The new rules are also proposed in accordance with the requirements of Chapter 162. The new rules are also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this proposal.

§174.5. Joint Ownership.

(a) Physician and Physician Assistants may jointly own an entity in accordance with the provisions of Chapters 22, 152, and 301 of the Texas Business Organizations Code.

(b) Physicians and Physician Assistants who jointly own an entity must annually submit a Jointly-Owned Entity Annual Report form, accompanied by an \$18 fee.

(c) Restrictions on joint ownership by certain professionals, as set forth in §301.012 of the Texas Business Organizations Code, only apply to those entities formed after June 17, 2011.

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

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## SUBCHAPTER C. PHYSICIAN CALL COVERAGE AGREEMENTS

### 22 TAC §174.10

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The new rules are also proposed in accordance with the requirements of Chapter 162. The new rules are also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this proposal.

§174.10. Call Coverage Agreement Minimum Requirements.

A call coverage agreement:

(1) may be oral or written;

(2) allows for and sets forth the terms in which a physician will provide medical services to established patients of another physician; and

(3) describes the timing and method by which the covering physician will provide a report to the patient's primary physician about the medical intervention or advice provided during the coverage period.

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

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Scott Freshour

General Counsel

Texas Medical Board

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## CHAPTER 175. FEES AND PENALTIES

The Texas Medical Board (Board) proposes the repeal of current Chapter 175, concerning Fees and Penalties, §§175.1 - 175.5.

The Board also proposes new Chapter 175, concerning Telemedicine, §§175.1 - 175.3.

Also, the Board contemporaneously proposes the repeal of current Chapter 174, concerning Telemedicine. This includes Subchapter A, concerning Telemedicine, §§174.1 - 174.8; and Subchapter B, concerning Mental Health Services, §174.9.

The Board has determined that due to the extensive reorganization of Chapters 160-200, repeal of Chapter 175 is more efficient than proposing multiple amendments to make the required changes.

The proposed new sections are as follows:

New §175.1. License Required, explains that a physician practicing telemedicine in Texas must hold a full Texas medical license, with some limited exceptions.

New §175.2. Telemedicine Services, explains that telemedicine services must be performed in compliance with the Medical Practice Act and Chapter 111 of the Texas Occupations Code.

New §175.3. Requirements for a Valid Prescription, explains the requirements for a valid prescription using telemedicine. It also explains the requirements for prescribing for chronic pain using telemedicine.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the proposed repeals and new sections are in effect, the public benefit anticipated as a result of enforcing these proposed sections will be to will be to remove redundant language from rules, simplify the rules, and make the rules easier to understand. It will also increase patient accessibility to properly licensed, trained, and educated medical providers.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect, there

will be no fiscal impact or effect on government growth as a result of enforcing the proposed sections.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect there will be no probable economic cost to individuals required to comply with these proposed sections.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for these proposed repeals and new sections and determined that for each year of the first five years these proposed repeals and new sections will be in effect there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of these proposed repeals and new sections and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years these proposed repeals and new sections are in effect:

(1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering these proposed repeals and new sections;

(2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections;

(3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections; and

(4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering these proposed repeals and new sections.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years these proposed repeals and new sections will be in effect, there will be no effect on local economy and local employment.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for these proposed repeals and new sections. For each year of the first five years these proposed repeals and new sections will be in effect, Mr. Freshour has determined the following:

(1) These proposed repeals and new sections do not create or eliminate a government program.

(2) Implementation of these proposed repeals and new sections does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of these proposed repeals and new sections does not require an increase or decrease in future legislative appropriations to the agency.

(4) These proposed sections do not require an increase or decrease in fees paid to the agency.

(5) These proposed repeals and new sections do not create new regulations.

(6) These proposed repeal and new sections do repeal existing regulations as described above. These proposed new sections do not expand or limit an existing regulation.

(7) These proposed repeals and new sections do not increase the number of individuals subject to the sections' applicability.

(8) These proposed repeals and new sections do not positively or adversely affect this state's economy.

Comments on the proposal may be submitted using this link: <https://forms.office.com/g/e6riGJaRDp>. A public hearing will be held at a later date. Comments on the proposal will be accepted for 30 days following publication.

## 22 TAC §§175.1 - 175.5

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for re-adoption, re-adoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this proposal.

§175.1. *Application and Administrative Fees.*

§175.2. *Registration and Renewal Fees.*

§175.3. *Penalties.*

§175.4. *Fee Exemption for Military Service Member, Military Veteran, or Military Spouse.*

§175.5. *Payment of Fees or Penalties.*

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

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## CHAPTER 175. TELEMEDICINE

### 22 TAC §§175.1 - 175.3

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The new rules are also proposed in accordance with the requirements of Chapter 111 of the Texas Occupations Code. No other statutes, articles or codes are affected by this proposal.

§175.1. *License Required.*

In accordance with Chapters 155.001 and 111 of the Texas Occupations Code, a physician may not provide telemedicine medical services to patients in Texas unless they hold a full Texas medical license, except

for those who held an out-of-state telemedicine license as of September 1, 2022.

§175.2. *Telemedicine Services.*

Telemedicine medical services, including supervision, delegation, and posting of notices regarding filing a complaint with the board, must be provided in accordance with Chapter 111 of the Texas Occupations Code and the Medical Practice Act.

§175.3. *Requirements for a Valid Prescription.*

(a) In accordance with §111.006 of the Texas Occupations Code, a valid prescription requires:

(1) establishing a physician-patient relationship; and

(2) compliance with all other applicable laws before prescribing, dispensing, delivering, or administering a dangerous drug or controlled substance, including, but not limited to, the Medical Practice Act and Texas Health and Safety Code, Chapters 481 and 483.

(b) Requirements for Prescribing for Chronic Pain via Telemedicine.

(1) A physician must use audio and video two-way communication, unless the patient:

(A) is an established pain patient of the prescribing physician;

(B) receives a prescription identical to the prescription issued at the previous visit; and

(C) was seen by the prescribing physician, or their delegate, in the last 90 days either;

(i) in-person; or

(ii) by audio and video two-way communication.

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

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## CHAPTER 176. HEALTH CARE LIABILITY LAWSUITS AND SETTLEMENTS

The Texas Medical Board (Board) proposes the repeal of current Chapter 176, concerning Health Care Liability Lawsuits and Settlements, §§176.1 - 176.9.

The Board also proposes new Chapter 176, concerning Reporting Malpractice Claims, §176.1 and §176.2.

The Board has determined that due to the extensive reorganization of Chapters 160-200, repeal of Chapter 176 is more efficient than proposing multiple amendments to make the required changes.

The proposed new sections are as follows:

New §176.1, Definitions, defines terms used in new Chapter 176.

New §176.2, Required Reporting, explains the content required and the process for reporting healthcare liability and malpractice claims to the board.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the proposed repeals and new sections are in effect, the public benefit anticipated as a result of enforcing these proposed sections will be to remove redundant language from rules, simplify the rules, and make the rules easier to understand.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect, there will be no fiscal impact or effect on government growth as a result of enforcing the proposed sections.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect there will be no probable economic cost to individuals required to comply with these proposed sections.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for these proposed repeals and new sections and determined that for each year of the first five years these proposed repeals and new sections will be in effect there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of these proposed repeals and new sections and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years these proposed repeals and new sections are in effect:

- (1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering these proposed repeals and new sections;
- (2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections;
- (3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections; and
- (4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering these proposed repeals and new sections.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years these proposed repeals and new sections will be in effect, there will be no effect on local economy and local employment.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for these proposed repeals and new sections. For each year of the first five years these proposed repeals and new sections will be in effect, Mr. Freshour has determined the following:

- (1) These proposed repeals and new sections do not create or eliminate a government program.

(2) Implementation of these proposed repeals and new sections does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of these proposed repeals and new sections does not require an increase or decrease in future legislative appropriations to the agency.

(4) These proposed sections do not require an increase or decrease in fees paid to the agency.

(5) These proposed repeals and new sections do not create new regulations.

(6) These proposed repeals and new sections do repeal existing regulations as described above. These proposed new sections do not expand or limit an existing regulation.

(7) These proposed repeal and new sections do not increase the number of individuals subject to the sections' applicability.

(8) These proposed repeals and new sections do not positively or adversely affect this state's economy.

Comments on the proposal may be submitted using this link: <https://forms.office.com/g/MB7fZRdD8K>. A public hearing will be held at a later date. Comments on the proposal will be accepted for 30 days following publication.

## 22 TAC §§176.1 - 176.9

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle.

The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years.

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

§176.1. *Definitions.*

§176.2. *Reporting Responsibilities.*

§176.3. *Separate Reports Required and Identifying Information.*

§176.4. *Timeframes and Attachments.*

§176.5. *Alternate Reporting Formats.*

§176.6. *Penalty.*

§176.7. *Claims not Required to be Reported.*

§176.8. *Board Review of Health Care Liability and Settlements.*

§176.9. *Reporting Form.*

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

Filed with the Office of the Secretary of State on September 9, 2024.

TRD-202404268

Scott Freshour

General Counsel

Texas Medical Board

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For further information, please call: (512) 305-7030

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## CHAPTER 176. REPORTING MALPRACTICE CLAIMS

### 22 TAC §176.1, §176.2

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The new rules are also proposed in accordance with the requirements of Chapter 160 of the Texas Occupations Code.

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

#### §176.1. Definitions.

(a) Claim--any claim for damages with or without a lawsuit filed, against at physician relating to a departure from accepted standards of medical or health care.

(b) Report--the information provided to the board, pursuant to §160.052 of the Act.

#### (c) Settlement:

(1) a payment made on a claim on which no lawsuit has been filed;

(2) an agreement to settle a lawsuit on a claim for a specified amount;

(3) a dismissal or non-suit of a lawsuit on a claim with no payment; or

(4) a final judgment in a lawsuit on a claim entered by the trial court.

#### §176.2. Required Reporting.

(a) Chapter 160, Subchapter B, of the Act mandates that physicians and insurers have a duty to report healthcare liability and malpractice claims to the board.

(b) The required report must be timely submitted by either the insurer or physician, in accordance with Chapters 160.052 and 160.053 of the Act.

#### (c) Content of Report.

(1) The information required to be reported by §160.053 of the Act, may be reported either on the board-approved Claims Report set out below or in an alternate format.

(2) If an alternate format is used, the information must include at least the information required by the board-approved Claims Report.

Figure: 22 TAC §176.2(c)(2)

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

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## CHAPTER 177. BUSINESS ORGANIZATIONS AND AGREEMENTS

The Texas Medical Board (Board) proposes the repeal of current Chapter 177, concerning Business Organizations and Agreements. This includes Subchapter A, concerning Definitions, §177.1, Subchapter B, concerning Non-Profit Health Organizations, §§177.2 - 177.13, Subchapter C, concerning Jointly Owned Entities, §§177.14 - 177.16, Subchapter D, concerning Employment of Physicians, §177.17, Subchapter E, concerning Physician Call Coverage Medical Services, §§177.18, 177.20.

The Board also proposes new Chapter 177, concerning Complaints and Investigations. This includes new Subchapter A, concerning Complaints, §§177.1 - 177.3; Subchapter B, concerning Investigative Process, §§177.10 - 177.13, and Subchapter C, concerning Expert Panel Review, §177.20 and §177.21.

Also, the Board contemporaneously proposes the repeal of the following current chapters:

Chapter 178, concerning Complaints, §§178.1 - 178.9;

Chapter 179, concerning Investigations, §§179.1 - 179.8; and

Chapter 182, concerning Use of Experts, §182.1, §182.3, §182.5, and §182.8.

The Board has determined that due to the extensive reorganization of Chapters 160-200, repeal of Chapter 177 is more efficient than proposing multiple amendments to make the required changes.

The proposed new subchapters and sections are as follows:

### SUBCHAPTER A. COMPLAINTS.

New §177.1, Definitions, explains the meaning of several terms as used in new Chapter 177.

New §177.2, Mandatory Complaint Notification, requires the posting of a notice of how to file a complaint and explains to whom the requirement applies.

New §177.3, Complaint Initiation, explains how to file a complaint and what information a complaint must contain.

### SUBCHAPTER B. INVESTIGATIVE PROCESS.

New §177.10, Preliminary Investigation, explains how a preliminary investigation is to be conducted and how it is utilized by the board.

New §177.11, Official Investigation, how an official investigation is to be conducted and how it is utilized by the board.

New §177.12, Appeal of Dismissal, explains the process for a complainant to appeal the dismissal of a complaint and the possible outcomes of a complainant's appeal.

New §177.13, Probable Cause Guidelines for Requiring Mental or Physical Examination, explains the process for the board to order a mental or physical examination of a licensee if there is



cause for concern regarding the fitness of the licensee to practice the regulated profession.

#### SUBCHAPTER C. EXPERT PANEL REVIEW.

New §177.20, Qualifications, explains the general qualifications necessary to act as an expert reviewer for the board.

New §177.21, Expert Reviewer Selection and Report, explains the selection and assignment process for assigning expert reviewers and duties if assigned as an expert reviewer.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the proposed repeals and new sections are in effect, the public benefit anticipated as a result of enforcing these proposed sections will be to remove redundant language from rules, simplify the rules, and make the rules easier to understand. It also ensures qualified individuals willing be performing the required reviews.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect, will be no fiscal impact or effect on government growth as a result of enforcing the proposed sections.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect there will be no probable economic cost to individuals required to comply with these proposed sections.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for these proposed repeals and new sections and determined that for each year of the first five years these proposed repeals and new sections will be in effect there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of these proposed repeals and new sections and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years these proposed repeals and new sections are in effect:

- (1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering these proposed repeals and new sections;
- (2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections;
- (3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections; and
- (4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering these proposed repeals and new sections.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years these proposed repeals and new sections will be in effect, there will be no effect on local economy and local employment.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for these proposed repeals and new sections. For each year of the first five years these proposed repeals and new sections will be in effect, Mr. Freshour has determined the following:

- (1) These proposed repeals and new sections do not create or eliminate a government program.
- (2) Implementation of these proposed repeals and new sections does not require the creation of new employee positions or the elimination of existing employee positions.
- (3) Implementation of these proposed repeals and new sections does not require an increase or decrease in future legislative appropriations to the agency.
- (4) These proposed sections do not require an increase or decrease in fees paid to the agency.
- (5) These proposed repeals and new sections do not create new regulations.
- (6) These proposed repeals and new sections do repeal existing regulations as described above. These proposed new sections do not expand or limit an existing regulation.
- (7) These proposed repeals and new sections do not increase the number of individuals subject to the sections' applicability.
- (8) These proposed repeals and new sections do not positively or adversely affect this state's economy.

Comments on the proposal may be submitted using the following link: <https://forms.office.com/g/FLvK02KrPm>. A public hearing will be held at a later date. Comments on the proposal will be accepted for 30 days following publication.

#### SUBCHAPTER A. DEFINITIONS

##### 22 TAC §177.1

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years.

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

##### *§177.1. Definitions.*

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

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#### SUBCHAPTER B. NON-PROFIT HEALTH ORGANIZATIONS

##### 22 TAC §§177.2 - 177.13

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years.

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

- §177.2. *Initial Certification of 162.001(b) Health Organizations.*
- §177.3. *Qualifications for Certification as a 162.001(b) Health Organization.*
- §177.4. *Applications for Certification as a 162.001(b) Health Organization.*
- §177.5. *Special Requirements for 162.001(b) Health Organizations.*
- §177.6. *Biennial Reports for 162.001(b) Health Organizations.*
- §177.7. *Establishment of Fees.*
- §177.8. *Failure to Submit Reports or Fees for 162.001(b) Health Organizations.*
- §177.9. *Migrant, Community or Homeless Health Centers.*
- §177.10. *Review of Applications and Reports.*
- §177.11. *Denial of Certification.*
- §177.12. *Revocation of Certification.*
- §177.13. *Complaint Procedure Notification.*

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

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## SUBCHAPTER C. JOINTLY OWNED ENTITIES

### 22 TAC §§177.14 - 177.16

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years.

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

- §177.14. *Therapeutic Optometrists.*
- §177.15. *Podiatrists.*
- §177.16. *Physician Assistants.*

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

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## SUBCHAPTER D. EMPLOYMENT OF PHYSICIANS

### 22 TAC §177.17

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years.

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

- §177.17. *Exceptions to Corporate Practice of Medicine Doctrine.*

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

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## SUBCHAPTER E. PHYSICIAN CALL COVERAGE MEDICAL SERVICES

### 22 TAC §177.18, §177.20

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years.

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

- §177.18. *Purpose and Scope.*
- §177.20. *Call Coverage Minimum Requirements.*

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

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## CHAPTER 177. COMPLAINTS AND INVESTIGATIONS

### SUBCHAPTER A. COMPLAINTS

#### 22 TAC §§177.1 - 177.3

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The new rules are also proposed in accordance with the requirements of §153.012(1) and Chapter 154 of the Texas Occupations Code. No other statutes, articles or codes are affected by this proposal.

##### §177.1. Definitions.

The following words and terms shall have the following meanings in this Chapter unless the context clearly indicates otherwise.

(1) Baseless or unfounded--not based on any evidence or fact.

(2) Board--The Medical Board, Physician Assistants Board, Texas Board of Acupuncture Examiners, Respiratory Care Practitioners Board, Medical Radiological Technologists Board, Perfusionists Advisory Committee, and Medical Physicists Advisory Committee.

##### §177.2. Mandatory Complaint Notification.

(a) Licensees must post the following public notifications on how to file complaints with the board:

Figure 1: 22 TAC §177.2

Figure 2: 22 TAC §177.2

(b) The required notice must be:

(1) displayed in a prominent location at a licensee's place of business, practice, or any location where physician supervision or delegation is required;

(2) in English and Spanish of no less than 8½ inches by 11 inches in size;

(3) no smaller than standard 24-point Times Roman print;

(4) entirely in black print on white background; and

(5) with no alterations, deletions, or additions to the language.

(c) Licensees providing telemedicine must provide the required notice:

(1) on a prominently displayed link on the provider website;

(2) in a provider app, by recording, or in a bill for services;

(3) in no less than a 10-point easily readable font; and

(4) with no alterations, deletions, or additions to the language.

##### §177.3. Complaint Initiation.

A complaint must be made in writing and include:

(1) the complainant's name and contact information;

(2) the name of the licensee against whom the complaint is made;

(3) the name and birth date of the patient or individual harmed, if applicable; and

(4) the time/date and place of the alleged violation or action.

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

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### SUBCHAPTER B. INVESTIGATIVE PROCESS

#### 22 TAC §§177.10 - 177.13

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The new rules are also proposed in accordance with the requirements of Chapter 154 and §164.056. No other statutes, articles or codes are affected by this proposal.

##### §177.10. Preliminary Investigation.

(a) A preliminary investigation shall be conducted in accordance with §154.057 of the Act. Information gathered during a preliminary investigation may include:

(1) the history of the licensee collected and maintained by the board, including prior board complaints and investigations, if any;

(2) a National Practitioner's Data Bank report;

(3) any additional information provided by the complainant, if needed; and

(4) a response from the licensee, if requested by the board.

(b) The preliminary investigation will determine if the complaint:

(1) is jurisdictional;

(2) is sufficient to open an official investigation;

(3) should be dismissed; or

(4) should be referred to another government agency.

(c) Notwithstanding §154.051(d) and (d-1) of the Act, there is no statute of limitations to consider or act on complaints alleging non-standard of care violations or violations not covered under §22.011(b)(12) of the Texas Penal Code, including action by another state licensing entity or criminal conduct.

§177.11. Official Investigation.

(a) If the preliminary investigation shows that a complaint is jurisdictional and that there is probable cause to justify further investigation, the complaint will be filed with the board and an official investigation shall be conducted. Official investigations will be assigned a priority in accordance with §154.056(a)(1) of the Act.

(b) Board staff will:

(1) use the preliminary investigation information;

(2) obtain any additional necessary information and documents to determine if a potential violation occurred;

(3) utilize expert physician reviewers in accordance with §154.056(e) of the Act when the investigation relates to standard of care; and

(4) issue subpoenas or requests for information to obtain information and documents.

(A) Responses to these subpoenas or requests for information shall be provided to the board within fourteen calendar days from receipt of the subpoena or request for information.

(B) The board may require responses to a subpoena or request for information in less than fourteen calendar days, based on individual circumstances.

(c) Upon completion of the official investigation, the matter will be:

(1) referred to the board's litigation department as a legal case; or

(2) recommended for dismissal.

§177.12. Appeal of Dismissal.

(a) A complainant may appeal the dismissal of a complaint. The appeal must:

(1) be in writing;

(2) be made within 90 days after receipt of the notice of the dismissal;

(3) list the reason(s) for the appeal; and

(4) provide information, if any, supporting the appeal.

(b) The complainant will be given notice of the opportunity to make a statement about the appeal.

(c) Only one appeal shall be allowed for each complaint.

(d) The Disciplinary Process Review Committee shall hear the appeal and set time limits for complainants who make a statement to the committee.

(e) Decisions on an appeal may be to:

(1) deny the appeal and uphold the dismissal;

(2) grant the appeal and continue the investigation; or

(3) grant the appeal and the refer to an Informal Settlement Conference.

§177.13. Probable Cause Guidelines for Requiring Mental or Physical Examination.

(a) In accordance with §164.056 of the Act, a mental or physical examination of a licensee can be requested:

(1) if an official complaint concerns allegations under §164.051(a)(4) of the Act and during the investigation:

(A) there has been no treatment or other ongoing remedial actions to address the allegations; and

(B) there is other evidence of the same or similar continuing conduct, including arrests, reports required under Chapter 160 of the Act, or receipt of multiple complaints or statements concerning the conduct; or

(2) if, during an Informal Settlement Conference, the actions or statements of the licensee indicate probable cause that there may be a violation of §164.051(a)(4) of the Act. In such a situation, the Panel can:

(A) defer the Informal Settlement Conference;

(B) request a new complaint be opened alleging a violation of §164.051(a)(4) of the Act; or

(C) order a mental or physical examination in accordance with §164.056 of the Act.

(b) If a physical or mental examination is ordered, the Notice will include a general statement of the basis for seeking the examination.

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

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Scott Freshour

General Counsel

Texas Medical Board

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**SUBCHAPTER C. EXPERT PANEL REVIEW**

**22 TAC §177.20, §177.21**

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The new rules are also proposed in accordance with the requirements of Chapter 154. No other statutes, articles or codes are affected by this proposal.

§177.20. Qualifications.

(a) In addition to the requirements of §154.056(e) of the Act, an expert reviewer must also hold a current certification from the American Board of Medical Specialties, the Bureau of Osteopathic Specialists, or the American Board of Oral and Maxillofacial Surgery at the time of appointment as an expert reviewer.

(b) The term of service of an expert reviewer is until:

- (1) resignation; or
- (2) removal for cause.

§177.21. Expert Reviewer Selection and Report.

(a) Expert reviewers must:

- (1) be selected for review of an investigation at random;
- (2) be of the same or similar specialty for the area of practice that is the basis of the complaint;
- (3) be from a different geographic area than the physician under investigation, if possible; and
- (4) not have any conflict of interest.

(b) An expert reviewer selected must immediately report any potential conflict of interest.

(c) If no expert fully meets the selection criteria, the Medical Director, with advice from General Counsel, will determine which expert reviewer will be selected.

(d) Each expert reviewer will:

- (1) issue a report in accordance with §§154.0561 and 154.058 of the Act; and
- (2) include the expert reviewer's area of specialty.

(e) Agency staff must add the following statement to each expert reviewer report: "PURSUANT TO §164.007 OF THE MEDICAL PRACTICE ACT, THIS DOCUMENT CONSTITUTES INVESTIGATIVE INFORMATION AND IS PRIVILEGED AND CONFIDENTIAL. THE EXPERT REVIEWER REPORTS (REPORTS) ARE STATUTORILY LIMITED FOR USE AT THE INFORMAL PROCEEDING ONLY, UNDER TEXAS OCCUPATIONS CODE, §164.003(f). THE REVIEWERS' REPORTS ARE REQUIRED TO BE PROVIDED TO THE LICENSEE UNDER §164.003(f). THE REPORTS REMAIN CONFIDENTIAL AND PRIVILEGED UNDER §§164.003(h) AND 164.007(c). THE REPORTS CANNOT BE RELEASED TO ANY PERSON OR ENTITY WITHOUT THE CONSENT OF THE BOARD. THE REPORTS CANNOT BE OFFERED, UTILIZED, OR SUBMITTED AS EVIDENCE OR DOCUMENTS IN A CONTESTED CASE PROCEEDING BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS OR IN ANY LEGAL PROCEEDING."

(f) Agency staff must add the following statement in bold letters to each expert reviewer report, when applicable, below the expert reviewer's specialty: "**This review involves Complementary or Alternative Medicine.**"

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

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CHAPTER 178. COMPLAINTS

**22 TAC §§178.1 - 178.9**

The Texas Medical Board (Board) proposes the repeal of current Chapter 178, concerning Complaints, §§178.1 - 178.9.

The Board has determined that due to the extensive reorganization of Chapters 160-200 as part of the Board's rule review, repeal of Chapter 178 in its entirety is more efficient than proposing multiple amendments to make the required changes.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the proposed repeals are in effect, the public benefit anticipated as a result of enforcing these proposed sections will be to remove redundant language from rules, simplify the rules, and make the rules easier to understand.

Mr. Freshour has also determined that for the first five-year period these proposed repeals are in effect, there will be no fiscal impact or effect on government growth as a result of enforcing the proposed sections.

Mr. Freshour has also determined that for the first five-year period these proposed repeals are in effect there will be no probable economic cost to individuals required to comply with these proposed sections.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for these proposed repeals and determined that for each year of the first five years these proposed repeals there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of these proposed repeals and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years these proposed repeals are in effect:

- (1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering these proposed repeals;
- (2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering these proposed repeals;
- (3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering these proposed repeals; and
- (4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering these proposed repeals.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years these proposed repeals will be in effect, there will be no effect on local economy and local employment.

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

- (1) These proposed repeals do not create or eliminate a government program.

(2) Implementation of these proposed repeals does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of these proposed repeals does not require an increase or decrease in future legislative appropriations to the agency.

(4) These proposed sections do not require an increase or decrease in fees paid to the agency.

(5) These proposed repeals do not create new regulations.

(6) These proposed repeals do repeal existing regulations as described above.

(7) These proposed repeals do not increase the number of individuals subject to the sections' applicability.

(8) These proposed repeals do not positively or adversely affect this state's economy.

Comments on the Repeal may be submitted using this link: <https://forms.office.com/g/DibuGXnyfE>. A public hearing will be held at a later date. Comments on the proposal will be accepted for 30 days following publication.

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for re-adoption, re-adoption with amendments, or repeal every four years.

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

§178.1. *Purpose and Scope.*

§178.2. *Definitions.*

§178.3. *Complaint Notification.*

§178.4. *Complaint Initiation.*

§178.5. *Preliminary Investigation of a Complaint.*

§178.6. *Complaint Filing.*

§178.7. *Complaint Resolution.*

§178.8. *Appeals.*

§178.9. *Statute of Limitations.*

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

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Scott Freshour

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## CHAPTER 179. INVESTIGATIONS

### 22 TAC §§179.1 - 179.8

The Texas Medical Board (Board) proposes the repeal of current Chapter 179, concerning Investigations, §§179.1 - 179.8.

The Board also proposes new Chapter 179, concerning Procedural Rules. This includes new Subchapter A, concerning Definitions, §179.1; Subchapter B, concerning Reporting Requirements, §179.5; Subchapter C, concerning Pre-Settlement Conference Resolution Process, §179.10; Subchapter D, concerning Informal Settlement Conference, §§179.15 and 179.16; Subchapter E, concerning Contested Case Procedure §179.20; Subchapter F, concerning Temporary Suspension or Restriction Proceedings, §179.25 and §179.26; Subchapter G, concerning Suspension by Operation of Law, §179.30; Subchapter H, concerning Cease and Desist Orders, §179.35; and Subchapter I, concerning Out-of-Network Billing, §179.40.

Also, the Board contemporaneously proposes the repeal of current Chapter 187, concerning Procedural Rules. This includes Subchapter A, concerning General Provisions and Definitions, §§187.1 - 187.9; Subchapter B, concerning Informal Board Proceedings, §187.10, §187.11, §§187.13 - 187.16, §§187.18 - 21; Subchapter C, concerning Formal Board Proceedings at SOAH, §§187.22 - 187.31, 187.33; Subchapter D, concerning Formal Board Proceedings, §§187.35 - 187.37, 187.39, 187.42; Subchapter E, concerning Proceedings Relating to Probationers, §§187.43 - 187.45; Subchapter F, concerning Temporary Suspension and Restriction Proceedings, §§187.55 - 187.62; Subchapter G, concerning Suspension By Operation Of Law, §§187.70 - 187.72; Subchapter H, concerning Imposition of Administrative Penalty, §§187.75 - 187.82; Subchapter I, concerning Proceedings For Cease And Desist Orders, §187.83, §187.84; and Subchapter J, concerning Procedures Related To Out-Of-Network Health Benefit Claim Dispute Resolution, §§187.85 - 187.89.

The Board has determined that due to the extensive reorganization of Chapters 160-200, repeal of Chapter 179 is more efficient than proposing multiple amendments to make the required changes.

#### SUBCHAPTER A. DEFINITIONS.

New §179.1, Definitions, explains the meaning of certain specific terms as used in new Chapter 179.

#### SUBCHAPTER B. REPORTING REQUIREMENTS.

New §179.5, Reports to Outside Entities, explains the board's mandatory reporting related to board actions.

#### SUBCHAPTER C. Pre-Settlement Conference Resolution Process.

New §179.10, Quality Assurance Panel, explains the process utilized by the board for potential disposition of certain complaints prior to the convening of an Informal Settlement Conference (ISC).

#### SUBCHAPTER D. Informal Settlement Conference.

New §179.15, Informal Settlement Conferences (ISC) Notice, explains the content of the notice of the ISC to a licensee. It also explains a licensee's ability to submit information for consideration at the ISC, request for recodation of the ISC, and a request for continuance of the ISC.

New §179.16, Conduct of the Informal Settlement Conference (ISC), explains how an ISC will generally be conducted and possible complaint resolutions that may be offered at an ISC.

#### SUBCHAPTER E. Contested Case Procedure.

New §179.20, Notice of Oral Argument, explains the opportunity for a licensee to attend and provide oral argument to the board concerning a proposal for decision after a State Office of Administrative Hearings (SOAH) contested case hearing.

#### SUBCHAPTER F. Temporary Suspension or Restriction Proceedings.

New §179.25, Temporary Suspension or Restriction Hearing Without Notice, explains the process followed by the board if the board has reason to believe a licensee is a "continuing threat." A disciplinary hearing will be held as soon as practicable in accordance with §164.059 of the Act or §164.0595 of the Act.

§179.26, Temporary Suspension or Restriction Hearing With Notice, explains the process followed by the board regarding examining witnesses, closing arguments, panel deliberation and announcement of the panel's decision. Evidence is considered under a relaxed standard described in §2001.081 of the Texas Government Code.

#### SUBCHAPTER G. Suspension by Operation of Law.

New §179.30, Automatic Suspensions Based upon Felony Conviction, explains what the board considers to be initial and final criminal convictions. It also details how initial and final convictions may be handled by the board.

#### SUBCHAPTER H. Cease and Desist Orders.

New §179.35, Cease and Desist Orders, explains the process utilized by the board to consider the unlicensed practice of a regulated profession.

#### SUBCHAPTER I. Out-of-Network Billing.

New §179.40, Out-of-Network Billing, explains how the board investigates complaints of bad faith participation and other consumer complaints in out-of-network billing cases.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the proposed repeals and new sections are in effect, the public benefit anticipated as a result of enforcing these proposed sections will be to remove redundant language from rules, simplify the rules, and make the rules easier to understand.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect, there will be no fiscal impact or effect on government growth as a result of enforcing the proposed sections.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect there will be no probable economic cost to individuals required to comply with these proposed sections.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for these proposed repeals and new sections and determined that for each year of the first five years these proposed repeals and new sections will be in effect there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of these proposed repeals and new sections and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years these proposed repeals and new sections are in effect:

(1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering these proposed repeals and new sections;

(2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections;

(3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections; and

(4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering these proposed repeals and new sections.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years these proposed repeals and new sections will be in effect, there will be no effect on local economy and local employment.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for these proposed repeals and new sections. For each year of the first five years these proposed repeals and new sections will be in effect, Mr. Freshour has determined the following:

(1) These proposed repeals and new sections do not create or eliminate a government program.

(2) Implementation of these proposed repeals and new sections does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of these proposed repeals and new sections does not require an increase or decrease in future legislative appropriations to the agency.

(4) These proposed sections do not require an increase or decrease in fees paid to the agency.

(5) These proposed repeals and new sections do not create new regulations.

(6) These proposed repeals and new sections do repeal existing regulations as described above. These proposed new sections do not expand or limit an existing regulation.

(7) These proposed repeals and new sections do not increase the number of individuals subject to the sections' applicability.

(8) These proposed repeals and new sections do not positively or adversely affect this state's economy.

Comments on the proposal may be submitted using this link: <https://forms.office.com/g/4jKFB6ZdaP>. A public hearing will be held at a later date. Comments on the proposal will be accepted for 30 days following publication.

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years.

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

§179.1. *Purpose and Scope.*

- §179.2. *Definitions.*
- §179.3. *Confidentiality.*
- §179.4. *Request for Information and Records from Physicians.*
- §179.5. *Investigation of Professional Review Actions.*
- §179.6. *Time Limits.*
- §179.7. *Past Complaints.*
- §179.8. *Alcohol and Drug Screening During Investigation for Substance Abuse.*

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

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## CHAPTER 179. PROCEDURAL RULES

### SUBCHAPTER A. DEFINITIONS

#### 22 TAC §179.1

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The new rules are also proposed in accordance with the requirements of Chapter 164 of the Texas Occupations Code.

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

##### §179.1. Definitions.

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

(1) Address of record--The last known mailing address of each licensee or applicant, as provided to the board pursuant to the Act.

(2) Appear; Appearance--An opportunity to present and be heard at an Informal Settlement Conference (ISC) via videoconference. A respondent who cannot utilize videoconference may request to appear via teleconference. Licensees are entitled to all substantive and procedural rights delineated in the Medical Practice Act.

(3) Authorized representative--A person who has been designated in writing by a party to represent the party at a board proceeding, including an attorney of record.

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

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## SUBCHAPTER B. REPORTING REQUIREMENTS

#### 22 TAC §179.5

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The new rules are also proposed in accordance with the requirements of Chapter 164 of the Texas Occupations Code.

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

##### §179.5. Reports to Outside Entities.

The board reports all actions in accordance with applicable federal and state statutes, rules, and National Practitioner Data Bank (NPDB) guidelines.

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

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## SUBCHAPTER C. PRE-SETTLEMENT CONFERENCE RESOLUTION PROCESS

#### 22 TAC §179.10

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The new rules are also proposed in accordance with the requirements of Chapter 164 of the Texas Occupations Code.

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

##### §179.10. Quality Assurance Panel.

Prior to convening an Informal Settlement Conference, a Quality Assurance Panel (QAP) may offer resolution of certain complaints.

(1) The QAP is composed of board members or district review committee members as well as board staff members.

(2) Complaints presented to the QAP can be returned to investigations, offered a Remedial Plan, offered an Agreed Order, recommended for dismissal, or set for an Informal Settlement Conference.



(3) Recommendations for dismissal will be presented to the Disciplinary Process Review Committee for consideration.

(4) Offers of a Remedial Plan or Agreed Order by QAP will be sent to the licensee for consideration.

(A) If accepted by the licensee, the Remedial Plan or Agreed Order will be presented to the board for consideration and approval.

(B) If the offer is rejected or is not returned timely, the matter will continue to an Informal Settlement Conference.

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

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## SUBCHAPTER D. INFORMAL SETTLEMENT CONFERENCE

### 22 TAC §179.15, §179.16

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The new rules are also proposed in accordance with the requirements of Chapter 164 of the Texas Occupations Code.

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

#### §179.15. Informal Settlement Conference (ISC) Notice.

(a) The board's notice and procedural rules for ISCs hereby incorporate the requirements outlined in §164.003(b) of the Act.

(b) The notice of the ISC shall:

(1) be sent to the licensee and the complainant(s) in writing at least 45 days prior to the date of the scheduled ISC;

(2) include a statement that appearance at the ISC shall be via videoconference;

(3) include a written statement of the nature of the allegations and a copy of the information the board intends to use at the ISC; and

(4) be provided via email or other verifiable means.

(c) The licensee may file responsive information with board staff up until 15 days before the date of the ISC. Any information furnished later may, but is not required to, be considered at the time of the ISC.

(d) A licensee may request for the ISC to be recorded. Such a request must be made in writing at least 15 days prior to the date of the ISC. The recording is confidential under §164.007(c) of the Act. Independent recording of an ISC is prohibited.

(e) Requests for a continuance or rescheduling of an ISC.

(1) Requests must:

(A) be in writing;

(B) be made within five business days of the initial notice of the ISC; and

(C) explain the basis for the request including supporting documentation, if any.

(2) A request made more than five business days after the licensee received notice of the date of the ISC will be considered on a case-by-case basis for good cause.

(3) Requests shall be forwarded to General Counsel to grant or deny the request, and General Counsel shall notify the licensee of the determination.

#### §179.16. Conduct of the Informal Settlement Conference (ISC).

(a) In addition to the requirements of Chapter 164 of the Act, the following provisions apply to the conduct of ISCs:

(1) All appearances at an ISC shall be via videoconference or teleconference.

(2) The complainant shall be invited to make an oral statement at the ISC. Only the panel members and hearings counsel may address the Complainant.

(3) The board's staff attorney and the licensee and/or the licensee's representative may discuss the investigation with and present pre-filed information to the panel.

(b) After discussion with the parties, the panel may deliberate in private and then recommend resolution as allowed under Chapter 164 of the Act, including, but not limited to:

(1) dismissal;

(2) remedial plan;

(3) agreed order with terms and conditions, including allowable administrative penalties;

(4) referral to the State Office of Administrative Hearings (SOAH);

(5) deferral for further information; or

(6) other allowed actions, including consideration of a temporary suspension.

(c) If an agreed order is recommended, limited post-ISC negotiation with the panel is allowed as follows:

(1) only a single comprehensive proposal by the licensee or the licensee's representative is allowed;

(2) the licensee's proposal must be in writing and provided to the board's staff attorney assigned to the ISC; and

(3) board staff may communicate directly with the board representative(s) after the ISC for the purpose of discussing settlement of the case.

(d) All recommendations for dismissal and remedial plans or agreed orders that are accepted and signed by the licensee will be presented to the board for consideration and possible approval.

(e) A remedial plan may not be entered into to resolve an investigation of a complaint once a SOAH complaint or petition has been filed.

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

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## SUBCHAPTER E. CONTESTED CASE PROCEDURE

### 22 TAC §179.20

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The new rules are also proposed in accordance with the requirements of Chapter 164 of the Texas Occupations Code and Chapter 2001 of the Texas Government Code.

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

#### §179.20. Notice of Oral Argument.

All parties shall be given notice of the opportunity to attend and provide oral argument concerning a proposal for decision before the board. Notice shall be sent to the party or the party's attorney of record as set out in Texas Government Code, §2001.142(a).

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

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## SUBCHAPTER F. TEMPORARY SUSPENSION OR RESTRICTION PROCEEDINGS

### 22 TAC §179.25, §179.26

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The new rules are also proposed in accordance with the requirements of Chapter 164 of the Texas Occupations Code.

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

#### §179.25. Temporary Suspension or Restriction Hearing Without Notice.

(a) If the board has reason to believe a licensee is a "continuing threat," a disciplinary proceeding will be held as soon as practicable in accordance with §164.059 of the Act or §164.0595 of the Act, as applicable.

(b) The three-member panel must include at least one physician.

(c) In determining a continuing threat, a panel will consider:

(1) the definition of continuing threat to the public welfare, as defined by §151.002 of the Act;

(2) the actions or inaction of the licensee;

(3) whether the public harm alleged is more than abstract, hypothetical, or remote; and

(4) whether there have been prior complaints, investigations, or discipline of the same or similar nature against the licensee.

(d) A member of the General Counsel staff shall act as hearings counsel and assist the panel as follows:

(1) provision of advice on legal processes and procedural issues including evidentiary rulings;

(2) asking questions to clarify issues during the proceedings; and

(3) being present during deliberations of the panel for legal advice as needed.

#### §179.26. Temporary Suspension or Restriction Hearing With Notice.

(a) A With-Notice Hearing shall include activities such as opening statements, admission of evidence, calling and examining witnesses, closing arguments, panel deliberation, and announcement of the panel's decision. The panel has discretion over setting time limits and evidentiary determinations.

(b) Evidence will be considered under a relaxed standard described in §2001.081 of the Texas Government Code, including information of a type on which a reasonably prudent person commonly relies in the conduct of the person's affairs, necessary to ascertain facts not reasonably susceptible of proof under formal rules of evidence rules, and not precluded by statute.

(c) The following applies to filing of documents by parties:

(1) All documentary evidence must be filed in electronic format;

(2) Staff's documentary evidence will accompany the Notice of Hearing;

(3) The licensee's documentary evidence must be filed at least by 9:00 a.m. on the business day before the time of the hearing; and

(4) Evidence filed by either party less than 24 hours before the hearing will be considered at panel's discretion.

(d) For purposes of suspension or restriction under §164.0595(e) of the Act, final disposition of a criminal case includes evidence of a:

(1) final, non-appealable conviction,

(2) acceptance and entry of a plea agreement;

(3) dismissal;

(4) acquittal; or

(5) successful completion of a deferred adjudication.

(e) A suspension or restriction hearing is ancillary to the ISC or other subsequent hearings described in §164.059 of the Act and may not be enjoined under §164.011(c) of the Act.

(f) Because the express statutory authority in §164.059 of the Act provides a comprehensive post-suspension hearing process, the requirements of §2001.054(c-1) of the Texas Government Code do not apply.

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

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General Counsel

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## SUBCHAPTER G. SUSPENSION BY OPERATION OF LAW

### 22 TAC §179.30

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The new rules are also proposed in accordance with the requirements of Chapter 164 of the Texas Occupations Code.

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

#### §179.30. Automatic Suspensions Based upon Felony Conviction.

(a) For the purpose of this Section, an initial conviction occurs when there has been an adjudication of guilt of the offense charged, including, but not limited to, a finding of guilt by a jury or judge. A final conviction occurs when there has been an adjudication of guilt and a judgment entered.

(b) Once a licensee has been initially convicted of an offense under §164.057 of the Act or has been incarcerated under §164.058 of the Act, or any other applicable law, the Executive Director or their designee shall:

(1) immediately suspend the physician's license; and

(2) notify the licensee or the licensee's representative of the suspension by the most appropriate method;

(c) Upon notice to the board of a licensee's final conviction under §164.057 of the Act:

(1) the licensee's license shall be revoked; and

(2) the licensee or the licensee's representative shall be notified of the revocation by the most appropriate method.

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

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## SUBCHAPTER H. CEASE AND DESIST ORDERS

### 22 TAC §179.35

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The new rules are also proposed in accordance with the requirements of Chapter 165 of the Texas Occupations Code.

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

#### §179.35. Cease and Desist Orders.

(a) In accordance with §165.052 of the Act, a Cease and Desist hearing regarding the unlicensed practice of medicine by an individual shall be conducted in the same manner as an Informal Settlement Conference, including notice, but with the following modifications:

(1) The hearing shall be considered an open meeting and notice of the hearing will be posted with the Texas Secretary of State as required by applicable law.

(2) A minimum of 10 days' notice prior to the date of the hearing shall be provided to the individual charged with the unlicensed practice of medicine.

(3) The hearing shall be recorded.

(4) The Executive Director has been delegated authority to issue a Cease and Desist Order signed by the Chair of the Cease and Desist hearing, if directed by the panel.

(b) An individual notice of a Cease and Desist hearing may resolve the matter prior to the hearing by entering into an agreed Cease and Desist Order. The authority to sign the authority to the Executive Director is immediately effective when signed by the Executive Director.

(c) If the unlicensed practice of medicine continues after entrance of an order, the Board may pursue further action as authorized by law and make referrals of the matter as appropriate including to law enforcement agencies.

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

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## SUBCHAPTER I. OUT-OF-NETWORK BILLING

### 22 TAC §179.40

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The new rules are also proposed in accordance with the requirements of Chapter 1467 of the Texas Insurance Code.

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

#### §179.40. Out-of-Network Billing.

(a) In accordance with §1467.003 of the Texas Insurance Code, complaints of bad faith participation shall be investigated in the same manner as all other complaints.

(b) In accordance with §1467.151 of the Texas Insurance Code, the following applies to consumer complaints other than bad faith participation:

(1) priority is given to investigations alleging delayed health care or medical care;

(2) investigations are conducted in the same manner as all other complaints; and

(3) the matter may be resolved in accordance with all applicable Board statutes and rules.

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

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## CHAPTER 180. TEXAS PHYSICIAN HEALTH PROGRAM

*(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 22 TAC §180.5 is not included in the print version of the Texas Register. The figure is available in the on-line version of the September 27, 2024, issue of the Texas Register.)*

The Texas Medical Board (Board) proposes the repeal of current Chapter 180, concerning Texas Physician Health Program, §§180.1 - 180.4.

Also, the Board contemporaneously proposes the repeal of current Chapter 190, concerning Disciplinary Guidelines. This includes Subchapter A, concerning General Provisions, §190.1 and §190.2; Subchapter B, concerning Violation Guidelines, §190.8; Subchapter C, concerning Sanction Guidelines, §190.14 and §190.15; and Subchapter D, concerning Administrative Penalties, §190.16.

The Board has determined that due to the extensive reorganization of Chapters 160-200, repeal of Chapters 180 and 190 is more efficient than proposing multiple amendments to make the required changes.

The Board proposes new Chapter 180, concerning Disciplinary Guidelines. This includes new Subchapter A, concerning Violation Guidelines, §180.1; and Subchapter B, concerning Sanction Guidelines, §180.5.

### SUBCHAPTER A. VIOLATION GUIDELINES.

New §180.1, Violation Guidelines, outlines the acts, practices and conduct that are violations of the Medical Practice Act.

### SUBCHAPTER B. SANCTION GUIDELINES.

New §180.5, Sanction Guidelines, provide guidance on assessing remedial action or sanctions for violations of the Medical Practice Act.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the proposed repeals and new sections are in effect, the public benefit anticipated as a result of enforcing these proposed sections will be to remove redundant language from rules, simplify the rules, and make the rules easier to understand.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect, there will be no fiscal impact or effect on government growth as a result of enforcing the proposed sections.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect there will be no probable economic cost to individuals required to comply with these proposed sections.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for these proposed repeals and new sections and determined that for each year of the first five years these proposed repeals and new sections will be in effect there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of these proposed repeals and new sections and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years these proposed repeals and new sections are in effect:

(1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering these proposed repeals and new sections;

(2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections;

(3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections; and

(4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering these proposed repeals and new sections.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years these proposed repeals and new sections will be in effect, there will be no effect on local economy and local employment.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for these proposed repeals and new sections. For each year of the first five years these proposed repeals and new sections will be in effect, Mr. Freshour has determined the following:

(1) These proposed repeals and new sections do not create or eliminate a government program.

(2) Implementation of these proposed repeals and new sections does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of these proposed repeals and new sections does not require an increase or decrease in future legislative appropriations to the agency.

(4) These proposed sections do not require an increase or decrease in fees paid to the agency.

(5) These proposed repeals and new sections do not create new regulations.

(6) These proposed repeals and new sections do repeal existing regulations as described above. These proposed new sections do not expand or limit an existing regulation.

(7) These proposed repeals and new sections do not increase the number of individuals subject to the sections' applicability.

(8) These proposed repeals and new sections do not positively or adversely affect this state's economy.

Comments on the proposal may be submitted using this link: <https://forms.office.com/g/TFPksa6Qp2>. A public hearing will be held at a later date. Comments on the proposal will be accepted for 30 days following publication.

## 22 TAC §§180.1 - 180.4

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for re-adoption, re-adoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this proposal.

*§180.1. Purpose.*

*§180.2. Definitions.*

*§180.3. Texas Physician Health Program.*

*§180.4. Operation of Program.*

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

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Scott Freshour

General Counsel

Texas Medical Board

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## CHAPTER 180. DISCIPLINARY GUIDELINES SUBCHAPTER A. VIOLATION GUIDELINES

### 22 TAC §180.1

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The new rules are also proposed in accordance with the requirements of Chapter 164 of the Texas Occupations Code. No other statutes, articles or codes are affected by this proposal.

#### §180.1. Violation Guidelines.

When substantiated by credible evidence, the following acts, practices, and conduct are considered to be violations of the Medical Practice Act ("the Act") and are not an exhaustive or exclusive listing:

(1) Practice inconsistent with public health and welfare. Failure to practice in an acceptable professional manner consistent with public health and welfare within the meaning of the Act includes, but is not limited to:

(A) failure to treat a patient according to the generally accepted standard of care;

(B) negligence in performing medical services;

(C) failure to use proper diligence in one's professional practice;

(D) failure to safeguard against potential complications;

(E) improper utilization review;

(F) failure to timely respond in person when on-call or when requested by emergency room or hospital staff;

(G) failure to disclose reasonably foreseeable side effects of a procedure or treatment;

(H) failure to disclose reasonable alternative treatments to a proposed procedure or treatment;

(I) failure to obtain informed consent from the patient or other person authorized by law to consent to treatment on the patient's behalf before performing tests, treatments, procedures, or autopsies as required under Chapter 49 of the Code of Criminal Procedure;

(J) termination of patient care without providing reasonable notice to the patient;

(K) prescription or administration of a drug in a manner that is not in compliance with the standards for physicians practicing complementary and alternative medicine or that is either not approved by the Food and Drug Administration (FDA) for use in human beings

or does not meet standards for off-label use, unless an exemption has otherwise been obtained from the FDA, as applicable; or

(L) inappropriate prescription of dangerous drugs or controlled substances to oneself, family members, or others in which there is a close personal relationship that would include the following:

(i) prescribing or administering dangerous drugs or controlled substances without taking an adequate history, performing a proper physical examination, and creating and maintaining adequate records; or

(ii) prescribing controlled substances in the absence of immediate need. "Immediate need" shall be considered no more than 72 hours.

(2) Unprofessional or dishonorable conduct likely to injure the public. Unprofessional or dishonorable conduct that is likely to injure the public within the meaning of the Act includes, but is not limited to:

(A) violating a board order;

(B) failing to comply with a board subpoena or request for information or action;

(C) providing false information to the board;

(D) failing to cooperate with board staff;

(E) engaging in sexually inappropriate contact or behavior directed towards a patient, patient's family, other licensees, hospital personnel, or other medical personnel in a medical setting;

(F) behaving in an abusive or assaultive manner towards a patient or the patient's family or representatives;

(G) failing to timely respond to communications from a patient;

(H) failing to complete the required amounts of Continuing Medical Education (CME);

(I) failing to maintain the confidentiality of a patient;

(J) failing to report suspected abuse of a patient by a third party, when the report of that abuse is required by law; or

(K) behaving in a disruptive manner toward licensees, hospital personnel, other medical personnel, patients, family members of patients or others.

(3) Unprofessional or dishonorable conduct likely to deceive or defraud the public. Unprofessional or dishonorable conduct that is likely to deceive or defraud the public, within the meaning of the Act includes, but is not limited to:

(A) becoming financially or personally involved with a patient in an inappropriate manner;

(B) referring a patient to an entity, such as a facility, laboratory, or pharmacy without disclosing the existence of the licensee's financial interest in the entity to the patient;

(C) using false, misleading, or deceptive advertising;

(D) interfering with an investigation, such as contacting or attempting to contact a complainant, witness, medical peer review committee member, or professional review body regarding statements or information provided to the board for purposes of intimidation, harassment or demanding to withdraw cooperation from the board;

(E) providing medically unnecessary services to a patient; or

(F) a physician or an employee or representative of a physician submitting a billing statement to a patient or a third-party payer that is false or fraudulent, misrepresents services provided, or otherwise does not meet professional standards.

(4) Disciplinary action by peer groups. A voluntary relinquishment of privileges, agreement to not renew privileges, or a failure to renew privileges with a hospital, medical staff, or medical association or society while an investigation or disciplinary action is pending or is on appeal, constitutes disciplinary action that is appropriate and reasonably supported by evidence submitted to the board, within the meaning of the Act.

(5) Repeated or recurring meritorious health care liability claims evidencing professional incompetency likely to injure the public. Repeated or recurring meritorious health care liability claims evidencing professional incompetency likely to injure the public means three or more claims made in a five-year period within the last seven years that were resolved by either a judicial decision or settlement for at least \$100,000.00 with the consent of the physician.

(6) Disciplinary action by another state board. A voluntary surrender of a license in lieu of disciplinary action or while an investigation or disciplinary action is pending constitutes disciplinary action within the meaning of the Act and may be considered the equivalent of a revocation.

(7) Discipline based on criminal conviction.

(A) Initial conviction. An initial conviction occurs when there has been adjudication of guilt of the offense charged including, but not limited to, a finding of guilt by a jury or judge, or a plea.

(B) Final conviction. A final conviction means a non-appealable finding of guilt.

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

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## SUBCHAPTER B. SANCTION GUIDELINES

### 22 TAC §180.5

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The new rules are also proposed in accordance with the requirements of Chapter 164 of the Texas Occupations Code. No other statutes, articles or codes are affected by this proposal.

§180.5. Sanction Guidelines.

(a) The standard sanctions outlined in this subsection provide a range from "Low Sanction" to "High Sanction."

(b) The board may impose more or less severe or restrictive sanctions, based on any aggravating or mitigating factors that are found to apply in a particular case.

(1) The following may be considered as aggravating factors:

(A) harm to one or more patients;

(B) the severity of patient harm;

(C) one or more violations that involve more than one patient;

(D) economic harm to any individual or entity and the severity of such harm;

(E) increased potential for harm to the public;

(F) attempted concealment of the act constituting a violation;

(G) intentional, premeditated, knowing, or grossly negligent act constituting a violation;

(H) prior similar violations;

(I) previous disciplinary action by the board, any government agency, peer review organization, or health care entity;

(J) violation of a board order; or

(K) other relevant circumstances increasing the seriousness of the misconduct.

(2) The following may be considered as mitigating factors:

(A) self-reported and voluntary admissions of violation(s);

(B) implementation of remedial measures to correct or mitigate harm from the violation(s);

(C) acknowledgment of wrongdoing and willingness to cooperate with the board, as evidenced by acceptance of an agreed order;

(D) rehabilitative potential;

(E) prior community service and present value to the community;

(F) participation in a continuing medical education course described in §161.35 of this title completed not more than two years before the start of the investigation, if the physician is being investigated by the board regarding the physician's selection of clinical care for the treatment of tick-borne diseases;

(G) other relevant circumstances reducing the seriousness of the misconduct; or

(H) other relevant circumstances lessening responsibility for the misconduct.

(c) The maximum sanction in all cases is revocation of the licensee's license.

(d) For remedial plans in which continuing medical education is recommended, a minimum of four hours in each appropriate topic addressing the violation(s) is the recommended hour requirement. For agreed orders in which continuing medical education is recommended, a minimum of eight hours in each appropriate topic addressing the violation(s) is the recommended hour requirement.

(e) Remedial plans will include a fee related to the enforcement costs, in the amount of \$500.00.

(f) Administrative penalties may be required in the amount between \$1,000.00 up to \$5,000.00 per violation. In accordance with §165.003 of the Act, each day the violation continues is a separate violation.

(g) Each statutory violation constitutes a separate offense, even if arising out of a single act.

(h) For any violation of the Act that is not specifically mentioned in this rule, the board shall apply a sanction that generally follows the spirit and scheme of the sanctions outlined in this rule. Figure: 22 TAC §180.5

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

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## CHAPTER 181. CONTACT LENS PRESCRIPTIONS

The Texas Medical Board (Board) proposes the repeal of current Chapter 181, concerning Contact Lens Prescriptions, §§181.1 - 181.7.

The Board also proposes new Chapter 181, concerning Compliance Program, §§181.1 - 181.8.

Also, the Board contemporaneously proposes the repeal of current Chapter 189, concerning Compliance Program, §§189.1 - 189.16.

The Board has determined that due to the extensive reorganization of Chapters 160 - 200, repeal of Chapter 181 is more efficient than proposing multiple amendments to make the required changes.

The proposed new sections are as follows:

New §181.1, Definitions, defines terms used in new Chapter 181.

New §181.2, General Compliance Standards, explains the general compliance requirements for licensees subject to board action.

New §181.3, Compliance Process, describes the compliance process, including the initial meeting with the compliance officer and ongoing compliance reviews.

New §181.4, Determination of Non-Compliance, describes conduct considered by the board to be non-compliant with the terms or conditions of a non-disciplinary or disciplinary action.

New §181.5, Enforcement Process for Violations, identifies non-compliance by a compliance officer. It also describes the proper timeframe of ISC notification to the licensee, as well as information the board must receive from the licensee prior to the ISC.

New §181.6, Modification and Termination Process for Disciplinary Orders, explains the process to follow for licensees under

disciplinary orders when seeking to modify or terminate the order.

New §181.7, Automatic Termination of a Disciplinary Order, explains the condition or terms that allow for an automatic termination of a licensee's disciplinary order.

New §181.8, Recommendation for Competency Assessment, explains the process followed when a third-party monitor for the board believes a licensee poses a continuing threat.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the proposed repeals and new sections are in effect, the public benefit anticipated as a result of enforcing these proposed sections will be to remove redundant language from rules, simplify the rules, and make the rules easier to understand.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect, there will be no fiscal impact or effect on government growth as a result of enforcing the proposed sections.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect there will be no probable economic cost to individuals required to comply with these proposed sections.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for these proposed repeals and new sections and determined that for each year of the first five years these proposed repeals and new sections will be in effect there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of these proposed repeals and new sections and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years these proposed repeals and new sections are in effect:

- (1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering these proposed repeals and new sections;
- (2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections;
- (3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections; and
- (4) there is no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering these proposed repeals and new sections.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years these proposed repeals and new sections will be in effect, there will be no effect on local economy and local employment.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for these proposed repeals and new sections. For each year of the first five years these proposed repeals and new sections will be in effect, Mr. Freshour has determined the following:

- (1) These proposed repeals and new sections do not create or eliminate a government program.
- (2) Implementation of these proposed repeals and new sections does not require the creation of new employee positions or the elimination of existing employee positions.
- (3) Implementation of these proposed repeals and new sections does not require an increase or decrease in future legislative appropriations to the agency.
- (4) These proposed sections do not require an increase or decrease in fees paid to the agency.
- (5) These proposed repeals and new sections do not create new regulations.
- (6) These proposed repeals and new sections do repeal existing regulations as described above. These proposed new sections do not expand or limit an existing regulation.
- (7) These proposed repeals and new sections do not increase the number of individuals subject to the sections' applicability.
- (8) These proposed repeals and new sections do not positively or adversely affect this state's economy.

Comments on the proposal may be submitted using this link: <https://forms.office.com/g/VdXUSaASBh>. A public hearing will be held at a later date. Comments on the proposal will be accepted for 30 days following publication.

## 22 TAC §§181.1 - 181.7

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for re-adoption, re-adoption with amendments, or repeal every four years.

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

§181.1. *Purpose.*

§181.2. *Definitions.*

§181.3. *Release of Contact Lens Prescription.*

§181.4. *Delegation of Fitting of Contact Lenses.*

§181.5. *Contact Lens Dispensing Permit Not Required of Physician or Physician's Employees.*

§181.6. *Physician's Prescriptions: Delegation.*

§181.7. *Liability.*

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

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## CHAPTER 181. COMPLIANCE PROGRAM

### 22 TAC §§181.1 - 181.8

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The new rules are also proposed in accordance with the requirements of Chapter 164 of the Texas Occupations Code.

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

#### §181.1. Definitions.

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

(1) Licensee--A person to whom the board or an advisory board or committee of the board has issued a license, permit, certificate, approved registration, or similar form of permission authorized by law.

(2) Monitoring physician--A licensed Texas physician who conducts reviews of medical/billing records and/or conducts onsite reviews and periodically reports in writing to the board on the licensee's compliance.

(3) Toll--To extend the term of an order for any period of time that:

(A) a licensee practices exclusively outside the State of Texas;

(B) a licensee's license is cancelled for nonpayment of licensure fees;

(C) the order is stayed or enjoined by court order; or

(D) is longer than 60 consecutive days that a licensee does not actively practice medicine.

#### §181.2. General Compliance Standards.

(a) All licensees who are subject to non-disciplinary or disciplinary action must submit to compliance monitoring.

(b) All terms and conditions of a non-disciplinary or disciplinary action are binding and enforceable.

(c) Licensees are solely responsible for timely providing to the board all requested or required documentation of compliance.

(d) Licensees must maintain current contact information with the board, through board approved processes, including:

(1) work address(es);

(2) home address;

(3) work and cell telephone number(s); and

(4) electronic mail address.

(e) Any change to the required contact information must be reported to the board no later than ten calendar days after the effective date of the change.

(f) A compliance file is considered investigative and is confidential and subject to the provisions of §164.007(c) of the Act.

#### §181.3. Compliance Process.

(a) The compliance officer shall provide notice to the licensee of an initial meeting to review terms and conditions of the non-disciplinary or disciplinary action and the compliance process.

(b) At the initial meeting, the compliance officer will provide the licensee with a copy of the non-disciplinary or disciplinary action and other written information, including protocols for compliance with each term and condition.

(c) The compliance officer will meet with the licensee on a periodic and random basis and provide ongoing compliance reviews. The compliance reviews may be unannounced. The meetings may be conducted at a practice location or other location to verify compliance, and the time, date, and location of all visits are to be determined by staff unless otherwise agreed to by staff.

#### §181.4. Determination of Non-Compliance.

In addition to failing to comply with a term or condition of a non-disciplinary or disciplinary action, the following are also considered violations:

(1) failure to cooperate with board representatives, including:

(A) failing to promptly respond to communications;

(B) interference with board representatives that compromises or prevents them from fulfilling duties and responsibilities; or

(C) any harassing or threatening conduct directed toward board representatives.

(2) failure to timely submit a required report, unless a licensee presents evidence of good faith efforts to ensure the timely submission of reports.

#### §181.5. Enforcement Process for Violations.

(a) If a compliance officer identifies potential non-compliance, the Informal Settlement Conference (ISC) processes under Chapter 179 of this title will apply, except:

(1) the notice of the ISC to the licensee must be provided at least ten days prior to the date of the ISC; and

(2) any information the licensee wants considered at the ISC must be received by the board at least five days prior to the date of the ISC.

(b) To resolve violations of an order or remedial plan, a licensee may waive appearance at an ISC, and accept a settlement agreement approved by the Executive Director or their designee.

#### §181.6. Modification and Termination Process for Disciplinary Orders.

(a) In order to be eligible to submit the modification or termination request, the licensee must not be subject to a pending complaint, investigation, or board proceeding.

(b) The timing of the initial modification or termination request will be specified in the disciplinary order.

(c) Requests must be in writing and explain the basis for the request.

(d) If a licensee is determined to be eligible for modification or termination, an informal meeting will be scheduled for consideration of the request by a board representative panel. The meeting, will be conducted in a manner similar to an ISC; except that the burden is on the licensee to demonstrate grounds such as:

(1) a significant change in circumstances;

(2) an unanticipated, unique, or undue hardship as a result of the board action, but not the denial of insurance coverage or an adverse action taken by a medical specialty board; or

(3) any other relevant considerations.

(e) If at any time prior to final approval of the modification or termination request, the licensee becomes ineligible for any reason, the pending action will be cancelled, including any scheduled informal meeting to consider the request or board meeting to consider the recommendation.

(f) Subsequent requests can only be made once a year after the effective date of any order granting or denying modification or termination of the original order.

(g) Remedial plans are not allowed to be modified. Termination is automatic upon successful completion of the terms and conditions of the remedial plan.

§181.7. Automatic Termination of a Disciplinary Order.

(a) An order may be automatically terminated if specified in an order or upon successful completion.

(b) Successful completion of an order means:

(1) the compliance officer has verified timely completion of all terms and conditions of the order;

(2) there is no board complaint, investigation, or action pending related to violation of the order; and

(3) the order is not in tolled status, including partial tolling.

(c) When successful completion is verified, a written Notice of Termination of the Order will be issued.

§181.8. Recommendation for Competency Assessment.

(a) A third-party monitor may recommend that the licensee complete a competency evaluation if they have a good faith belief the individual poses a continuing threat.

(b) A recommendation must be reviewed and approved by the Chair of the Disciplinary Process and Review Committee (DPRC).

(c) If approved, the following procedure applies:

(1) the compliance officer will notify the licensee of the evaluation;

(2) the approved program must send a written report regarding the performance and results of evaluation directly to the compliance officer;

(3) upon completion of the competency evaluation, the licensee may be required to appear before a panel of board representatives;

(A) Informal Settlement Conference (ISC) processes under Chapter 179 of this title will apply to these appearances, except:

(i) the notice of the ISC to review the competency assessment must be provided to the licensee at least ten days prior to the date of the ISC; and

(ii) any information the licensee wants considered at the ISC must be received at least five days prior to the date of the ISC.

(4) Nothing in this paragraph limits the board's authority to conduct a temporary restriction or suspension proceeding under §164.059 of the Act.

(5) The panel may make recommendations for appropriate action, including but not limited to:

(A) a requirement to follow all the program recommendations,

(B) necessary re-training;

(C) re-education measures;

(D) practice restrictions; or

(E) a recommendation to convene temporary restriction or suspension proceedings if a continuing threat is identified.

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

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Scott Freshour

General Counsel

Texas Medical Board

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For further information, please call: (512) 305-7030



## CHAPTER 182. USE OF EXPERTS

### 22 TAC §§182.1, 182.3, 182.5, 182.8

The Texas Medical Board (Board) proposes the repeal of current Chapter 182, concerning Use of Experts, §182.1, §182.3, §182.5, and §182.8.

The Board also proposes new Chapter 182, concerning Texas Physician Health Program, §§182.1 - 182.4.

Also, the Board contemporaneously proposes the repeal of current Chapter 180, concerning Texas Physician Health Program, §§180.1 - 180.4.

The Board has determined that due to the extensive reorganization of Chapters 160-200, repeal of Chapter 182 is more efficient than proposing multiple amendments to make the required changes.

The proposed new sections are as follows:

New §182.1, Definitions, defines terms used in new Chapter 182.

New §182.2, Governing Board and Physician Health and Rehabilitation Advisory Committee Standards, explains the process of appointment of the Governing Board and Physician Health and Rehabilitation Advisory Committee. It also details the grounds for removal of members and conflicts of interest for members.

New §182.3, Operation of the Program, details how the Texas Physician Health Program (PHP) operates, including referrals to the program, agreements with participants, and drug and alcohol testing of participants. It also explains the Case Advisory Panel of the PHP.

New §182.4, Authority for the Program to Accept Gifts, Grants, and Donations, describes the process for acceptance of gifts, grants, and donations to the Governing Board.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the proposed repeals and new sections are in effect, the public benefit anticipated as a result of enforcing these proposed sections will be to remove redundant language from rules, simplify the rules, and make the rules easier to understand.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect, there

will be no fiscal impact or effect on government growth as a result of enforcing the proposed sections.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect there will be no probable economic cost to individuals required to comply with these proposed sections.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for these proposed repeals and new sections and determined that for each year of the first five years these proposed repeals and new sections will be in effect there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of these proposed repeals and new sections and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years these proposed repeals and new sections are in effect:

(1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering these proposed repeals and new sections

(2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections;

(3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections; and

(4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering these proposed repeals and new sections.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years these proposed repeals and new sections will be in effect, there will be no effect on local economy and local employment.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for these proposed repeals and new sections. For each year of the first five years these proposed repeals and new sections will be in effect, Mr. Freshour has determined the following:

(1) These proposed repeals and new sections do not create or eliminate a government program.

(2) Implementation of these proposed repeals and new sections does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of these proposed repeals and new sections does not require an increase or decrease in future legislative appropriations to the agency.

(4) These proposed sections do not require an increase or decrease in fees paid to the agency.

(5) These proposed repeals and new sections do not create new regulations.

(6) These proposed repeals and new sections do repeals existing regulations as described above. These proposed new sections do not expand or limit an existing regulation.

(7) These proposed repeals and new sections do not increase the number of individuals subject to the sections' applicability.

(8) These proposed repeals and new sections do not positively or adversely affect this state's economy.

Comments on the proposal may be submitted using this link: <https://forms.office.com/g/63DZ1ji8iq>. A public hearing will be held at a later date. Comments on the proposal will be accepted for 30 days following publication.

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years.

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

§182.1. *Purpose.*

§182.3. *Definitions.*

§182.5. *Expert Reviewer Qualifications.*

§182.8. *Expert Physician Reviewers.*

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

Filed with the Office of the Secretary of State on September 13, 2024.

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Scott Freshour  
General Counsel  
Texas Medical Board

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For further information, please call: (512) 305-7030



## CHAPTER 182. TEXAS PHYSICIAN HEALTH PROGRAM

### 22 TAC §§182.1 - 182.4

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The new rules are also proposed in accordance with the requirements of Texas Occupations Code, Chapter 167. The new rules are also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this proposal.

§182.1. *Definitions.*

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

(1) Agency--the Texas Medical Board and its advisory boards and committees.

(2) Agreement--a contract entered into between a participant and the TXPHP, detailing the terms of participant monitoring by TXPHP.

(3) Program or TXPHP--the Texas Physician Health Program.

§182.2. Governing Board and Physician Health and Rehabilitation Advisory Committee Standards.

(a) Appointment of Governing Board. The president of the Medical Board shall appoint a Governing Board of:

(1) 11 qualified individuals with appropriate experience as follows:

(A) six doctors of medicine (M.D.) licensed in Texas;

(B) two doctors of osteopathic medicine (D.O.) licensed in Texas;

(C) one physician assistant licensed in Texas for at least five years;

(D) one mental health professional licensed in Texas; and

(E) one public member who meets the requirements of §152.003 of the Act.

(2) The president of the Medical Board shall appoint the president of the Governing Board

(3) Members shall serve staggered six-year terms and may be reappointed.

(4) Any vacancies that occur are filled by the president of the Medical Board.

(b) Appointment of the Physician Health and Rehabilitation Advisory Committee ("Advisory Committee"). In accordance with §167.004 of the Act, the Governing Board appoints an Advisory Committee.

(1) The Advisory Committee shall be composed of a minimum of three physicians licensed in Texas with appropriate experience.

(2) The members serve staggered six-year terms at the pleasure of the Governing Board.

(3) Any vacancies that occur shall be filled by the Governing Board.

(c) Grounds for Removal. A member may be removed from the Governing Board or Advisory Committee if:

(1) grounds for removal exist under §152.006 of the Act; or

(2) the member fails to meet standards of professional conduct described in §160.2 of this title (relating to Functions and Duties).

(d) Conflicts of Interest.

(1) Governing Board and Advisory Committee members should avoid conflicts of interest and recuse themselves from participating in matters or decisions that represent such conflicts.

(2) Members must recuse themselves in any matter or decision relating to a participant that the member has treated or is currently treating.

§182.3. Operation of the Program.

(a) A Memorandum of Understanding (MOU) with the Medical Board shall be adopted by the Governing Board. The MOU is required to be reviewed as part of the program's internal audit in accordance with Chapter 167 of the Act.

(b) Referrals.

(1) Referrals to the program shall be accomplished in accordance with Chapter 167 of the Act.

(2) The program may accept a self-referral from an individual with credentials acceptable to the program, applicant for licensure with the Agency, or licensee of the Agency, or a referral from an individual, a physician health and rehabilitation committee, a physician assistant organization, a state physician health program, an education program, a hospital or hospital system licensed in this state, a residency program, or the Agency.

(3) Agency referrals to the program may be public or private.

(4) Notwithstanding §167.0015 of the Act, the program may accept a referral from the board following a TMB investigation related to impairment resulting in a violation of the standard of care or the commission of a boundary violation. The referral to the program is solely for any impairment issue, and TMB will address disciplinary issues, if any, related to the standard of care violation or the commission of a boundary violation. A self-referral by an individual accused of a standard of care or boundary violation does not prohibit investigation by TMB for the standard of care or boundary violation.

(c) Eligibility Determinations.

(1) The Medical Director, designee of the Medical Director, or Governing Board president shall meet with a referred individual to determine eligibility for the program. The eligibility determination may be delegated to another qualified medical professional as necessary. This meeting with the referred individual may be waived if the Medical Director determines that good cause exists.

(2) A referred individual may be requested to undergo a clinically appropriate evaluation as either a condition for eligibility or as a term of an agreement. Refusal to undergo an evaluation may be referred to the Agency.

(d) Case Advisory Panel.

(1) The Case Advisory Panel is appointed by the president of the Governing Board to assist and advise the Medical Director, as needed, in eligibility determinations or monitoring recommendations. The Case Advisory Panel consists of the president, secretary, and one other Governing Board member.

(2) The Governing Board member is appointed on a four-month rotating basis.

(3) Cases reviewed by the Case Advisory Panel shall be reported on at the next scheduled meeting of the Governing Board.

(e) Agreements.

(1) Agreements are effective upon signature by the program participant and are subject to review by the Governing Board.

(2) Agreements between participants and the program may include, but are not limited to, the following terms and conditions:

(A) abstinence from prohibited substances and drug testing;

(B) agreement to not treat one's own self, family, or friends;

(C) agreement to not receive treatment from family or friends;

(D) participation in mutual support groups, such as Alcoholics Anonymous;

(E) participation in support groups for recovering professionals, such as Caduceus and International Doctors in Alcoholics Anonymous (IDAA);

(F) worksite monitoring;

(G) practice restrictions; or

(H) treatment by an appropriate health care provider.

(f) Drug and alcohol testing of participants shall be provided by a vendor using protocols approved by the Medical Board.

§182.4. Authority for the Program to Accept Gifts, Grants, and Donations.

(a) This subsection is set forth pursuant to §167.013 of the Act, which allows the Governing Board to receive a donation for the program.

(b) Texas Government Code, Chapter 572, governs the standards of conduct between the Governing Board, program, and donors.

(c) The Governing Board may not accept donations from individual applicants for a license or licensees under the Texas Medical Board's jurisdiction.

(d) In order for donations to be considered by the Governing Board:

(1) the donor must complete a form required by the Governing Board providing information including a description of the donation, the purpose, and any restrictions;

(2) the donation's purpose may not be for the funding of employee positions or services; and

(3) the donation must be considered in an open meeting by a majority of the members of the Governing Board and, if accepted, reported in the minutes including the name of the donor, and the purpose and a description of the donation.

(e) Following acceptance of the donation by the Governing Board, the donor and the program shall execute a donation agreement, which includes:

(1) a description of the donation, including a statement of the value;

(2) a statement by the donor attesting to the donor's ownership rights in the donation and the donor's authority to make the donation;

(3) a signature of the donor or designee;

(4) a signature of the program designee;

(5) restrictions on the use of the donations, if any;

(6) the mailing address of the donor and principal place of business if the donor is a business entity;

(7) a statement identifying any official relationship between the donor and the program; and

(8) a statement advising the donor the lack of tax-deductible status and to seek legal and/or tax advice from its own legal counsel.

(f) Monetary donations will be deposited and disbursed in accordance with the General Appropriations Act and for the purpose

specified by the donor, and in accordance with any local, state, and federal laws. In no event will donations be used for purposes not within the program's statutory authority.

(g) Conflict of Laws. These rules shall not conflict with a requirement of a statute regulating the conduct of an officer or employee of the program or the procedures of the program. In the event there appears to be a conflict between these rules and a state statute, the state statute controls.

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

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Scott Freshour

General Counsel

Texas Medical Board

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For further information, please call: (512) 305-7030



## CHAPTER 183. ACUPUNCTURE

### 22 TAC §§183.1 - 183.27

The Texas Medical Board (Board) proposes the repeal of current Chapter 183, concerning Acupuncture, §§183.1 - 183.27.

The Board also proposes new Chapter 183, concerning Physician Assistants. This includes new Subchapter A, concerning Physician Assistant Board, §§183.1 - 5; Subchapter B, concerning Licensing and Registration, §§183.10 - 183.17; Subchapter C, concerning Practice Requirements, §183.20, and §183.21; and Subchapter D, concerning Board Processes and Procedures, §183.25.

Also, the Board contemporaneously proposes the repeal of current Chapter 185, concerning Physician Assistants, §§185.1 - 185.33.

The Board has determined that due to the extensive reorganization of Chapters 160-200, repeal of Chapter 183 is more efficient than proposing multiple amendments to make the required changes.

The proposed new subchapters and sections are as follows:

#### SUBCHAPTER A. PHYSICIAN ASSISTANT BOARD.

New §183.1, Definitions, defines terms used in new Chapter 183.

New §183.2, Functions and Duties, explains the functions and duties of the Physician Assistant Board and its members.

New §183.3, Meetings, explains how often the board meets, how board and committee meetings are conducted, and the voting process at meetings.

New §183.4, Standing Committees, explains the function of the two Standing Committees, Disciplinary Committee and Licensure Committee of the board.

New §183.5, Officers of the Board, explains the duties of the presiding officer and secretary of the board, as well as appointment and succession of officers.

#### SUBCHAPTER B. LICENSING AND REGISTRATION.

New §183.10, General Requirements for Licensure, outlines the general standards for licensure for a Physicians Assistants license cited in §§204.152 and 204.153 of the Act and submission of relevant documentation.

New §183.11, Current Clinical Practice, outlines the requirements of a physician assistant relating to professional or work history evaluations and demonstration that the physician assistant has worked as a physician assistant in the preceding five years from the date of application. Alternatively, the section describes several options if an applicant cannot demonstrate current clinical practice as a physician assistant within the last three years from the date of application.

New §183.12, Temporary Licenses, explains the requirements and process for an applicant to obtain a temporary physician assistants license as cited in §205.155 of the Act.

New §183.13, Procedural Rules for Licensure Applicants, outlines the general requirements and processing of the application to obtain a physician assistants license. This section also describes the options offered by the Executive Director to the applicant if there is an issue with the application.

New §183.14, Relicensure, explains the requirements for a license holder who retired or surrendered their license and seek to be re-licensed.

New §183.15, License Registration and Renewal, outlines the general requirements for license registration and renewal for a Texas physician assistants license.

New §183.16, Biennial Continuing Medical Education (CME) Requirements, explains the registration renewal requirements regarding the Physicians Assistants biennial continuing medical education.

New §183.17, Inactive License, explains the number of years that the license is automatically canceled after being placed on inactive status for 3 years. This section also describes the process for relicensure, which is required for activation of a canceled license.

#### SUBCHAPTER C. PRACTICE REQUIREMENTS.

New §183.20, On-Going Reporting Requirements, states that a license holder must report any event listed in §162.2(b)(1) through (7) of this title to the board within 10 days after the event.

New §183.21, Training and Registration Requirements for Physician Assistants Performing Radiologic Procedures, outlines specific requirements for physician assistants in performing radiologic procedures when delegated in compliance with requirements of §157.001 of the Medical Practice Act.

#### SUBCHAPTER D. BOARD PROCESSES AND PROCEDURES.

New §183.25, Procedural Rules, explains the applicable rules applied to complaints and investigations, disciplinary guidelines and sanctions, and compliance in accordance with §204.312 of the Act for physician assistants.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the proposed repeals and new sections are in effect, the public benefit anticipated as a result of enforcing these proposed sections will be to remove redundant language from rules, simplify the rules, and make the rules easier to understand.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect, there

will be no fiscal impact or effect on government growth as a result of enforcing the proposed sections.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect there will be no probable economic cost to individuals required to comply with these proposed sections.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for these proposed repeals and new sections and determined that for each year of the first five years these proposed repeals and new sections will be in effect there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of these proposed repeals and new sections and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years these proposed repeals and new sections are in effect:

(1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering these proposed repeals and new sections;

(2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections;

(3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections; and

(4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering these proposed repeals and new sections.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years these proposed repeals and new sections will be in effect, there will be no effect on local economy and local employment.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for these proposed repeals and new sections. For each year of the first five years these proposed repeals and new sections will be in effect, Mr. Freshour has determined the following:

(1) These proposed repeals and new sections do not create or eliminate a government program.

(2) Implementation of these proposed repeals and new sections does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of these proposed repeals and new sections does not require an increase or decrease in future legislative appropriations to the agency.

(4) These proposed sections do not require an increase or decrease in fees paid to the agency.

(5) These proposed repeals and new sections do not create new regulations.

(6) These proposed repeals and new sections do repeal existing regulations as described above. These proposed new sections do not expand or limit an existing regulation.

(7) These proposed repeals and new sections do not increase the number of individuals subject to the sections' applicability.

(8) These proposed repeals and new sections do not positively or adversely affect this state's economy.

Comments on the proposal may be submitted using this link: <https://forms.office.com/g/KPT623ehXQ>. A public hearing will be held at a later date. Comments on the proposal will be accepted for 30 days following publication.

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for reoption, reoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this proposal.

§183.1. *Purpose.*

§183.2. *Definitions.*

§183.3. *Meetings.*

§183.4. *Licensure.*

§183.5. *Biennial Renewal of License.*

§183.6. *Denial of License; Discipline of Licensee.*

§183.7. *Scope of Practice.*

§183.8. *Investigations.*

§183.9. *Impaired Acupuncturists.*

§183.10. *Patient Records.*

§183.11. *Complaint Procedure Notification.*

§183.12. *Medical Board Review and Approval.*

§183.13. *Construction.*

§183.14. *Acudetox Specialist.*

§183.15. *Use of Professional Titles.*

§183.16. *Texas Acupuncture Schools.*

§183.17. *Compliance.*

§183.18. *Administrative Penalties.*

§183.19. *Acupuncture Advertising.*

§183.20. *Continuing Acupuncture Education.*

§183.21. *Continuing Auricular Acupuncture Education for Acudetox Specialists.*

§183.22. *Language Requirements.*

§183.23. *Voluntary Surrender of Acupuncture License.*

§183.24. *Procedure.*

§183.25. *Inactive Status License.*

§183.26. *Retired License.*

§183.27. *Exemption from Licensure for Certain Military Spouses.*

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

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Scott Freshour

General Counsel

Texas Medical Board

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For further information, please call: (512) 305-7030

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## CHAPTER 183. PHYSICIAN ASSISTANTS SUBCHAPTER A. PHYSICIAN ASSISTANT BOARD

### 22 TAC §§183.1 - 183.5

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §204.101, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle; and establish rules related to licensure and registration of the license. The new rules are also proposed under the authority of §153.0015(a); and in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for reoption, reoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this proposal.

§183.1. Definitions.

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

(1) Act--The Physician Assistant Licensing Act, Texas Occupations Code, Chapter 204.

(2) Board or the "Physician Assistant Board"--The Texas Physician Assistant Board.

(3) Medical Practice Act--Texas Occupations Code, Title 3, Subtitle B, as amended.

§183.2. Functions and Duties.

(a) In accordance with §204.101 of the Act, board duties and functions include:

(1) establishing standards for the practice of physician assistants;

(2) regulating physician assistants through licensure and discipline;

(3) receiving complaints and investigating possible violations of the Act and the board rules;

(4) reviewing, modifying, proposing, and adopting rules;

(5) considering, reviewing, and approving policy as necessary; and

(6) acting as a resource concerning proposed legislative changes to reflect current medical and healthcare needs and practices.

(b) Individual board members are required to:

(1) identify and disclose any conflicts of interest that may interfere with carrying out their duties and functions or that may impede their ability to be fair and impartial, and recuse from such matters;

(2) comply with the Act;

(3) maintain the highest levels of professional and ethical conduct, including, but not limited to:

(A) A board member shall not appear as an expert witness in any case in which a licensee of the board is a party and in which the expert testimony relates to standard of care or professional malpractice;

(B) A board member shall not appear in any administrative proceeding involving the exercise of the board's licensing or

disciplinary authority before the board or the State Office of Administrative Hearings (SOAH) in which proceeding a licensee of the board is a party;

(C) A board member should refrain from making any statement that implies that the board member is speaking for the board if the board has not voted on an issue or, unless the board has given the board member such authority; and

(4) A board member shall immediately disclose if they are subject to a non-disciplinary or disciplinary action by any health care facility or professional licensing entity.

(c) Failure to comply with any of the requirements set forth in the Act or this section will be reported to the Office of the Governor.

§183.3. Meetings.

(a) The board may meet up to four times a year, with a minimum of two times a year, to carry out the mandates of the Act.

(b) Board and Committee meetings shall be conducted in compliance with Texas Government Code, Chapter 551, and, to the extent possible, pursuant to the provisions of Robert's Rules of Order Newly Revised.

(c) Special meetings may be called by the presiding officer of the board or by resolution of the board.

(d) The board may act only by majority vote of its members present and voting. Proxy votes are not allowed.

§183.4. Standing Committees.

The Standing Committees of the board are as follows:

(1) Disciplinary Committee:

(A) reviews and makes recommendations to resolve complaints, close investigations, dismiss cases, and hears complainant appeals;

(B) recommends, reviews, and develops improvements of the disciplinary process, rules, policies, and other related matters; and

(C) receives reports on enforcement activities and statistical information.

(2) Licensure Committee:

(A) reviews applications and makes recommendations, based on eligibility criteria for licensure of physician assistants;

(B) recommends, reviews, and develops changes to the licensure process, rules, policies, and other related matters as necessary; and

(C) maintains communication with Texas physician assistant programs.

§183.5. Officers of the Board.

(a) In accordance with §204.055 of the Act, the officers of the board consist of a presiding officer and a secretary.

(b) The secretary of the board shall assume the duties of the presiding officer in the event of the presiding officer's absence or incapacity.

(c) The board, at a regular meeting or special meeting, upon majority vote of the members present, may remove the secretary from office.

(d) In the event of the absence or temporary incapacity of the presiding officer and the secretary, the members of the board may elect

another physician assistant member to act as the presiding officer of a board meeting or as an interim acting presiding officer for the duration of the absences or incapacity or until another presiding officer is appointed by the governor.

(e) Upon the death, resignation, removal, or permanent incapacity of the presiding officer or the secretary, the board shall elect a secretary from its membership to fill the vacant position. The board may elect an interim acting presiding officer until another presiding officer is appointed by the governor. Such an election shall be conducted as soon as practicable at a regular or special meeting of the board.

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

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Scott Freshour

General Counsel

Texas Medical Board

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## SUBCHAPTER B. LICENSING AND REGISTRATION

### 22 TAC §§183.10 - 183.17

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §204.101, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle; and establish rules related to licensure and registration of the license. The new rules are also proposed under the authority of §153.0015(a); and in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this proposal.

§183.10. General Requirements for Licensure.

(a) All applicants for a license must meet the general standards in §§204.152 and 204.153 of the Act and submit:

(1) the board required application form;

(2) payment of the required fee of \$220.00, and additional fees and surcharges as applicable; and

(3) required documentation including, but not limited to:

(A) a Dean's Certification of Graduation form;

(B) evidence of passage of the national licensing examination required for NCCPA certification with no more than six attempts;

(C) a current NCCPA verification;

(D) a birth certificate or other similar proof of age;

(E) Professional or Work History Evaluation forms demonstrating or relating to the practice as a physician assistant for the preceding five years from the date of the application;



(F) the National Practitioner Data Bank and Health Integrity and Protection Data Bank report (NPDB-HIPDB);

(G) FBI/DPS Fingerprint Report;

(H) documentation of alternate name or name change, if applicable;

(I) a physician assistant school transcript, if requested;

(J) arrest records, if applicable;

(K) malpractice records, if applicable;

(L) treatment records for alcohol or substance use disorder or any physical or mental illness impacting the ability to practice, if applicable;

(M) military orders or DD214, if applicable;

(N) evidence of passage of the Texas Jurisprudence examination with at least a score of 75; and

(O) any other documentation deemed necessary by the board to process an application.

(b) Applications are valid for one year from the date of submission. The one-year period can be extended for the following reasons:

(1) delay in processing an application;

(2) referral to the Licensure Committee;

(3) unanticipated military assignments, medical reasons, or catastrophic events; or

(4) other extenuating circumstances.

(c) In accordance with Texas Occupations Code, Chapter 55, military service members, veterans, and spouses must:

(1) meet the general requirements as set forth in subsection (a) of this section; and

(2) submit a completed application on the board approved form and all additional documentation as required, with the exception of the application fee.

#### §183.11. Current Clinical Practice.

(a) All applicants must submit professional or work history evaluations demonstrating or relating to the practice as a physician assistant in the preceding five years from the date of application. "Current clinical practice" may be demonstrated by:

(1) currently practicing as a physician assistant involving treatment of persons;

(2) enrollment as a student in an acceptable approved physician assistant program; or

(3) appointment as an active teaching faculty member in an acceptable approved physician assistant program.

(b) The Executive Director may offer to an applicant that cannot demonstrate current clinical practice as a physician assistant within the last three years from the date of application:

(1) a Supervised Temporary License as set forth in §183.12 of this subchapter (relating to Temporary Licenses);

(2) remedial clinical education including, but not limited to, enrollment as a student at an acceptable physician assistant program approved by the board; or

(3) other remedial measures necessary to ensure protection of the public and minimal competency of the applicant to safely practice.

#### §183.12. Temporary Licenses.

(a) Applicants for a temporary license must meet the requirements in §204.155 of the Act.

(b) Temporary licenses may be issued to:

(1) an applicant who is qualified for a full license, subject to the terms and conditions that require board approval; or

(2) remedy current clinical practice issues set forth in §183.11 of this subchapter (relating to Current Clinical Practice).

(c) In order to be determined eligible for a temporary license to remedy a current clinical practice issue under §183.11 of this subchapter, an applicant must be supervised by a licensed physician who:

(1) has an unrestricted license in Texas;

(2) has no pending investigation;

(3) is not a relative or family member;

(4) has never had a license revoked, suspended, restricted, or cancelled for cause; and

(5) meets any other eligibility criteria established by the board.

(d) Applicants for a temporary license must submit:

(1) a board required application form; and

(2) the required fee of \$107.00.

(e) Temporary licenses will be terminated upon:

(1) issuance of a full license; or

(2) violation of conditions of a temporary license.

#### §183.13. Procedural Rules for Licensure Applicants.

(a) Applications will be processed in accordance with §204.152 of the Act.

(b) The Executive Director may offer to an applicant:

(1) the option to withdraw an application with missing items, defects, omissions, or other errors and resubmit a corrected application;

(2) a Remedial Plan;

(3) an Agreed Order; or

(4) other recommendations considered appropriate by the board.

(c) Applicants not approved for licensure by the Executive Director may, within 20 days of notice of non-approval, request to appear before the Licensure Committee.

(1) If the applicant fails to take timely action, the application for licensure shall be deemed withdrawn regardless of the board's action.

(2) The applicant shall be notified of the board's final determination.

(3) An applicant has 20 days from the date of the notice of the board's final decision to either accept the determination or request an appeal to the State Office of Administrative Hearings (SOAH).

#### §183.14. Relicensure.

(a) For a license holder who retired or surrendered their license (including cancellation for non-payment) and who is seeking to be relicensed, the following is required:

(1) all statutory requirements for licensure must be met;

(2) application must be submitted and the required fee of \$220.00, and additional fees and surcharges, as applicable, must be paid;

(3) the requirements of §183.10 of this subchapter (relating to General Requirements for Licensure) must be met;

(4) competency to resume practice must be demonstrated; and

(5) other remediation required by the board must be completed.

(b) In accordance with §204.315 of the Act, applicants seeking relicensure under this section will be reviewed and processed in accordance with §§164.151 and 164.152 of the Medical Practice Act.

§183.15. License Registration and Renewal.

(a) Within 90 days of a license being issued, it must be registered by:

(1) completing a board registration form;

(2) submitting payment of the initial registration fee of \$541.00, and additional fees and surcharges, as applicable;

(3) providing requested information related to their online verification; and

(4) providing other relevant information requested by the board staff.

(b) Subsequent registration will be biennially by:

(1) completing a board renewal form;

(2) submitting payment of a biennial registration fee of \$537.00, and additional fees and surcharges, as applicable;

(3) verifying and updating information related to their online verification;

(4) completing biennial continuing medical education (CME) required under §183.16 of this subchapter (relating to Biennial Continuing Medical Education (CME) Requirements); and

(5) providing other relevant information requested by board staff.

(c) Failure to renew before a license's expiration date will result in increased charges as follows:

(1) 1-90 days late -- renewal fee plus one half of the renewal fee; and

(2) 91 days-1 year late -- double the renewal fee.

(d) Failure to renew within one year after the expiration date of the license will result in cancellation of the license.

§183.16. Biennial Continuing Medical Education (CME) Requirements.

(a) As part of registration renewal, a license holder must complete 40 hours of continuing medical education (CME) during the biennial renewal period.

(1) At least 20 hours must be from formal courses:

(A) designated for Category I credit by a CME sponsor approved by the American Academy of Physician Assistants; or

(B) approved by the board for course credit, including a human trafficking prevention course approved by the Executive Commissioner of the Texas Health and Human Services Commission.

(2) The remaining hours may be designated for Category II credit, composed of informal self-study, attendance at hospital lectures, grand rounds, case conferences, or by providing volunteer medical services at a site serving a medically underserved population.

(b) Formal CME credit is allowed at the rate of 1 credit for each hour of time acting on behalf of the physician assistant board for evaluation of a physician assistant's competency or practice monitoring, up to a maximum of 6 hours per year, as part of the required formal hours.

(c) Military service members are subject to the same CME requirements but are allowed extensions in accordance with §55.003 of the Texas Occupations Code, if applicable.

(d) Carry forward of CME credit is allowed as follows:

(1) A maximum of 80 total excess credit hours may be carried forward and shall be reported according to whether the hours are Category I and/or Category II.

(2) Excess CME credit hours may not be carried forward or applied to a report of CME more than two years beyond the date of the biennial registration following the period during which the hours were earned. No hours may be carried forward past a single renewal period.

(e) Exemptions for CME requirements.

(1) Requests must be made in writing at least 30 days prior to expiration of the biennial renewal period for the following reasons:

(A) catastrophic illness;

(B) military service of longer than one year's duration outside the United States;

(C) licensee's residence of longer than one year's duration outside the United States; or

(D) other good cause.

(2) Exemptions are subject to the approval of the Executive Director of the board and may not exceed two years.

§183.17. Inactive License.

(a) In accordance with §204.157 of the Act, a license may be placed on inactive status.

(b) Inactive status cannot exceed three years, after which the license will be automatically canceled.

(c) To reactivate within three years, an applicant must meet all the requirements of §204.157(c) of the Act and §183.10 of this subchapter (General Requirements for Licensure).

(d) After a license has been cancelled, an applicant must meet all requirements under §183.14 of this subchapter (relating to Procedural Rules for Licensure Applicants) to obtain relicensure.

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

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Texas Medical Board  
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## SUBCHAPTER C. PRACTICE REQUIREMENTS

### 22 TAC §183.20, §183.21

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §204.101, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle; and establish rules related to licensure and registration of the license. The new rules are also proposed under the authority of §153.0015(a); and in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this proposal.

#### §183.20. On-Going Reporting Requirements.

A license holder must report any event listed in §162.2(b)(1) - (7) of this title (relating to Profile Updates) to the board within 10 days after the event.

#### §183.21. Training and Registration Requirements for Physician Assistants Performing Radiologic Procedures.

In accordance with §601.254 of the Texas Occupations Code, a physician assistant may perform a radiologic procedure, including a dangerous or hazardous procedure, when delegated in compliance with requirements of §157.001 of the Medical Practice Act.

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

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## SUBCHAPTER D. BOARD PROCESSES AND PROCEDURES

### 22 TAC §183.25

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §204.101, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle; and establish rules related to licensure and registration of the license. The new rules are also proposed under the authority of §153.0015(a);

and in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this proposal.

#### §183.25. Procedural Rules.

(a) In accordance with §204.312 of the Act, the Procedural Rules in Chapter 179 of this title (relating to Procedural Rules) shall apply, except to the extent those rules conflict with the Act, in which case the Act controls.

(b) The rules related to Complaints and Investigations in Chapter 177 of this title (relating to Complaints and Investigations) shall apply, except to the extent those rules conflict with the Act, in which case the Act controls.

(c) The rules related to Disciplinary Guidelines and Sanctions in Chapter 180 of this title (relating to Disciplinary Guidelines) shall apply, except to the extent those rules conflict with the Act, in which case the Act controls. Applicable rules for purposes of this subsection include, but are not limited to:

- (1) practice inconsistent with public health and welfare;
- (2) unprofessional or dishonorable conduct;
- (3) disciplinary actions by state boards and peer groups;
- (4) aggravating and mitigating factors; and
- (5) criminal convictions.

(d) The rules related to Compliance in Chapter 181 (relating to Compliance Program) of this title shall apply, except to the extent those rules conflict with the Act, in which case the Act controls.

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

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## CHAPTER 184. SURGICAL ASSISTANTS

The Texas Medical Board (Board) proposes the repeal of current Chapter 184, concerning Surgical Assistants §§184.1 - 184.9 and §§184.12 - 184.26.

The Board also proposes new Chapter 184, concerning Acupuncture. This includes new Subchapter A, concerning Acupuncture Board, §§184.1 - 184.4, Subchapter B, concerning Licensing and Registration, §§184.10 - 184.19, Subchapter C, concerning Practice Requirements, §§184.25 - 184.27, Subchapter D, concerning Board Processes and Procedures, §184.30; and Subchapter E, concerning Acudetox Specialists, §§184.35 - 184.37.

Also, the Board contemporaneously proposes the repeal of current Chapter 183, concerning Acupuncture, §§183.1 - 183.27.

The Board has determined that due to the extensive reorganization of Chapters 160-200, repeal of Chapter 184 is more efficient than proposing multiple amendments to make the required changes.

The proposed new subchapters and sections are as follows:

#### SUBCHAPTER A. ACUPUNCTURE BOARD.

New §184.1, Definitions, defines terms used in new Chapter 184.

New §184.2, Functions and Duties, explains the functions and duties of the Board and its members.

New §184.3, Meetings, explains how Board and Committee meetings are conducted.

New §184.4, Standing Committees, explains the function of the three Standing Committees of the Board.

#### Subchapter B. Licensing and Registration.

New §184.10, General Requirements for Licensure, outlines the general standards for licensure for a Texas acupuncture license.

New §184.11, Current Clinical Practice, outlines the professional or work history information applicants must provide for review when seeking a license.

New §184.12, Temporary Licenses, explains the standards required when a temporary license may be issued and the purpose of the license.

New §184.13, Examinations and Attempt Limits, outlines the applicants' requirements to take and pass the examination for licensure eligibility.

New §184.14, Procedural Rules for Licensure Applicants, explains the procedural rules for Applicants in accordance with §205.202 of the Act.

New §184.15, Relicensure, explains the requirements for a license holder who retired or surrendered their license and is seeking to be re-licensed.

New §184.16, License Registration and Renewal, explains the registration and renewal process of an acupuncture license.

New §184.17, Biennial Continuing Acupuncture Education (CAE) Requirements, explains the requirements of a license holder, as part of registration renewal with regard to biennial continuing acupuncture education.

New §184.18, Approval of Continuing Education Courses and Providers, explains the purpose, requirements, and process for approval of continuing education courses and providers.

New §184.19, Inactive License, explains the number of years that the license is automatically canceled after being placed on inactive status for 3 years. The process for relicensure is required for activation of a canceled license.

#### Subchapter C. Practice Requirements.

New §184.25, Patient Records, outlines the general requirements for keeping and maintaining adequate patient records, including retention periods.

New §184.26, On-Going Reporting Requirements, states that a license holder must report any event listed in §162.2(b)(1) through (7) of this title to the board within 10 days after the event.

New §184.27, Acupuncture Advertising, describes what type of acupuncture advertising is or is not considered to be permissible or prohibited.

Subchapter D. board processes and procedures.

New §184.30, Procedural Rules, explains the applicable rules applied to complaints and investigations, disciplinary guidelines and sanctions, and compliance in accordance with §205.351 of the Act.

#### Subchapter E, Acudetox Specialists.

New §184.35, Definitions, defines the term, Auricular Acudetox.

New §184.36, Acudetox Certification, outlines the general requirements and process for certification to perform acudetox, including acupuncture certificate renewal.

New §184.37, Other Requirements Related to Acudetox Practice, states that Certificate-holders must keep a current mailing and practice address on file with the board and that a change of address must be reported to the board within 10 days. Also, this section states that Certificate-holders use of titles is restricted to "Certified Acudetox Specialist" or "C.A.S." and that failure to comply with Acudetox rules may result in loss of certification.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the proposed repeals and new sections are in effect, the public benefit anticipated as a result of enforcing these proposed sections will be to remove redundant language from rules, simplify the rules, and make the rules easier to understand.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect, there will be no fiscal impact or effect on government growth as a result of enforcing the proposed sections.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect there will be no probable economic cost to individuals required to comply with these proposed sections.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for these proposed repeals and new sections and determined that for each year of the first five years these proposed repeals and new sections will be in effect there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of these proposed repeals and new sections and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years these proposed repeals and new sections are in effect:

(1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering these proposed repeals and new sections;

(2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections;

(3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections; and

(4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering these proposed repeals and new sections.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the

first five years these proposed repeals and new sections will be in effect, there will be no effect on local economy and local employment.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for these proposed repeals and new sections. For each year of the first five years these proposed repeals and new sections will be in effect, Mr. Freshour has determined the following:

- (1) These proposed repeals and new sections do not create or eliminate a government program.
- (2) Implementation of these proposed repeals and new sections does not require the creation of new employee positions or the elimination of existing employee positions.
- (3) Implementation of these proposed repeals and new sections does not require an increase or decrease in future legislative appropriations to the agency.
- (4) These proposed sections do not require an increase or decrease in fees paid to the agency.
- (5) These proposed repeals and new sections do not create new regulations.
- (6) These proposed repeals and new sections do repeal existing regulations as described above. These proposed new sections do not expand or limit an existing regulation.
- (7) These proposed repeals and new sections do not increase the number of individuals subject to the sections' applicability.
- (8) These proposed repeals and new sections do not positively or adversely affect this state's economy.

Comments on the proposal may be submitted using this link: <https://forms.office.com/g/Ts2WwLfkzB>. A public hearing will be held at a later date. Comments on the proposal will be accepted for 30 days following publication.

#### **22 TAC §§184.1 - 184.9, 184.12 - 184.26**

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §205.101, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of Acupuncture; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for re-adoption, re-adoption with amendments, or repeal every four years.

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

- §184.1. *Purpose.*
- §184.2. *Definitions.*
- §184.3. *Meetings.*
- §184.4. *Qualifications for Licensure.*
- §184.5. *Procedural Rules for Licensure Applicants.*
- §184.6. *Licensure Documentation.*
- §184.7. *Temporary Licensure.*
- §184.8. *License Renewal.*
- §184.9. *Relicensure.*
- §184.12. *Surgical Assistant Scope of Practice.*
- §184.13. *Physician Supervision.*
- §184.14. *Supervising Physician.*
- §184.15. *Grounds for Denial of Licensure and for Disciplinary Action.*

- §184.16. *Discipline of Surgical Assistants.*
- §184.17. *Disciplinary Guidelines.*
- §184.18. *Administrative Penalties.*
- §184.19. *Complaint Procedure Notification.*
- §184.20. *Investigations.*
- §184.21. *Impaired Surgical Assistants.*
- §184.22. *Procedure.*
- §184.23. *Compliance.*
- §184.24. *Construction.*
- §184.25. *Continuing Education.*
- §183.26. *Voluntary Relinquishment or Surrender of a License.*

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

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## **CHAPTER 184. ACUPUNCTURE SUBCHAPTER A. ACUPUNCTURE BOARD**

### **22 TAC §§184.1 - 184.4**

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §205.101, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle and establish rules related to licensure. The new rules are also proposed in accordance with §152.0015(a). The new rules are also proposed under the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for re-adoption, re-adoption with amendments, or repeal every four years.

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

#### §184.1. Definitions.

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

(1) Acupuncture Act or "the Act"--Texas Occupations Code, Chapter 205.

(2) Acupuncture Board or "board"--The Texas State Board of Acupuncture Examiners.

(3) Acceptable approved acupuncture school--Effective January 1, 1996, and in addition to and consistent with the requirements of §205.206 of the Act:

(A) a school of acupuncture located in the United States or Canada which, at the time of the applicant's graduation, was a candidate for accreditation by the Accreditation Commission for Acupuncture and Herbal Medicine (ACAHM) or another accrediting body recognized by the Texas Higher Education Coordinating Board, provides certification that the curriculum at the time of the applicant's graduation was equivalent to the curriculum upon which accreditation granted, offered a master's degree or a professional certificate or diploma upon

graduation, and had a curriculum of 1,800 hours with at least 450 hours of herbal studies which at a minimum included the following:

(i) basic herbology including recognition, nomenclature, functions, temperature, taste, contraindications, and therapeutic combinations of herbs;

(ii) herbal formulas including traditional herbal formulas and their modifications or variations based on traditional methods of herbal therapy;

(iii) patent herbs including the names of the more common patent herbal medications and their uses; and

(iv) clinical training emphasizing herbal uses; or

(B) a school of acupuncture located in the United States or Canada which, at the time of the applicant's graduation, was accredited by ACAHM or another accrediting body recognized by the Texas Higher Education Coordinating Board, offered a master's degree or a professional certificate or diploma upon graduation, and had a curriculum of 1,800 hours with at least 450 hours of herbal studies which at a minimum included the following:

(i) basic herbology including recognition, nomenclature, functions, temperature, taste, contraindications, and therapeutic combinations of herbs;

(ii) herbal formulas including traditional herbal formulas and their modifications or variations based on traditional methods of herbal therapy;

(iii) patent herbs including the names of the more common patent herbal medications and their uses; and

(iv) clinical training emphasizing herbal uses; or

(C) a school of acupuncture located outside the United States or Canada that is determined by the board to be substantially equivalent to a Texas acupuncture school or a school defined in subparagraph (B) of this paragraph. An evaluation by the Foreign Credentials Service of America (FCSA) or an evaluation requested by the board may be utilized when making a determination of substantial equivalence.

(4) Medical Practice Act--Texas Occupations Code Annotated, Title 3, Subtitle B, as amended.

#### §184.2. Functions and Duties.

(a) In accordance with §205.101 of the Act, board duties and functions include:

(1) establishing standards for the practice of acupuncture;  
(2) regulating acupuncturists through licensure and discipline;

(3) receiving complaints and investigating possible violations of the Act and the board rules;

(4) reviewing, modifying, proposing, and adopting rules;

(5) considering, reviewing, and approving policy as necessary; and

(6) acting as a resource concerning proposed legislative changes to reflect current medical and healthcare needs and practices.

(b) Individual board members are required to:

(1) identify and disclose any conflicts of interest that may interfere with carrying out their duties and functions or that may impede their ability to be fair and impartial, and recuse from such matters;

(2) comply with the Act;

(3) maintain the highest levels of professional and ethical conduct, including, but not limited to:

(A) A board member shall not appear as an expert witness in any case in which a licensee of the board is a party and in which the expert testimony relates to standard of care or professional malpractice;

(B) A board member shall not appear in any administrative proceeding involving the exercise of the board's licensing or disciplinary authority before the board or the State Office of Administrative Hearings (SOAH) in which proceeding a licensee of the board is a party;

(C) A board member shall refrain from making any statement that implies that the board member is speaking for the board if the board has not voted on an issue or unless the board has given the board member such authority; and

(4) immediately disclose if they are subject to a non-disciplinary or disciplinary action by any health care facility or professional licensing entity.

(c) Failure to comply with any of the requirements set forth in the Act or this section will be reported to the Office of the Governor.

#### §184.3. Meetings.

(a) Board and Committee meetings shall be conducted in compliance with Texas Government Code, Chapter 551, and, to the extent possible, pursuant to the provisions of Robert's Rules of Order Newly Revised.

(b) Special meetings may be called by the presiding officer of the board or by resolution of the board.

(c) The board may act only by majority vote of its members present and voting. Proxy votes are not allowed.

#### §184.4. Standing Committees.

The Standing Committees of the board are as follows:

(1) Discipline and Ethics Committee:

(A) reviews and makes recommendations to resolve complaints, close investigations, and dismiss cases, and hears complainant appeals;

(B) recommends, reviews, and develops improvements of the disciplinary process, rules, policies, and other related matters; and

(C) receives reports on enforcement activities and statistical information.

(2) Licensure Committee:

(A) reviews applications and makes recommendations, based on eligibility criteria, for licensure of acupuncturists;

(B) recommends, reviews, and develops changes to the licensure process, rules, policies, and other related matters as necessary; and

(C) maintains communication with Texas acupuncture programs.

(3) Education Committee:

(A) reviews and makes recommendations concerning educational requirements for licensure in Texas;

(B) reviews and makes recommendations for continuing education requirements and providers used for renewal of a Texas license; and

(C) reviews information regarding foreign acupuncture schools and adequacy of education for licensure.

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

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General Counsel

Texas Medical Board

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## SUBCHAPTER B. LICENSING AND REGISTRATION

### 22 TAC §§184.10 - 184.19

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §205.101, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle and establish rules related to licensure. The new rules are also proposed in accordance with §152.0015(a). The new rules are also proposed under the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for re adoption, re adoption with amendments, or repeal every four years.

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

#### §184.10. General Requirements for Licensure.

(a) All applicants for a license must meet the general standards in §205.203 of the Act and submit:

- (1) the board required application form;
- (2) payment of the required fee of \$320.00, and additional fees and surcharges as applicable; and
- (3) required documentation including, but not limited to:
  - (A) a Dean's Certification of Graduation form verifying completion of an acceptable approved acupuncture school;
  - (B) an Acupuncture School Transcript, including proof of completion of 1,800 instructional hours, with at least 450 hours of herbal studies;
  - (C) certified transcript of NCCAOM Examination Scores;
  - (D) evidence of passage of the CCAOM (Council of Colleges of Acupuncture and Oriental Medicine) Clean Needle Technique (CNT) course and practical examination;
  - (E) proof of ability to communicate in English as described in §184.13 of this chapter (relating to Examinations and Attempt Limits);
  - (F) a birth certificate or other similar proof of age;

(G) Professional or Work History Evaluation forms demonstrating or relating to the practice of acupuncture for the preceding five years from the date of the application;

(H) National Practitioner Data Bank/Health Integrity and Protection Data Bank report (NPDB-HIPDB);

(I) FBI/DPS Fingerprint Report;  
(J) documentation of alternate name or name change, if applicable;

(K) arrest records, if applicable;

(L) malpractice records, if applicable;

(M) treatment records for alcohol or substance use disorder or any physical or mental illness impacting the ability to practice, if applicable;

(N) military orders or DD214, if applicable;

(O) evidence of passage of the Texas Jurisprudence examination with at least a score of 75; and

(P) any other documentation deemed necessary by the board to process an application, including certified translation of any document in a language other than the English language along with the original document or a certified copy of the translated document.

(b) Applications are valid for one year from the date of submission. The one-year period can be extended for the following reasons:

- (1) delay in processing an application;
- (2) referral to the Licensure Committee;
- (3) unanticipated military assignments, medical reasons, or catastrophic events; or
- (4) other extenuating circumstances.

(c) In accordance with Texas Occupations Code, Chapter 55, military service members, veterans, and spouses must:

(1) meet the general requirements as set forth in subsection (a) of this section; and

(2) submit a completed application on the board approved form and all additional documentation as required, with the exception of the application fee.

#### §184.11. Current Clinical Practice.

(a) All applicants must submit professional or work history evaluations demonstrating or relating to the practice as an acupuncturist in the preceding five years from the date of application. "Current clinical practice" may be demonstrated by:

(1) currently practicing acupuncture involving treatment of persons;

(2) enrollment as a student at an acceptable approved acupuncture school; or

(3) appointment as an active teaching faculty member at an acceptable approved acupuncture school.

(b) The Executive Director may offer to an applicant that cannot demonstrate current clinical practice as an acupuncturist within the last three years from date of application:

(1) a Supervised Temporary License as set forth in §184.12 of this chapter;

(2) remedial education including, but not limited to, enrollment as a student and successful completion of 240 hours of clinical

practice at an acceptable approved acupuncture school or other structured program approved by the board; or

(3) other remedial measures necessary to ensure protection of the public and minimal competency of the applicant to safely practice.

§184.12. Temporary Licenses.

(a) Applicants for a temporary license must meet the requirements in §205.208 of the Act.

(b) Temporary licenses may be issued to:

(1) an applicant who is qualified for a full license, subject to terms and conditions that require board approval; or

(2) remedy current clinical practice issues set forth in §184.11 of this chapter (relating to Current Clinical Practice).

(c) In order to be determined eligible for a temporary license to remedy a current clinical practice issue under §184.11 of this chapter, an applicant must be supervised by a licensed acupuncturist who:

(1) has an unrestricted license in Texas;

(2) has no pending investigation;

(3) is not a relative or family member;

(4) has never had a license revoked, suspended, restricted, or cancelled for cause; and

(5) meets any other eligibility criteria established by the board.

(d) Applicants for a temporary license must submit:

(1) a board required application form; and

(2) the required fee of \$107.00.

(e) Temporary licenses will be terminated upon:

(1) issuance of a full license; or

(2) violation of conditions of a temporary license.

§184.13. Examinations and Attempt Limits.

(a) An applicant must provide proof of passage of the following:

(1) The National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) examination, consisting of the following:

(A) if taken before June 1, 2004: the Comprehensive Written Exam (CWE), the Clean Needle Technique Portion (CNTP), the Practical Examination of Point Location Skills (PEPLS), and the Chinese Herbology Exam; or

(B) if taken on or after June 1, 2004: the NCCAOM Foundation of Oriental Medicine Module, Acupuncture Module, Point Location Module, the Chinese Herbology Module, and the Biomedicine Module; and

(2) CCAOM (Council of Colleges of Acupuncture and Oriental Medicine) Clean Needle Technique (CNT) course and practical examination.

(b) All applicants must take and pass, within six attempts, each component of the full National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) examination.

(c) English proficiency is demonstrated by:

(1) graduation from an of approved school of acupuncture located in the United States or Canada; or

(2) passage of any of the following recognized tests:

(A) English language version of NCCAOM examination; or

(B) Passing score of 70% or better on each section of any of the following tests:

(i) Test of English as a Foreign Language (TOEFL);

(ii) Test of English for International Communication (TOEIC);

(iii) Occupational English Test (OET); or

(iv) other examination of English competency considered acceptable to the board.

§184.14. Procedural Rules for Licensure Applicants.

(a) Applications will be processed in accordance with §205.202 of the Act.

(b) The Executive Director may offer to an applicant:

(1) the option to withdraw an application with missing items, defects, omissions, or other errors and resubmit a corrected application;

(2) a Remedial Plan;

(3) an Agreed Order; or

(4) other recommendations considered appropriate by the board.

(c) Applicants not approved for licensure by the Executive Director may, within 20 days of notice of non-approval, request to appear before the Licensure Committee.

(1) If the applicant fails to take timely action, the application for licensure shall be deemed withdrawn regardless of the board's action.

(2) The applicant shall be notified of the board's final determination.

(3) An applicant has 20 days from the date of the notice of the board's final decision to either accept the determination or request an appeal to the State Office of Administrative Hearings (SOAH).

§184.15. Relicensure.

(a) For a license holder who retired or surrendered their license (including cancellation for non-payment) and who is seeking to be relicensed, the following is required:

(1) all statutory requirements for licensure must be met;

(2) application must be submitted and the required fee of \$320.00, and additional fees and surcharges, as applicable, must be paid;

(3) the requirements of §184.10 of this chapter (relating to General Requirement for Licensure) must be met;

(4) competency to resume practice must be demonstrated; and

(5) other remediation required by the board must be completed.

(b) In accordance with §205.3522 of the Act, applicants seeking relicensure under this section will be reviewed and processed in accordance with §§164.151 and 164.152 of the Medical Practice Act.

§184.16. License Registration and Renewal.



(a) Within 90 days of a license being issued, it must be registered by:

- (1) completing a board registration form;
- (2) submitting payment of the initial registration fee of \$671.00, and additional fees and surcharges, as applicable;
- (3) providing requested information related to their online verification; and
- (4) providing other relevant information requested by the board staff.

(b) Subsequent registration will be biennially by:

- (1) completing a board renewal form;
- (2) submitting payment of a biennial registration fee of \$667.00, and additional fees and surcharges, as applicable;
- (3) verifying and updating information related to their on-line verification;
- (4) completing biennial continuing acupuncture education (CAE) required under §184.17 of this chapter (relating to Biennial Continuing Acupuncture Education (CAE) Requirements); and
- (5) providing other relevant information requested by board staff.

(c) Failure to renew before a license's expiration date will result in increased charges as follows:

- (1) 1-90 days late -- renewal fee plus one half of the renewal fee; and
- (2) 91 days-1 year late -- double the renewal fee.

(d) Failure to renew within one year after the license's expiration date will result in cancellation of the license.

§184.17. Biennial Continuing Acupuncture Education (CAE) Requirements.

(a) As part of registration renewal, a license holder must complete 34 hours of CAE during the biennial renewal period as follows:

- (1) Minimum core hours include:
  - (A) eight hours in general acupuncture therapies;
  - (B) two hours in ethics and safety;
  - (C) six hours in herbology; and
  - (D) four hours of biomedicine.

(2) Completion of a course in human trafficking prevention approved by the Executive Commissioner of the Texas Health and Human Services Commission. This course may satisfy the required two core hours in ethics and safety.

(3) The remaining CAE hours may be from other approved courses. No more than four hours in business practice or office administration is allowed.

(b) Approved courses are:

- (1) courses approved by the board;
- (2) courses offered by board approved CAE providers;
- (3) NCCAOM professional development activity credits;

and

(4) CAE providers who are formally approved by another state for a minimum of three years.

(c) Carry forward of CAE credit is allowed as follows:

- (1) no more than 34 excess hours earned in a biennium may be applied to the following biennial requirements; and
- (2) no hours can be carried forward past a single renewal period.

(d) Instructors of board-approved CAE courses may receive three hours of CAE credit for each hour of lecture with a maximum of six hours of continuing education credit per year. No CAE credit shall be granted to school faculty members as credit for their regular teaching assignments.

(e) Exemptions for CAE requirements.

(1) Requests must be made in writing at least 30 days prior to expiration of the biennial renewal period for the following reasons:

- (A) catastrophic illness
- (B) military service of longer than one year's duration outside the state;
- (C) licensee's residence of longer than one year's duration outside the United States; or
- (D) other good cause.

(2) Exemptions are subject to the approval of the Executive Director of the board and may not exceed two years.

§184.18. Approval of Continuing Education Courses and Providers.

(a) Pursuant to §205.255 of the Act, the following must be approved by the board:

(1) CAE courses and providers that are not NCCAOM approved; and

(2) acceptable approved acupuncture schools and colleges seeking to be approved providers.

(b) Requests for approval of CAE courses must include:

- (1) a form approved by the board;
- (2) payment of required fee of \$25.00; and
- (3) other requested documentation including, but not limited to:

(A) Course description related to acupuncture or oriental medicine, including techniques, skills, and patient care;

(B) method of instruction or teaching;

(C) the name, credentials, competency and training of the instructor(s);

(D) verification of attendance/participation;

(E) each credit hour is equal to no less than 50 minutes of actual instruction or training;

(F) name and location of school, state, or professional organization; and

(G) provide written evaluations available to the board upon request.

(c) Requests for approval of a CAE provider must include:

- (1) a form approved by the board;
- (2) payment of required fee of \$50.00;
- (3) other requested documentation including, but not limited to, evidence that the provider has three continuous years of previ-

ous experience providing at least one different CAE course in Texas in each of those years that were approved by the board; and

(4) only one provider number is issued to an organization, and it is not transferable.

(d) Provider Responsibilities and Duties. The provider must:

(1) keep course records for four years demonstrating the following:

(A) course outlines of each course given;

(B) record of time and places of each course given;

(C) course instructor and their qualifications;

(D) the attendance record showing the name, signature and license number of licensed attendees; and

(E) copy of a certificate of completion.

(2) provide notice of any changes in person(s) responsible for the provider's continuing education course, including name, address, or telephone number changes.

(e) After board review, notice of the decision will be provided to the requestor.

(f) Approval, if granted, is valid for three years.

(g) Approval may be withdrawn based on information received concerning a course or provider. If the board is considering withdrawing approval, notice will be provided prior to taking any action.

#### §184.19. Inactive License.

(a) A license may be placed on inactive status.

(b) Inactive status cannot exceed three years, after which the license will be automatically canceled.

(c) To reactivate within three years, an applicant must meet all the requirements of §184.10 of this chapter (relating to General Requirements for Licensure).

(d) After a license has been cancelled, an applicant must meet all requirements under §184.15 of this chapter (relating to Relicensure) to obtain relicensure.

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

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## SUBCHAPTER C. PRACTICE REQUIREMENTS

22 TAC §§184.25 - 184.27

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §205.101, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle and establish rules related to licensure. The new rules are also proposed in accordance with §152.0015(a). The new rules are also proposed under the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years.

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

#### §184.25. Patient Records.

(a) Acupuncturists must keep and maintain adequate patient records in English that include, but are not limited to:

(1) the patient's name and address;

(2) vital signs;

(3) the chief complaint;

(4) a patient history;

(5) documented patient consent, including written patient consent for treatment in sensitive areas;

(6) a treatment plan, including amounts and forms of herbal medications and other modalities, including acupuncture terms, including herbs, may use the Chinese or Pinyin translation if commonly known by such translation;

(7) adequate billing records to support charges and billing codes used; and

(8) copies of referrals to and from other providers done in accordance with §205.301 of the Act, including the below form for documentation required by §205.301(b) of the Act: Figure: 22 TAC §184.25(a)(8)

(b) Retention of Patient and Billing Records. An acupuncturist must retain patient records as follows:

(1) for a minimum of five years from the date of last treatment by the acupuncturist.

(2) For patients younger than 18 years of age, until the patient reaches age 21, or for five years from the date of last treatment, whichever is longer.

(c) For purposes of releasing or providing copies of patient records:

(1) §159.005 of the Medical Practice Act applies, along with other applicable state and federal laws including HIPAA; and

(2) allowable charges are those listed in §163.3(c) of this title (relating to Requests for Medical Records).

#### §184.26. On-Going Reporting Requirements.

A license holder must report any event listed in §162.2(b)(1) through (7) of this title (relating to Profile Updates) to the board within 10 days after the event.

#### §184.27. Acupuncture Advertising.

(a) Acupuncturists shall not authorize or use false, misleading, or deceptive advertising.

(b) Acupuncturists also shall not:

(1) hold themselves out as a physician or surgeon or any combination or derivative of those terms as defined under §151.002(a)(13) of the Medical Practice Act;

(2) use the terms "board certified" unless the advertising also discloses the complete name of the board which conferred the referenced certification and is currently certified.

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

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## SUBCHAPTER D. BOARD PROCESSES AND PROCEDURES

### 22 TAC §184.30

The new rule is proposed under the authority of the Texas Occupations Code Annotated, §205.101, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle and establish rules related to licensure. The new rules are also proposed in accordance with §152.0015(a). The new rules are also proposed under the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years.

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

#### §184.30. Procedural Rules.

(a) For purposes of this subchapter and in accordance with §205.351 of the Act, the Procedural Rules in Chapter 179 of this title shall apply, except to the extent those rules conflict with the Act, in which case the Act controls.

(b) The rules related to Complaints and Investigations in Chapter 177 of this title shall apply, except to the extent those rules conflict with the Act, in which case the Act controls.

(c) The rules related to Disciplinary Guidelines and Sanctions in Chapter 180 of this title shall apply, except to the extent those rules conflict with the Act, in which case the Act controls. Applicable rules for purposes of this subsection include, but are not limited to:

- (1) practice inconsistent with public health and welfare;
- (2) unprofessional or dishonorable conduct;
- (3) disciplinary actions by state boards and peer groups;
- (4) aggravating and mitigating factors; and
- (5) criminal convictions.

(d) The rules related to Compliance in Chapter 181 of this title shall apply, except to the extent those rules conflict with the Act, in which case the Act controls.

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

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## SUBCHAPTER E. ACUDETTOX SPECIALIST

### 22 TAC §§184.35 - 184.37

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §205.101, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle and establish rules related to licensure. The new rules are also proposed in accordance with §152.0015(a). The new rules are also proposed under the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years.

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

#### §184.35. Definitions.

Auricular Acudetox means an acupuncture treatment limited to the insertion of needles into five acupuncture points in the ear. These points are the liver, kidney, lung, sympathetic and shen men.

#### §184.36. Acudetox Certification.

(a) An Acudetox certificate may be issued in accordance with §205.303 of the Act, and the applicant must submit:

- (1) a board required application form;
- (2) the required fee of \$52.00, and additional fees and surcharges as applicable;
- (3) proof of completion of auricular acupuncture at least 70 hours in length that includes a clean needle technique course or equivalent universal infection control precaution procedures course; and
- (4) other documentation deemed necessary to process an application.

(b) In accordance with §205.303(d) of the Act, a certificate may be renewed by submitting:

- (1) a board required renewal form;
- (2) payment of the renewal fee of \$87.50, and additional fees and surcharges as applicable;
- (3) completing at least three hours of Continuing Auricular Acupuncture Education for Acudetox Specialists and other courses are designated or otherwise approved for credit by the board; and
- (4) other documentation deemed necessary to process a renewal.

(c) Failure to renew certificate before expiration date but less than a year will be a \$25.00 fee plus the required renewal fee.

(d) Certificates expired for a year are automatically canceled.

§184.37. Other Requirements Related to Acudetox Practice.

(a) Certificate-holders must keep a current mailing and practice address on file with the Texas Medical Board and provide notice of any address change within ten days of such change.

(b) Certificate holders may only use the titles "Certified Acudetox Specialist" or "C.A.S."

(c) Failure to comply with laws and rules related to Acudetox may result in loss of certification.

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

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## CHAPTER 185. PHYSICIAN ASSISTANTS

The Texas Medical Board (Board) proposes the repeal of current Chapter 185, concerning Physician Assistants, §§185.1 - 185.33.

The Board also proposes new Chapter 185, concerning Surgical Assistants, §§185.1 - 185.11.

Also, the Board contemporaneously proposes the repeal of current Chapter 184, concerning Surgical Assistants, §§184.1 - 184.9, and §§184.12 - 184.26.

The Board has determined that due to the extensive reorganization of Chapters 160-200, repeal of Chapter 185 is more efficient than proposing multiple amendments to make the required changes.

The proposed new sections are as follows:

New §185.1, Definitions, defines terms used in new Chapter 185.

New §185.2, Meetings, explains how Advisory Committee meetings are conducted in compliance with §206.058 of the Act.

New §185.3, General Requirements for Licensure, outlines the general requirements for licensure for a Surgical Assistants license in accordance with §§206.202 and 206.203 of the Act including but not limited to, application form, and specific documentation.

New §185.4, Education Requirements, outlines the applicant's completion of specific education requirements for Surgical Assistants for licensure.

New §185.5, Examinations, describe the organizations that will accept a passing score for the purpose of obtaining a Surgical Assistants license.

New §185.6, Procedural Rules for Licensure Applicants, outlines the process of review of the licensee's application by the Executive Director and the options that may be offered in accordance with §206.209 of the Act.

New §185.7, Temporary Licenses, explains the requirements and process to obtain a temporary Surgical Assistants license in accordance with §206.206 of the Act.

New §185.8, License Registration and Renewal, outlines the general requirements for license registration and renewal of a Texas Surgical Assistants license.

New §185.9, Biennial Continuing Education (CE) Requirements, explains the requirements of a license holder, including their completion of formal course hours by an accredited organization or school and exemptions for CE requirements regarding the Surgical Assistants biennial continuing medical education.

New §185.10, Relicensure, describes the requirements by which a licensee who has retired or surrendered their license and seeks to be re-licensed.

New §185.11, Procedural Rules, explains the applicable rules applied to complaints and investigations, disciplinary guidelines and sanctions, and compliance in accordance with §206.313 of the Act.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the proposed repeals and new sections are in effect, the public benefit anticipated as a result of enforcing these proposed sections will be to remove redundant language from rules, simplify the rules, and make the rules easier to understand.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect, there will be no fiscal impact or effect on government growth as a result of enforcing the proposed sections.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect there will be no probable economic cost to individuals required to comply with these proposed sections.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for these proposed repeals and new sections and determined that for each year of the first five years these proposed repeals and new sections will be in effect there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of these proposed repeals and new sections and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years these proposed repeals and new sections are in effect:

(1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering these proposed repeals and new sections;

(2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections;

(3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections; and

(4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering these proposed repeals and new sections.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years these proposed repeals and new sections will be in effect, there will be no effect on local economy and local employment.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for these proposed repeals and new sections. For each year of the first five years these proposed repeals and new sections will be in effect, Mr. Freshour has determined the following:

- (1) These proposed repeals and new sections do not create or eliminate a government program.
- (2) Implementation of these proposed repeals and new sections does not require the creation of new employee positions or the elimination of existing employee positions.
- (3) Implementation of these proposed repeals and new sections does not require an increase or decrease in future legislative appropriations to the agency.
- (4) These proposed sections do not require an increase or decrease in fees paid to the agency.
- (5) These proposed repeals and new sections do not create new regulations.
- (6) These proposed repeals and new sections do repeal existing regulations as described above. These proposed new sections do not expand or limit an existing regulation.
- (7) These proposed repeals and new sections do not increase the number of individuals subject to the sections' applicability.
- (8) These proposed repeals and new sections do not positively or adversely affect this state's economy.

Comments on the proposal may be submitted using this link: <https://forms.office.com/g/xy7qvcnp08>. A public hearing will be held at a later date. Comments on the proposal will be accepted for 30 days following publication.

## 22 TAC §§185.1 - 185.33

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this proposal.

- §185.1. *Purpose.*
- §185.2. *Definitions.*
- §185.3. *Meetings and Committees.*
- §185.4. *Procedural Rules for Licensure Applicants.*
- §185.5. *Relicensure.*
- §185.6. *Biennial Renewal of License.*
- §185.7. *Temporary License.*
- §185.8. *Inactive License.*
- §185.9. *Reissuance of License Following Revocation.*
- §185.10. *Physician Assistant Scope of Practice.*
- §185.11. *Tasks Not Permitted to be Delegated to a Physician Assistant.*
- §185.12. *Identification Requirements.*

- §185.13. *Notification of Intent to Practice and Supervise.*
- §185.14. *Physician Supervision.*
- §185.15. *Supervising Physician.*
- §185.16. *Employment Guidelines.*
- §185.17. *Grounds for Denial of Licensure and for Disciplinary Action.*
- §185.18. *Discipline of Physician Assistants.*
- §185.19. *Administrative Penalties.*
- §185.20. *Complaints.*
- §185.21. *Investigations.*
- §185.22. *Impaired Physician Assistants.*
- §185.23. *Third Party Reports to the Board.*
- §185.24. *Procedure.*
- §185.25. *Compliance.*
- §185.26. *Voluntary Relinquishment or Surrender of Physician Assistant License.*
- §185.27. *Duty to Report Certain Conduct to the Board.*
- §185.28. *Retired License.*
- §185.29. *Report of Impairment on Registration Form.*
- §185.30. *Prescriptive Authority Agreements Generally.*
- §185.31. *Prescriptive Authority Agreements: Minimum Requirements.*
- §185.32. *Training and Registration Requirements for Physician Assistants Performing Radiologic Procedures.*
- §185.33. *Exemption from Licensure for Certain Military Spouses.*

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

Filed with the Office of the Secretary of State on September 9, 2024.

TRD-202404300

Scott Freshour  
General Counsel

Texas Medical Board

Earliest possible date of adoption: October 27, 2024

For further information, please call: (512) 305-7030



## CHAPTER 185. SURGICAL ASSISTANTS

### 22 TAC §§185.1 - 185.11

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §206.101, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle; and establish rules related to licensure and registration of the license. The new rules are also proposed under the authority of Texas Occupations Code §153.0015(a); and in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this proposal.

- §185.1. *Definitions.*

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

(1) Act--Texas Occupations Code, Chapter 206.

(2) Advisory Committee--the Surgical Assistant Advisory Committee to the Texas Medical Board.

(3) Medical Practice Act--Texas Occupations Code, Title 3, Subtitle B, as amended.

§185.2. Meetings.

Meetings of the Advisory Committee shall be conducted in compliance with §206.058 of the Act; Texas Government Code, Chapter 551; and to the extent possible, pursuant to the provisions of Robert's Rules of Order Newly Revised.

§185.3. General Requirements for Licensure.

(a) All applicants for a license must meet the general standards in §§206.202 and 206.203 of the Act, and submit:

(1) the board required application form;

(2) payment of the required fee of \$351.00, and additional fees and surcharges as applicable; and

(3) required documentation, including, but not limited to:

(A) certified transcript verifying at least an Associate's degree at a two or four year institution of higher education;

(B) certified transcript verifying completion of an education program set forth in §185.4 of this chapter (relating to Education Requirements);

(C) Professional or Work History Evaluation forms verifying practice as a Surgical Assistant for at least 2000 hours within the last three years from the date of the application;

(D) current certification by a national certifying board approved by the board;

(E) certified transcript of a surgical or first assistant examination set forth in §185.5 of this chapter (relating to Examinations);

(F) birth certificate or other similar proof of age;

(G) FBI/DPS Fingerprint Report;

(H) documentation of alternate name or name change, if applicable;

(I) arrest records, if applicable;

(J) malpractice records, if applicable;

(K) treatment records for alcohol or substance use disorder or any physical or mental illness impacting the ability to practice, if applicable;

(L) military orders or DD214, if applicable; and

(M) any other documentation deemed necessary by the board to process an application.

(b) Applications are valid for one year from the date of submission. The one-year period may be extended for the following reasons:

(1) delay in processing an application;

(2) referral to the Licensure Committee;

(3) unanticipated military assignments, medical reasons, or catastrophic events; or

(4) other extenuating circumstances.

(c) In accordance with Texas Occupations Code, Chapter 55, military service members, veterans, and spouses must:

(1) meet the general requirements as set forth in subsection (a) of this section; and

(2) submit a completed application on the board approved form and all additional documentation as required, with the exception of an application fee.

§185.4. Education Requirements.

In addition to the education recognized in §206.203 of the Act, an applicant for licensure must complete:

(1) a Surgical Assistant program accredited by the Commission on Accreditation of Allied Health Education Programs (CAA-HEP);

(2) basic and clinical sciences coursework at a medical school;

(3) a registered nurse first assistant program that is approved or recognized by the Texas Board of Nursing; or

(4) a post graduate clinical Physician Assistant program accredited by the Accreditation Review Commission on Education for the Physician Assistant, Inc. (ARC-PA), or by that Committee's predecessor or successor.

§185.5. Examinations.

The following examinations with a passing score are acceptable:

(1) American Board of Surgical Assistants;

(2) National Board of Surgical Technology and Surgical Assisting (NBSTSA) formerly known as Liaison Council on Certification for the Surgical Technologist (LCC-ST); or

(3) the National Surgical Assistant Association provided that the exam was administered on or after March 29, 2003.

§185.6. Procedural Rules for Licensure Applicants.

(a) Applications will be processed in accordance with §206.209 of the Act.

(b) The Executive Director may offer to an applicant:

(1) the option to withdraw an application with missing items, defects, omission, or other errors and re-submitting a corrected application;

(2) a Remedial Plan;

(3) an Agreed Order; or

(4) other recommendations considered appropriate by the board.

(c) Applicants not approved for licensure by the Executive Director may within 20 days of notice of non-approval request to appear before the Licensure Committee.

(1) If the applicant fails to take timely action, the application for licensure shall be deemed withdrawn regardless of the board's action.

(2) The applicant shall be notified of the board's final determination.

(3) An applicant has 20 days from the date the notice of the board's final decision to either accept the determination or request an appeal to the State Office of Administrative Hearings (SOAH).

§185.7. Temporary Licenses.

(a) Temporary licenses will be issued in accordance with §206.206 of the Act.

(b) Applicants must submit:

- (1) a board required application form; and
- (2) the required fee of \$50.00.

§185.8. License Registration and Renewal.

(a) Within 90 days of a license being issued, it must be registered by:

(1) completing a board registration form; and

(2) submitting payment of the initial registration fee of \$561.00, and additional fees and surcharges as applicable.

(b) Subsequent registration will be biennially by:

(1) completing the renewal form;

(2) submitting payment of a biennial registration fee of \$557.00, and additional fees and surcharges as applicable; and

(3) completing biennial continuing education (CE) required under §185.9 of this chapter (relating to Biennial Continuing Education (CE) Requirements).

(c) Failure to renew before the expiration date will result in increased charges as follows:

(1) 1-90 days late -- renewal fee plus one half of the renewal fee; and

(2) 91 days-1 year late -- double the renewal fee.

(d) Failure to renew within one year after the expiration date of the license will result in cancellation of the license.

§185.9. Biennial Continuing Education (CE) Requirements.

(a) As part of registration renewal, a license holder must complete 36 hours of continuing education (CE) in surgical assisting or in courses that enhance the practice of surgical assisting as follows:

(b) 18 hours of formal courses that are:

(1) AMA/PRA Category I credited by an Accreditation Council for Continuing Medical Education;

(2) Association of Surgical Technologists/ Association of Surgical Assistants, the American Board of Surgical Assistants, or the National Surgical Assistants Association approved;

(3) AOA Category 1-A credit approved by the American Osteopathic Association; or

(4) Texas Medical Association approved.

(c) The formal hours of CE must:

(1) include 2 hours of medical ethics and/or professional responsibility; and

(2) a course in human trafficking prevention approved by the Texas Health and Human Services Commission must be completed. The course will be credited toward the required medical ethics or professional responsibility.

(d) The remaining hours may be composed of informal self-study, attendance at hospital lectures or grand rounds not approved for formal CE, or case conferences and must be recorded in a manner that can be easily transmitted to the board upon request.

(e) Exemptions for CE requirements.

(1) Requests must be made in writing at least 30 days prior to the expiration of the biennial renewal period for the following reasons:

(A) catastrophic illness;

(B) military service of longer than one year's duration outside the United States;

(C) licensee's residence of longer than one year's duration outside the United States; or

(D) other good cause.

(2) Exemptions are subject to the approval of the Executive Director of the board and may not exceed two years.

§185.10. Relicensure.

(a) For a licensee who retired or surrendered their license (including cancellation for non-payment) and who is seeking to be reissued a license, the following is required:

(1) all statutory requirements for licensure must be met;

(2) application must be submitted and the required fee of \$351.00, and additional fees and surcharges, as applicable, must be paid;

(3) the requirements of §185.3 of this chapter (relating to General Requirements for Licensure) must be met;

(4) competency to resume practice must be demonstrated; and

(5) other remediation required by the board must be completed.

(b) Applicants seeking relicensure under this section will be reviewed and processed in accordance with §§164.151 and 164.152 of the Medical Practice Act.

§185.11. Procedural Rules.

(a) In accordance with §206.313 of the Act, the Procedural Rules in Chapter 179 of this title (relating to Procedural Rules) shall apply, except to the extent those rules conflict with the Act, in which case the Act controls.

(b) The rules related to Complaints and Investigations in Chapter 177 of this title (relating to Complaints and Investigations) shall apply, except to the extent those rules conflict with the Act, in which case the Act controls.

(c) The rules related to Disciplinary Guidelines and Sanctions in Chapter 180 of this title (relating to Disciplinary Guidelines) shall apply, except to the extent those rules conflict with the Act, in which case the Act controls. Applicable rules for purposes of this subsection include, but are not limited to:

(1) practice inconsistent with public health and welfare;

(2) unprofessional or dishonorable conduct;

(3) disciplinary actions by state boards and peer groups;

(4) aggravating and mitigating factors; and

(5) criminal convictions.

(d) The rules related to Compliance in Chapter 181 of this title (relating to Compliance Program) shall apply, except to the extent those rules conflict with the Act, in which case the Act controls.

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

Filed with the Office of the Secretary of State on September 9, 2024.

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Scott Freshour

General Counsel

Texas Medical Board

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For further information, please call: (512) 305-7030



## CHAPTER 186. RESPIRATORY CARE PRACTITIONERS

The Texas Medical Board (Board) proposes the repeal of current Chapter 186, concerning Respiratory Care Practitioners §§186.1 - 186.14, §§186.16 - 186.30.

The Board also proposes new Chapter 186, concerning Medical Radiologic Technology. This includes new Subchapter A, concerning Texas Board of Medical Radiologic Technology, §§186.1 - 186.4; Subchapter B, concerning Medical Radiologic Technologist Certification, Registration, and Practice Requirements, §§186.10 - 186.21; Subchapter C, concerning Non-Certified Technician Registration and Practice Requirements, §§186.25 - 186.32; Subchapter D, concerning Hardship Exemptions §186.40 and §186.41; Subchapter E, concerning Education Programs and Instructor Requirements, §186.45; and Subchapter F, concerning Procedural Rules, §186.50 and §186.51.

Also, the Board contemporaneously proposes the repeal of current Chapter 194, concerning Medical Radiologic Technology. This includes Subchapter A, concerning Certificate Holders, Non-Certified Technicians, and Other Authorized Individuals Or Entities, §§194.1 - 194.13, §§194.15 - 194.34.

The Board has determined that due to the extensive reorganization of Chapters 160-200, repeal of Chapter 186 is more efficient than proposing multiple amendments to make the required changes.

The proposed new subchapters and sections are as follows:

### SUBCHAPTER A. TEXAS BOARD OF MEDICAL RADIOLOGIC TECHNOLOGY.

New §186.1, Definitions, defines words and terms used in new Chapter 186.

New §186.2, Functions and Duties, explains the functions and duties of the Board and its members.

New §186.3, Meetings, explains how Board meetings are conducted.

New §186.4, Standing Committees, identifies and describes the function of the 3 Standing Committees of the board, the Disciplinary Committee, Licensure Committee, and Education Committee.

### SUBCHAPTER B. MEDICAL RADIOLOGIC TECHNOLOGIST CERTIFICATION, REGISTRATION, AND PRACTICE REQUIREMENTS.

New §186.10, General Requirements for Certification, outlines the general requirements for an MRT certification.

New §186.11, Requirements for a Radiologist Assistant Certificate, outlines the requirements for certification as a Radiologist Assistant.

New §186.12, Requirements for a General Medical Radiologic Technologist Certificate, outlines the general requirements for certification as a Medical Radiologic Technologist.

New §186.13, Requirements for a Limited Medical Radiologic Technologist Certificate, outlines the limited requirements for certification as a Medical Radiologic Technologist.

New §186.14, Current Clinical Practice, outlines the submission of an applicant's professional or work history information for board review when seeking certification.

New §186.15, Temporary Certificates, explains the requirements and process to obtain a temporary Medical Radiologic Technology Certificate.

New §186.16, Procedural Rules for Certificate Applicants, outlines the general requirements for Applicants to obtain a Medical Radiologic Technology certification.

New §186.17, Recertification, outlines the requirements for a certificate holder who has retired or who has surrendered their certificate and is seeking reissuance of a certificate.

New §186.18, Certificate Registration and Renewal, outlines the general requirements of certificate registration and renewal.

New §186.19, Biennial Continuing Education (CE) Requirements, explains the requirements regarding the Medical Radiologic Technology biennial continuing medical education.

New §186.20, Scope of Practice, describes the dangerous and hazardous procedures that may be performed as are specified in §601.056 of the Act.

New §186.21, Professional Identification, explains the type of certification which must be displayed at all times when performing procedures.

### SUBCHAPTER C. NON-CERTIFIED TECHNICIAN REGISTRATION AND PRACTICE REQUIREMENTS.

New §186.25, Non-Certified Technicians (NCTs), outlines specific documentation and payment of fee requirements that an NCT must provide in order to qualify for a NCT certification.

New §186.26, Education Standards for Non-Certified Technician (NCT), outlines specific educational standards as an applicant for NCT licensure.

New §186.27, Procedural Rules for Non-Certified Technician (NCT) Applicants, outlines the general requirements for an applicant to obtain an NCT certification.

New §186.28, Renewal of Non-Certified Technician (NCT) Registration, outlines the general requirements for NCT registration renewal.

New §186.29, Biennial Non-Certified Technician (NCT) Continuing Education (CE) Requirements, explains the requirements regarding the NCT's biennial continuing education.

New §186.30, Reissuance of Registration for Non-Certified Technicians (NCTs), outlines the requirements for an NCT who has retired or who has surrendered their registration and is seeking to be reissued registration.

New §186.31, Limited Practice of Non-Certified Technicians (NCTs), explains the parameters an NCT may not perform



regarding a dangerous or hazardous procedure as defined by §186.12 of this subtitle.

New §186.32, Professional Identification, states the requirement that an NCT must display identification certification at all times when performing procedures.

#### SUBCHAPTER D. HARDSHIP EXEMPTIONS.

New §186.40, Hardship Exemptions, explains the hardship exemption qualifications that a practitioner or hospital may qualify for if it meets specific outlined criteria.

New §186.41, Bone Densitometry Exemption, describes the specific performance criteria for the practitioner, registered nurse, physician assistant, certificate holder, or a certified densitometry technologist regarding bone density using x-radiation.

#### SUBCHAPTER E. EDUCATION PROGRAMS AND INSTRUCTOR REQUIREMENTS.

New §186.45, Education Programs and Instructor Requirements, outlines the requirements of education programs and instructors to be accredited for LMRT and NCT certification.

#### SUBCHAPTER F. PROCEDURAL RULES.

New §186.50, Procedural Rules, Procedural Rules, explains the applicable rules applied to complaints and investigations, disciplinary guidelines and sanctions, and compliance in accordance with §601.311 of the Act.

New §186.51, On-Going Reporting Requirements, explains that a certificate holder or NCT must report any event listed in §162.2(b)(1) through (7) of this title within 10 days after the event.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the proposed repeals and new sections are in effect, the public benefit anticipated as a result of enforcing these proposed sections will be to remove redundant language from rules, simplify the rules, and make the rules easier to understand.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect, there will be no fiscal impact or effect on government growth as a result of enforcing the proposed sections.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect there will be no probable economic cost to individuals required to comply with these proposed sections.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for these proposed repeals and new sections and determined that for each year of the first five years these proposed repeals and new sections will be in effect there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of these proposed repeals and new sections and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years these proposed repeals and new sections are in effect:

(1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering these proposed repeals and new sections;

(2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections;

(3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections; and

(4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering these proposed repeals and new sections.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years these proposed repeal and new sections will be in effect, there will be no effect on local economy and local employment.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for these proposed repeal and new sections. For each year of the first five years these proposed repeal and new sections will be in effect, Mr. Freshour has determined the following:

(1) These proposed repeals and new sections do not create or eliminate a government program.

(2) Implementation of these proposed repeals and new sections does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of these proposed repeals and new sections does not require an increase or decrease in future legislative appropriations to the agency.

(4) These proposed sections do not require an increase or decrease in fees paid to the agency.

(5) These proposed repeals and new sections do not create new regulations.

(6) These proposed repeals and new sections do repeal existing regulations as described above. These proposed new sections do not expand or limit an existing regulation.

(7) These proposed repeals and new sections do not increase the number of individuals subject to the sections' applicability.

(8) These proposed repeals and new sections do not positively or adversely affect this state's economy.

Comments on the proposal may be submitted using this link: <https://forms.office.com/g/LXqDi1pYME>. A public hearing will be held at a later date. Comments on the proposal will be accepted for 30 days following publication

### **22 TAC §§186.1 - 186.14, 186.16 - 186.30**

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for reoption, readoption with amendments, or repeal every four years.

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

§186.1. *Purpose.*

§186.2. *Definitions.*

§186.3. *Meetings and Committees.*

§186.4. *Procedural Rules and Qualifications for Certificate Applicants.*  
 §186.5. *Recertification.*  
 §186.6. *Biennial Renewal of Certificate.*  
 §186.7. *Temporary Permit.*  
 §186.8. *Inactive Certificate.*  
 §186.9. *Reissuance of Certificate Following Revocation.*  
 §186.10. *Continuing Education Requirements.*  
 §186.11. *Respiratory Care Practitioner Scope of Practice.*  
 §186.12. *Tasks Not Permitted to be Delegated to a Respiratory Care Practitioner.*  
 §186.13. *Identification Requirements.*  
 §186.14. *Physician Direction.*  
 §186.16. *Employment Guidelines.*  
 §186.17. *Grounds for Denial of Certification and for Disciplinary Action.*  
 §186.18. *Discipline of Respiratory Care Practitioners.*  
 §186.19. *Administrative Penalties.*  
 §186.20. *Complaints.*  
 §186.21. *Investigations.*  
 §186.22. *Impaired Respiratory Care Practitioners.*  
 §186.23. *Third Party Reports to the Advisory Board.*  
 §186.24. *Procedure.*  
 §186.25. *Compliance.*  
 §186.26. *Voluntary Relinquishment or Surrender of Respiratory Care Practitioner Certificate.*  
 §186.27. *Duty to Report Certain Conduct to the Advisory Board.*  
 §186.28. *Retired Certificate.*  
 §186.29. *Report of Impairment on Registration Form.*  
 §186.30. *Exemption from Licensure for Certain Military Spouses.*  
 The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 9, 2024.

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Scott Freshour

General Counsel

Texas Medical Board

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For further information, please call: (512) 305-7030



## CHAPTER 186. MEDICAL RADIOLOGIC TECHNOLOGY

### SUBCHAPTER A. TEXAS BOARD OF MEDICAL RADIOLOGIC TECHNOLOGY

#### 22 TAC §§186.1 - 186.4

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle; and establish rules related to licensure. The new rules are also proposed under the authority of the Texas Occupations Code Annotated §601.0522.

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

§186.1. *Definitions.*

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

(1) ABHES--Accrediting Bureau of Health Education Schools.

(2) Act--The Medical Radiologic Technologist Certification Act, Texas Occupations Code, Chapter 601.

(3) Advisory Board--Texas Board of Medical Radiologic Technology

(4) ARRT--The American Registry of Radiologic Technologists and its predecessor or successor organizations.

(5) ASRT--The American Society of Radiologic Technologists and its predecessor or successor organizations.

(6) CBRPA--Certification Board for Radiology Practitioner Assistants.

(7) JRCCVT--The Joint Review Committee on Education in Cardiovascular Technology.

(8) JRCERT--The Joint Review Committee on Education in Radiologic Technology.

(9) JRCNMT--The Joint Review Committee on Educational Programs in Nuclear Medicine Technology.

(10) Limited Medical Radiologic Technologist (LMRT)--A certificate holder who is limited to administer radiation to only specific body areas. The areas are skull, chest, spine, extremities, podiatric, chiropractic and cardiovascular.

(11) NMTCB--Nuclear Medicine Technology Certification Board and its successor organizations.

(12) Non-certified Technician (NCT)--A person who has completed a training program approved by the Advisory Board and who is registered with the Advisory Board under this chapter.

(13) SACS--The Southern Association of Colleges and Schools, Commission on Colleges.

(14) Sponsoring Institution--A hospital, educational, other facility, or a division thereof, that offers or intends to offer a course of study in medical radiologic technology.

§186.2. *Functions and Duties.*

(a) In accordance with §601.052 of the Act, Advisory Board duties and functions include:

(1) establishing standards for the practice of Medical Radiologic Technology;

(2) regulating medical radiologic technologists and non-certified technicians through certification and discipline;

(3) receiving complaints and investigating possible violations of the Act and the Advisory Board rules;

(4) reviewing, modifying, proposing, and adopting rules;

(5) considering, reviewing, and approving policy and changes as necessary; and

(6) acting as a resource concerning proposed legislative changes to reflect current medical and healthcare needs and practices.

(b) Individual Advisory Board members are required to:

(1) identify and disclose any conflicts of interest that may interfere with carrying out their duties and functions or that may impede their ability to be fair and impartial, and recuse from such matters;

(2) comply with the Act;

(3) maintain the highest levels of professional and ethical conduct, including, but not limited to:

(A) A board member shall not appear as an expert witness in any case in which a licensee of the board is a party and in which the expert testimony relates to standard of care or professional malpractice;

(B) A board member shall not appear in any administrative proceeding involving the exercise of the board's licensing or disciplinary authority before the board or the State Office of Administrative Hearings (SOAH) in which proceeding a licensee of the board is a party; and

(C) A board member shall refrain from making any statement that implies that the board member is speaking for the board if the board has not voted on an issue or unless the board has given the board member such authority; and

(4) immediately disclose if they are subject to a non-disciplinary or disciplinary action by any health care facility or professional licensing entity.

(c) Failure to comply with any of the requirements set forth in the Act or this section will be reported to the Office of the Governor.

*§186.3. Meetings.*

(a) Advisory Board meetings shall be conducted in compliance with Texas Government Code, Chapter 551, and, to the extent possible, pursuant to the provisions of Robert's Rules of Order Newly Revised.

(b) Special meetings may be called by the presiding officer or resolution of the Advisory Board.

(c) The Advisory Board may act only by majority vote of its members present and voting. Proxy votes are not allowed.

*§186.4. Standing Committees.*

The Standing Committees of the Advisory Board are as follows:

(1) Disciplinary Committee:

(A) reviews and makes recommendations to resolve complaints, close investigations and dismiss cases, and hears complainant appeals;

(B) recommends, reviews, and develops improvements of the disciplinary process, rules, policies, and other related matters; and

(C) receives reports on enforcement activities and statistical information.

(2) Licensure Committee:

(A) reviews applications and makes recommendations, based on eligibility criteria, for certification of medical radiologic technologists and non-certified technicians;

(B) recommends, reviews, and develops changes to the licensure process, rules, policies, and other related matters as necessary; and

(C) maintains communication with medical radiologic technologist programs.

(3) Education Committee:

(A) reviews and makes recommendations concerning educational and training requirements for certification as a medical

radiologic technologist or registration as a non-certified technician in Texas; and

(B) reviews and makes recommendations for approval or rescinding approval of medical radiologic technologist or non-certified technician education program curricula and instructors.

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

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## SUBCHAPTER B. MEDICAL RADIOLOGIC TECHNOLOGIST CERTIFICATION, REGISTRATION, AND PRACTICE REQUIREMENTS

### 22 TAC §§186.10 - 186.21

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle; and establish rules related to licensure. The new rules are also proposed under the authority of the Texas Occupations Code Annotated §601.0522.

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

*§186.10. General Requirements for Certification.*

(a) All applicants for certification must meet the requirements in §601.105 of the Act and submit:

(1) the board required application form;

(2) payment of the required fee and additional fees and surcharges as applicable:

(A) Radiologist Assistant fee of \$140.00;

(B) General or Limited Medical Radiologic Technologist fee of \$80.00;

(C) Temporary General or Temporary Limited Medical Radiologic Technologist fee of \$30.00;

(D) Non-Certified Radiologic Technician fee of \$60.00;

and

(3) required documentation including, but not limited to:

(A) an educational transcript;

(B) a current national certification;

(C) a certified transcript of specialty examination scores;

(D) a birth certificate or other similar proof of age;

(E) Professional or Work History Evaluation forms demonstrating or relating to the practice of radiologic technology for the preceding five years from the date of the application;

(F) National Practitioner Data Bank/Health Integrity and Protection Data Bank report (NPDB-HIPDB), if applicable;

(G) FBI/DPS Fingerprint Report;

(H) documentation of alternate name or name change, if applicable;

(I) arrest records, if applicable;

(J) malpractice records, if applicable;

(K) treatment records for alcohol or substance use disorder or any physical or mental illness impacting the ability practice, if applicable;

(L) military orders or DD214, if applicable;

(M) evidence of passage of the Texas Jurisprudence examination with at least a score of 75; and

(N) any other documentation deemed necessary by the board to process an application.

(b) Applications are valid for one year from the date of submission. The one-year period can be extended for the following reasons:

(1) delay in processing an application;

(2) referral to the Licensure Committee;

(3) unanticipated military assignments, medical reasons, or catastrophic events; or

(4) other extenuating circumstances.

(c) In accordance with Texas Occupations Code, Chapter 55, military service members, veterans, and spouses must:

(1) meet the general requirements as set forth in subsection (a) of this section; and

(2) submit a completed application on the board-approved form and all additional documentation as required, with the exception of the application fee.

§186.11. Requirements for a Radiologist Assistant Certificate.

Applicants for a Radiologist Assistant Certificate must meet the requirements listed in §186.10 of this chapter (relating to General Requirements for Certification) and the requirements listed in §601.002(b-10) of the Act.

§186.12. Requirements for a General Medical Radiologic Technologist Certificate.

(a) Applicants for a General Medical Radiologic Technologist certificate must meet the requirements listed in §186.10 of this chapter (relating to General Requirements for Certification) and the requirements listed in §601.105 of the Act.

(b) To qualify for a general certificate, an applicant must meet at least one of the following requirements:

(1) current ARRT certification as a registered technologist, radiographer, radiation therapist, or nuclear medicine technologist; or

(2) current NMTCB certification as a nuclear medicine technologist.

§186.13. Requirements for a Limited Medical Radiologic Technologist Certificate.

(a) Applicants for a Limited Medical Radiologic Technologist Certificate must meet the requirements listed in §186.10 of this chapter

(relating to General Requirements for Certification) and the requirements listed in §601.105 of the Act.

(b) To qualify for a limited certificate, an applicant must meet at least one of the following requirements:

(1) the successful completion of a limited program and successful completion of exam as set out in subsections (c) and (d) of this section; or

(2) current licensure, certification, or registration as an LMRT in another state, the District of Columbia, or a territory of the United States of America.

(c) Acceptable limited certificate programs training individuals to perform limited radiologic procedures must:

(1) be accredited by JRCERT, ABHES, or SACS (or other regional accrediting entities) to offer a limited curriculum in radiologic technology; or

(2) be accredited by JRCVT to offer a curriculum in invasive cardiovascular technology.

(d) Limited certificate examinations.

(1) Accepted examinations for limited certificates are:

(A) ARRT limited scope of practice in radiography examinations for:

(i) skull;

(ii) chest;

(iii) spine;

(iv) extremities;

(v) chiropractic (spine and extremities); and

(vi) podiatric (podiatry); or

(B) Cardiovascular Credentialing International invasive registry examination for cardiovascular; or

(C) a limited radiography examination accepted for licensure in another state

(2) Eligibility for an ARRT limited scope of practice in radiography examination requires the applicant to:

(A) request and obtain Advisory board authorization; and

(B) provide the Advisory Board with documents showing completion of either:

(i) an approved limited program; or

(ii) education components necessary for the appropriate limited scope of practice in radiography examination signed by the program director or registrar.

(3) Authorization by the Advisory Board allows for three attempts to successfully pass the ARRT limited scope of practice in radiography examination with a score of 75.

(4) The minimum acceptable score for a cardiovascular limited certificate is 70.

(5) If an ARRT examinee does not successfully meet the requirements of paragraph (3) of this section, they must:

(A) complete a board-approved continuing education course of at least 60 hours from an approved limited program; and

(B) seek authorization from the Advisory Board to be allowed one more attempt to pass with a score of 75 within one year. If they do not pass the extra attempt, they are ineligible for that particular limited certificate.

§186.14. Current Clinical Practice.

(a) All applicants must submit professional or work history evaluations demonstrating or relating to the practice as a medical radiologic technologist in the preceding five years from the date of application. "Current clinical practice" may be demonstrated by:

(1) currently practicing medical radiologic technology involving treatment of persons;

(2) enrollment as a student at an acceptable approved medical radiologic technology school; or

(3) appointment as an active teaching faculty member at an acceptable approved medical radiologic technology school.

(b) The Executive Director may offer to an applicant that cannot demonstrate current clinical practice as a medical radiologic technologist within the last three years from the date of application:

(1) a supervised temporary certificate as set forth in §186.15 of this chapter (relating to Temporary Certificates);

(2) remedial clinical education including, but not limited to, enrollment as a student at an acceptable approved medical radiologic technology school or other structured program approved by the Advisory Board; or

(3) other remedial measures necessary to ensure protection of the public and minimal competency of the applicant to safely practice.

§186.15. Temporary Certificates.

(a) Applicants for a Temporary Medical Radiologic Technology (TMRT) Certificate or a Temporary Limited Medical Radiologic Technology (TLMRT) Certificate must meet the requirements in §601.102 of the Act.

(b) A TMRT or TLMRT certificate may be issued to an applicant:

(1) who is qualified for a certificate, subject to terms and conditions that require board approval;

(2) who has satisfied the requirements of §186.10 of this chapter (relating to General Requirements for Certification), with the exception of completion of the national certification or specialty examination; or

(3) who must remedy current clinical practice issues set forth in §186.13 of this chapter (relating to Requirements for a Limited Medical Radiologic Technologist Certificate).

(c) In order to be determined eligible for a temporary certificate to remedy a current clinical practice issue under §186.13 of this chapter, an applicant must be supervised by a general certificate holder or licensed practitioner, as defined by §601.002 of the Act, who:

(1) has an unrestricted license or certificate in Texas;

(2) has no pending investigation;

(3) is not a relative or family member;

(4) has never had a license or certificate revoked, suspended, restricted, or cancelled for cause; and

(5) meets any other eligibility criteria established by the Advisory Board.

(d) Duration of Temporary Certificates is as follows:

(1) TMRT - one year, with no renewal or reapplication; and

(2) TLMRT - six months, with no renewal or reapplication.

(e) Temporary certificates shall terminate upon:

(1) issuance of a full license; or

(2) violation of conditions of a temporary certificate.

§186.16. Procedural Rules for Certificate Applicants.

(a) Applications will be processed in accordance with §601.105 of the Act.

(b) The Executive Director may offer to an applicant:

(1) the option to withdraw an application with missing items, defects, omissions, or other errors and resubmit a corrected application;

(2) a Remedial Plan;

(3) an Agreed Order; or

(4) other recommendations considered appropriate by the board.

(c) Applicants not approved for certification by the Executive Director may, within 20 days of notice of non-approval, request to appear before the Licensure Committee.

(1) If the applicant fails to take timely action, the application for certification shall be deemed withdrawn regardless of the board's action.

(2) The applicant shall be notified of the board's final determination.

(3) An applicant has 20 days from the date of the notice of the board's final decision to either accept the determination or request an appeal to the State Office of Administrative Hearings (SOAH).

§186.17. Recertification.

(a) For a certificate holder who retired or surrendered their certificate (including cancellation for non-payment) and who is seeking to be reissued a certificate, the following is required:

(1) all statutory requirements for certification must be met;

(2) application must be submitted and the required fee and additional fees and surcharges, as applicable, must be paid;

(3) the requirements of §186.10 of this chapter (relating to General Requirements for Certification) must be met;

(4) competency to resume practice must be demonstrated; and

(5) other remediation prescribed by the Advisory Board must be completed.

(b) In accordance with §601.305, applicants seeking recertification under this section will be reviewed and processed in accordance with §§164.151 and 164.152 of the Medical Practice Act.

§186.18. Certificate Registration and Renewal.

(a) Certificate holders must renew the registration of their certificate on a biennial basis by:

(1) completing a board renewal form;

(2) submitting payment of the applicable biennial registration fee;

(A) if Radiologist Assistant, fee of \$100.00, and additional fees and surcharges as applicable;

(B) if General or Limited Medical Radiologic Technician, fee of \$66.00, and additional fees and surcharges as applicable;

(3) verifying and updating information related to their online verification;

(4) completing biennial Continuing Education (CE) required under §186.19 of this chapter (relating to Biennial Continuing Education (CE) Requirements); and

(5) providing other relevant information requested by board staff.

(b) Failure to renew before a certificate's expiration date will result in increased charges as follows:

(1) 1-90 days late--renewal fee plus one half of the renewal fee; and

(2) 91 days-1 year late--double the renewal fee.

(3) Failure to renew within one year after the expiration date of the certificate will result in cancellation of the certificate.

§186.19. Biennial Continuing Education (CE) Requirements.

(a) As part of registration renewal, a certificate holder must complete Continuing Education (CE) each biennium as follows:

(1) For a radiologist assistant:

(A) a minimum of 23 hours in activities designated for Category A or A+ credits by ARRT as a Recognized Continuing Education Evaluation Mechanism (RCEEM) or RCEEM+; and

(B) a course in human trafficking prevention approved by the Executive Commissioner of the Texas Health and Human Services Commission.

(2) For a General Medical Radiologic Technologist (GMRT):

(A) a minimum of 24 hours, at least 12 hours of which must be in activities designated for Category A or A+ credits by ARRT as a Recognized Continuing Education Evaluation Mechanism (RCEEM) or RCEEM+, and any remaining credits may be composed of self-study or courses that are recorded and verifiable upon request by the board; and

(B) a course in human trafficking prevention approved by the Executive Commissioner of the Texas Health and Human Services Commission.

(3) For a Limited Medical Radiologic Technologist (LMRT):

(A) a minimum of 18 hours, at least nine of which must be in activities designated for Category A or A+ credits by ARRT as a Recognized Continuing Education Evaluation Mechanism (RCEEM) or RCEEM+, and any remaining credits may be composed of self-study or courses that are recorded and verifiable upon request by the board; and

(B) a course in human trafficking prevention approved by the Executive Commissioner of the Texas Health and Human Services Commission.

(b) Other CE that may be counted are:

(1) For an RA or MRT who renewed an ARRT certificate during the current biennial renewal period may use those CE credits, except for human trafficking prevention credit.

(2) For an RA, MRT, or LMRT who holds another health profession Texas license, registration, or certification may use the CE hours for the other license, registration, or certification, if the hours meet the requirements of this subsection, including human trafficking prevention, if applicable:

(A) no more than three hours credit during a renewal period for a cardiopulmonary resuscitation course or basic cardiac life support course;

(B) no more than six hours credit during a renewal period for an advanced cardiac life support course;

(C) no more than six hours credit for attendance in tumor conferences (limited to six hours), in-service education and training offered or sponsored by Joint Commission-accredited or Medicare certified hospitals; and

(D) no more than six hours for teaching in a program accredited by a board recognized accrediting organization.

(c) Military service members have the same CE requirements but are allowed extensions in accordance with Chapter 55.003 of the Texas Occupations Code, as applicable.

(d) CE Carry Forward:

(1) For RAs or MRTs, a maximum of 48 credit hours may be carried forward.

(2) For LMRTs, a maximum of 24 hours may be carried forward.

(3) The human trafficking prevention credit cannot be carried forward.

(4) Credits cannot be carried forward or applied more than two years following the period in which they are earned.

(e) Exemptions for CE requirements.

(1) Requests must be made in writing at least 30 days prior to expiration of the biennial renewal period for the following reasons:

(A) catastrophic illness;

(B) military service of longer than one year's duration outside the United States;

(C) licensee's residence of longer than one year's duration outside the United States; or

(D) other good cause.

(2) Exemptions are subject to the approval of the Executive Director of the board and may not exceed two years.

§186.20. cccc.

(a) Dangerous and hazardous procedures may only be performed by those individuals specified in §601.056 of the Act, unless otherwise indicated below.

(b) Dangerous procedures are:

(1) nuclear medicine studies to include positron emission tomography (PET);

(2) administration of radio-pharmaceuticals, not including preparation or dispensing except as regulated under the authority of the Texas State Board of Pharmacy;

(3) radiation therapy, including simulation, brachytherapy, and all external radiation therapy beams including Grenz rays;

(4) Computed Tomography (CT) or any variation thereof;

(5) interventional radiographic procedures, including angiography; in addition to individuals specified in §601.056 of the Act an LMRT with a cardiovascular category certificate may perform these;

(6) fluoroscopy; in addition to individuals specified in §601.056 of the Act, an LMRT with a cardiovascular category certificate may perform these; and

(7) cineradiography (including digital acquisition techniques); in addition to individuals specified in §601.056 of the Act, an LMRT with a cardiovascular category certificate may perform these.

(c) Hazardous procedures are:

(1) conventional tomography;

(2) skull radiography, excluding anterior-posterior/posterior-anterior (AP/PA), lateral, Townes, Caldwell, and Waters views;

(3) portable x-ray equipment;

(4) spine radiography, excluding AP/PA, lateral and lateral flexion/extension views;

(5) shoulder girdle radiographs, excluding AP and lateral shoulder views, AP clavicle, and AP scapula;

(6) pelvic girdle radiographs, excluding AP or PA views;

(7) sternum radiographs;

(8) radiographic procedures which utilize contrast media;

and

(9) pediatric radiography, excluding extremities; in addition to the individuals specified under §601.056 of the Act an LMRT with the appropriate category certification may perform these. Pediatric studies must be performed with radioprotection so that proper collimation and shielding is utilized during all exposure sequences.

(d) Mammography may only be performed in compliance with federal and state law specific to mammography, including Mammography Quality Safety Act and Texas Radiation Control Program.

(e) LMRTs may perform hazardous procedures if within the scope of their certification.

(f) Only an LMRT who holds a limited certificate in the cardiovascular category may perform procedures using contrast media and/or ionizing radiation for imaging a disease or condition of the cardiovascular system.

§186.21. Professional Identification.

Identification indicating certification type must be displayed at all times when performing procedures.

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

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## SUBCHAPTER C. NON-CERTIFIED TECHNICIAN REGISTRATION AND PRACTICE REQUIREMENTS

### 22 TAC §§186.25 - 186.32

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle; and establish rules related to licensure. The new rules are also proposed under the authority of the Texas Occupations Code Annotated §601.0522.

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

§186.25. Non-Certified Technicians (NCTs).

(a) A person who is not legally authorized under §601.101 of the Act or is exempt from certification under §§601.151 through 601.157 of the Act may intentionally use radiologic technology only if they submit the following to the Advisory Board:

(1) the board-required application form;

(2) payment of the required fee of \$60.00, and additional fees and surcharges as applicable; and

(3) required documentation, including but not limited to:

(A) evidence of completion of a board approved NCT program;

(B) birth certificate or other similar proof of age;

(C) Professional or Work History Evaluation forms demonstrating or relating to the practice of radiologic technology for the preceding five years from the date of the application;

(D) FBI/DPS Fingerprint Report;

(E) documentation of alternate name or name change, if applicable;

(F) training program transcript, if requested;

(G) arrest records, if applicable;

(H) malpractice records, if applicable;

(I) treatment records for alcohol or substance use disorder or any physical or mental illness impacting the ability practice, if applicable;

(J) military orders or DD214, if applicable;

(K) evidence of passage of Texas Jurisprudence examination with at least a score of 75; and

(L) any other documentation deemed necessary by the board to process an application.

(b) Applications are valid for one year from the date of submission. The one-year period can be extended for the following reasons:

(1) delay in processing an application;

(2) referral to the Licensure Committee;

(3) unanticipated military assignments, medical reasons, or catastrophic events; or

(4) other extenuating circumstances.

(c) In accordance with Texas Occupations Code, Chapter 55, military service members, veterans, and spouses must:

(1) meet the general requirements as set forth in subsection (a) of this section; and

(2) submit a completed application on the board-approved form and all additional documentation as required, with the exception of the application fee.

§186.26. Education Standards for Non-Certified Technician (NCT).

(a) Placement on the Non-Certified Technician (NCT) registry requires successful completion of an approved program of 120 total classroom hours with the following minimum requirements:

(1) radiation safety and protection for the patient, self and others--22 classroom hours;

(2) image production and evaluation--24 classroom hours; and

(3) radiographic equipment maintenance and operation--16 classroom hours including at least 6 hours of quality control, darkroom, processing, and Texas Regulations for Control of Radiation; and

(4) anatomy and radiologic procedures of the:

(A) skull (5 views: Caldwell, Townes, Waters, AP/PA, and lateral)--10 classroom hours;

(B) chest--8 classroom hours;

(C) spine--8 classroom hours;

(D) abdomen, not including any procedures utilizing contrast media--4 classroom hours;

(E) upper extremities--14 classroom hours;

(F) lower extremities--14 classroom hours.

(b) The training program hours must be live, in-person, and directed by an approved instructor.

§186.27. Procedural Rules for Non-Certified Technician (NCT) Applicants.

(a) Applications will be processed in accordance with §601.105 of the Act.

(b) The Executive Director may offer to an applicant:

(1) the option to withdraw an application with missing items, defects, omissions, or other errors and resubmit a corrected application;

(2) a Remedial Plan;

(3) an Agreed Order; or

(4) other recommendations considered appropriate by the board.

(c) Applicants not approved for registration by the Executive Director may, within 20 days of notice of non-approval, request to appear before the Licensure Committee.

(1) If the applicant fails to take timely action, the application for registration shall be deemed withdrawn regardless of the board's action.

(2) The applicant shall be notified of the board's final determination.

(3) An applicant has 20 days from the date of the notice of the board's final decision to either accept the determination or request an appeal to the State Office of Administrative Hearings (SOAH).

§186.28. Renewal of Non-Certified Technician (NCT) Registration.

(a) Non-Certified Technicians (NCTs) must renew the registration of their registration on a biennial basis by:

(1) completing a board renewal form;

(2) submitting payment of a biennial registration fee of \$56.00, and additional fees and surcharges, as applicable;

(3) verifying and updating information related to their on-line verification;

(4) completing biennial Continuing Education (CE) required under §186.29 of this chapter (relating to Biennial Non-Certified Technician (NCT) Continuing Education (CE) Requirements); and

(5) providing other relevant information requested by board staff.

(b) Failure to renew before a registration's expiration date will result in increased charges as follows: 1 day-1 year late--\$50.00.

(c) Failure to renew within one year after the expiration date of the registration will result in cancellation of the NCT registration.

§186.29. Biennial Non-Certified Technician (NCT) Continuing Education (CE) Requirements.

(a) A Non-Certified Technician (NCT) must complete 12 hours of continuing education each biennium as follows:

(1) a minimum of 6 hours in activities designated for Category A or A+ credits by ARRT as a Recognized Continuing Education Evaluation Mechanism (RCEEM) or RCEEM+;

(2) a course in human trafficking prevention approved by the Executive Commissioner of the Texas Health and Human Services Commission; and

(3) the remaining credits may be composed of self-study or courses and made available upon board request.

(b) A maximum of 12 hours may be carried forward, except the human trafficking prevention credit cannot be carried forward. The credits cannot be carried forward or applied more than two years following the period in which they are earned.

(c) Exemptions for CE requirements.

(1) Requests must be made in writing at least 30 days prior to expiration of the biennial renewal period for the following reasons:

(A) catastrophic illness;

(B) military service of longer than one year's duration outside the United States;

(C) licensee's residence of longer than one year's duration outside the United States; or

(D) other good cause.

(2) Exemptions are subject to the approval of the Executive Director of the board and may not exceed two years.

§186.30. Reissuance of Registration for Non-Certified Technicians (NCTs).

(a) For a Non-Certified Technician (NCT) who retired or surrendered their registration (including non-payment) and who is seeking to be reissued registration, the following is required:

(1) all statutory requirements for certification must be met;

(2) an application must be submitted and the required fee and additional fees and surcharges, as applicable, must be paid;



- (3) the requirements of §186.10 of this chapter must be met;
- (4) competency to resume practice must be demonstrated;
- and
- (5) other remediation prescribed by the Advisory Board must be completed.

(b) Applicants seeking reissuance of registration under this section will be reviewed and processed in accordance with §§164.151 and 164.152 of the Medical Practice Act.

§186.31. Limited Practice of Non-Certified Technicians (NCTs).

A Non-Certified Technician (NCT) may not perform a radiologic procedure identified as dangerous or hazardous, as defined by §186.20 of this chapter (relating to Scope of Practice).

§186.32. Professional Identification.

Identification indicating NCT status must be displayed at all times when performing procedures.

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

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## SUBCHAPTER D. HARDSHIP EXEMPTIONS

### 22 TAC §186.40, §186.41

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle; and establish rules related to licensure. The new rules are also proposed under the authority of the Texas Occupations Code Annotated §601.0522.

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

§186.40. Hardship Exemptions.

(a) A hospital, federally qualified health center (FQHC) as defined by 42 U.S.C. §1396d, or practitioner may qualify for a hardship exemption from employing an MRT, LMRT, or NCT for the following reason(s):

- (1) inability to attract or retain a MRT, LMRT, or NCT when the practitioner's practice, FQHC, or hospital is located in a county with a population of less than 50,000;
- (2) the practitioner's practice, FQHC, or hospital is more than 200 highway miles from the nearest approved school of medical radiologic technology;
- (3) the approved school(s) of medical radiologic technology has a waiting list of school applicants due to a lack of faculty or space for a training program;

(4) the practitioner's, FQHC's, or hospital's need exceeds the number of graduates from the nearest approved school(s) of medical radiologic technology; or

(5) emergency conditions have occurred during the 90 days immediately prior to making application for the hardship exemption.

(b) To obtain a hardship exemption, the hospital, FQHC, or practitioner must submit the following, in addition to meeting the requirements of §601.203 of the Act:

- (1) completed board approved application form notating the basis for the hardship;
- (2) payment of the required \$30.00 fee and additional fees and surcharges as applicable;
- (3) DPS/FBI fingerprint report for individuals who will perform the radiologic procedures; and
- (4) any other information deemed necessary to process an application.

(c) If granted, a hardship exemption is valid for one year and must be reapplied for annually.

(d) No more than seven individuals will be allowed to perform radiologic procedures under the hardship exemption, if granted.

§186.41. Bone Densitometry Exemption.

Bone densitometry using x-radiation may be performed by:

- (1) a practitioner;
- (2) a registered nurse or physician assistant;
- (3) a certificate holder; or
- (4) a certified densitometry technologist who meets the following:

(A) in good standing with the International Society for Clinical Densitometry (ISCD);

(B) has successfully completed the ARRT bone density exam; or

(C) has at least 20 hours of documented training as follows:

- (i) 16 hours using bone densitometry equipment utilizing x-radiation; and
- (ii) 4 hours of radiation safety and protection training.

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

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## SUBCHAPTER E. EDUCATION PROGRAMS AND INSTRUCTOR REQUIREMENTS

### 22 TAC §186.45

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle; and establish rules related to licensure. The new rules are also proposed under the authority of the Texas Occupations Code Annotated §601.0522.

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

#### §186.45. Education Programs and Instructor Requirements.

(a) General certificate education programs must be accredited by an accrediting body recognized by:

(1) the Council for Higher Education Accreditation, including but not limited to the JRCNMT; or

(2) the United States Secretary of Education, including but not limited to JRCERT, ABHES, or SACS.

(b) General requirements for LMRT and NCT education program approval includes submission of the following by the program director:

(1) completed board-approved application form;

(2) required fee of \$500.00 and additional fees and surcharges as applicable;

(3) other documentation deemed necessary to process an application.

(c) Program directors of LMRT education programs must submit evidence of current accreditation by:

(1) JRCERT, ABHES, or SACS to offer a limited curriculum in radiologic technology; or

(2) JRCVVT to offer a curriculum in invasive cardiovascular technology.

(d) Program directors of NCT education programs must submit documentation of the following board forms with any required supporting documentation:

(1) Program General Information;

(2) Program Outline and Curriculum;

(3) Program Equipment and Safety Compliance;

(4) Program Director and Instructors;

(5) Program Student Education File;

(6) Texas Workforce Commission form, and if approval has not been granted by the Texas Higher Education Coordinating Board, a letter or documentation from the Texas Workforce Commission, Career Schools and Colleges Section, indicating that the proposed training program has complied with or has been granted exempt status under Texas Education Code, Chapter 132; and

(7) Program Attestation.

(e) Requirements for NCT Instructors.

(1) In accordance with §601.052 of the Act, an individual may apply to be approved as a NCT instructor by submitting the following:

(A) a board approved application form;

(B) required fee of \$50.00 and additional fees and surcharges as applicable;

(C) documents regarding qualifications, including;

(i) current MRT certification;

(ii) current LMRT certification (not a temporary certificate) in the same area as the proposed area of instruction; or

(iii) current licensure for practitioners; and

(D) other information deemed necessary to process an application.

(2) Approval as an NCT instructor must be obtained at least 30 days before providing any instructional services in a board-approved NCT training program.

(f) Other standards for programs and instructors are:

(1) Approval must be obtained before beginning a program or acting as an instructor.

(2) Approval of a training program or as an NCT instructor is valid for three years. The program or instructor may reapply for approval.

(3) A program director must report the following to the board within 30 days after the event:

(A) any change of address of the program;

(B) any change in status of approved instructors or program director(s); and

(C) any change in accreditation status.

(4) Programs must retain copies of program records for five years.

(5) Applications for approval are considered by the Executive Director. If a program or instructor is not approved, they may appeal for reconsideration by the Education Committee of the board.

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

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## SUBCHAPTER F. PROCEDURAL RULES

### 22 TAC §186.50, §186.51

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle; and establish rules related to licensure. The new rules are also proposed

under the authority of the Texas Occupations Code Annotated §601.0522.

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

§186.50. Procedural Rules.

(a) In accordance with §601.311 of the Act, the Procedural Rules in Chapter 179 of this title shall apply, except to the extent those rules conflict with the Act, in which case the Act controls.

(b) The rules related to Complaints and Investigations in Chapter 177 of this title shall apply, except to the extent those rules conflict with the Act, in which case the Act controls.

(c) The rules related to Disciplinary Guidelines and Sanctions in Chapter 180 of this title shall apply, except to the extent those rules conflict with the Act, in which case the Act controls. Applicable rules for purposes of this subsection include, but are not limited to:

- (1) practice inconsistent with public health and welfare;
- (2) unprofessional or dishonorable conduct;
- (3) disciplinary actions by state boards and peer groups;
- (4) aggravating and mitigating factors; and
- (5) criminal convictions.

(d) The rules related to Compliance in Chapter 181 of this title shall apply, except to the extent those rules conflict with the Act, in which case the Act controls.

§186.51. On-Going Reporting Requirements.

A certificate holder or NCT must report any event listed in §162.2(b)(1) through (7) of this title (relating to Profile Updates) to the board within 10 days after the event.

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

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## CHAPTER 187. PROCEDURAL RULES

The Texas Medical Board (Board) proposes the repeal of current Chapter 187, concerning Procedural Rules. This includes Subchapter A, concerning General Provisions and Definitions, §§187.1 - 187.9; Subchapter B, concerning Informal Board Proceedings, §§187.10, 187.11, 187.13 - 187.16, 187.18 - 187.21; Subchapter C, concerning Formal Board Proceedings at SOAH, §§187.22 - 187.31, and §187.33; Subchapter D, concerning Formal Board Proceedings, §§187.35 - 187.37, 187.39 and §187.42; Subchapter E, concerning Proceedings Relating to Probationers, §§187.43 - 187.45; Subchapter F, concerning Temporary Suspension and Restriction Proceedings, §§187.55 - 187.62; Subchapter G, concerning Suspension by Operation of Law, §§187.70 - 187.72; Subchapter H, concerning Imposition

of Administrative Penalty, §§187.75 - 187.82; Subchapter I, concerning Proceedings for Cease and Desist Orders, §187.83 and §187.84; and Subchapter J, concerning Procedures Related to Out-Of-Network Health Benefit Claim Dispute Resolution, §§187.85 - 187.89.

The Board also proposes new Chapter 187, concerning Respiratory Care Practitioners. This includes Subchapter A, concerning Texas Board of Respiratory Care, §§187.1 - 187.4; Subchapter B, concerning Certification and Registration, §§187.10 - 187.17; Subchapter C, concerning Practice Requirements, §187.20; Subchapter D, concerning Board Processes and Procedures, §187.25 and §187.26.

Also, the Board contemporaneously proposes the repeal of current Chapter 186, concerning Respiratory Care Practitioners, §§186.1 - 186.14 and §§186.16 - 186.30.

The Board has determined that due to the extensive reorganization of Chapters 160-200, the repeal of Chapter 187 is more efficient than proposing multiple amendments to make the required changes.

The proposed new subchapters and sections are as follows:

### SUBCHAPTER A. TEXAS BOARD OF RESPIRATORY CARE.

New §187.1, Definitions, defines terms used in new Chapter 187.

New §187.2, Functions and Duties, explains the functions and duties of the Board and its members.

New §187.3, Meetings, explains how Board meetings are conducted.

New §187.4, Standing Committees, identifies and describes the function of the 2 Standing Committees of the Advisory Board, the Discipline and Ethics Committee and Licensure Committee.

### SUBCHAPTER B. CERTIFICATION AND REGISTRATION.

New §187.10, General Requirements for Certification, outlines the general requirements for licensure for a Respiratory Care Practitioners certification.

New §187.11, Current Clinical Practice, outlines the submission of an applicant's professional or work history information for board review when seeking certification.

New §187.12, Temporary Permits, explains the requirements and process for a temporary Respiratory Care Practitioners permit.

New §187.13, Procedural Rules for Certificate Applicants, outlines the general requirements for applicants to obtain a Respiratory Care Practitioners certification.

New §187.14, Recertification, outlines the requirements for a certificate holder who has retired or who has surrendered their certificate and is seeking reissuance of a certificate.

New §187.15, Certificate Registration and Renewal, outlines the general requirements of certificate registration and renewal.

New §187.16, Biennial Continuing Education (CE) Requirements, explains the requirements regarding the Respiratory Care Practitioners biennial continuing education.

New §187.17, Inactive Certificate, describes the status of being placed on inactive status in accordance with §604.156 of the Act and the requirements to obtain recertification under §187.14 of this subchapter.

## SUBCHAPTER C. PRACTICE REQUIREMENTS.

New §187.20, On-Going Reporting Requirements, explains the requirements related to a Respiratory Care Practitioner licensed by the Advisory Board to report any event listed in §162.2(b)(1) through (7) of this title within 10 days after the event.

## SUBCHAPTER D. BOARD PROCESSES AND PROCEDURES.

New §187.25, Procedural Rules, explains the applicable rules applied to complaints and investigations, disciplinary guidelines and sanctions, and compliance in accordance with §604.209 of the Act.

New §187.26, Consequences of Criminal Conviction, states that licensing and disciplinary matters or arrest and criminal history will be evaluated consistent with Chapter 53 of the Texas Occupations Code.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the proposed repeals and new sections are in effect, the public benefit anticipated as a result of enforcing these proposed sections will be to remove redundant language from rules, simplify the rules, and make the rules easier to understand.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect, there will be no fiscal impact or effect on government growth as a result of enforcing the proposed sections.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect there will be no probable economic cost to individuals required to comply with these proposed sections.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for these proposed repeals and new sections and determined that for each year of the first five years these proposed repeals and new sections will be in effect there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of these proposed repeals and new sections and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years these proposed repeals and new sections are in effect:

- (1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering these proposed repeals and new sections;
- (2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections;
- (3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections; and
- (4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering these proposed repeals and new sections.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years these proposed repeals and new sections will be in effect, there will be no effect on local economy and local employment.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for these proposed repeals and new sections. For each year of the first five years these proposed repeals and new sections will be in effect, Mr. Freshour has determined the following:

- (1) These proposed repeals and new sections do not create or eliminate a government program.
- (2) Implementation of these proposed repeals and new sections does not require the creation of new employee positions or the elimination of existing employee positions.
- (3) Implementation of these proposed repeals and new sections does not require an increase or decrease in future legislative appropriations to the agency.
- (4) These proposed sections do not require an increase or decrease in fees paid to the agency.
- (5) These proposed repeals and new sections do not create new regulations.
- (6) These proposed repeals and new sections do repeal existing regulations as described above. These proposed new sections do not expand or limit an existing regulation.
- (7) These proposed repeals and new sections do not increase the number of individuals subject to the sections' applicability.
- (8) These proposed repeals and new sections do not positively or adversely affect this state's economy.

Comments on the proposal may be submitted using this link: <https://forms.office.com/g/cqenXh72VF>. A public hearing will be held at a later date. Comments on the proposal will be accepted for 30 days following publication.

## SUBCHAPTER A. GENERAL PROVISIONS AND DEFINITIONS

### 22 TAC §§187.1 - 187.9

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years.

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

§187.1. *Purpose and Scope.*

§187.2. *Definitions.*

§187.3. *Computation of Time.*

§187.4. *Agreement to be in Writing.*

§187.5. *National Practitioner Data Bank (NPDB).*

§187.6. *Appearances.*

§187.7. *Conduct and Decorum.*

§187.8. *Subpoenas.*

§187.9. *Board Actions.*

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

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Scott Freshour

General Counsel

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## SUBCHAPTER B. INFORMAL BOARD PROCEEDINGS

### 22 TAC §§187.10, 187.11, 187.13 - 187.16, 187.18 - 187.21

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years.

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

§187.10. *Purpose.*

§187.11. *Transfer to Legal Division.*

§187.13. *Informal Board Proceedings Relating to Licensure Eligibility.*

§187.14. *Informal Resolution of Disciplinary Issues Against a Licensee*

§187.15. *Investigation and Collection of Information.*

§187.16. *Informal Show Compliance (ISC) Information and Notices.*

§187.18. *ISC Scheduling, Process and Procedures.*

§187.19. *Resolution by Agreed Order.*

§187.20. *Board Action on Agreed Orders.*

§187.21. *Board and District Review Committee Members Participation.*

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

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## SUBCHAPTER C. FORMAL BOARD PROCEEDINGS AT SOAH

### 22 TAC §§187.22 - 187.31, 187.33

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides

authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years.

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

§187.22. *Purpose.*

§187.23. *General Provisions.*

§187.24. *Pleadings.*

§187.25. *Notice of Adjudicative Hearing.*

§187.26. *Service in SOAH Proceedings.*

§187.27. *Written Answers in SOAH Proceedings and Default Orders.*

§187.28. *Discovery.*

§187.29. *Mediated Settlement Conferences.*

§187.30. *Reporter and Transcripts.*

§187.31. *Evidence.*

§187.33. *Proposals for Decision.*

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

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## SUBCHAPTER D. FORMAL BOARD PROCEEDINGS

### 22 TAC §§187.35 - 187.37, 187.39, 187.42

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years.

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

§187.35. *Presentation of Proposal for Decision.*

§187.36. *Interlocutory Appeals for Certification of Questions.*

§187.37. *Board Action on Proposal for Decision.*

§187.39. *Costs of Administrative Hearings.*

§187.42. *Recusals.*

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

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## SUBCHAPTER E. PROCEEDINGS RELATING TO PROBATIONERS

### 22 TAC §§187.43 - 187.45

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years.

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

§187.43. *Proceedings for the Modification/Termination of Agreed Orders and Disciplinary Orders.*

§187.44. *Probationer Show Compliance Proceedings.*

§187.45. *Probationer Appearances.*

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

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## SUBCHAPTER F. TEMPORARY SUSPENSION AND RESTRICTION PROCEEDINGS

### 22 TAC §§187.55 - 187.62

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years.

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

§187.55. *Purpose.*

§187.56. *Convening a Disciplinary Panel.*

§187.57. *Charge of the Disciplinary Panel.*

§187.58. *Procedures before the Disciplinary Panel.*

§187.59. *Evidence.*

§187.60. *Temporary Suspension or Restriction Without Notice or Hearing.*

§187.61. *Ancillary Proceeding.*

§187.62. *Continuing Threat Constitutes A Danger to the Public.*

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

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## SUBCHAPTER G. SUSPENSION BY OPERATION OF LAW

### 22 TAC §§187.70 - 187.72

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years.

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

§187.70. *Purposes and Construction.*

§187.71. *Hearing before a Panel of Board Representatives.*

§187.72. *Decision of the Panel.*

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

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## SUBCHAPTER H. IMPOSITION OF ADMINISTRATIVE PENALTY

### 22 TAC §§187.75 - 187.82

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its

duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years.

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

§187.75. *Purposes and Construction.*

§187.76. *Notice of Intention to Impose Administrative Penalty; Response.*

§187.77. *Payment of the Administrative Penalty.*

§187.78. *Written Response.*

§187.79. *Personal Appearance at an ISC.*

§187.80. *Imposition of Administrative Penalty.*

§187.81. *Reports of Imposition of Administrative Penalty.*

§187.82. *Unpaid Administrative Penalties.*

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

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## SUBCHAPTER I. PROCEEDINGS FOR CEASE AND DESIST ORDERS

### 22 TAC §187.83, §187.84

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years.

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

§187.83. *Proceedings for Cease and Desist Orders.*

§187.84. *Violation of Cease and Desist Orders.*

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

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## SUBCHAPTER J. PROCEDURES RELATED TO OUT-OF-NETWORK HEALTH BENEFIT CLAIM DISPUTE RESOLUTION

### 22 TAC §§187.85 - 187.89

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years.

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

§187.85. *Purpose and Construction.*

§187.86. *Scope.*

§187.87. *Definitions.*

§187.88. *Complaint Process and Resolution.*

§187.89. *Notice of Availability of Mandatory Mediation.*

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

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## CHAPTER 187. RESPIRATORY CARE PRACTITIONERS

### SUBCHAPTER A. TEXAS BOARD OF RESPIRATORY CARE

#### 22 TAC §§187.1 - 187.4

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle, and establish rules related to licensure. The new rules are also proposed in accordance with the requirements §604.0522 and §604.052(a).

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

§187.1. *Definitions.*

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

(1) AARC--The American Association for Respiratory Care.

(2) Act--The Respiratory Care Practitioners Act, Texas Occupations Code, Chapter 604.

(3) Advisory Board--Texas Board of Respiratory Care.

(4) Directing physician--A physician including a qualified medical director licensed by the Medical Board that directs a Texas state-certified respiratory care practitioner in the practice of respiratory care.

(5) Educational accrediting body--Commission on Accreditation for Respiratory Care (CoARC), or other such organization approved by the Advisory Board in accordance with §604.054 of the Act.

(6) Formal training--Completion of an organized educational activity in respiratory care procedures recognized by the Advisory Board.

(7) Medical Practice Act--Texas Occupations Code, Title 3, Subtitle B, as amended.

(8) NBRC--National Board for Respiratory Care, Inc.

(9) Respiratory care--The treatment, management, control, diagnostic evaluation, and or care of patients who have deficiencies and abnormalities associated with the cardiorespiratory system, in conjunction with the provisions of §604.003 of the Act. Respiratory care does not include the delivery, assembly, set up, testing, and demonstration of respiratory care equipment upon the order of a licensed physician. Demonstration is not to be interpreted as the actual patient assessment and education, administration, or performance of the respiratory care procedure(s).

§187.2. Functions and Duties.

(a) In accordance with §604.052 of the Act, Advisory Board duties and functions include:

(1) establishing standards for the practice of respiratory care;

(2) regulating respiratory care practitioners through certification and discipline;

(3) receiving complaints and investigating possible violations of the Act and the Advisory Board rules;

(4) reviewing, modifying, proposing, and adopting rules;

(5) considering, reviewing, and approving policy and changes as necessary; and

(6) acting as resource concerning proposed legislative changes to reflect current medical and healthcare needs and practices.

(b) Individual Advisory Board members are required to:

(1) identify and disclose any conflicts of interest that may interfere with in carrying out their duties and functions or that may impede their ability to be fair and impartial, and recuse from such matters;

(2) comply with the Act;

(3) maintain the highest levels of professional and ethical conduct, including, but not limited to:

(A) A board member shall not appear as an expert witness in any case in which a licensee of the board is a party and in which the expert testimony relates to standard of care or professional malpractice;

(B) A board member shall not appear in any administrative proceeding involving the exercise of the board's licensing or disciplinary authority before the board or the State Office of Administrative Hearings (SOAH) in which proceeding a licensee of the board is a party;

(C) A board member should refrain from making any statement that implies that the board member is speaking for the board if the board has not voted on an issue or unless the board has given the board member such authority.

(4) immediately disclose if they are subject to a non-disciplinary or disciplinary action by any health care facility or professional licensing entity.

(c) Failure to comply with any of the requirements set forth in the Act or this section will be reported to the Office of the Governor.

§187.3. Meetings.

(a) Advisory Board meetings are conducted in accordance with the Texas Government Code, Chapter 551, and, to the extent possible, pursuant to the provisions of Robert's Rules of Order Newly Revised.

(b) Special meetings may be called by the presiding officer or resolution of the Advisory Board.

(c) The Advisory Board may act only by majority vote of its members present and voting. Proxy votes are not allowed.

§187.4. Standing Committees.

The Standing Committees of the Advisory Board are as follows:

(1) Discipline and Ethics Committee:

(A) reviews and makes recommendations to resolve complaints, close investigations, and dismiss cases, and hears complainant appeals;

(B) recommends, reviews, and develops improvements of the disciplinary process, rules, policies, and other related matters; and

(C) receives reports on enforcement activities and statistical information.

(2) Licensure Committee:

(A) reviews applications and makes recommendations, based on eligibility criteria, for certification of respiratory care practitioners;

(B) recommends, reviews, and develops changes to the licensure process, rules, policies, and other related matters as necessary; and

(C) maintains communication with Texas respiratory care programs.

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

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SUBCHAPTER B. CERTIFICATION AND REGISTRATION



## 22 TAC §§187.10 - 187.17

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle, and establish rules related to licensure. The new rules are also proposed in accordance with the requirements §604.0522 and §604.052(a).

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

### §187.10. General Requirements for Certification.

(a) All applicants for a certificate must meet the requirements in §604.104 of the Act, and submit:

- (1) the board required application form;
- (2) payment of the required fee, and additional fees and surcharges, as applicable:

- (A) Respiratory care practitioner fee of \$125.00; and
- (B) Temporary respiratory care practitioner fee of \$55.00;

(3) required documentation including, but not limited to:

- (A) Certification of Graduation form;
- (B) certified transcript of examination scores;
- (C) birth certificate or other similar proof of age;
- (D) current NBRC verification;

(E) Professional or Work History Evaluation forms demonstrating or relating to the practice of respiratory care for the preceding five years from the date of the application;

(F) National Practitioner Data Bank/Health Integrity and Protection Data Bank report (NPDB-HIPDB);

(G) FBI/DPS Fingerprint Report;

(H) documentation of alternate name or name change, if applicable;

(I) arrest records, if applicable;

(J) malpractice records, if applicable.

(K) treatment records for alcohol or substance use disorder or any physical or mental illness impacting the ability to practice, if applicable;

(L) military orders or DD214, if applicable;

(M) evidence of passage of the Texas Jurisprudence examination with at least a score of 75; and

(N) any other documentation deemed necessary by the board to process an application.

(b) Applications are valid for one year from the date of submission. The one-year period can be extended for the following reasons:

- (1) delay in processing an application;
- (2) referral to the Licensure Committee;
- (3) unanticipated military assignments, medical reasons, or catastrophic events; or
- (4) other extenuating circumstances.

(c) In accordance with Texas Occupations Code, Chapter 55, military service members, veterans, and spouses must:

(1) meet the general requirements as set forth in subsection (a) of this section; and

(2) submit a completed application on the board approved form and all additional documentation as required, with the exception of the application fee.

### §187.11. Current Clinical Practice.

(a) All applicants must submit professional or work history evaluations demonstrating or relating to the practice as a respiratory care practitioner in the preceding five years from the date of application. "Current clinical practice" may be demonstrated by:

(1) currently practicing as a respiratory care practitioner involving treatment of persons;

(2) enrollment as a student in an acceptable approved respiratory care program; or

(3) appointment as an active teaching faculty member in an acceptable approved respiratory care program.

(b) The Executive Director may offer to an applicant that cannot demonstrate current clinical practice as a respiratory care practitioner within the last three years from date of application:

(1) a supervised temporary permit as set forth in §187.12 of this subchapter (relating to Temporary Permits);

(2) remedial clinical education including, but not limited to, enrollment as a student at an acceptable respiratory care program approved by the Advisory Board; or

(3) other remedial measures necessary to ensure protection of the public and minimal competency of the applicant to safely practice.

### §187.12. Temporary Permits.

(a) Applicants for a temporary permit must meet the requirements in §§604.107 and 604.108 of the Act.

(b) Temporary permits may be issued to an applicant:

(1) who is qualified for a full certificate, subject to the terms and conditions that require Advisory Board approval;

(2) who has completed the requirements of §187.10 of this subchapter (relating to General Requirements for Certification), with the exception of the national certification examination; or

(3) who must remedy current clinical practice issues set forth in §187.11 of this subchapter (relating to Current Clinical Practice).

(c) In order to be determined eligible for a temporary permit to remedy a current clinical practice issue under §187.11 of this subchapter, an applicant must be supervised by a licensed physician or respiratory care practitioner who:

(1) has an unrestricted license in Texas;

(2) has no pending investigation;

(3) is not a relative or family member;

(4) has never had a license revoked, suspended, restricted, or cancelled for cause; and

(5) meets any other eligibility criteria established by the Advisory Board.

(d) The duration of a temporary permit is no longer than 12 months from the date of issuance.

(e) Temporary permits will be terminated upon:

- (1) issuance of a certificate; or
- (2) violation of conditions of a temporary permit.

§187.13 Procedural Rules for Certificate Applicants.

(a) Applications will be processed in accordance with §604.105 of the Act.

(b) The Executive Director may offer to an applicant:

(1) the option to withdraw an application with missing items, defects, omissions, or other errors and resubmit a corrected application;

(2) a Remedial Plan;

(3) an Agreed Order; or

(4) other recommendations considered appropriate by the board.

(c) Applicants not approved for certification by the Executive Director may, within 20 days of notice of non-approval, request to appear before the Licensure Committee.

(1) If the applicant fails to take timely action, the application for certification shall be deemed withdrawn regardless of the Advisory Board's action.

(2) The applicant shall be notified of the Advisory Board's final determination.

(3) An applicant has 20 days from the date of the notice of the Advisory Board's final decision to either accept the determination or request an appeal to the State Office of Administrative Hearings (SOAH).

§187.14 Recertification.

(a) For a certificate holder who retired or surrendered their license (including cancellation for non-payment) and who is seeking to be recertified, the following is required:

(1) all statutory requirements for licensure must be met;

(2) the application must be submitted and the required fee of \$125.00, and additional fees and surcharges, as applicable, must be paid;

(3) the requirements of §187.10 of this subchapter (relating to General Requirements for Certification) must be met;

(4) competency to resume practice must be demonstrated; and

(5) other remediation required by the Advisory Board must be completed.

(b) In accordance with §604.2011 of the Act, applicants seeking recertification under this section will be reviewed and processed in accordance with §§164.151 and 164.152 of the Medical Practice Act.

§187.15 Certificate Registration and Renewal.

(a) Certificate holders must renew the registration of their certificate on a biennial basis by:

(1) completing a board renewal form;

(2) submitting payment of a biennial registration fee of \$106.00, and additional fees and surcharges, as applicable;

(3) verifying and updating information related to their on-line verification;

(4) completing biennial Continuing Education (CE) required under §187.16 of this subchapter (relating to Biennial Continuing Education (CE) Requirements); and

(5) providing other relevant information requested by board staff.

(b) Failure to renew before a certificate's expiration date will result in increased charges as follows:

(1) 1-90 days late -- renewal fee plus one half of the renewal fee; and

(2) 91 days-1 year late -- double the renewal fee.

(c) Failure to renew within one year after the expiration date of the certificate will result in cancellation of the certificate.

§187.16 Biennial Continuing Education (CE) Requirements.

(a) As part of registration renewal, a certificate holder must complete 24 contact hours of Continuing Education (CE) during the biennial renewal period.

(1) Of the 24 hours, at least 12 contact hours of traditional courses must be completed. For purposes of this rule:

(A) "Traditional CE" is defined in accordance with the AARC and must be approved, recognized, accepted, or assigned as CE credit by a professional organization or association (such as TSRC, NBRC or AARC) or offered by a federal, state, or local government entity.

(B) "Non-traditional CE" is defined in accordance with the AARC and must be approved, recognized, accepted, or assigned as CE credit by a professional organization or association (such as TSRC, NBRC or AARC) or offered by a federal, state, or local government entity.

(2) Of the required contact hours, a course in human trafficking prevention approved by the Executive Commissioner of the Texas Health and Human Services Commission must be completed. The course may satisfy the required two contact hours on the topic of ethics.

(3) Passage of NBRC, BRPT, NAECB or ACLS credentialing or proctored examination can be used as CE but only once every three renewal periods.

(4) At least two contact hours must be on the topic of ethics. The ethics hours may be completed via traditional courses or non-traditional courses.

(5) All CE courses must be relevant to the practice of respiratory care and be approved, recognized, or assigned credit by a professional organization or governmental entity.

(6) A respiratory care practitioner who teaches or instructs a CE course or a course in a respiratory care educational program accredited by COARC or another accrediting body approved by the Advisory Board shall be credited one contact hour in non-traditional CE for each contact hour actually taught. CE credit will be given only once for teaching a particular course.

(b) Military service members have the same CE requirements but are allowed extensions in accordance with Chapter 55.003 of the Texas Occupations Code, as applicable.

(c) Exemptions for CME requirements.

(1) Requests must be made in writing at least 30 days prior to expiration of the biennial renewal period for the following reasons:

(A) catastrophic illness;

(B) military service of longer than one year's duration outside the United States;

(C) licensee's residence of longer than one year's duration outside the United States; or

(D) other good cause.

(2) Exemptions are subject to the approval of the Executive Director of the board and may not exceed two years.

§187.17. Inactive Certificate.

(a) In accordance with §604.156 of the Act, a certificate may be placed on inactive status.

(b) Inactive status cannot exceed three years, after which the certificate will be automatically canceled.

(c) To reactivate within three years, an applicant must meet all the requirements of §604.156(b) of the Act and §187.10 of this subchapter (relating to General Requirements for Certification).

(d) After a certificate has been cancelled, an applicant must meet all requirements under §187.14 of this subchapter (relating to Recertification) to obtain recertification.

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

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Scott Freshour  
General Counsel  
Texas Medical Board

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For further information, please call: (512) 305-7030



## SUBCHAPTER C. PRACTICE REQUIREMENTS

### 22 TAC §187.20

The new rule is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle, and establish rules related to licensure. The new rule is also proposed in accordance with the requirements §604.0522 and §604.052(a).

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

§187.20. On-Going Reporting Requirements.

A certificate holder must report any event listed in §162.2(b)(1) through (7) of this title (relating to Physician Supervision of a Student Physician Assistant) to the Advisory Board within 10 days after the event.

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

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## SUBCHAPTER D. BOARD PROCESSES AND PROCEDURES

### 22 TAC §187.25, §187.26

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle, and establish rules related to licensure. The new rules are also proposed in accordance with the requirements §604.0522 and §604.052(a).

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

§187.25. Procedural Rules.

(a) In accordance with §604.209 of the Act, the Procedural Rules in Chapter 179 of this title shall apply, except to the extent those rules conflict with the Act, in which case the Act controls.

(b) The rules related to Complaints and Investigations in Chapter 177 of this title shall apply, except to the extent those rules conflict with the Act, in which case the Act controls.

(c) The rules related to Disciplinary Guidelines and Sanctions in Chapter 180 of this title shall apply, except to the extent those rules conflict with the Act, in which case the Act controls. Applicable rules for purposes of this subsection include but are not limited to:

- (1) practice inconsistent with public health and welfare;
- (2) unprofessional or dishonorable conduct;
- (3) disciplinary actions by state boards and peer groups;
- (4) aggravating and mitigating factors; and
- (5) criminal convictions.

(d) The rules related to Compliance in Chapter 181 of this title shall apply, except to the extent those rules conflict with the Act, in which case the Act controls.

§187.26. Consequences of Criminal Conviction.

In accordance with §604.058 of the Act, licensing and disciplinary matters or arrest and criminal history will be evaluated consistent with Chapter 53 of the Texas Occupations Code.

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

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## CHAPTER 188. PERFUSIONISTS

### 22 TAC §§188.1 - 188.15, 188.17 - 188.24, 188.26, 188.28 - 188.30

The Texas Medical Board (Board) proposes the repeal of current Chapter 188, concerning Perfusionists, §§188.1 - 188.15, 188.17 - 188.24, 188.26, 188.28 - 188.30.

The Board also proposes new Chapter 188, concerning Perfusionists, §§188.1 - 188.14.

The Board has determined that due to the extensive reorganization of Chapters 160-200, repeal of Chapter 188 is more efficient than proposing multiple amendments to make the required changes.

The proposed new sections are as follows:

New §188.1, Definitions, defines terms used in new Chapter 188.

New §188.2, Meetings, explains how Advisory Committee meetings are conducted.

New §188.3, General Requirements for Licensure, outlines the general licensure requirements for a Texas Perfusionist license.

New §188.4, Educational Requirements, explains the educational requirements recognized in §603.254 of the Act, and completion of an educational program accepted by the American Board of Cardiovascular Perfusion (ABCP) for examination purposes.

New §188.5, Competency Examinations, explains the perfusion examination and credentialing requirements for licensure.

New §188.6, Procedural Rules for Licensure Applicants, explains the procedure by which the Executive Director may offer an applicant in order for the applicant to obtain licensure.

New §188.7, Provisional Licenses, explains the requirements and process for provisional licensure.

New §188.8, Supervision Standards, describes the requirements of a supervising licensee.

New §188.9, License Registration and Renewal, outlines the general requirements of licensure registration and renewal.

New §188.10, Biennial Continuing Education (CE) Requirements, explains the license holder's course requirements regarding completion of CE and exemptions.

New §188.11, Relicensure, describes the requirements for a licensee who has retired or surrendered their license and seeks to be re-licensed.

New §188.12, Code of Ethics, explains the requirements that a Perfusionist must conform to regarding all state and federal laws, rules, and professional standards.

New §188.13, On-Going Reporting Requirements, states that perfusionists must report any event listed in §162.2(b)(1) through (7) of this title to the board within 10 days after the event.

New §188.14, Procedural Rules, explains the applicable rules applied to complaints and investigations, disciplinary guidelines and sanctions, and compliance in accordance with §603.401 of the Act.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the proposed repeals and new sections are in effect, the public benefit anticipated as a result of enforcing these proposed sections will

be to remove redundant language from rules, simplify the rules, and make the rules easier to understand.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect, there will be no fiscal impact or effect on government growth as a result of enforcing the proposed sections.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect there will be no probable economic cost to individuals required to comply with these proposed sections.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for these proposed repeals and new sections and determined that for each year of the first five years these proposed repeals and new sections will be in effect there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of these proposed repeals and new sections and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years these proposed repeals and new sections are in effect:

(1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering these proposed repeals and new sections;

(2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections;

(3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections; and

(4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering these proposed repeals and new sections.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years these proposed repeals and new sections will be in effect, there will be no effect on local economy and local employment.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for these proposed repeals and new sections. For each year of the first five years these proposed repeals and new sections will be in effect, Mr. Freshour has determined the following:

(1) These proposed repeals and new sections do not create or eliminate a government program.

(2) Implementation of these proposed repeals and new sections does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of these proposed repeals and new sections does not require an increase or decrease in future legislative appropriations to the agency.

(4) These proposed sections do not require an increase or decrease in fees paid to the agency.

(5) These proposed repeals and new sections do not create new regulations.

(6) These proposed repeals and new sections do repeal existing regulations as described above. These proposed new sections do not expand or limit an existing regulation.

(7) These proposed repeals and new sections do not increase the number of individuals subject to the sections' applicability.

(8) These proposed repeals and new sections do not positively or adversely affect this state's economy.

Comments on the proposal may be submitted using this link: <https://forms.office.com/g/eEuTm0fpCg>. A public hearing will be held at a later date. Comments on the proposal will be accepted for 30 days following publication.

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §603.151, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for re-adoption, re-adoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this proposal.

§188.1. *Purpose.*

§188.2. *Definitions.*

§188.3. *Meetings.*

§188.4. *Qualifications for Licensure.*

§188.5. *Procedural Rules for Licensure Applicants.*

§188.6. *Licensure Documentation.*

§188.7. *Provisional Licensed Perfusionists.*

§188.8. *Temporary Licensure.*

§188.9. *License Renewal.*

§188.10. *Code of Ethics.*

§188.11. *Perfusionist Scope of Practice.*

§188.12. *Supervision.*

§188.13. *Grounds for Denial of Licensure and for Disciplinary Action.*

§188.14. *Discipline of Perfusionists.*

§188.15. *Disciplinary Guidelines.*

§188.17. *Complaint Procedure Notification.*

§188.18. *Investigations.*

§188.19. *Third Party Reports to the Board.*

§188.20. *Impaired Perfusionists.*

§188.21. *Procedure.*

§188.22. *Compliance.*

§188.23. *Construction.*

§188.24. *Continuing Education.*

§188.26. *Exemption from Registration Fee for Retired Perfusionists Providing Voluntary Charity Care.*

§188.28. *Exemption from Registration Fee for Retired Perfusionists.*

§188.29. *Voluntary Relinquishment or Surrender of a License.*

§188.30. *Exemption from Licensure for Certain Military Spouses.*

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

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Scott Freshour

General Counsel

Texas Medical Board

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For further information, please call: (512) 305-7030



## 22 TAC §§188.1 - 188.14

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §603.151, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle; and establish rules related to licensure and registration of the license. The new rules are also proposed under the authority of §153.0015(a); and in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for re-adoption, re-adoption with amendments, or repeal every four years. No other statutes, articles or codes are affected by this proposal.

### §188.1. Definitions.

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

(1) Act -- Texas Occupations Code, Chapter 603.

(2) Medical Practice Act -- Texas Occupations Code, Title 3, Subtitle B, as amended.

### §188.2. Meetings.

Advisory Committee meetings shall be conducted in compliance with §603.057 of the Act; Texas Government Code, Chapter 551; and to the extent possible, pursuant to the provisions of Robert's Rules of Order Newly Revised.

### §188.3. General Requirements for Licensure.

(a) All applicants for a license must meet the general standards in Chapter 603, Subchapter F, of the Act, and submit:

(1) the board required application form;

(2) payment of the required fee of \$180.00, and applicable fees and surcharges, as applicable;

(3) required documentation including, but not limited to:

(A) an educational transcript;

(B) a certified transcript of examination scores;

(C) a current national certification;

(D) a birth certificate or other similar proof of age;

(E) Professional or Work History Evaluation forms demonstrating or relating to the practice of perfusion for the preceding 5 years from the date of the application;

(F) National Practitioner Data Bank/Health Integrity and Protection Data Bank report (NPDB-HIPDB);

(G) FBI/DPS Fingerprint Report;

(H) documentation of alternate name or name change, if applicable;

(I) arrest records, if applicable;

(J) malpractice records, if applicable.

(K) treatment records for alcohol or substance use disorder or any physical or mental illness impacting the ability to practice, if applicable;

(L) military orders or DD214, if applicable;

(M) evidence of passage of Texas Jurisprudence examination with at least a score of 75; and

(N) any other documentation deemed necessary by the board to process an application.

(b) Applications are valid for one year from the date of submission. The one-year period may be extended for the following reasons:

(1) delay in processing an application;

(2) referral to the Licensure Committee;

(3) unanticipated military assignments, medical reasons, or catastrophic events; or

(4) other extenuating circumstances.

(c) In accordance with Texas Occupations Code, Chapter 55, military service members, veterans, and spouses must:

(1) meet the general requirements as set forth in subsection (a) of this section; and

(2) submit a completed application on the board approved form and all additional documentation as required, with the exception of the application fee.

#### §188.4. Educational Requirements.

In addition to the education requirements recognized in §603.254 of the Act, completion of an educational program accepted by the American Board of Cardiovascular Perfusion (ABCP) for examination purposes is also acceptable.

#### §188.5. Competency Examinations.

(a) A perfusion examination administered by the American Board of Cardiovascular Perfusion (ABCP) with a passing score is acceptable.

(b) An applicant must demonstrate a credential as a Certified Clinical Perfusionist (CCP) within 3 years immediately preceding the date of application.

#### §188.6. Procedural Rules for Licensure Applicants.

(a) Applications will be processed in accordance with Chapter 603 of the Act.

(b) The Executive Director may offer to an applicant:

(1) the option to withdraw an application with missing items, defects, omission or other errors and resubmit a corrected application;

(2) a Remedial Plan;

(3) an Agreed Order; or

(4) other recommendations considered appropriate by the board.

(c) Applicants not approved for licensure by the Executive Director may, within 20 days of notice of non-approval, request to appear before the Licensure Committee.

(1) If the applicant fails to take timely action, the application for licensure shall be deemed withdrawn regardless of the board's action.

(2) The applicant shall be notified of the board's final determination.

(3) An applicant has 20 days from the date of the notice of the board's final decision to either accept the determination or request an appeal to the State Office of Administrative Hearings (SOAH).

#### §188.7. Provisional Licenses.

(a) A provisional license applicant must meet general standards in §603.257 of the Act.

(b) Applications for a provisional license will be processed in accordance with §§603.259 and 603.302 of the Act.

(c) Applicants must:

(1) submit board required application form;

(2) pay the required fee of \$180.00, and additional fees and surcharges, as applicable;

(3) meet the general requirements as set forth in this §188.3 of this chapter (relating to General Requirements for Licensure), with the exception of exam scores and national certification; and

(4) submit any other required documentation deemed necessary to process an application, including proof of a qualified supervisor.

(d) An applicant who fails the ABCP examination may retake the examination no more than four times.

#### §188.8. Supervision Standards.

In addition to the requirements in §603.259 of the Act, the supervising licensee must:

(1) have an unrestricted license in Texas;

(2) have no pending investigation;

(3) not be a relative or family member;

(4) have never had a licensed revoked, suspended, restricted or cancelled for cause; and

(5) meet any other eligibility criteria established by the board.

#### §188.9. License Registration and Renewal.

(a) Licensees must renew the registration of their license on a biennial basis by:

(1) completing a board renewal form;

(2) submitting payment of a biennial registration fee of \$362.00, and additional fees and surcharges, as applicable; and

(3) completing biennial continuing education (CE) required under §188.10 of this chapter (relating to Biennial Continuing Education (CE) Requirements); and

(4) providing other relevant information requested by board staff.

(b) Failure to renew before a license's expiration date will result in increased charges as follows:

(1) 1-90 days late -- renewal fee plus one quarter of the renewal fee; and

(2) 91 days-1 year late -- renewal fee plus one half of the renewal fee.

(c) Failure to renew within one year after the expiration date of the certificate will result in cancellation of the certificate.

§188.10. Biennial Continuing Education (CE) Requirements.

(a) As part of registration renewal, a license holder must complete Continuing Education (CE) as follows:

(1) completion of a course in human trafficking prevention approved by the Executive Commissioner of the Texas Health and Human Services Commission; and

(2) completion of the annual ABCP certification CE requirements; or

(3) complete 30 hours of CE as follows:

(A) fifteen hours designated as ABCP approved;

(B) completion of 40 cases as the Primary Perfusionist for Cardiopulmonary bypass (instructor or primary), ECMO, VAD, Isolated Limb Perfusion, or VENO-VENO bypass.

(b) Documentation of CEs claimed must be maintained and produced upon request by the board.

(c) Military service members are subject to the same CE requirements but are allowed extensions in accordance with §55.003 of the Texas Occupations Code, if applicable.

(d) Carry forward of CE credit is allowed as follows:

(1) excess hours earned in a biennium can only be applied to the immediately following biennial requirements; and

(2) no hours can be carried forward past a single renewal period.

(e) Exemptions for CE requirements.

(1) Requests must be made in writing at least 30 days prior to expiration of the biennial renewal period for the following reasons:

(A) catastrophic illness;

(B) military service of longer than one year's duration outside the state;

(C) licensee's residence of longer than one year's duration outside the United States; or

(D) other good cause.

(2) Exemptions are subject to the approval of the Executive Director of the board and may not exceed two years.

§188.11. Relicensure.

(a) For a licensee who retired or surrendered their license (including cancellation for non-payment) and is seeking to be relicensed, the following is required:

(1) all statutory requirements for licensure must be met;

(2) application must be submitted and the required fee of \$180.00, and additional fees and surcharges, as applicable, must be paid;

(3) the requirements of §188.3 of this chapter (relating to General Requirements for Licensure) must be met;

(4) competency to resume practice must be demonstrated; and

(5) other remediation required by the board must be completed.

(b) Applicants seeking relicensure under this section will be reviewed and processed in accordance with §§164.151 and 164.152 of the Texas Occupations Code.

§188.12. Code of Ethics.

In accordance with §603.151 of the Act, perfusionists must conform to all state and federal laws, rules, and professional standards.

§188.13. On-Going Reporting Requirements.

A license holder must report any event listed in §162.2(b)(1) through (7) of this title (relating to Profile Updates) to the board within 10 days after the event.

§188.14. Procedural Rules.

(a) In accordance with §603.401 of the Act, the Procedural Rules in Chapter 179 of this title (relating to Procedural Rules) shall apply, except to the extent those rules conflict with the Act, in which case the Act controls.

(b) The rules related to Complaints and Investigations in Chapter 177 of this title (relating to Complaints and Investigations) shall apply, except to the extent those rules conflict with the Act, in which case the Act controls.

(c) The rules related to Disciplinary Guidelines and Sanctions in Chapter 180 of this title (relating to Disciplinary Guidelines) shall apply, except to the extent those rules conflict with the Act, in which case the Act controls, including, but not limited to:

(1) practice inconsistent with public health and welfare;

(2) unprofessional or dishonorable conduct;

(3) disciplinary actions by state boards and peer groups;

(4) aggravating and mitigating factors; and

(5) criminal convictions.

(d) The rules related to Compliance in Chapter 181 of this title (relating to Compliance Program) shall apply, except to the extent those rules conflict with the Act, in which case the Act controls.

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

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Scott Freshour

General Counsel

Texas Medical Board

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For further information, please call: (512) 305-7030



## CHAPTER 189. COMPLIANCE PROGRAM

The Texas Medical Board (Board) proposes the repeal of current Chapter 189, concerning Compliance Program, §§189.1 - 189.16.

The Board also proposes new Chapter 189, concerning Medical Physicists, §§189.1 - 189.13.

Also, the Board contemporaneously proposes the repeal of current Chapter 160, concerning Medical Physicists, §§160.1 - 160.5, §§160.7 - 160.31.

The Board has determined that due to the extensive reorganization of Chapters 160-200, repeal of Chapter 189 is more efficient than proposing multiple amendments to make the required changes.

The proposed new sections are as follows:

New §189.1, Definitions, defines terms used in new Chapter 189.

New §189.2, Meetings, explains how Advisory Committee meetings are conducted.

New §189.3, General Requirements for Licensure, outlines the general requirements and specific documentation necessary for an applicant to obtain a Medical Physicist license.

New §189.4, Required References, explains the requirement for an applicant to submit three professional references to obtain a license.

New §189.5, Acceptable Education for Licensure, outlines the applicant's eligibility requirements including specific educational programs and degrees, as well as specified credit hours necessary to apply for Medical Physicist licensure.

New §189.6, Specialty Examinations, details the specific examination in each specialty that the applicant must pass to obtain a Medical Physicist license.

New §189.7, Current Clinical Practice, outlines the process of submission of an applicant's professional or work history information, demonstrating fulfillment of the minimum practice requirements to apply for licensure as set forth under §602.207 of the Act.

New §189.8, Temporary License, explains the requirements and process of the applicant to obtain a temporary Medical Physicist license.

New §189.9, Procedural Rules for Licensure Applicants, states that applications will be processed in accordance with Chapter 602 of the Act. The section also describes the Executive Director's review of the licensure applications and the several options which may be offered to the applicant.

New §189.10, Registration and Renewal of Certificate, details the process of renewal of the registration of the licensee's license on a biennial basis and the basis for cancellation of the certificate.

New §189.11, Biennial Continuing Education (CE) Requirements, describes the CE courses that the license holder is required to complete biennially and the specified number of hours. Exemptions for CE requirements are also detailed.

New §189.12, Reporting Requirements, states that a Medical Physicist must report any event listed in §162.2(b)(1) through (7) of this title within 10 days after the event.

New §189.13, Procedural Rules, describes the applicability of Chapter 179, regarding Procedural Rules; Chapter 177, regarding Complaints and Investigation; Chapter 180, regarding Disciplinary Guidelines and Sanctions; and Chapter 181, regarding Compliance.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the proposed repeals and new sections are in effect, the public benefit anticipated as a result of enforcing these proposed sections will be to remove redundant language from rules, simplify the rules, and make the rules easier to understand.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect, there will be no fiscal impact or effect on government growth as a result of enforcing the proposed sections.

Mr. Freshour has also determined that for the first five-year period these proposed repeals and new sections are in effect there will be no probable economic cost to individuals required to comply with these proposed sections.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for these proposed repeals and new sections and determined that for each year of the first five years these proposed repeals and new sections will be in effect there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of these proposed repeals and new sections and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years these proposed repeals and new sections are in effect:

(1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering these proposed repeals and new sections;

(2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections;

(3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering these proposed repeals and new sections; and

(4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering these proposed repeals and new sections.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years these proposed repeals and new sections will be in effect, there will be no effect on local economy and local employment.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for these proposed repeals and new sections. For each year of the first five years these proposed repeal and new sections will be in effect, Mr. Freshour has determined the following:

(1) These proposed repeals and new sections do not create or eliminate a government program.

(2) Implementation of these proposed repeals and new sections does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of these proposed repeals and new sections does not require an increase or decrease in future legislative appropriations to the agency.

(4) These proposed sections do not require an increase or decrease in fees paid to the agency.

(5) These proposed repeals and new sections do not create new regulations.

(6) These proposed repeals and new sections do repeal existing regulations as described above. These proposed new sections do not expand or limit an existing regulation.

(7) These proposed repeals and new sections do not increase the number of individuals subject to the sections' applicability.



(8) These proposed repeals and new sections do not positively or adversely affect this state's economy.

Comments on the proposal may be submitted using this link: <https://forms.office.com/g/VNDveErjnx>. A public hearing will be held at a later date. Comments on the proposal will be accepted for 30 days following publication.

## 22 TAC §§189.1 - 189.13

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for reoption, reoption with amendments, or repeal every four years.

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

§189.1. *Purpose and Scope.*

§189.2. *Definitions.*

§189.3. *Responsibilities of Probationers.*

§189.4. *Limitations on Physician Probationer's Practice.*

§189.5. *Compliance Visits and Communications.*

§189.6. *Probation Appearances.*

§189.7. *Modification/Termination Hearings.*

§189.8. *Procedures Concerning Non-compliance.*

§189.9. *Grounds for Temporary Suspension or Automatic Suspension of Probationers.*

§189.10. *Drug Screens.*

§189.11. *Process for Approval of Physicians, Other Professionals, Group Practices and Institutional Settings.*

§189.12. *Suspended licenses.*

§189.13. *Investigative Reports.*

§189.14. *Receipt of Probationer's Address of Record and Contact Information.*

§189.15. *Determination of Successful Completion of an Order.*

§189.16. *Monitoring, Proctoring, or Supervising Physician/Professional's Recommendation for Competency Assessment.*

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

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Scott Freshour

General Counsel

Texas Medical Board

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For further information, please call: (512) 305-7030



## CHAPTER 189. MEDICAL PHYSICISTS

### 22 TAC §§189.1 - 189.16

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority

for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle; and establish rules related to licensure. The new rules are also proposed under the authority of the Texas Occupations Code Annotated, Chapter 602. No other statutes, articles or codes are affected by this proposal.

#### §189.1. Definitions.

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

(1) Act--Texas Occupations Code, Chapter 602.

(2) Board--The Texas Medical Board.

#### §189.2. Meetings.

Advisory Committee meetings shall be conducted in compliance with §602.058 of the Act; Texas Government Code, Chapter 551; and to the extent possible, pursuant to the provisions of Robert's Rules of Order Newly Revised.

#### §189.3. General Requirements for Licensure.

(a) All applicants for a license must meet the requirements in §§602.203 and 602.207 of the Act, and submit:

(1) the board required application form;

(2) payment of the required fee of \$130.00 for a single specialty, \$50.00 for each additional specialty, and additional fees and surcharges as applicable; and

(3) required documentation, including but not limited to:

(A) an educational transcript;

(B) a current Board Certification;

(C) Professional Reference forms;

(D) a birth certificate or other similar proof of age;

(E) Professional or Work History Evaluation forms demonstrating or relating to the practice of medical physics for the preceding five years from the date of the application;

(F) National Practitioner Data Bank/Health Integrity and Protection Data Bank report (NPDB-HIPDB);

(G) FBI/DPS fingerprint report;

(H) documentation of alternate name or name change, if applicable;

(I) arrest records, if applicable;

(J) malpractice records, if applicable.

(K) treatment records for alcohol or substance use disorder or any physical or mental illness impacting the ability to practice, if applicable;

(L) military orders or DD214, if applicable;

(M) evidence of passage of the Texas Jurisprudence Examination with at least a score of 75; and

(N) any other documentation deemed necessary by the board to process an application.

(b) Applications are valid for one year from the date of submission. The one-year period may be extended for the following reasons:

(1) delay in processing an application;

(2) referral to the Licensure Committee;

(3) unanticipated military assignments, medical reasons, or catastrophic events; or

(4) other extenuating circumstances.

(c) In accordance with Texas Occupations Code, Chapter 55, military service members, veterans, and spouses must:

(1) meet the general requirements as set forth in subsection (a); and

(2) submit a completed application on the board approved form and all additional documentation as required, with the exception of the application fee.

§189.4. Required References.

In accordance with §602.203(b)(4) of the Act, an applicant must submit three professional references as follows:

(1) If applying for a single specialty, an applicant must submit references from at least two medical physicists and one licensed physician practicing in the same specialty.

(2) If applying for two or more specialties, an applicant must submit references from at least two medical physicists and a licensed physician practicing in the same specialty area(s). One of the medical physicists must be practicing in at least one of the specialty areas, and the other medical physicist must practice in the other specialty area(s).

(3) If applying for a license in medical health physics, the physician providing a reference must practice in diagnostic radiology, radiation oncology, or nuclear medicine.

§189.5. Acceptable Education for Licensure.

(a) To be eligible for a license, an applicant must have earned a master's or doctoral degree from:

(1) a medical physics program accredited by the Commission on Accreditation of Medical Physics Education Programs (CAMPEP);

(2) an accredited college or university in physics, medical physics, biophysics, radiological physics, medical health physics or equivalent courses; or

(3) an accredited university in physical science (including chemistry), applied mathematics or engineering with 20 hours upper division or graduate level physics courses. For the purpose of this clause, upper division semester hour credits are defined as third-level or above (junior, senior, or graduate) course work completed from a regionally accredited college or university.

(b) Degrees received at international universities shall be acceptable only if such course work could be counted as transfer credit by regionally accredited universities. An applicant with an international degree must provide:

(1) an International Credential Evaluation from the Foreign Credential Service of America (FCSA);

(2) a credential evaluation from an American Board of Radiology (ABR) approved Credentials Evaluation organization; or

(3) another similar entity as approved by the board.

§189.6. Specialty Examinations.

(a) An applicant under this section must successfully pass one of the following examinations in each specialty for which an application is submitted:

(1) Therapeutic Radiological Physics Specialty Examination offered by:

(A) the American Board of Radiology or its successor organization in therapeutic radiological physics, radiological physics or therapeutic medical physics;

(B) the American Board of Medical Physics or its successor organization in radiation oncology physics; or

(C) the Canadian College of Physicists in Medicine or its successor organization in radiation oncology physics;

(2) Medical Nuclear Physics Specialty Examination offered by:

(A) the American Board of Radiology or its successor organization in medical nuclear physics radiological physics or nuclear medical physics;

(B) the American Board of Medical Physics or its successor organization in nuclear medicine physics;

(C) the American Board of Science in Nuclear Medicine or its successor organization in physics and instrumentation or in molecular imaging science; or

(D) the Canadian College of Physicists in Medicine or its successor organization in nuclear medicine physics;

(3) Diagnostic Radiological Physics Specialty Examination offered by:

(A) the American Board of Radiology or its successor organization in diagnostic radiological physics, radiological physics or diagnostic medical physics;

(B) the American Board of Medical Physics or its successor organization in diagnostic imaging physics or diagnostic radiology physics; or

(C) the Canadian College of Physicists in Medicine or its successor organization in diagnostic radiology health physics;

(4) Medical Health Physics Specialty Examination offered by:

(A) the American Board of Radiology or its successor organization in radiological physics;

(B) the American Board of Health Physics or its successor organization in health physics or comprehensive health physics;

(C) the American Board of Medical Physics or its successor organization in medical health physics; or

(D) the American Board of Science in Nuclear Medicine or its successor organization in radiation protection.

§189.7. Current Clinical Practice.

Applicants must submit professional or work history evaluations demonstrating fulfillment of the minimum practice requirements set forth under §602.207 of the Act. "Current clinical practice" may be demonstrated by:

(1) currently practicing as a medical physicist;

(2) enrollment as a student at an acceptable approved school; or

(3) appointment as an active teaching faculty member at an approved school.

§189.8. Temporary License.

(a) Applicants for a temporary license must meet the educational requirements under §189.5 of this chapter (relating to Acceptable Education for Licensure).

(b) A temporary license shall be issued for each specialty for a one-year period.

(c) The holder of a temporary license may apply for up to twelve temporary licenses.

(d) Upon application for the seventh temporary license, the Board shall perform an evaluation of an applicant's progress toward certification in a medical physicist area of specialty. This evaluation will include, but is not limited to:

(1) information on the applicant's current participation in any medical physicist training program;

(2) identification of the medical physicist specialty/specialties an applicant is working toward;

(3) the number of certification examinations taken during the previous six years and the results of said examinations;

(4) any medical physicist certification(s) successfully completed during the previous six years. If this evaluation determines that satisfactory progress has not been made toward completion of a medical physicist certification, an application for an additional temporary license may be denied.

(e) The board may, in its discretion, allow the holder of a temporary license to apply for more than twelve licenses.

(f) The application for a temporary license shall include information regarding the experience in the medical physics specialty completed by the renewal applicant during the previous one-year period.

(g) The work experience must be under the supervision of a licensed medical physicist holding a license in the specialty area. The work experience must be completed in accordance with a supervision plan approved by the board, signed by both the supervisor and the temporary license holder. In order to be approved as a supervisor, the licensed medical physicist must:

(1) have an unrestricted license or certificate in Texas;

(2) have no pending investigation;

(3) not be a relative or family member;

(4) have never had a license or certificate revoked, suspended, restricted, or cancelled for cause; and

(5) meet any other eligibility criteria established by the board.

(h) A supervisor shall supervise no more than two temporary license holders or their full-time equivalents, unless in a CAMPEP approved medical physics training.

(i) Applicants for a temporary license must submit:

(1) a board required application form; and

(2) the required fee.

(j) Temporary licenses will be terminated upon:

(1) issuance of a full license; or

(2) violation of conditions of a temporary license.

§189.9. Procedural Rules for Licensure Applicants.

(a) Applications will be processed in accordance with Chapter 602 of the Act.

(b) The Executive Director may offer to an applicant:

(1) the option to withdraw an application with missing items, defects, omission or other errors and resubmit a corrected application;

(2) a Remedial Plan;

(3) an Agreed Order; or

(4) other recommendations considered appropriate by the board.

(c) Applicants not approved for licensure by the Executive Director may within 20 days of notice of non-approval request to appear before the Licensure Committee.

(1) If the applicant fails to take timely action, the application for licensure shall be deemed withdrawn regardless of the board's action.

(2) The applicant shall be notified of the board's final determination.

(3) An applicant has 20 days from the date of receipt of the notice of the board's final decision to either accept the determination or request an appeal to the State Office of Administrative Hearings (SOAH).

§189.10. Registration and Renewal of Certificate.

(a) Licensees must renew the registration of their license on a biennial basis by:

(1) completing a board renewal form;

(2) submitting payment of a biennial registration fee and additional fees and surcharges, as applicable;

(A) \$260.00 for the first specialty;

(B) \$50.00 for each additional specialty, if applicable;

and

(3) completing biennial Continuing Education (CE) required under §189.11 of this chapter (relating to Biennial Continuing Education (CE) Requirements); and

(4) providing other relevant information requested by board staff.

(c) Failure to renew before a license's expiration date will result in increased charges as follows:

(1) 1-90 days late -- renewal fee plus one half of the renewal fee; and

(2) 91 days-1 year late -- double the renewal fee.

(c) Failure to renew within one year after the expiration date of the certificate will result in cancellation of the certificate.

§189.11. Biennial Continuing Education (CE) Requirements.

(a) As part of registration renewal, a license holder must complete Continuing Education (CE) as follows:

(1) A licensee must complete 24 contact hours of CE recognized by the board. A contact hour shall be defined as 50 minutes of attendance and participation.

(2) Recognized CE includes:

(A) programs sponsored by American Association of Physicists in Medicine (AAPM), American College of Medical Physics (ACMP), American College of Radiology (ACR), Health Physics Society (HPS), Society of Nuclear Medicine and Molecular Imaging (SN-

MMI), Radiological Society of North America (RSNA), American Society for Therapeutic Radiology and Oncology (ASTRO), or other professional organizations acceptable to the board;

(B) a program of study in medical physics that is accredited by the American Association of Physicists in Medicine Commission on Accreditation of Medical Physicist Education Programs;

(C) participation in medical physics related courses, refresher courses, conferences, and seminars sponsored by state and private universities that have an accredited graduate medical physics program;

(D) a course of study from an accredited college or university in physics, medical physics, biophysics, radiological physics, medical health physics or nuclear engineering; and

(E) other courses that enhance the practice of medical physics and are acceptable to the board.

(3) A medical physicist shall be presumed to have complied with this section if in the preceding 24 months, they obtain board certification or recertification by the American Board of Radiology (ABR), American Board of Medical Physics (ABMP), American Board of Science in Nuclear Medicine (ABSNM), or American Board of Health Physics (ABHP).

(b) Military service members are subject to the same CE requirements but are allowed extensions in accordance with §55.003 of the Texas Occupations Code, if applicable.

(c) Exemptions for CE requirements.

(1) Requests for exemptions from completing the CE requirements must be made in writing at least 30 days prior to expiration of the biennial renewal period for the following reasons:

(A) catastrophic illness;

(B) military service of longer than one year's duration outside the state;

(C) licensee's residence of longer than one year's duration outside the United States; or

(D) other good cause.

(2) Exemptions are subject to the approval of the Executive Director of the board and may not exceed two years.

§189.12. On-Going Reporting Requirements.

A medical physicist must report any event listed in §162.2(b)(1) through (7) of this title to the board within 10 days after the event.

§189.13. Procedural Rules.

(a) The Procedural Rules in Chapter 179 of this title (relating to Investigations) shall apply, except to the extent those rules conflict with the Act, in which case the Act controls.

(b) The rules related to Complaints and Investigations in Chapter 177 of this title (relating to Business Organizations and Agreements) shall apply, except to the extent those rules conflict with the Act, in which case the Act controls.

(c) The rules related to Disciplinary Guidelines and Sanctions in Chapter 180 of this title (relating to Texas Physician Health Program) shall apply, except to the extent those rules conflict with the Act, in which case the Act controls, including, but not limited to:

(1) practice inconsistent with public health and welfare;

(2) unprofessional or dishonorable conduct;

(3) disciplinary actions by state boards;

(4) aggravating and mitigating factors; and

(5) criminal convictions.

(d) The rules related to Compliance in Chapter 181 of this title (relating to Contact Lens Prescriptions) shall apply, except to the extent those rules conflict with the Act, in which case the Act controls.

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

Filed with the Office of the Secretary of State on September 9, 2024.

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Scott Freshour

General Counsel

Texas Medical Board

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For further information, please call: (512) 305-7030



## CHAPTER 190. DISCIPLINARY GUIDELINES

The Texas Medical Board (Board) proposes the repeal of current Chapter 190, concerning Disciplinary Guidelines. This includes Subchapter A, concerning General Provisions, §190.1 and §190.2; Subchapter B, concerning Violation Guidelines, §190.8; Subchapter C, concerning Sanction Guidelines, §190.14 and §190.15; and Subchapter D, concerning Administrative Penalties, §190.16.

The Board has determined that due to the extensive reorganization of Chapters 160-200 as part of the Board's rule review, repeal of Chapter 190 in its entirety is more efficient than proposing multiple amendments to make the required changes.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the proposed repeals are in effect, the public benefit anticipated as a result of enforcing these proposed sections will be to remove redundant language from rules, simplify the rules, and make the rules easier to understand.

Mr. Freshour has also determined that for the first five-year period these proposed repeals are in effect, there will be no fiscal impact or effect on government growth as a result of enforcing the proposed sections.

Mr. Freshour has also determined that for the first five-year period these proposed repeals are in effect there will be no probable economic cost to individuals required to comply with these proposed sections.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for these proposed repeals and determined that for each year of the first five years these proposed repeals there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of these proposed repeals and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years these proposed repeals are in effect:

- (1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering these proposed repeals;
- (2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering these proposed repeals;
- (3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering these proposed repeals; and
- (4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering these proposed repeals.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years these proposed repeals will be in effect, there will be no effect on local economy and local employment.

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

- (1) These proposed repeals do not create or eliminate a government program.
- (2) Implementation of these proposed repeals does not require the creation of new employee positions or the elimination of existing employee positions.
- (3) Implementation of these proposed repeals does not require an increase or decrease in future legislative appropriations to the agency.
- (4) These proposed sections do not require an increase or decrease in fees paid to the agency.
- (5) These proposed repeals do not create new regulations.
- (6) These proposed repeals do repeal existing regulations as described above.
- (7) These proposed repeal do not increase the number of individuals subject to the sections' applicability.
- (8) These proposed repeals do not positively or adversely affect this state's economy.

Comments on the Repeal may be submitted using this link: <https://forms.office.com/g/DibuGXnyfE>. A public hearing will be held at a later date. Comments on the proposal will be accepted for 30 days following publication.

## SUBCHAPTER A. GENERAL PROVISIONS

### 22 TAC §190.1, §190.2

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years.

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

§190.1. *Purpose.*

§190.2. *Board's Role.*

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

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Scott Freshour

General Counsel

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## SUBCHAPTER B. VIOLATION GUIDELINES

### 22 TAC §190.8

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years.

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

§190.8. *Violation Guidelines.*

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

Filed with the Office of the Secretary of State on September 16, 2024.

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Scott Freshour

General Counsel

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For further information, please call: (512) 305-7030



## SUBCHAPTER C. SANCTION GUIDELINES

### 22 TAC §190.14, §190.15

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years.

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

§190.14. *Disciplinary Sanction Guidelines.*

§190.15. *Aggravating and Mitigating Factors.*

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

Filed with the Office of the Secretary of State on September 16, 2024.

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## SUBCHAPTER D. ADMINISTRATIVE PENALTIES

### 22 TAC §190.16

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for re-adoption, readoption with amendments, or repeal every four years.

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

#### §190.16. *Administrative Penalties*

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

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## CHAPTER 192. OFFICE-BASED ANESTHESIA SERVICES

### 22 TAC §§192.1 - 192.6

The Texas Medical Board (Board) proposes the repeal of current Chapter 192, concerning Office-Based Anesthesia Services, §§192.1 - 192.6.

The Board has determined that due to the extensive reorganization of Chapters 160-200 as part of the Board's rule review, repeal of Chapter 192 in its entirety is more efficient than proposing multiple amendments to make the required changes.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the proposed repeals are in effect, the public benefit anticipated as a

result of enforcing these proposed sections will be to remove redundant language from rules, simplify the rules, and make the rules easier to understand.

Mr. Freshour has also determined that for the first five-year period these proposed repeals are in effect, there will be no fiscal impact or effect on government growth as a result of enforcing the proposed sections.

Mr. Freshour has also determined that for the first five-year period these proposed repeals are in effect there will be no probable economic cost to individuals required to comply with these proposed sections.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for these proposed repeals and determined that for each year of the first five years these proposed repeals there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of these proposed repeals and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years these proposed repeals are in effect:

(1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering these proposed repeals;

(2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering these proposed repeals;

(3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering these proposed repeals; and

(4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering these proposed repeals.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years these proposed repeals will be in effect, there will be no effect on local economy and local employment.

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

(1) These proposed repeals do not create or eliminate a government program.

(2) Implementation of these proposed repeals does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of these proposed repeals does not require an increase or decrease in future legislative appropriations to the agency.

(4) These proposed sections do not require an increase or decrease in fees paid to the agency.

(5) These proposed repeals do not create new regulations.

(6) These proposed repeals do repeal existing regulations as described above.

(7) These proposed repeals do not increase the number of individuals subject to the sections' applicability.

(8) These proposed repeals do not positively or adversely affect this state's economy.

Comments on the Repeal may be submitted using this link: <https://forms.office.com/g/DibuGXnyfE>. A public hearing will be held at a later date. Comments on the proposal will be accepted for 30 days following publication.

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for re-adoption, re-adoption with amendments, or repeal every four years.

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

§192.1. *Definitions.*

§192.2. *Provision of Anesthesia Services in Outpatient Settings.*

§192.3. *Compliance with Office-Based Anesthesia Rules.*

§192.4. *Registration.*

§192.5. *Inspections.*

§192.6. *Requests for Inspection and Advisory Opinion.*

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

Filed with the Office of the Secretary of State on September 9, 2024.

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Scott Freshour

General Counsel

Texas Medical Board

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For further information, please call: (512) 305-7030



## CHAPTER 193. STANDING DELEGATION ORDERS

### 22 TAC §§193.1 - 193.13

The Texas Medical Board (Board) proposes the repeal of current Chapter 193, concerning Standing Delegation Orders, §§193.1 - 193.13.

The Board has determined that due to the extensive reorganization of Chapters 160-200 as part of the Board's rule review, repeal of Chapter 193 in its entirety is more efficient than proposing multiple amendments to make the required changes.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the proposed repeals are in effect, the public benefit anticipated as a result of enforcing these proposed sections will be to remove redundant language from rules, simplify the rules, and make the rules easier to understand.

Mr. Freshour has also determined that for the first five-year period these proposed repeals are in effect, there will be no fiscal impact or effect on government growth as a result of enforcing the proposed sections.

Mr. Freshour has also determined that for the first five-year period these proposed repeals are in effect there will be no probable economic cost to individuals required to comply with these proposed sections.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for these proposed repeals and determined that for each year of the first five years these proposed repeals there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of these proposed repeals and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years these proposed repeals are in effect:

(1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering these proposed repeals;

(2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering these proposed repeals;

(3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering these proposed repeals; and

(4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering these proposed repeals.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years these proposed repeals will be in effect, there will be no effect on local economy and local employment.

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

(1) These proposed repeals do not create or eliminate a government program.

(2) Implementation of these proposed repeals does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of these proposed repeals does not require an increase or decrease in future legislative appropriations to the agency.

(4) These proposed sections do not require an increase or decrease in fees paid to the agency.

(5) These proposed repeals do not create new regulations.

(6) These proposed repeals do repeal existing regulations as described above. These proposed new sections do not expand or limit an existing regulation.

(7) These proposed repeals do not increase the number of individuals subject to the sections' applicability.

(8) These proposed repeals do not positively or adversely affect this state's economy.

Comments on the Repeal may be submitted using this link: <https://forms.office.com/g/DibuGXnyfE>. A public hearing will be held at a later date. Comments on the proposal will be accepted for 30 days following publication.

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years.

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

- §193.1. *Purpose.*
- §193.2. *Definitions.*
- §193.3. *Exclusion from the Provisions of this Chapter.*
- §193.4. *Scope of Standing Delegation Orders.*
- §193.5. *Physician Liability for Delegated Acts and Enforcement.*
- §193.6. *Delegation of Prescribing and Ordering Drugs and Devices.*
- §193.7. *Prescriptive Authority Agreements Generally.*
- §193.9. *Delegation of Prescriptive Authority at a Facility-Based Practice Site.*
- §193.10. *Registration of Delegation and Prescriptive Authority Agreements.*
- §193.11. *Prescription Forms.*
- §193.12. *Prescriptive Authority Agreement Inspections.*
- §193.13. *Delegation to Certified Registered Nurse Anesthetists.*
- §193.14. *Delegation Related to Obstetrical Services.*
- §193.15. *Delegated Drug Therapy Management.*
- §193.16. *Delegated Administration of Immunizations or Vaccinations by a Pharmacist under Written Protocol.*
- §193.17. *Nonsurgical Medical Cosmetic Procedures.*
- §193.18. *Pronouncement of Death.*
- §193.19. *Collaborative Management of Glaucoma.*
- §193.20. *Immunization of Persons Over 65 by Physicians' Offices.*

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

Filed with the Office of the Secretary of State on September 9, 2024.

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Scott Freshour

General Counsel

Texas Medical Board

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For further information, please call: (512) 305-7030



CHAPTER 194. MEDICAL RADIOLOGIC  
TECHNOLOGY  
SUBCHAPTER A. CERTIFICATE HOLDERS,  
NON-CERTIFIED TECHNICIANS, AND OTHER  
AUTHORIZED INDIVIDUALS OR ENTITIES  
22 TAC §§194.1 - 194.13, 194.15 - 194.34

The Texas Medical Board (Board) proposes the repeal of current Chapter 194, concerning Medical Radiologic Technology. This includes Subchapter A, concerning Certificate Holders, Non-Certified Technicians, and Other Authorized Individuals or Entities, §§194.1 - 194.13, §§194.15 - 194.34.

The Board has determined that due to the extensive reorganization of Chapters 160-200 as part of the Board's rule review, repeal of Chapter 194 in its entirety is more efficient than proposing multiple amendments to make the required changes.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the proposed repeals are in effect, the public benefit anticipated as a result of enforcing these proposed sections will be to remove redundant language from rules, simplify the rules, and make the rules easier to understand.

Mr. Freshour has also determined that for the first five-year period these proposed repeals are in effect, there will be no fiscal impact or effect on government growth as a result of enforcing the proposed sections.

Mr. Freshour has also determined that for the first five-year period these proposed repeals are in effect there will be no probable economic cost to individuals required to comply with these proposed sections.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for these proposed repeals and determined that for each year of the first five years these proposed repeals there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of these proposed repeals and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years these proposed repeals are in effect:

(1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering these proposed repeals;

(2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering these proposed repeals;

(3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering these proposed repeals; and

(4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering these proposed repeals.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years these proposed repeals will be in effect, there will be no effect on local economy and local employment.

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

(1) These proposed repeals do not create or eliminate a government program.



(2) Implementation of these proposed repeals does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of these proposed repeals does not require an increase or decrease in future legislative appropriations to the agency.

(4) These proposed sections do not require an increase or decrease in fees paid to the agency.

(5) These proposed repeals do not create new regulations.

(6) These proposed repeals do repeal existing regulations as described above.

(7) These proposed repeals do not increase the number of individuals subject to the sections' applicability.

(8) These proposed repeals do not positively or adversely affect this state's economy.

Comments on the Repeal may be submitted using this link: <https://forms.office.com/g/DibuGXnyfE>. A public hearing will be held at a later date. Comments on the proposal will be accepted for 30 days following publication.

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for reoption, reoption with amendments, or repeal every four years.

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

§194.1. *Purpose.*

§194.2. *Definitions.*

§194.3. *Meetings and Committees.*

§194.4. *Guidelines for Early Involvement in Rulemaking Process.*

§194.5. *Applicability of Chapter; Exemptions.*

§194.6. *Procedural Rules and Minimum Eligibility Requirements for Applicants for a Certificate or Placement on the Board's Non-Certified Technician Registry.*

§194.7. *Biennial Renewal of Certificate or Placement on the Board's Non-Certified Technician Registry.*

§194.8. *Renewal of Certificate by Out-of-State Person.*

§194.9. *Change of Name and Address.*

§194.10. *Retired Certificate or NCT Registration.*

§194.11. *Exemption from Registration Fee for Retired Certificate or NCT General Registration Permit Holders Providing Voluntary Charity Care.*

§194.12. *Standards for the Approval of Certificate Program Curricula and Instructors.*

§194.13. *Mandatory Training Programs for Non-Certified Technicians.*

§194.15. *Bone Densitometry Training.*

§194.16. *Hardship Exemptions.*

§194.17. *Dangerous or Hazardous Procedures.*

§194.18. *Advertising or Competitive Bidding.*

§194.19. *Direct Supervision of a Student Required.*

§194.20. *Identification Requirements.*

§194.21. *Scope of Practice.*

§194.22. *Grounds for Denial of Certificate, Registration, or Other Approval, and for Disciplinary Action.*

§194.23. *Criminal Backgrounds.*

§194.24. *Administrative Penalties.*

§194.25. *Procedure.*

§194.26. *Compliance.*

§194.27. *Reissuance of Certificate or Permit Following Revocation.*

§194.28. *Complaints.*

§194.29. *Investigations.*

§194.30. *Impaired Individuals.*

§194.31. *Third Party Reports to the Board.*

§194.32. *Duty to Report Certain Conduct to the Board.*

§194.33. *Voluntary Relinquishment or Surrender of Certificate or Permit.*

§194.34. *Exemption from Licensure for Certain Military Spouses.*

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

Filed with the Office of the Secretary of State on September 9, 2024.

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Scott Freshour

General Counsel

Texas Medical Board

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For further information, please call: (512) 305-7030



## CHAPTER 195. PAIN MANAGEMENT CLINICS

### 22 TAC §§195.1 - 195.5

The Texas Medical Board (Board) proposes the repeal of current Chapter 195, concerning Pain Management Clinics, §§195.1 - 195.5.

The Board has determined that due to the extensive reorganization of Chapters 160 - 200 as part of the Board's rule review, repeal of Chapter 195 in its entirety is more efficient than proposing multiple amendments to make the required changes.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the proposed repeals are in effect, the public benefit anticipated as a result of enforcing these proposed sections will be to remove redundant language from rules, simplify the rules, and make the rules easier to understand.

Mr. Freshour has also determined that for the first five-year period these proposed repeals are in effect, there will be no fiscal impact or effect on government growth as a result of enforcing the proposed sections.

Mr. Freshour has also determined that for the first five-year period these proposed repeals are in effect there will be no probable economic cost to individuals required to comply with these proposed sections.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for these proposed repeals determined that for each year of the first five years these proposed repeals there will be no effect on small businesses, micro businesses, or rural communities. The agency

has considered alternative methods of achieving the purpose of these proposed repeals and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years these proposed repeals are in effect:

(1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering these proposed repeals;

(2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering these proposed repeals;

(3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering these proposed repeals; and

(4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering these proposed repeals.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years these proposed repeals will be in effect, there will be no effect on local economy and local employment.

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

(1) These proposed repeals do not create or eliminate a government program.

(2) Implementation of these proposed repeals does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of these proposed repeals does not require an increase or decrease in future legislative appropriations to the agency.

(4) These proposed sections do not require an increase or decrease in fees paid to the agency.

(5) These proposed repeals do not create new regulations.

(6) These proposed repeals do repeal existing regulations as described above.

(7) These proposed repeals do not increase the number of individuals subject to the sections' applicability.

(8) These proposed repeals do not positively or adversely affect this state's economy.

Comments on the Repeal may be submitted using this link: <https://forms.office.com/g/DibuGXnyfE>. A public hearing will be held at a later date. Comments on the proposal will be accepted for 30 days following publication.

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which

requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years.

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

§195.1. *Definitions.*

§195.2. *Gold Designated Practice.*

§195.3. *Certification of Pain Management Clinics.*

§195.4. *Minimum Operational Standards for the Treatment of Pain Patients.*

§195.5. *Audits, Inspections and Investigations.*

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

Filed with the Office of the Secretary of State on September 9, 2024.

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Scott Freshour

General Counsel

Texas Medical Board

Earliest possible date of adoption: October 27, 2024

For further information, please call: (512) 305-7030



## CHAPTER 197. EMERGENCY MEDICAL SERVICE

### 22 TAC §§197.1 - 197.7

The Texas Medical Board (Board) proposes the repeal of current Chapter 197, concerning Emergency Medical Services, §§197.1 - 197.7.

The Board has determined that due to the extensive reorganization of Chapters 160-200 as part of the Board's rule review, repeal of Chapter 197 in its entirety is more efficient than proposing multiple amendments to make the required changes.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the proposed repeals are in effect, the public benefit anticipated as a result of enforcing these proposed sections will be to remove redundant language from rules, simplify the rules, and make the rules easier to understand.

Mr. Freshour has also determined that for the first five-year period these proposed repeals are in effect, there will be no fiscal impact or effect on government growth as a result of enforcing the proposed sections.

Mr. Freshour has also determined that for the first five-year period these proposed repeals are in effect there will be no probable economic cost to individuals required to comply with these proposed sections.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for these proposed repeals and determined that for each year of the first five years these proposed repeals there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of these proposed repeals and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years these proposed repeals are in effect:

- (1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering these proposed repeals;
- (2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering these proposed repeals;
- (3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering these proposed repeals; and
- (4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering these proposed repeals.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years these proposed repeals will be in effect, there will be no effect on local economy and local employment.

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

- (1) These proposed repeals do not create or eliminate a government program.
- (2) Implementation of these proposed repeals does not require the creation of new employee positions or the elimination of existing employee positions.
- (3) Implementation of these proposed repeals does not require an increase or decrease in future legislative appropriations to the agency.
- (4) These proposed sections do not require an increase or decrease in fees paid to the agency.
- (5) These proposed repeals do not create new regulations.
- (6) These proposed repeals do repeal existing regulations as described above.
- (7) These proposed repeals do not increase the number of individuals subject to the sections' applicability.
- (8) These proposed repeals do not positively or adversely affect this state's economy.

Comments on the Repeal may be submitted using this link: <https://forms.office.com/g/DibuGXnyfE>. A public hearing will be held at a later date. Comments on the proposal will be accepted for 30 days following publication.

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years.

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

§197.1. *Purpose.*

§197.2. *Definitions.*

§197.3. *Off-line Medical Director.*

§197.4. *On-Line Medical Direction.*

§197.5. *Authority for Control of Medical Services at the Scene of a Medical Emergency.*

§197.6. *Authority to Conduct Research and/or Educational Studies.*

§197.7. *Physician Supervision of Emergency Medical Technician-Paramedic or Licensed Paramedic Care Provided in a Health Care Facility Setting.*

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

Filed with the Office of the Secretary of State on September 9, 2024.

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Scott Freshour

General Counsel

Texas Medical Board

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For further information, please call: (512) 305-7030



## CHAPTER 198. STANDARDS FOR USE OF INVESTIGATIONAL AGENTS

The Texas Medical Board (Board) proposes the repeal of current Chapter 198, concerning Standards for Use of Investigational Agents. This includes Subchapter A, concerning Standards for Use of Investigational Drugs, Biological Products, Or Devices, §§198.1 - 198.4; and Subchapter B, concerning Investigational Stem Cell Treatments for Patients with Certain Severe Chronic Diseases or Terminal Illnesses, §198.5 and §198.6.

The Board has determined that due to the extensive reorganization of Chapters 160-200 as part of the Board's rule review, repeal of Chapter 198 in its entirety is more efficient than proposing multiple amendments to make the required changes.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the proposed repeals are in effect, the public benefit anticipated as a result of enforcing these proposed sections will be to remove redundant language from rules, simplify the rules, and make the rules easier to understand.

Mr. Freshour has also determined that for the first five-year period these proposed repeals are in effect, there will be no fiscal impact or effect on government growth as a result of enforcing the proposed repeals.

Mr. Freshour has also determined that for the first five-year period these proposed repeals are in effect there will be no probable economic cost to individuals required to comply with these proposed repeals.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for these proposed repeals and determined that for each year of the first five years these proposed repeals there will be no effect on small businesses, micro businesses, or rural communities. The

agency has considered alternative methods of achieving the purpose of these proposed repeals and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years these proposed repeals are in effect:

(1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering these proposed repeals;

(2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering these proposed repeals;

(3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering these proposed repeals; and

(4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering these proposed repeals.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years these proposed repeals will be in effect, there will be no effect on local economy and local employment.

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

(1) These proposed repeals do not create or eliminate a government program.

(2) Implementation of these proposed repeals does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of these proposed repeals does not require an increase or decrease in future legislative appropriations to the agency.

(4) These proposed repeals do not require an increase or decrease in fees paid to the agency.

(5) These proposed repeals do not create new regulations.

(6) These proposed repeals do repeal existing regulations as described above.

(7) These proposed repeals do not increase the number of individuals subject to the sections' applicability.

(8) These proposed repeals do not positively or adversely affect this state's economy.

Comments on the Repeal may be submitted using this link: <https://forms.office.com/g/DibuGXnyfE>. A public hearing will be held at a later date. Comments on the proposal will be accepted for 30 days following publication.

## SUBCHAPTER A. STANDARDS FOR USE OF INVESTIGATIONAL DRUGS, BIOLOGICAL PRODUCTS, OR DEVICES

### 22 TAC §§198.1 - 198.4

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides

authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years.

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

§198.1. *Purpose.*

§198.2. *Definitions.*

§198.3. *Practice Guidelines for the Use of Investigational Agents.*

§198.4. *Use of Investigational Drugs, Biological Products, or Devices for Patients with Terminal Illnesses.*

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

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Scott Freshour

General Counsel

Texas Medical Board

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For further information, please call: (512) 305-7030



## SUBCHAPTER B. INVESTIGATIONAL STEM CELL TREATMENTS FOR PATIENTS WITH CERTAIN SEVERE CHRONIC DISEASES OR TERMINAL ILLNESSES

### 22 TAC §§198.5, §198.6

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years.

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

§198.5. *Use of Investigational Stem Cell Treatments for Patients with Certain Severe Chronic Diseases or Terminal Illnesses.*

§198.6. *Process and Procedures for IRBs Engaged in the Use of Investigational Stem Cell Treatments for Patients with Certain Severe Chronic Diseases or Terminal Illnesses.*

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

Filed with the Office of the Secretary of State on September 9, 2024.

TRD-202404448



## CHAPTER 200. STANDARDS FOR PHYSICIANS PRACTICING COMPLEMENTARY AND ALTERNATIVE MEDICINE

### 22 TAC §§200.1 - 200.3

The Texas Medical Board (Board) proposes the repeal of current Chapter 200, concerning Standards for Physicians Practicing Complementary and Alternative Medicine, §§200.1 - 200.3.

The Board has determined that due to the extensive reorganization of Chapters 160-200 as part of the Board's rule review, repeal of Chapter 200 in its entirety is more efficient than proposing multiple amendments to make the required changes.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the proposed repeals are in effect, the public benefit anticipated as a result of enforcing these proposed repeals will be to remove redundant language from rules, simplify the rules, and make the rules easier to understand.

Mr. Freshour has also determined that for the first five-year period these proposed repeals are in effect, there will be no fiscal impact or effect on government growth as a result of enforcing the proposed repeals.

Mr. Freshour has also determined that for the first five-year period these proposed repeals are in effect there will be no probable economic cost to individuals required to comply with these proposed repeals.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for these proposed repeals and determined that for each year of the first five years these proposed repeals there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of these proposed repeals and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years these proposed repeals are in effect:

- (1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering these proposed repeals;
- (2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering these proposed repeals;
- (3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering these proposed repeals; and
- (4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering these proposed repeals.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years these proposed repeals will be in effect, there will be no effect on local economy and local employment.

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

- (1) These proposed repeals do not create or eliminate a government program.
- (2) Implementation of these proposed repeals does not require the creation of new employee positions or the elimination of existing employee positions.
- (3) Implementation of these proposed repeals does not require an increase or decrease in future legislative appropriations to the agency.
- (4) These proposed repeals do not require an increase or decrease in fees paid to the agency.
- (5) These proposed repeals do not create new regulations.
- (6) These proposed repeals do repeal existing regulations as described above.
- (7) These proposed repeals do not increase the number of individuals subject to the sections' applicability.
- (8) These proposed repeals do not positively or adversely affect this state's economy.

Comments on the Repeal may be submitted using this link: <https://forms.office.com/g/DibuGXnyfE>. A public hearing will be held at a later date. Comments on the proposal will be accepted for 30 days following publication.

The repeal of the rules is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to recommend and adopt rules and by-laws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle. The repeal of the rules is also proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years.

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

§200.1. *Purpose.*

§200.2. *Definitions.*

§200.3. *Practice Guidelines for the Provision of Complementary and Alternative Medicine.*

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

Filed with the Office of the Secretary of State on September 16, 2024.

TRD-202404437

Scott Freshour  
General Counsel  
Texas Medical Board

Earliest possible date of adoption: October 27, 2024  
For further information, please call: (512) 305-7030

◆ ◆ ◆  
**TITLE 28. INSURANCE**

**PART 1. TEXAS DEPARTMENT OF INSURANCE**

**CHAPTER 3. LIFE, ACCIDENT, AND HEALTH INSURANCE AND ANNUITIES**

**SUBCHAPTER RR. VALUATION MANUAL**

**28 TAC §3.9901**

The Texas Department of Insurance (TDI) proposes to amend 28 TAC §3.9901, concerning the adoption of a valuation manual for reserving and related requirements. The amendment to §3.9901 implements Insurance Code §425.073.

**EXPLANATION.** An amendment to §3.9901 is necessary to comply with Insurance Code §425.073, which requires the commissioner to adopt a valuation manual that is substantially similar to the National Association of Insurance Commissioners (NAIC) Valuation Manual.

Under Insurance Code §425.073, the commissioner must adopt the valuation manual, and any changes to it, by rule.

Under Insurance Code §425.073(c), when the NAIC adopts changes to its valuation manual, the commissioner must adopt substantially similar changes. This subsection also requires the commissioner to determine that NAIC's changes were approved by an affirmative vote representing at least three-fourths of the voting NAIC members, but not less than a majority of the total membership. In addition, the NAIC members voting in favor of amending the valuation manual must represent jurisdictions totaling greater than 75% of the direct written premiums as reported in the most recently available life, accident, and health/fraternal annual statements and health annual statements.

TDI originally adopted the valuation manual in §3.9901 on December 29, 2016, in compliance with Insurance Code §425.073. On August 15, 2024, the NAIC voted to adopt changes to the valuation manual. Fifty jurisdictions, representing jurisdictions totaling 97.81% of the relevant direct written premiums, voted in favor of adopting the amendments to the valuation manual. The vote adopting changes to the NAIC Valuation Manual meets the requirements of Insurance Code §425.073(c).

This proposal includes provisions related to NAIC rules, regulations, directives, or standards. Under Insurance Code §36.004, TDI must consider whether authority exists to enforce or adopt the NAIC's changes. In addition, under Insurance Code §36.007, the commissioner cannot adopt or enforce a rule implementing an interstate, national, or international agreement that infringes on the authority of this state to regulate the business of insurance in this state, unless the agreement is approved by the Texas Legislature. TDI has determined that neither §36.004 nor §36.007 prohibit this proposal because Insurance Code §425.073 requires the Texas insurance commissioner to adopt a valuation manual that is substantially similar to the valuation manual approved by the NAIC, and §425.073(c) expressly requires the commissioner to adopt changes to the valuation manual that are substantially similar to changes adopted by the NAIC.

In addition to clarifying existing provisions, the 2025 NAIC Valuation Manual includes changes that:

- require qualified actuaries for principle-based reserving to meet the American Academy of Actuaries' Specific Qualification Standard with respect to their opining areas;
- for credit disability, remove the 12% increase to claim incidence rates for credit disability, based on more recent experience;
- authorize the valuation rate for non-jumbo contracts (contracts of less than \$250 million) to be determined daily rather than quarterly;
- allow that the valuation rate for funding agreements to be determined monthly rather than annually;
- add explicit requirements for international mortality to principle-based reserving for life products; and
- allow for variable annuity principle-based reserving prescribed assumption updates, as ongoing maintenance.

The NAIC's adopted changes to the valuation manual can be viewed at [https://content.naic.org/sites/default/files/pbr\\_data\\_valuation\\_manual\\_future\\_edition\\_red-line.pdf](https://content.naic.org/sites/default/files/pbr_data_valuation_manual_future_edition_red-line.pdf).

**Section 3.9901.** The amendment to §3.9901 strikes the date on which the NAIC adopted its previous valuation manual and inserts the date on which the NAIC adopted its current valuation manual, adopting by reference the new valuation manual dated August 15, 2024. An additional change lowercases the word "commissioner," for consistency with current agency style preferences.

**FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Jamie Walker, deputy commissioner of the Financial Regulation Division, has determined that during each year of the first five years the proposed amendment is in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the amendment, other than that imposed by statute. Ms. Walker made this determination because the proposed amendment does not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendment.

Ms. Walker does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

**PUBLIC BENEFIT AND COST NOTE.** For each year of the first five years the proposed amendment is in effect, Ms. Walker expects that administering the proposed amendment will have the public benefit of ensuring that TDI's rules conform to Insurance Code §425.073.

Ms. Walker expects that the proposed amendment will not increase the cost of compliance with Insurance Code §425.073 because it does not impose requirements beyond those in statute. Insurance Code §425.073 requires that changes to the valuation manual be adopted by rule and be substantially similar to changes adopted by the NAIC. As a result, any cost associated with adopting the changes to the valuation manual is a direct result of Insurance Code §425.073 and not the proposed amendment.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** TDI has determined that the proposed amendment will not have an adverse economic effect on small or micro businesses, or on rural communities. This is because

the amendment does not impose any requirements beyond those required by statute. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

**EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045.** TDI has determined that this proposal does not impose a possible cost on regulated persons. In addition, no other rule amendments are required under Government Code §2001.0045 because the proposed amendment is necessary to implement legislation. The proposed rule implements Insurance Code §425.073, as added by Senate Bill 1654, 84th Legislature, 2015.

**GOVERNMENT GROWTH IMPACT STATEMENT.** TDI has determined that for each year of the first five years that the proposed amendment is in effect, the proposed rule:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will not create a new regulation;
- will not expand, limit, or repeal an existing regulation;
- will not increase or decrease the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

**TAKINGS IMPACT ASSESSMENT.** TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

**REQUEST FOR PUBLIC COMMENT.** TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., central time, on October 28, 2024. Send your comments to [ChiefClerk@tdi.texas.gov](mailto:ChiefClerk@tdi.texas.gov) or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

To request a public hearing on the proposal, submit a request before the end of the comment period to [ChiefClerk@tdi.texas.gov](mailto:ChiefClerk@tdi.texas.gov) or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030. The request for public hearing must be separate from any comments and received by the TDI no later than 5:00 p.m., central time, on October 28, 2024. If TDI holds a public hearing, TDI will consider written and oral comments presented at the hearing.

**STATUTORY AUTHORITY.** TDI proposes the amendment to §3.9901 under Insurance Code §425.073 and §36.001.

Insurance Code §425.073 requires the commissioner to, by rule, adopt changes to the valuation manual previously adopted by the commissioner that are substantially similar to any changes adopted by NAIC to its valuation manual. Section 425.073 also requires that after a valuation manual has been adopted by the commissioner by rule, any changes to the valuation manual must be adopted by rule.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

**CROSS-REFERENCE TO STATUTE.** Section 3.9901 implements Insurance Code §425.073.

§3.9901. *Valuation Manual.*

(a) The commissioner [Commissioner] adopts by reference the National Association of Insurance Commissioners (NAIC) Valuation Manual, including subsequent changes that were adopted by the NAIC through August 15, 2024, [46, 2023,] as required by Insurance Code §425.073.

(b) The operative date of the NAIC Valuation Manual in Texas is January 1, 2017.

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

Filed with the Office of the Secretary of State on September 16, 2024.

TRD-202404447

Jessica Barta

General Counsel

Texas Department of Insurance

Earliest possible date of adoption: October 27, 2024

For further information, please call: (512) 676-6555



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

### CHAPTER 131. BENEFITS--LIFETIME INCOME BENEFITS

#### 28 TAC §131.5

**INTRODUCTION.** The Texas Department of Insurance, Division of Workers' Compensation (DWC) proposes new 28 TAC §131.5, concerning verification by the Subsequent Injury Fund (SIF). Section 131.5 implements Labor Code §§408.081, 408.161, and 408.162.

House Bill (HB) 2468, 88th Legislature, Regular Session (2023) made changes to Labor Code §408.161 that define traumatic brain injury and make other combinations of third-degree burns eligible for lifetime income benefits (LIBs). Although this proposed rule does not directly implement HB 2468, the proposed new section will impact LIBs recipients paid by the SIF, including injured employees that are eligible for LIBs under the changes made by HB 2468.

**EXPLANATION.** The new section requires the SIF to verify that the LIBs recipient is living, receiving LIBs payments, and their contact information has not changed. The new section also requires the LIBs recipient to certify the information with the SIF each month over a telephone call, video call, or other online verification system to receive the LIBs payment from the SIF. New §131.5 is necessary to implement Labor Code §§408.081, 408.161, and 408.162. Labor Code §§408.081 and 408.161 pertain to when and how injured employees receive LIBs and re-

quire that LIBs are payable only while the injured employee is alive. New §131.5 is necessary to implement those sections effectively by ensuring that DWC is notified of the injured employee's death before the SIF issues a LIBs payment to that injured employee. Labor Code §408.162 applies when an injury combines with a subsequent injury to qualify an injured employee for LIBs. In these situations, the insurance carrier for the subsequent injury pays benefits for the subsequent injury as if the previous injury did not happen, and the SIF pays the difference between the LIBs and the amount the insurance carrier pays for the subsequent injury. New §131.5 is necessary for DWC to verify that the injured employee is still alive, preventing the waste of public funds when the SIF makes these payments to the injured employee.

**FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Deputy Commissioner for Claims and Customer Services Erica De La Cruz has determined that during each year of the first five years the proposed new section is in effect, there will be no or minimal measurable fiscal impact on state and local governments as a result of enforcing or administering the sections, other than that imposed by the statute. This determination was made because the proposed new section does not add to or decrease state revenues or expenditures, and because local and state government entities are only involved in enforcing or complying with the proposed new section when acting in the capacity of a workers' compensation insurance carrier. Those entities will be impacted in the same way as an insurance carrier and will realize the same benefits from the proposed new section.

Deputy Commissioner De La Cruz does not anticipate a measurable effect on local employment or the local economy as a result of this proposal.

**PUBLIC BENEFIT AND COST NOTE.** For each year of the first five years the proposed new section is in effect, Deputy Commissioner De La Cruz expects that enforcing and administering the proposed new section will have the public benefits of increasing efficiency and transparency, and preventing the waste of public funds, as well as ensuring that DWC's rules conform to Labor Code §§408.081(d), 408.161, and 408.162 and are current and accurate, which promotes transparent and efficient regulation.

Deputy Commissioner De La Cruz expects that the proposed new section will not increase the cost to comply with Labor Code §§408.081(d), 408.161, and 408.162 because it does not impose requirements beyond those actions that are required to comply with the statute. Labor Code §408.081(d) requires that an employee's entitlement to LIBs end on the death of the employee. Labor Code §408.161(a) requires that LIBs are paid until the death of the employee. Together, the statutes require DWC to determine if the employee is living at the time the SIF makes the LIBs payment. As a result, the cost associated with verification by the SIF and certification by the employee does not result from the enforcement or administration of the proposed new section.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** DWC has determined that the proposed new section will not have an adverse economic effect or a disproportionate economic impact on small or micro businesses, or on rural communities because the proposed new section makes changes required to conform DWC rules to Labor Code §§408.081, 408.161, and 408.162. The proposed new section does not change the people the rule affects or impose additional costs beyond what is required by the statutes. As a result, and in accordance with Government Code §2006.002(c), DWC is not required to prepare a regulatory flexibility analysis.

**EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045.** DWC has determined that this proposal does not impose a possible cost on regulated persons. As a result, no additional rule amendments are required under Government Code §2001.0045.

**GOVERNMENT GROWTH IMPACT STATEMENT.** DWC has determined that for each year of the first five years that the proposed new section is in effect, the proposed rule:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will create a new regulation;
- will not expand, limit, or repeal an existing regulation;
- will not increase or decrease the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

DWC made these determinations because the proposed rule enhances efficiency and transparency, and is necessary to prevent the waste of public funds. The proposed rule does not change the people the law affects or impose additional costs.

**TAKINGS IMPACT ASSESSMENT.** DWC has determined that no private real property interests are affected by this proposal, and this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

**REQUEST FOR PUBLIC COMMENT.** DWC will consider any written comments on the proposal that DWC receives no later than 5:00 p.m., Central time, on October 28, 2024. Send your comments to [RuleComments@tdi.texas.gov](mailto:RuleComments@tdi.texas.gov); or to Texas Department of Insurance, Division of Workers' Compensation, Legal Services, MC-LS, P.O. Box 12050, Austin, Texas 78711-2050.

To request a public hearing on the proposal, submit a request before the end of the comment period to [RuleComments@tdi.texas.gov](mailto:RuleComments@tdi.texas.gov); or to Texas Department of Insurance, Division of Workers' Compensation, Legal Services, MC-LS, P.O. Box 12050, Austin, Texas 78711-2050. The request for public hearing must be separate from any comments. If DWC holds a public hearing, it will consider written and oral comments presented at the hearing.

**STATUTORY AUTHORITY.** DWC proposes §131.5 under Labor Code §§402.00111, 402.00116, 402.00128, 402.021, 402.061, 408.081, 408.161, and 408.162.

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

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



Labor Code §402.00128(b)(12) provides that the commissioner may exercise other powers and perform other duties as necessary to implement and enforce the Workers' Compensation Act.

Labor Code §402.021(b)(3) provides that the workers' compensation system must provide appropriate income benefits and medical benefits in a manner that is timely and cost-effective.

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

Labor Code §408.081(d) provides that an employee's entitlement to LIBs ends on the death of the employee.

Labor Code §408.161(a) provides that LIBs are paid until the death of the employee.

Labor Code §408.162(a) provides that, when an injury combines with a subsequent injury to qualify an injured employee for LIBs, the insurance carrier for the subsequent injury pays benefits for the subsequent injury as if the previous injury did not happen. Section 408.162(b) requires the SIF to pay the difference between the amount of LIBs and the amount the insurance carrier pays for the subsequent injury.

CROSS-REFERENCE TO STATUTE. Section 131.5 implements Labor Code §§408.081, 408.161, and 408.162, enacted by HB 752, 73rd Legislature, Regular Session (1993).

§131.5. Verification by the Subsequent Injury Fund.

(a) The Subsequent Injury Fund must confirm the following information before making a payment to the lifetime income benefit recipient:

(1) the recipient is living;

(2) lifetime income benefits are being received; and

(3) the recipient's contact information is correct.

(b) The lifetime income benefits recipient must provide the information required by subsection (a)(1) - (3) to the Subsequent Injury Fund each month over a telephone call, video call, or other online verification system to receive the lifetime income benefit payment from the Subsequent Injury Fund.

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

Filed with the Office of the Secretary of State on September 13, 2024.

TRD-202404431

Kara Mace

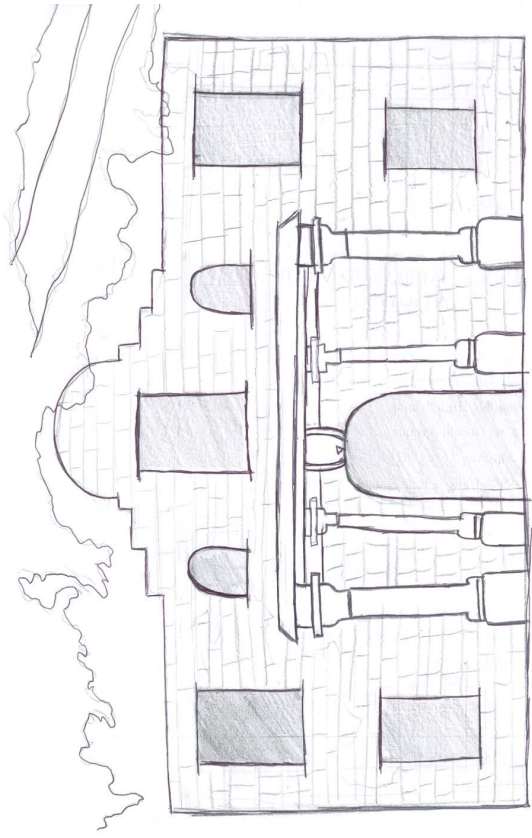
General Counsel

Texas Department of Insurance, Division of Workers' Compensation

Earliest possible date of adoption: October 27, 2024

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





# WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

## TITLE 16. ECONOMIC REGULATION

### PART 8. TEXAS RACING COMMISSION

#### CHAPTER 303. GENERAL PROVISIONS

##### SUBCHAPTER F. LICENSING PERSONS WITH CRIMINAL BACKGROUNDS

###### 16 TAC §303.201

The Texas Racing Commission withdraws proposed amendments to 16 TAC §303.201 which appeared in the March 22, 2024, issue of the *Texas Register* (49 TexReg 1814).

Filed with the Office of the Secretary of State on September 10, 2024.

TRD-202404383

Amy F. Cook

Executive Director

Texas Racing Commission

Effective date: September 10, 2024

For further information, please call: (512) 833-6699



###### 16 TAC §303.202

The Texas Racing Commission withdraws proposed amendments to 16 TAC §303.202 which appeared in the March 22, 2024, issue of the *Texas Register* (49 TexReg 1815).

Filed with the Office of the Secretary of State on September 10, 2024.

TRD-202404384

Amy F. Cook

Executive Director

Texas Racing Commission

Effective date: September 10, 2024

For further information, please call: (512) 833-6699



#### CHAPTER 311. OTHER LICENSES

## SUBCHAPTER A. LICENSING PROVISIONS

### DIVISION 1. OCCUPATIONAL LICENSES

#### 16 TAC §311.4

The Texas Racing Commission withdraws proposed amendments to 16 TAC §311.4 which appeared in the March 22, 2024, issue of the *Texas Register* (49 TexReg 1818).

Filed with the Office of the Secretary of State on September 10, 2024.

TRD-202404385

Amy F. Cook

Executive Director

Texas Racing Commission

Effective date: September 10, 2024

For further information, please call: (512) 833-6699



#### CHAPTER 319. VETERINARY PRACTICES AND DRUG TESTING

##### SUBCHAPTER D. DRUG TESTING

### DIVISION 3. PROVISIONS FOR HORSES

#### 16 TAC §319.362

The Texas Racing Commission withdraws proposed amendments to 16 TAC §319.362 which appeared in the March 22, 2024, issue of the *Texas Register* (49 TexReg 1819).

Filed with the Office of the Secretary of State on September 10, 2024.

TRD-202404386

Amy F. Cook

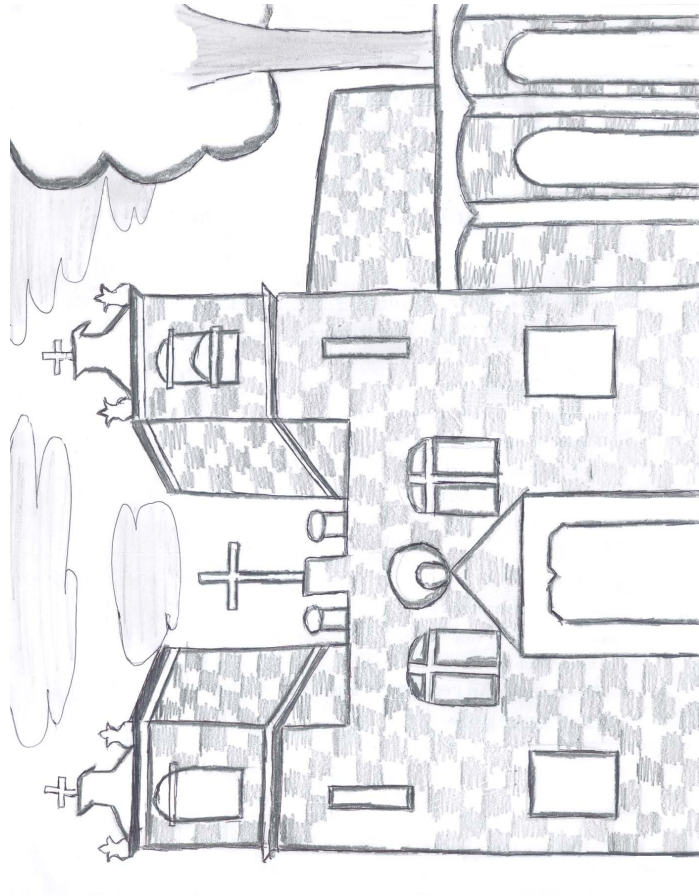
Executive Director

Texas Racing Commission

Effective date: September 10, 2024

For further information, please call: (512) 833-6699





# 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 16. ECONOMIC REGULATION

### PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

#### CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

##### SUBCHAPTER S. WHOLESALE MARKETS

###### 16 TAC §25.508

The Public Utility Commission of Texas (commission) adopts new §25.508, relating to Reliability Standard for the ERCOT Region, with changes to the proposed text as published in the June 28, 2024, issue of the *Texas Register* (49 TexReg 4678) and will be republished. The rule implements Public Utility Regulatory Act (PURA) §39.159(b)(1) as revised by Section 18 of Senate Bill (S.B.) 3 during the Texas 87th Regular Legislative Session. This rule creates a reliability standard for the Electric Reliability Council of Texas (ERCOT) power region and identifies a process for the commission to review whether the ERCOT system is meeting that standard. This new section is adopted under Project Number 54584.

The commission received comments on the proposed new section from the Advanced Power Alliance and American Clean Power Association (APA and ACP), the Alliance for Retail Markets (ARM), Conservative Texans for Energy Innovations (CTEI), CPS Energy, Inc. (CPS), the Electric Reliability Council of Texas (ERCOT), Hunt Energy Network, L.L.C. (HEN), the Institute for Policy Integrity at New York University School of Law (Policy Integrity), the Lower Colorado River Authority (LCRA), NRG Energy, Inc. (NRG), Octopus Energy (Octopus), the Office of Public Utility Counsel (OPUC), the Oncor Electric Delivery Company, L.L.C. (Oncor), Potomac Economics (Potomac), Shell Energy North America LP (Shell), the Sierra Club, the Steering Committee of Cities served by Oncor and the Texas Coalition for Affordable Power (Cities), the Texas Advanced Energy Business Alliance (TAEBA), Texas Competitive Power Advocates (TCPA), Texas Electric Cooperatives, Inc. (TEC), the Texas Energy Association for Marketers (TEAM), the Texas Energy Buyers Alliance (TEBA), the Texas Energy Poverty Research Institute (TEPRI), Texas Industrial Energy Consumers (TIEC), the Texas-New Mexico Power Company (TNMP), the Texas Oil and Gas Association (TXOGA), the Texas Public Policy Foundation (TPPF), the Texas Public Power Association (TPPA), and the Texas Solar Power Association (TSPA).

#### Briefing Questions

The commission invited interested parties to address two questions related to including exceedance tolerances in the reliability standard's metrics.

1. What are the advantages and disadvantages of enshrining an exceedance tolerance for magnitude and duration in the commission's rule?

In response to this question, several parties included an opinion on whether the exceedance tolerances should be included in the rule. The following parties expressed support for including the exceedance tolerances: ARM, CPS, ERCOT, HEN, LCRA, NRG, Octopus, OPUC, TCPA, and TEC. The following parties expressed opposition to including the exceedance tolerances: APA and ACP, Potomac, Shell, Cities, TAEBA, TEAM, TXOGA, TIEC, and TEPRI.

The major advantages of enshrining exceedance tolerances in the reliability standard that were identified by commenters were flexibility, clarity, regulatory certainty, transparency, and guidance to ERCOT. For example, ERCOT stated that, without an exceedance tolerance, even one extreme outlier event above a criterion's threshold would cause the reliability standard to be violated, making the standard too rigid. OPUC agreed with ERCOT that including a reasonable exceedance tolerance would balance the goal of avoiding events where outages cannot be rotated with the cost of eliminating all such outages from the model entirely. ARM stated that a codified exceedance tolerance would provide transparency and clarity, leading to regulatory certainty. HEN stated that the key purpose of the reliability standard is to be sufficiently specific to provide clarity and guidance to ERCOT in determining the resource adequacy needs of the ERCOT grid. Similarly, Octopus stated that codifying an exceedance tolerance in the rule would ensure that the commission sets the level of flexibility in the standard, rather than ERCOT. TCPA stated that one advantage to enshrining exceedance tolerances in the rule is to reduce the risk of frequent changes to the reliability standard metrics to achieve a particular outcome. TCPA explained that frequently changing the metrics could create uncertainty and therefore undermine confidence in the ERCOT markets.

The major disadvantages of enshrining an exceedance tolerance identified by commenters were rigidity, complexity, overreliance on the misplaced belief that 1-in-400-year events will happen only once every 400 years, and lack of specific direction provided to ERCOT. APA and ACP recommended that the rule direct ERCOT to model the outcomes at several different exceedance tolerances, which would allow the commission to decide which exceedance tolerances to use. APA and ACP explained that the exceedance tolerances are subject to the shortcomings of assumptions and modeling practices in ERCOT's study. TEC noted that setting the exceedance tolerances too high or too low would lead to undesirable outcomes. TEPRI stated that there are other ways to achieve the goal of determining whether the ERCOT

system is reliable, and that "it would be more useful for the commission to request ERCOT to show the probabilistic distribution of outages and what the major causes of the outages are so that proper policy measures can be put in place outside of a resource adequacy construct." Potomac and Cities commented that if they are included, the tolerances should reflect a reasonable estimate of the value of lost load (VOLL). Cities further commented that the exceedance tolerances should be flexible, rather than codified as a single value. Cities noted that the commission could adjust the exceedance tolerances outside a formal rulemaking, such as within the ERCOT stakeholder process.

TPPA stated that "if values for exceedance tolerances are to be included in the rule, then greater detail is necessary in the rule on other modeling inputs, including the number of simulations to be run and the precision and range of correlation to be used."

#### Commission Response

The commission agrees that exceedance tolerances provide the benefits identified by commenters and that codifying exceedance tolerances in the rule strikes the right balance between reliability and likely future costs to achieve that level of reliability. The commission disagrees that codifying exceedance tolerances in the rule introduces rigidity because the exceedance tolerances allow the system to exceed the reliability standard by a defined amount. Moreover, the commission retains discretion to reevaluate the exceedance tolerances after reviewing assessments from ERCOT on how the system is performing. For the same reasons, the commission declines to modify the rule to require ERCOT to model outcomes at several different exceedance tolerances, as suggested by APA and ACP.

In response to TEPRI on probabilistic outcomes, having ERCOT provide a probabilistic distribution and cause of the outages identified in the model would provide a valuable data point in reviewing future assessments. However, the commission disagrees with TEPRI that this should be done in lieu of establishing exceedance tolerances in the rule because the exceedance tolerances establish the acceptable thresholds on the duration and magnitude metrics through which that information can be interpreted. The commission disagrees with Potomac and Cities that the exceedance tolerances need to be directly linked to an estimated VOLL because the thresholds are not solely based on economics, but on the level of reliability for the ERCOT region that the commission aims to achieve. The commission disagrees with Cities that the commission should not adopt static exceedance tolerance values to gain additional flexibility because an undefined tolerance amount does not promote regulatory certainty.

In response to TPPA, the commission modifies subsection (c) of the rule to include a period for stakeholder comment after ERCOT submits its modeling assumptions. Stakeholders can submit feedback at that time on particulars of ERCOT's modeling inputs.

For these reasons, the adopted rule retains exceedance tolerances. However, the commission modifies the exceedance tolerance related to the magnitude criterion for other reasons, as discussed below.

2. Should the exceedance tolerance be evaluated more frequently than the reliability standard? If so, what is the appropriate frequency?

ERCOT, HEN, OPUC, TCPA, and TEAM answered that no, the exceedance tolerances should not be evaluated more frequently than the reliability standard and instead should be evaluated at the same time as the standard metrics themselves.

Several commenters answered that yes, the exceedance tolerances should be evaluated more frequently than the reliability standard. There were two main responses on the appropriate frequency: generally, that the exceedance tolerances should be evaluated more frequently than the standard (APA and ACP and Cities), and that the exceedance tolerances should be evaluated when the ERCOT system is assessed (TEC, Potomac, CPS, and TAEB). Shell commented that the exceedance tolerances should be evaluated whenever the underlying analysis or data collection methodology changes. TIEC agreed with this notion, stating that the commission should not codify any frequency, duration, magnitude, or exceedance tolerance metrics in the rule at all because modeling assumptions could skew the results one way or the other.

#### Commission Response

The commission agrees that the exceedance tolerances should be updated at the same time as the reliability standard metrics because the exceedance tolerances are part of the metrics. However, the commission declines to modify the rule to add scheduled reviews of the reliability standard metrics and exceedance tolerances. Updating the exceedance tolerances frequently, such as on the same cadence as ERCOT's system assessment or whenever the underlying analysis or data collection methodology change, would cause the reliability standard to change too frequently, creating regulatory uncertainty. The commission will review ERCOT's system assessments regularly and use its discretion to open a rulemaking to change the reliability standard metrics, including the exceedance tolerances.

#### Time frame for updating reliability standard criteria thresholds

A few parties commented on the length of time between updates to the reliability standard metrics. LCRA, TCPA, and TXOGA stated that the reliability standard metrics themselves should be stable and not frequently revisited. For example, LCRA suggested at least a five-year gap between reviews of the standard, TCPA suggested at least a 10-year gap between reviews of the standard, and TXOGA suggested only that the standard be reviewed less often than the system.

Other parties took a different view. Octopus recommended that ERCOT submit an annual report to the commission, and after the review, the commission should determine whether a rulemaking is necessary to update the reliability standard or exceedance tolerances. TIEC, which recommended that the commission not codify metric thresholds in the rule, suggested that the commission adjust metric thresholds every five years after a 60-day comment period. TEBA, which was also against codifying metric thresholds, suggested adjusting metrics no more frequently than every six years, or at least on a similar cadence as the system assessments. TEC suggested that the commission evaluate the reliability criteria and the exceedance tolerances every three years.

#### Commission Response

As discussed above, the commission disagrees with TIEC and TEBA's suggestion not to codify the reliability standard metrics. The commission agrees with commenters that observed that the reliability standard metrics should remain stable over time to provide regulatory certainty and a stable measurement tool to gauge

the long-term reliability of the system. The commission therefore declines to modify the rule to add an explicit timeline that would require the commission to reopen the reliability standard rule to review and update the reliability standard metrics. The commission retains discretion to reopen the rule and conduct that review at any time.

#### Proposed §25.508(a)(2) - Definition of "loss of load event"

Proposed subsection (a)(2) defines "loss of load event" as "an occurrence when the system load is greater than the available resource capacity to serve that load, resulting in involuntary load shed."

TPPA sought clarification on whether a loss of load event caused by transmission overload, frequency event, or lack of voltage support would meet the criteria of the definition of "loss of load event" in the rule because, in TPPA's view, the definition is supposed to be limited to load shed resulting from a shortage of market-wide generation capacity. TPPA suggested language modifying proposed (a)(2) to account for this distinction. ERCOT suggested modifying the definition of loss of load event to include "system firm load plus required minimum operating reserves" to avoid the potential misunderstanding that the system must reach zero megawatts (MW) of available excess capacity in a simulation for a loss of load event to occur.

#### Commission Response

The commission agrees with TPPA that, for purposes of this standard, a loss of load event would only include situations involving a system-wide shortage of resources to meet demand and would not include localized load shed resulting from transmission constraints on the system. Accordingly, the commission modifies the provision to reflect a system-wide event. The commission also agrees with ERCOT's recommended addition and modifies the rule accordingly. In addition, the commission modifies the rule to clarify that a loss of load event also needs to account for the minimum operating reserves required to avoid an energy emergency alert level three event, because even in a load shed scenario, ERCOT is required to maintain a minimum level of operating reserves.

#### Proposed §25.508(a)(3) - Definition of "transmission operator"

Proposed subsection (a)(3) defines "transmission operator" with a reference to the ERCOT protocols.

Some commenters suggested defining this term using the definition of "transmission operator" that is in the ERCOT protocols, rather than using placeholder text that refers to the definition in the ERCOT protocols.

#### Commission Response

The commission declines to modify the rule to use ERCOT's current definition of its term. The term "transmission operator" is primarily used by ERCOT and appears in the commission's rules infrequently, making a cross reference appropriate.

#### Proposed §25.508(a)(4) - Definition of "weatherization effectiveness"

Proposed subsection (a)(4) defines the term "weatherization effectiveness" as "the assumed percentage reduction in the amount of weather-related unplanned outages for thermal generation resources included in the model, due to compliance with the weatherization standards in §25.55 of this title (relating to Weather Emergency Preparedness)."

TPPA, TEC, and CPS suggested that the definition of "weatherization effectiveness" include all generation resources, not just thermal generation resources. TPPA stated that the definition does not consider energy storage resources, DC ties, renewable generation resources, and load resources. TPPA sought clarification on the definition, suggesting that the definition is intended only to include a percentage reduction for unplanned outages of thermal generation resources. TEC expressed concern that the defined focus on thermal generation resources because the current weatherization rules include all types of generation and the transmission system.

#### Commission Response

The data used by ERCOT in its study on which the reliability standard is based included weatherization effectiveness only for thermal generation resources. In the future, it is possible that ERCOT could include weatherization effectiveness for non-thermal generation resources as the relevant data becomes available. Accordingly, the commission modifies the rule to remove "thermal" from the definition of "weatherization effectiveness." The commission declines to modify the definition to remove the word "generation" because the reliability standard is based on resource adequacy. The commission also modifies the provision to add energy storage resources because these resources are also part of resource adequacy.

CPS suggested removing the proposed definition of weatherization effectiveness, because it is ambiguous, and replacing it with the generator outage rates and other applicable input assumptions in the ERCOT filing required by subsection (c)(1)(A). CPS asserted that the longer the weatherization rules are in effect, the more normal they become, and comparing the effectiveness of current standards to historical standards becomes less meaningful to the development of the reliability standard.

#### Commission Response

The commission declines to remove the defined term from the rule, as suggested by CPS. The commission's latest weatherization requirements under became effective in 2023, and therefore, modeling outcomes will tend to underestimate the impact of those requirements until there are enough historical years included in ERCOT's modeled assessment to forecast more accurately generation resource output under the new regulatory requirements. The commission may consider the relevance of weatherization effectiveness at a later date.

#### Proposed §25.508(b) - Reliability standard

Proposed subsection (b) defines the reliability standard with three threshold values for frequency, magnitude, and duration of loss of load events.

Potomac recommended that the commission set a reliability standard that reflects a reasonable implied VOLL.

#### Commission Response

The commission disagrees with Potomac's suggestion that the most principled reliability standard is one that reflects an implied economic measure. Potomac's focus on a "reasonable implied VOLL" is consistent with the independent market monitor's mission to search continuously for wholesale market economic efficiency. However, the commission is not exclusively focused on either economic or reliability outcomes: it must reasonably balance both and declines to consider only economic outcomes to establish the reliability standard for the ERCOT region. Moreover, considerations related to the cost of achieving that rela-

bility standard will be addressed when evaluating potential market reforms when the reliability standard is not met. Because the reliability standard does not automatically trigger any market changes, the evaluation of potential market reforms to achieve the standard is the appropriate time to consider cost.

Proposed §25.508(b)(1) - Reliability standard frequency threshold

Proposed subsection (b)(1) defines the frequency threshold of the reliability standard as the following: "The expected loss of load events for the ERCOT region must be less than 0.1 day per year on average, i.e., 0.1 loss of load expectation (LOLE)."

TPPA sought clarification on the meaning of "on average" in the context of the measurement of frequency of a loss of load event.

TCPA suggested changing the frequency criterion to better align it with what is being measured--the probability of a loss of load event occurring within a modeled year--and gave a suggested redline edit. TCPA stated that this would also avoid misinterpretation of the frequency criterion as a duration metric of 2.4 hours.

#### Commission Response

The reliability assessment will involve conducting many independent, probability-based simulations, each of which may result in some number of days with a loss of load event. In this context, in response to TPPA's request for clarification, "on average" means averaging the number of loss of load events from all of these independent modeling runs to determine the expected number of loss of load events for the system.

In response to TCPA's suggested redline to subsection (b)(1), the commission modifies subsection (b) of the rule to state that the system will be simulated using a probabilistic model. This modification clarifies that the criteria listed in (1)-(3) of subsection (b) will all be measured by this probability-based model simulation. Because of this change, it is unnecessary to modify subsection (b)(1) as suggested by TCPA. However, the commission modifies (b)(1) to clarify that the frequency metric is based on the number of expected load shed events, not the expected loss of load hours. In addition, the commission modifies the definition to state that the expected loss of load events must be "equal to or less than one event per ten years on average" to align with the industry standard.

Proposed §25.508(b)(2) and (3) - Reliability standard duration and magnitude thresholds

Proposed subsection (b)(2) defines the duration threshold of the reliability standard as the following: "the maximum expected length of a loss of load event for the ERCOT region, measured in hours, must be less than 12 hours, with a 1.00 percent exceedance tolerance." Proposed subsection (b)(3) defines the magnitude threshold of the reliability standard as the following: "the expected highest instantaneous level of load shed during a loss of load event for the ERCOT region, measured in megawatts, must be less than the maximum number of megawatts of load shed that can be safely rotated during a loss of load event, as determined by ERCOT, in consultation with commission staff and the transmission operators, with a 0.25 percent exceedance tolerance."

As an alternative to its primary recommendation of replacing the magnitude and duration criteria with expected unserved energy (EUE) or normalized EUE (NEUE) - discussed below - Potomac argued if the magnitude criterion is retained, the exceedance tolerance should be relaxed to 1.00 percent; and if the duration

criterion is retained, the threshold should be lengthened to 24 hours, rather than 12. Potomac explained that it found the reliability basis for the duration standard unclear. Sierra Club recommended exceedance tolerances for both duration and magnitude of two to three percent, and Shell recommended an exceedance tolerance for magnitude of no lower than three percent if the commission retains the current ERCOT data analysis methodology.

#### Commission Response

As discussed below, the commission declines to modify the rule to eliminate either the magnitude or the duration criterion because these are essential components of the commission's chosen reliability standard. The commission agrees that the magnitude criterion's exceedance tolerance should be relaxed to 1.00 percent and modifies the rule accordingly. This exceedance tolerance sets the expectation of a load shed event occurring during which ERCOT cannot safely and effectively rotate outages once every 100 years, on average. This level more appropriately balances the importance to the commission of avoiding these high-impact events with avoiding expensive outcomes driven solely by modeling assumptions. However, the commission disagrees that the duration threshold should be extended to 24 hours because the emergency pricing program (16 TAC §25.509) is in place to mitigate the cost impacts of load shed events that last longer than 12 hours. The reliability standard's duration threshold in the adopted rule remains at 12 hours to signify that load shed events that trigger the emergency pricing program are significant, and the market should be designed in a way to avoid such events.

The commission declines to relax exceedance tolerances for magnitude and duration any further, as suggested by Sierra Club and Shell, because doing so would signal the commission's acceptance of a less reliably designed system.

Policy Integrity commented that the thresholds for magnitude and duration are flawed because they are based on a constant VOLL, rather than a dynamic VOLL that varies by outage duration and severity. Policy Integrity suggested basing the analysis for these thresholds on a dynamic VOLL.

#### Commission Response

The commission declines to modify the rule to require a variable VOLL, as suggested by Policy Integrity, because the commission already has work underway through a survey to establish an updated VOLL for the ERCOT region. This value will be used as a basis for cost estimates associated with market design changes. Because the reliability assessment is a new process, the commission considers it valuable to allow ERCOT to conduct at least one assessment with the updated VOLL before considering further model changes related to VOLL.

Many commenters suggested improvements to the magnitude criterion in the proposed rule. Oncor, TNMP, Cities, and TAEBA stated that the variables used to calculate the magnitude threshold lacked clarity and recommended addressing this ambiguity. Some commenters suggested that the rule should clarify the requirements and process that ERCOT will use to determine the amount of load shed that can be safely rotated, including information regarding the frequency and process by which the criterion will be updated. For example, TSPA recommended that the initial maximum magnitude value be identified in this preamble. Octopus suggested that ERCOT provide an annual report on the maximum number of MW of load shed that can be safely rotated. TAEBA recommended the rule justify and provide explanation for the reasonableness of the 19 gigawatt (GW) amount



used in ERCOT's study that formed the basis for the reliability standard's metrics. TEC suggested that the amount of load that could be rotated be analyzed as a dynamic number based on changes to the system. Other comments suggested factors to include in calculating magnitude to improve the accuracy of the criterion, such as: cold-load pickup, underfrequency load shedding obligations, presence of mobile generation assets, clarification of the term "critical circuit," transmission and distribution service provider demand response, load management programs, large load additions, circuit segmentations, transmission-level customers, and ongoing resiliency improvements.

#### Commission Response

The commission agrees with commenters that additional clarity and consideration surrounding the variables used to calculate magnitude is desirable. However, the commission declines to amend the proposed rule because the result would be overly prescriptive for a calculation that must consider an evolving transmission and generation landscape. Instead, the commission expects ERCOT to achieve a similar result by considering stakeholder input, either through the adoption of protocols or other appropriate processes. This expectation bolsters the existing language of the adopted rule, which requires ERCOT to estimate the number of MWs that can be safely and effectively rotated during a loss of load event in consultation with commission staff and transmission operators. Allowing stakeholder input on the development of the assumptions and variables used in the calculation will ensure that transmission operators and other market participants can participate meaningfully in the establishment of the metric while providing additional flexibility to ERCOT and market participants to adjust the calculation as new technologies and information become available.

The commission does modify the proposed rule, however, to require ERCOT to file with the commission, on or before December 1 of each year, the amount of MW that can be safely rotated and a summary of the methodology used to derive that number.

Other parties expressed concern regarding the feasibility of the standard from a cost and implementation perspective. Cities stated that the magnitude criterion is overly strict as it effectively sets the frequency standard at 0.037 LOLE, rather than the 0.1 LOLE stated in the proposed rule. Cities questioned whether a 0.037 LOLE is attainable given the current market transition and load growth in Texas. HEN stated that magnitude is the controlling metric for calculating the reliability standard because frequency and duration should be easily achieved if magnitude is met. TIEC stated that selecting a maximum magnitude of 19 GW drives a frequency metric of one event in twenty-five years, a result TIEC considered unlikely to be justified by the cost to reach it. Potomac stated that, from its analysis, it is unlikely that an energy-only market can satisfy the one-in-ten reliability standard because it found that other regional transmission organizations with a one-in-ten reliability standard rely on capacity markets to supplement their energy and ancillary services markets.

#### Commission Response

The commission finds the magnitude criterion with the proposed exceedance tolerance to be reasonable and will address concerns about hypothetical market design change costs at the time it considers ERCOT's system reliability assessment. Further, the adopted rule requires this figure to be updated annually, which will provide opportunities to revisit the issues noted by commenters.

Several commenters expressed concern with ERCOT's study methodology and calculation of 19 GW as the initial amount of load shed that can be safely rotated. HEN suggested modifying the rule to provide a clear, maximum outage magnitude. HEN also recommended that the amount of load shed that can be rotated be reduced to 25 percent of the total load that can be controllably shed, instead of ERCOT's suggestion of 60 percent; which translates to a magnitude threshold of eight GW rather than 19 GW. HEN explained that PURA §39.159(d)(1) requires ERCOT to determine the quantity of dispatchable reliability reserve service (DRRS) necessary considering "historical variations in generation availability for each season based on a targeted reliability standard or goal," and that the magnitude threshold in the proposed rule does not provide meaningful guidance to ERCOT for determining the quantity of DRRS needed to meet the standard.

NRG supported the frequency, magnitude, duration, and exceedance probabilities provided in the proposed rule. However, NRG noted that the magnitude threshold should be set to an amount that can be rotated in a manner that minimizes disruption to customers, not the maximum amount of load shed theoretically possible on the system. NRG suggested that if TSPs determine 40 GW can be shed in total to rotate load shed safely, the magnitude threshold should be set to less than 20 GW.

Shell stated that the magnitude threshold should be calculated as the sum of the estimated amount of load that can be rotated by each distribution service provider (DSP) because this method would produce a reasonable and cost-effective metric to cover for an extreme event that has minimal chance of occurring.

Oncor suggested that ERCOT base its magnitude threshold amount on a load shed rotation cadence of 1:1, a ratio of consumers' time with power to their time without power, which translates to a maximum percentage of the total load available for load shed of 50 percent, rather than 60 percent. However, Oncor stated that it would support further reducing the amount of load shed that can be rotated to less than 50 percent. Oncor asserted that the 19 GW amount provided by ERCOT's study for safe rotation of load shed is incorrect. Oncor concluded that ERCOT overstated the amount of load shed that a TSP can effectively rotate during a LOLE which in turn understates the system's need for new generation. Oncor stated that 19 GW fails to account for the practical and operational considerations that would diminish load-shed capabilities to well below 19 GW in a real loss of load event, and that the magnitude criterion requires further refinement for accuracy.

TNMP had similar concerns to Oncor's and recommended that ERCOT's determination of 19 GW as the magnitude threshold be revised for accuracy. TNMP stated that increasing the number of consumers curtailed from 50 percent to 60 percent during a reliability event leads to at least a 50 percent increase in consumers' time without power.

TEC and TSPA recommended that the commission allow for stakeholder comment when it sets the magnitude criterion's threshold. TSPA further recommended that the magnitude threshold be set by commission order.

#### Commission Response

As a reliability metric, basing the standard for the magnitude of tolerable loss of load events on the amount of MW that ERCOT can safely and effectively rotate is a reasonable policy outcome. However, the commission finds commenters' concerns

about the calculation of that MW amount credible. Because that MW amount may change frequently due to changes in system configuration, installation of new technologies, or adoption of different emergency response strategies, to name just a few reasons, the commission declines to codify the process to calculate a numerical MW amount in rule. Instead, and as noted above, the commission expects ERCOT to use a stakeholder-informed process to calculate the amount of MW that can be safely and effectively rotated and modifies the rule to require ERCOT to file with the commission the result of that calculation and a summary of the methodology used at least annually.

Oncor suggested one redline to the magnitude criterion—that the magnitude threshold be set as the following: "the highest instantaneous level of load shed . . . must be less than the maximum load shed that can be effectively rotated during a loss of load event."

#### Commission Response

The commission disagrees with Oncor's suggested edit to the magnitude criterion because the term "effective" as applied to the magnitude criterion in this rulemaking is unclear.

TPPA requested clarification whether "expected highest instantaneous level of load shed" is meant to refer to load lost for mere fractions of a second or a measured ERCOT interval.

#### Commission Response

In response to TPPA's request for clarification on the interval over which magnitude is calculated, the commission modifies the rule to state that the measurement for magnitude is "the expected highest level of load shed during a loss of load event for the ERCOT region, measured as the average lost load for a given hour."

Proposed §25.508(b) and (c)(1)(C) - Reliability standard criteria, EUE, and NEUE

Proposed subsection (b) lists the reliability standard criteria: frequency, magnitude, and duration. Proposed subsection (c)(1)(C) requires ERCOT to report EUE and NEUE in its assessment.

Several parties commented specifically on the use of EUE and NEUE. Potomac, TXOGA, TIEC, and Shell recommended not using the three metrics of frequency, magnitude, and duration and replacing them with a single metric of EUE or NEUE. Potomac and TIEC explained that an EUE-based standard, considering the VOLL and cost of new entry (CONE), would be the most economically optimal choice. Potomac, TXOGA, and TIEC stated that EUE captures magnitude and duration. TIEC and Shell both suggested that the commission only monitor frequency, magnitude, and duration, and instead adopt the EUE or NEUE as the reliability standard. TEPRI also suggested that magnitude and duration be eliminated and replaced by EUE along with VOLL because EUE already considers risk, magnitude, and duration. TEPRI specifically acknowledged that EUE does not account for tail events and suggested that these events be accounted for through a separate study performed by ERCOT for the reliability standard, rather than through the magnitude and duration criteria with their exceedance tolerances.

HEN preferred EUE to LOLE as a better measure of reliability but was not opposed to using LOLE as one of the reliability measures. TSPA expressed support for keeping EUE and NEUE in the rule as proposed, within subsection (c)(1)(C).

TIEC and TEBA commented that the commission should not codify threshold metrics in the reliability standard rule. TIEC stated that "the commission should maintain its discretion in evaluating the modeling data to set a reasonable reliability standard, taking into account ERCOT's assessment of key metrics, along with the cost impacts to consumers."

#### Commission Response

The commission declines to modify the rule to replace the magnitude and duration criteria with either EUE or NEUE as recommended by Potomac, TXOGA, TIEC, and Shell. The commission agrees with TSPA that EUE and NEUE should remain informational only. Although EUE is a useful metric, and the commission requires ERCOT to include it in its assessment results, it is an average measure of events and does not distinguish the characteristics of extreme events. Because EUE is an average measure, the commission disagrees that EUE effectively captures the nuance provided by a reliability standard comprising individual frequency, magnitude, and duration criteria.

The commission disagrees with TIEC and TEBA that reliability standard metrics should not be codified in the commission rule. The commission must have a stable set of metrics by which to gauge the reliability of the ERCOT system, and to remain stable, these metrics must be codified in rule and updated only through deliberative and transparent processes. For these reasons, the commission declines to modify the rule.

TEPRI suggested modifying subsection (b) to specifically mention resource adequacy because that is what the rule is meant to address. TEPRI stated that in the future the commission should work towards changing the definition of a reliability standard from resource adequacy to the likelihood of residents losing access to electricity.

#### Commission Response

The commission agrees with TEPRI that the proposed rule is limited to resource adequacy and not a broader understanding of the causes and implications of interruptions to consumers' electricity access. However, the commission declines to modify the provision to explicitly mention resource adequacy. The proposed rule is clear in its limitations. Whether the broad concept of a reliability standard should be redefined to capture all interruptions to consumers' electricity access is beyond the scope of this rulemaking.

Policy Integrity suggested adding stress testing as a fourth criterion to the reliability standard in the proposed rule. Policy Integrity stated that including and measuring this criterion would minimize risk from tail events.

#### Commission Response

The commission declines to modify the rule to require stress testing, as suggested by Policy Integrity, because it is unnecessary. The adopted rule's thresholds are based on analysis that includes historical tail events, such as Winter Storm Uri. In addition, stress testing, which requires projection of tail events and an estimate of their severity, would introduce unnecessary subjectivity to the standard.

Proposed §25.508(b) and (c)(1)(D) - Roles of the commission and ERCOT

Proposed subsection (b) states that the ERCOT system meets the reliability standard if an ERCOT model analysis finds that the system meets each of the criteria provided in this subsection. Proposed subsection (c)(1)(D) states that if any reviewed

system falls below the reliability standard, ERCOT must include recommended market design changes in its filed assessment.

TPPA commented that it is the commission's role, not ERCOT's, to determine whether the ERCOT system has met the reliability standard. Similarly, LCRA recommended modifying subsection (b) to state that the commission's role is to ensure that the bulk power system for the ERCOT region meets or exceeds the metrics established in the rule. In support of its suggestion, LCRA cited PURA §39.159(b), which requires the commission to ensure that ERCOT establishes requirements to meet the reliability needs of the ERCOT region.

Potomac commented that it is an economic and policy function to develop market design alternatives. Specifically, Potomac stated that it should be the commission's role to determine market design changes, not ERCOT's, and that it is inappropriate to require ERCOT to recommend market design changes to the commission. Potomac accordingly recommended eliminating subsection (c)(1)(D) from the rule, or, in the alternative, the rule should require an independent review by the Independent Market Monitor (IMM) of any market design changes recommended by ERCOT.

#### Commission Response

Although the commission agrees with TPPA that it is the commission's role to establish a reliability standard, the evaluation of whether the system has met the reliability standard is an objective assessment based on a model that uses publicly available assumptions that are subject to commission review. Therefore, it is unnecessary to modify the proposed rule to explicitly recognize the commission's role in determining whether the ERCOT system has met the standard.

The commission also disagrees with LCRA's suggested modification because PURA §39.159(b) obligates the commission to ensure that ERCOT establishes requirements to meet the reliability needs of the ERCOT region. This rulemaking is limited to establishing a reliability standard for the ERCOT region, as discussed in the commission's response to comments on subsection (c)(2) below. It does not address the particular means by which that reliability standard will be met.

The commission declines to remove subsection (c)(1)(D) as suggested by Potomac. ERCOT may provide recommendations on market design options for the commission to consider, and the commission considers ERCOT to be a credible source for such recommendations. The commission retains discretion to decide whether to implement any market design changes as a result of the assessment and in consideration of ERCOT's recommendations. However, the commission agrees that the IMM should provide its assessment of ERCOT's recommended market design changes. The commission therefore modifies the rule to require the IMM to review recommended market design changes and expected system costs associated with those changes.

ERCOT suggested modifying subsection (b) to describe the simulation it will run to determine whether the system is meeting the reliability standard. Specifically, ERCOT suggested language to clarify that ERCOT is not conducting an analysis to determine whether the system is meeting the standard. Instead, ERCOT is running a probability-based model simulation that will demonstrate whether the system meets the standard.

#### Commission Response

The commission agrees with ERCOT's suggested clarifying language and modifies the rule accordingly.

#### Proposed §25.508(c)(1) - Timing of ERCOT's assessment

Proposed subsection (c)(1) requires an assessment to be performed every five years, starting January 1, 2026, and the assessment must review the ERCOT system that exists today and the system that will exist three years into the future.

Many parties expressed concern with both the length of time between full system assessments and the two-year gap between the three-year look-ahead and the five-year assessment. TEC suggested that the assessment occur every three years, and Octopus suggested that it occur every other year; TXOGA and Sierra Club both expressed concern with the five-year assessment schedule but provided no suggestion for a preferred review cycle. However, most parties that commented on this provision indicated a preference for an annual review of the system. TCPA and NRG cited PURA §39.159(b)(2) as support for their contention that the commission is statutorily bound to an annual reliability assessment. NRG also stated that ERCOT's resource mix and load growth change frequently. Similarly, TXOGA and TEPRI suggested the assessment be performed annually; TXOGA's reasoning was timely identification and mitigation of risks. TEPRI also recommended requiring a more comprehensive assessment every five years.

#### Commission Response

The commission modifies the rule to require ERCOT to perform its assessment every three years, as recommended by TEC. A three-year review cadence appropriately balances the need to provide the commission with timely and accurate information to evaluate the system's reliability with the administrative burden and regulatory uncertainty that more frequent evaluation would impose. This will also allow enough time for the commission to complete any required rulemakings and ERCOT to implement any changes in the protocols before the beginning of the next assessment.

The commission disagrees with TCPA and NRG that PURA §39.159(b)(2) is relevant to ERCOT's assessment of whether its system meets the reliability standard under this rule. This rule requires an assessment of the general reliability of ERCOT's system. It does not require a targeted evaluation of the quality and characteristics of ancillary services required to ensure reliability is certain pre-defined circumstances. The requirements of PURA §39.159(b)(2) will be met by the annual ancillary services methodology study, which is subject to approval by the commission.

TCPA recommended that the rule specify a time frame for ERCOT to deliver the system assessment, rather than specifying the time at which ERCOT will begin the assessment. TCPA stated that this would ensure a transparent and thorough process.

#### Commission Response

The commission declines to modify the rule to impose a deadline for ERCOT to file its assessment, as recommended by TCPA. Rather, the adopted rule imposes a start date on ERCOT's assessment to ensure ERCOT has sufficient time to complete its modeling and provide thoughtful market design recommendations, if necessary. The adopted rule involves a novel process and opportunity for stakeholder feedback. Furthermore, while not required by the rule, ERCOT might determine that additional analysis is required to support its recommendations. Commission staff and ERCOT communicate frequently on a wide array of topics, including developing coordinated workplans, and up-

dates on the status of ERCOT's analysis can be provided, if appropriate or necessary.

Proposed §25.508(c)(1) - ERCOT's assessment filing format

Proposed §25.508(c)(1) requires ERCOT to file a system assessment.

TEPRI recommended that the commission require the assessment to be provided in a searchable Excel spreadsheet. TPPF recommended that the commission add language to the rule guaranteeing that enough information will be published so that outside entities will be able to replicate the models used for the assessment and to evaluate the model outputs.

#### Commission Response

The probabilistic simulations ERCOT uses are extremely complex models that use an enormous amount of data - some of which is sensitive or otherwise confidential - and requires the use of SERVM modeling, which is inaccessible to the majority of market participants. Requiring ERCOT to provide sufficient information for outside entities to be able to replicate its results is infeasible. However, the commission expects ERCOT to provide sufficient information or explanation for outside parties to understand ERCOT's methodologies.

Proposed §25.508(c)(1)(A) - ERCOT's list of proposed assumptions

Proposed subsection (c)(1)(A)(i)-(v) is a list of assumptions that ERCOT must file with the commission before it conducts its assessment.

Several parties expressed a preference for adding other items to the list of assumptions that ERCOT must file. For example, Shell and Sierra Club both suggested adding "load forecast error, renewable forecast error, resource outage scenarios, resource outage scenarios by which the scenarios will be weighted in the study, and expected probability of weather pattern occurrence." Sierra Club also suggested adding expected levels of load reduction capability through the use of energy efficiency, demand response, and local distribution-level generation that has the impact of lowering load on the transmission system. TEC suggested adding load forecasts. TPPA and TEAM suggested requiring an update to VOLL, and TSPA suggested requiring an update to CONE and the reference technology. APA and ACP suggested using a dynamically modeled VOLL to better capture actual costs of loss-of-load events and to provide the commission with maximum information. TEPRI listed numerous requirements for inclusion in subsection (c)(1)(A) of the proposed rule, including gas constraints and transmission outages. TSPA recommended that the rule include a review of distributed energy resources (DERs) and microgrids as part of the assessment. APA and ACP suggested including transmission-related data in ERCOT's modeling, such as upgrades and outages.

TPPA recommended that proposed subsection (c)(1)(A)(ii) be edited to clarify that ERCOT's filing only includes expectations of the number of new resources and retirements that ERCOT is forecasting. TPPA also opposed ERCOT updating CONE on a routine basis unless there are structural changes to the generation market that would markedly change the costs of the technology because updating CONE is an extensive process. TPPA recommended removing the requirement to update CONE in proposed subsection (c)(1)(A)(iv) and updating CONE separately from the reliability standard assessment. TCPA also suggested removing reference to CONE from the list of ERCOT's proposed assumptions because an updated CONE value and

reference technology choices are relevant only after ERCOT finds that a modeled system fails to meet the reliability standard.

ERCOT suggested a modification to proposed subsection (c)(1)(A)(iv) to add "a recommendation regarding whether more than one reference technology should be incorporated in the assessment."

#### Commission Response

The commission agrees with commenters that the proposed rule does not list every relevant assumption that ERCOT will likely need to include in its system assessments. The purpose of requiring certain assumptions is transparency and certainty for stakeholders, ERCOT, and the commission. The commission disagrees, however, that transparency and certainty can be achieved only by adding numerous required assumptions to the commission rule. Instead, authorizing a comment period for stakeholder input on assumptions submitted by ERCOT should address these concerns. This way, stakeholders can provide input on the assumptions ERCOT has filed with the commission and identify any other assumptions that ERCOT should include before it performs its assessment. For these reasons, the commission declines to modify the rule to add any additional required assumptions but modifies the rule to allow for a comment period with the commission after ERCOT files its assumptions.

The commission declines to modify the rule to require a dynamically modeled VOLL, as suggested by APA and ACP, because the commission has already initiated a survey to establish an updated VOLL for the ERCOT region.

The commission declines to modify the rule to specify the methodology that ERCOT will use to identify resource additions and retirements, as suggested by TPPA. ERCOT will provide its information on the resource additions and retirements as part of its assumptions, and the commission will have an opportunity to modify these values if necessary.

The commission modifies the rule to remove the requirement that ERCOT update the CONE as part of its assessment because CONE updates will occur through a separate commission process. The commission agrees with ERCOT's suggested modification and modifies the rule accordingly.

APA and ACP, TEPRI, and TPPF suggested that the commission require ERCOT to appropriately weight high-impact, low-probability events, such as Winter Storm Uri, in its modeling. TIEC and TPPF alternatively recommended that the commission require ERCOT to eliminate these events entirely from its modeling. HEN expressed support for including these events.

#### Commission Response

The commission declines to modify the rule as suggested by commenters because it is unnecessary. The adopted rule allows for public comment on ERCOT's modeling assumptions, including the historic weather years ERCOT plans to use in the assessment. The commission will weigh feedback on ERCOT's modeling assumptions when they are filed.

Proposed §25.508(c)(1)(A) and (c)(2) - Allowance for comments on ERCOT's proposed assumptions and system assessment

Proposed subsection (c)(1)(A) requires ERCOT to file its proposed assumptions with the commission. Proposed subsection (c)(2) requires ERCOT to file its completed assessment with the commission.

Several commenters argued that a comment period after ERCOT submits its system assessment should be explicitly included in the rule to ensure that there is ample opportunity for stakeholder input. Some additionally requested that the commission establish an earlier comment period--after ERCOT submits its modeling assumptions. For example, Potomac suggested "an opportunity for comments on ERCOT's proposed modeling assumptions by market participants and the IMM since these assumptions can substantially alter the results of the assessment." Shell commented that, because ERCOT's assessment is heavily dependent on underlying assumptions, there should be an abundance of transparency and opportunities for stakeholder input on the assumptions and parameters in the assessment.

TNMP, TPPA, and Potomac suggested that commission approval of ERCOT's modeling assumptions be added to the rule because it would strengthen the opportunity for stakeholder feedback. TPPA recommended further that the commission require ERCOT to approve modeling assumptions through the ERCOT stakeholder process.

#### Commission Response

The commission agrees that stakeholder input after ERCOT files both its proposed modeling assumptions and system assessment would be valuable. In particular, the commission agrees that allowing comments on ERCOT's proposed assumptions is important because the assumptions will form the basis of ERCOT's assessment. Accordingly, the commission modifies the rule to add two comment periods: one after ERCOT files its proposed modeling assumptions and one after ERCOT files its system assessment. The commission further modifies the rule to provide commission staff with discretion over the timing and requirements of these comments. Because the commission modifies the rule to provide a comment period at the commission, the commission declines to modify the rule to require ERCOT to approve modeling assumptions through the ERCOT stakeholder process, as recommended by TPPA.

With regard to commission approval of the modeling assumptions, proposed modeling assumptions are an interim step in the system assessment and do not necessarily require a commission order or approval in every instance. However, the adopted rule does provide for commission review of ERCOT's modeling assumptions, if necessary. Further, ERCOT is required to consult with commission staff before filing its final recommended assumptions, and the commission may approve or direct revisions to the assumptions at its discretion. In addition, the commission modifies the rule to allow commission staff to provide its own recommendation on ERCOT's final modeling assumptions for the commission's review.

Proposed §25.508(c)(1)(B)(iii) - Market equilibrium reserve margin (MERM)

Proposed §25.508(c)(1)(B)(iii) requires ERCOT to report on the system configuration three years from the date of the current year's system analysis that would be required to achieve the MERM.

TEC recommended removing the requirement to calculate the MERM because it is inappropriate to include, and TCPA noted that the MERM takes a long time to calculate.

#### Commission Response

The commission modifies the proposed rule to remove the requirement for ERCOT to report on a system configuration at the

MERM because the current year assessment and three-year forward-looking assessment provide a sufficient snapshot of the resource adequacy outlook.

Proposed §25.508(c)(1)(C) and (D) - Adding system cost to recommendations

Proposed subsection (c)(1)(C) requires ERCOT to include certain results in its system assessment filing. Proposed subsection (c)(1)(D) requires ERCOT to include recommendations for market design changes in its filing with the commission if any modeled systems fall below the reliability standard.

Many commenters suggested that if the system is not meeting the reliability standard, bringing the system up to the level of the reliability standard will incur consumer costs, and these costs should be made publicly available as part of ERCOT's required recommendations in proposed subsection (c)(1)(C) or (D). OPUC, Cities, Sierra Club, CTEI, TEPRI, TXOGA, TEAM, TIEC, and Shell cited the need to balance reliability benefits with consumer costs. In contrast, TSPA, Octopus, and TEC simply recommended adding system cost as a required reporting component in proposed subsection (c)(1)(C) or (D). TPPF recommended that the rule require ERCOT to submit a cost-benefit analysis of any generation additions or transmission changes along with recommended market design changes.

#### Commission Response

The commission agrees with commenters that reliability benefits must be balanced with costs to achieve the desired reliability. The commission therefore modifies the rule to require ERCOT to include cost estimates along with its recommended market design changes and to require the IMM to conduct an independent review of both recommendations and costs. The cost estimates and independent review, along with a stakeholder comment period, will allow the commission to consider costs before determining whether any market design changes may be necessary.

Cities commented that ERCOT's analysis, on which commission staff relied to create the reliability standard, used an outdated CONE that underestimates system costs and is subject to uncertainties and change given that the Brattle Group study on CONE is ongoing. In addition, Cities recommended modifying the proposed rule to require ERCOT to include consumer costs related to the performance credit mechanism (PCM). Cities supported its suggestion by stating that "the reliability standard will set the PCM's target, driving the cost of the performance credits. (B)ecause performance credit costs are a direct outcome of the reliability standard, ERCOT should include performance credit costs in the system cost analysis."

#### Commission Response

The commission disagrees with Cities' suggestion to include the cost of performance credits as a required submission by ERCOT. The PCM is not the only potential solution available to the commission to bring the ERCOT system into compliance with the reliability standard; therefore, requiring costs for this single solution would be inappropriate. In addition, this rulemaking is to establish the reliability standard, not to prescribe consequences if the modeled system does not meet the standard.

TEPRI recommended using EUE and the VOLL to gauge consumer willingness to pay for increased reliability, stating further that the commission should support policies that are cost effective. TIEC stated that the commission should "disregard the costs ERCOT included in its modeling because they are not representative of the consumers' actual costs." In support of this

notion, TIEC stated that using CONE as a cost basis ignores that the market cannot pay only new resources but must instead pay all existing resources as well. To address this issue, TIEC recommended modeling NEUE with an updated VOLL.

Similarly, Shell contended that what consumers would pay for increased reliability is closer to CONE times the total dispatchable generation MW. Shell stated further that "investment for improving reliability is cost beneficial to consumers only if cost of generation investment is lower than cost savings to consumers from avoiding load shed or out of market actions due to the added generation."

#### Commission Response

For reasons discussed above, the commission declines to replace the three reliability standard metrics in the rule with one based on NEUE, as TIEC proposes. However, the adopted rule retains the proposed rule's requirement for ERCOT to include the EUE and NEUE in its assessment filing in order to gauge consumer costs of the modeled reliability outcomes, as suggested by TEPRI and TIEC. Additionally, the commission modifies the rule elsewhere to include a comment period after ERCOT files its assessment, so stakeholders will have an opportunity to comment on ERCOT's cost estimation methodology.

Sierra Club and TEPRI suggested that the commission update a study on an Economically Optimal Reserve Margin (EORM) because it is outdated. Sierra Club stated EORM could provide an important data point in assessing the reasonableness of the reliability standard.

#### Commission Response

The commission declines to modify the rule to require calculation of the EORM because ERCOT's assessment will report data more relevant to cost implications of the modeled systems. The EORM is an assessment of the level of reserves that minimizes societal costs. Assessing a system configuration at the market equilibrium reserve margin will provide insights into the willingness of hypothetical investors to take certain actions that may improve resource adequacy under the existing market design than would data related to the EORM.

Proposed §25.508(c)(2) - Consequences of a failure of a modeled system to meet the reliability standard

Subsection (c)(2) of the proposed rule states that the commission will review ERCOT's assessment of the ERCOT system and determine whether any market design changes are necessary.

Opinions from commenters varied on whether subsection (c)(2) should require action by the commission to change market design in response to a failure of the system to meet the reliability standard. CPS, LCRA, NRG, TCPA, TEC, and TPPA opined that the reliability standard is mandatory and action to come into compliance is therefore required. Cities, Octopus, OPUC, and TAEBAs asked the commission to clarify in the rule whether the standard is mandatory. CTEI, Potomac, TEAM, and TEBA supported the rule as proposed. CPS expressed support for the reliability standard as a standard with automatically triggered consequences that account for VOLL and CONE. In support of its opinion, CPS stated that without performance incentive mechanisms tied to the reliability standard, reliance for grid reliability will disproportionately fall to public entities, such as CPS, and that the reliability standard would therefore be incomplete as a standard.

Of those that recommended that the reliability standard be mandatory and that the rule include consequences for failure to meet the standard, both LCRA and NRG referred to legislative direction in PURA §39.159 as support for their position. LCRA stated that the statute places a clear duty on the commission to ensure that ERCOT establish requirements to meet the reliability needs of the power region, and that it is the commission's responsibility to effectuate this legislative mandate, ensuring that action will be taken if the reliability standard is not met. NRG stated that, for this policy to be effective, "failure to meet the reliability standard should trigger a pre-defined process to evaluate and then adopt any necessary changes to the ERCOT market structure to . . . meet the standard." NRG stated that this principle is embedded in PURA §39.159 and is consistent with how every other type of reliability measure is met in the ERCOT region, such as ERCOT's forward assessments of the transmission system and ancillary services and the reliability unit commitment process.

TCPA also stated that a pre-defined process in response to a failure of the system to meet the reliability standard would be appropriate and that a firm timeline associated with this process should be included in the rule.

TPPA commented that the long-term trajectory of the ERCOT market is uncertain because the commission's previously adopted blueprint documents are out of date, so there is uncertainty among stakeholders as to how the reliability standard will be applied. TPPA accordingly requested an updated version of the blueprint documents be published as part of the reliability standard rulemaking. In addition, TPPA stated that ERCOT should not provide recommended changes as part of its reliability assessment because the commission is the appropriate body to consider legislatively sanctioned market design changes and broader policy decisions, not ERCOT. TPPA therefore recommended that the commission seek stakeholders' input rather than accept recommended changes from ERCOT.

Of those expressing support for the proposed rule's treatment of the reliability standard as a measurement tool, rather than a mandatory trigger, TEBA, TIEC, and CTEI appreciated that such treatment will not require implementation of any particular market design, including the PCM or some other form of a capacity market. TIEC stated that it would oppose any language that would make market design changes mandatory to achieve certain generator revenues, remove the commission's discretion to decide whether market changes are needed, or result in any kind of CONE-based revenue stream for all generators that are available at a particular time. Potomac noted that treating the reliability standard as informational will greatly reduce any associated costs. TEAM stated that the reliability standard should not establish a reserve margin mandate because this would implicitly create a capacity market and shift risk to consumers.

LCRA, Shell, and TCPA suggested that the commission add language to the proposed rule specifying that the commission will adopt any market design changes through a rulemaking process. In support of its position, LCRA cited House Bill 1500 (88th R.S.), the commission's ERCOT directives interim process memo filed in Project No. 52301, and PURA §39.1514. LCRA stated that the bill, process memo, and statute demonstrate that the commission can direct ERCOT to take an official action through a contested case, rulemaking, or memorandum or written order adopted by a majority vote. LCRA and TCPA further suggested that the proposed rule should include an explicit timeframe in which the commission will open this rulemaking after ERCOT

files an assessment indicating the reliability standard has not been met.

#### Commission Response

The commission agrees with commenters that expressed support for the reliability standard as a measurement tool. The adopted rule establishes a process by which the ERCOT system will be regularly assessed for reliability, provides opportunities for input by stakeholders, the IMM, and commission staff, and allows the commission to determine whether market changes are required to address any identified reliability deficiencies and what those changes should be. The commission is presently considering many different mechanisms to ensure reliability and resource adequacy in the ERCOT region, and the selection of which solution is most appropriate given a particular set of circumstances - both now and in the future - should be deliberative and fully informed at the time that selection is made. Accordingly, the commission declines to modify the rule in response to comments requiring a particular outcome or action within a predetermined timeframe if ERCOT's projections do not meet the reliability standard.

With regard to PURA §39.159, the commission disagrees with stakeholder suggestions that the commission is required to adopt a reliability standard that mandates changes to market design should the standard not be met. Instead, the reliability standard included in the adopted rule defines the reliability needs for the ERCOT region and provides the basis for the commission and ERCOT to create the requirements, through other rules and the protocols, to meet those needs. It was not designed to accomplish any of the more targeted objectives of PURA §39.159(b). Those objectives are addressed through other means, such as the annual ancillary service methodology study.

The commission declines to modify the rule to require the commission to address identified reliability deficiencies through a rulemaking process, as recommended by LCRA, Shell, and TCPA, because it is unnecessary. Any solution that is identified by the commission will be implemented using the appropriate process for that particular solution, be it a rulemaking, directive to ERCOT, or some other action. In some instances, the appropriate action may be more information gathering in the form of workshops or studies or even requests for legislative action.

The commission declines to provide an updated blueprint as recommended by TPPA, because this request is beyond the scope of this rulemaking project.

With regard to ERCOT's role in providing recommended market design changes, the commission agrees with TPPA that the commission is the appropriate body to consider and ultimately determine whether market design changes are necessary. However, ERCOT has the technical expertise to evaluate both market design changes and the costs of those changes, making it an invaluable contributor to the commission's policy deliberations. The commission will consider ERCOT's recommendations, the analysis conducted by the IMM, and stakeholder comments to arrive at its own decision whether any market design changes are necessary.

The adopted rule includes other clarifying changes to describe the contents of ERCOT's filed assessment and recommended market design changes.

A majority of commenters suggested that the proposed rule should be modified to account for the specific tools the commis-

sion should employ in response to a modeled system's failure to meet the reliability standard. Most suggested that the commission limit itself to established, competitive market mechanisms or the energy-only market as a corrective for such a failure. Examples of out-of-market mechanisms, which commenters agreed should not be allowed, were capacity procurements, noted by Sierra Club, Shell, and TCPA and the PCM, noted by TEBA and TIEC. Sierra Club stated that the standard should not be interpreted as a specific capacity requirement on load-serving entities. TCPA opposed any state-sponsored or utility-owned capacity additions. TAEBA, Octopus, and NRG requested that the commission clarify its intentions for responding to a failure of a modeled ERCOT system to meet the reliability standard.

ARM "caution(ed) against too frequent development of new market products to address reliability standard shortfalls and prefer(red) the use of existing market design features (including those currently in development) to address any such shortfalls." In addition, ARM proposed that if the commission directs ERCOT to make changes to ancillary services to meet a shortfall in the reliability standard, the commission make an express designation in its orders whether such changes impose costs beyond a REP's control for a customer's existing contract. ARM also recommended a modification to the rule to ensure that if market changes will be made in the future to meet the reliability standard, changes will allow for sufficient lead time, such as one year, following the date the commission determines which changes are appropriate.

A few commented that the commission should specifically add non-generation alternative solutions to the rule that the commission could employ in response to a failure of a modeled ERCOT system to meet the reliability standard. For example, TSPA recommended including DERs and microgrids. TSPA supported its recommendation by stating that DERs and microgrids directly offset the need to rotate outages during an EEA event. TEPRI listed weatherization, segmentation, microgrids, and support of distribution resilience. Octopus specifically recommended that the commission direct ERCOT and stakeholders to identify and implement solutions to increase reliability at a lower cost, such as through greater integration of DERs, and report annually to the commission on these market activities.

Shell and TIEC urged the commission to require ERCOT to identify any non-generation, cost-effective alternatives that would reduce the frequency, duration, or magnitude of load shed events.

CPS suggested that the commission include existing and future programs in the rule, such as the current procurement of ancillary services quantities, future components of a co-optimized real-time market, including the ancillary service demand curves, or the performance credit mechanism. CPS stated that if these programs are available as automatic solutions in the rule, the commission could more quickly adjust the magnitude of the mechanism and deliberate on the need for larger market design changes as described in the proposed rule.

Cities suggested that the commission not adjust the policy levers of the market too frequently to bring the system into compliance with the reliability standard because frequent adjustments create regulatory uncertainty and undermine investment signals.

#### Commission Response

The commission declines to modify the proposed rule to add any market design, system change, or other action that may be useful to address a scenario in which the modeled system fails to meet the reliability standard. Such actions will be considered at

the time ERCOT's assessment reveals a failure of the modeled system to meet the standard and predetermining those actions in the rule would only serve to limit possible policy or market design responses to the assessment.

Finally, the commission disagrees with ARM's request related to a retail electric provider's ability to pass through costs associated with market design changes. Such a designation, if appropriate, will come at the time the commission approves a change to the market design.

All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting this section, the commission makes other minor modifications for the purpose of clarifying its intent.

This new section is adopted under the Public Utility Regulatory Act (PURA), Texas Utilities Code Annotated §14.002, which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, §39.159(b)(1), which requires that the commission adopt a reliability standard for the ERCOT power region.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002 and 39.159(b)(1).

§25.508. *Reliability Standard for the Electric Reliability Council of Texas (ERCOT) Region.*

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

(1) Exceedance tolerance--the maximum acceptable percentage of simulations in which the modeled ERCOT system experiences a loss of load event that exceeds the threshold for a given criterion of the reliability standard.

(2) Loss of load event--an occurrence when the system-wide firm load plus minimum operating reserves required to avoid an energy emergency alert level three event is greater than the available resource capacity to serve that load, resulting in involuntary load shed.

(3) Transmission operator--has the same meaning as defined in the ERCOT protocols.

(4) Weatherization effectiveness--the assumed percentage reduction in the amount of weather-related unplanned outages for generation resources and energy storage resources included in the model, due to compliance with the weatherization standards in §25.55 of this title (relating to Weather Emergency Preparedness).

(b) Reliability standard for the ERCOT region. The bulk power system for the ERCOT region meets the reliability standard if an ERCOT probability-based model simulation demonstrates that the system meets each of the criteria provided in this subsection.

(1) Frequency. The expected loss of load events for the ERCOT region must be equal to or less than one event per ten years on average, i.e., 0.1 loss of load expectation (LOLE).

(2) Duration. The maximum expected length of a loss of load event for the ERCOT region, measured in hours, must be less than 12 hours, with a 1.00 percent exceedance tolerance.

(3) Magnitude. The expected highest level of load shed during a loss of load event for the ERCOT region, measured as the average lost load for a given hour, must be less than the maximum number of megawatts of load shed that can be safely rotated during a loss of load event, as determined by ERCOT, in consultation with

commission staff and the transmission operators, with a 1.00 percent exceedance tolerance. Beginning in 2024, on or before December 1 of each year, ERCOT must file the maximum number of megawatts of load shed that can be safely rotated during a loss of load event and a summary of the methodology used to calculate this value.

(c) Reliability assessment. Beginning January 1, 2026, ERCOT must initiate an assessment to determine whether the bulk power system for the ERCOT region is meeting the reliability standard and is likely to continue to meet the reliability standard for the three years following the date of assessment. The assessment must be conducted at least once every three years.

(1) Modeling assumptions.

(A) Before conducting the assessment, ERCOT must file a comprehensive list of proposed modeling assumptions to be used in the reliability assessment. The proposed assumptions must include:

(i) the number of historic weather years that will be included in the modeling;

(ii) the amount of new resources and retirements, in megawatts, listed by resource type;

(iii) the weatherization effectiveness; and

(iv) any other assumptions that would impact the modeling results, along with an explanation of the possible impact of the additional assumptions.

(B) Commission staff will provide interested persons with at least 30 days from the date ERCOT files its proposed modeling assumptions to file comments recommending modifications to ERCOT's proposed modeling assumptions. Commission staff may include filing requirements or additional questions for comment.

(C) After reviewing filed comments, ERCOT, in consultation with commission staff, must file its final recommended modeling assumptions for commission review. Commission staff may provide a separate recommendation on ERCOT's final recommended modeling assumptions for the commission's consideration.

(2) Assessment components.

(A) ERCOT's assessment must include review and analysis of the resource fleet, loads, and other system characteristics for the ERCOT region for the following points in time:

(i) the current year's system configuration; and

(ii) the expected system configuration three years from the date of the current year's system analysis.

(B) The assessment results must include, at a minimum, the following metrics for each point in time:

(i) the LOLE;

(ii) the probability of a loss of load event exceeding the duration threshold established in subsection (b)(2) of this section;

(iii) the probability of a loss of load event exceeding the magnitude threshold established in subsection (b)(3) of this section;

(iv) the expected unserved energy; and

(v) the normalized expected unserved energy.

(3) Commission review and determination.

(A) ERCOT must file its assessment with the commission, including any information required under subparagraph (C)(i) of this paragraph.



(B) Commission staff will provide interested persons with at least 30 days from the date ERCOT files its assessment to file comments on ERCOT's assessment. Commission staff may include filing requirements or additional questions for comment.

(C) If the assessment shows that any reviewed system fails to meet the reliability standard described in subsection (b) of this section:

(i) ERCOT must provide the commission with a summary explanation of any identified deficiencies and its supporting analysis. ERCOT must also provide the commission with a menu of proposed recommended market design changes, including a primary recommendation, that are intended to address the identified deficiencies. ERCOT must provide the commission with the expected system costs associated with each of its proposed recommended changes;

(ii) the independent market monitor must conduct an independent review of ERCOT's proposed recommended market design changes, including associated expected system costs for each proposed recommended change, and file its review no later than the deadline established in subparagraph (B) of this paragraph; and

(iii) commission staff must provide a recommendation to the commission, considering expected system costs and reliability benefits, on whether any market design changes or other changes may be necessary to address the deficiency.

(D) The commission will review ERCOT's assessment and any recommendations, the independent market monitor's review, commission staff's recommendations, and stakeholder comments to determine whether any market design changes may be necessary.

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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Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
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## 16 TAC §25.510

The Public Utility Commission of Texas (commission) adopts an amendment to §25.510, relating to the Texas Energy Fund In-ERCOT Generation Loan Program with no changes to the proposed text as published in the July 26, 2024 issue of the *Texas Register* (49 TexReg 5456). The amendment to the rule is to correct an inadvertent omission by the *Texas Register* in the definitions for the formulas in subsection (b)(4) and (5). No other amendments have been made to the rule. This amendment is adopted under Project Number 55826. The adopted rule will not be republished.

The commission received no comments on the proposed amendment.

This amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (PURA), which provides the commission with the authority to make and enforce

rules reasonably required in the exercise of its powers and jurisdiction; and specifically, §34.0104, which authorizes the commission to use money in the Texas Energy Fund to provide loans to finance upgrades to or new construction of electric generating facilities in the ERCOT region; §34.0106(c), which requires the commission to adopt performance standards that electric generating facilities must meet to obtain a loan; and §34.0110, which authorizes the commission to establish procedures for the application and award of a grant or loan under PURA chapter 34, subchapter A.

Cross Reference to Statute: Public Utility Regulatory Act §§14.002, 34.0104; 34.0106(c), and 34.0110.

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

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## TITLE 19. EDUCATION

### PART 2. TEXAS EDUCATION AGENCY

#### CHAPTER 100. CHARTERS

##### SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING OPEN-ENROLLMENT CHARTER SCHOOLS

*(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 19 TAC §100.1013 is not included in the print version of the Texas Register. The figure is available in the on-line version of the September 27, 2024, issue of the Texas Register.)*

The Texas Education Agency (TEA) adopts the repeal of §§100.1001-100.1007, 100.1010, 100.1013, 100.1015, 100.1017, 100.1019, 100.1021-100.1023, 100.1025-100.1027, 100.1029, 100.1031-100.1033, 100.1035, 100.1041, 100.1043, 100.1045, 100.1047, 100.1049-100.1052, 100.1063, 100.1065, 100.1067, 100.1069, 100.1071, 100.1073, 100.1101-100.1108, 100.1111-100.1116, 100.1131-100.1135, 100.1151, 100.1153, 100.1155, 100.1157, 100.1159, and 100.1217; new §§100.1001, 100.1003, 100.1011, 100.1013, 100.1015, 100.1017, 100.1021, 100.1023, 100.1025, 100.1031, 100.1035, 100.1037, 100.1039, 100.1041, 100.1043, 100.1045, 100.1047, 100.1049, 100.1051, 100.1053, 100.1055, 100.1061, 100.1063, 100.1065, 100.1067, 100.1069, 100.1071, 100.1073, 100.1075, 100.1077, 100.1079, 100.1091, 100.1093, 100.1095, 100.1097, 100.1099, 100.1101, 100.1111, 100.1113, 100.1115, 100.1117, 100.1119, 100.1121, 100.1123, 100.1125, 100.1127, 100.1131, 100.1133, 100.1135, 100.1137, 100.1139, 100.1141, 100.1143, 100.1145, 100.1147, 100.1149, 100.1151, 100.1153, 100.1155, 100.1157, 100.1159,

100.1161, and 100.1163; and amendments to §§100.1203, 100.1205, 100.1207, 100.1209, and 100.1211-100.1213, concerning open-enrollment charter schools. New §§100.1001, 100.1011, 100.1017, 100.1021, 100.1023, 100.1025, 100.1031, 100.1035, 100.1039, 100.1061, 100.1069, 100.1113, 100.1115, 100.1121, and 100.1127 and amended §§100.1207, 100.1209, 100.1212, and 100.1213 are adopted with changes to the proposed text as published in the March 15, 2024 issue of the *Texas Register* (49 TexReg 1569) and will be republished. The repeal of §§100.1001-100.1007, 100.1010, 100.1013, 100.1015, 100.1017, 100.1019, 100.1021-100.1023, 100.1025-100.1027, 100.1029, 100.1031-100.1033, 100.1035, 100.1041, 100.1043, 100.1045, 100.1047, 100.1049, 100.1051-100.1052, 100.1063, 100.1065, 100.1067, 100.1069, 100.1071, 100.1073, 100.1101-100.1108, 100.1111-100.1116, 100.1131-100.1135, 100.1151, 100.1153, 100.1155, 100.1157, 100.1159, and 100.1217; new §§100.1003, 100.1013, 100.1015, 100.1037, 100.1041, 100.1043, 100.1045, 100.1047, 100.1049, 100.1051, 100.1053, 100.1055, 100.1063, 100.1065, 100.1067, 100.1071, 100.1073, 100.1075, 100.1077, 100.1079, 100.1091, 100.1093, 100.1095, 100.1097, 100.1099, 100.1101, 100.1111, 100.1117, 100.1119, 100.1123, 100.1125, 100.1131, 100.1133, 100.1135, 100.1137, 100.1139, 100.1141, 100.1143, 100.1145, 100.1147, 100.1149, 100.1151, 100.1153, 100.1155, 100.1157, 100.1159, 100.1161, and 100.1163; and amended §§100.1203, 100.1205, and 100.1211 are adopted without changes to the proposed text as published in the March 15, 2024 issue of the *Texas Register* (49 TexReg 1569) and will not be republished. The adopted revisions reorganize the subchapter as well as reflect changes to the Texas Education Code (TEC) resulting from House Bill (HB) 1707, 88th Texas Legislature, Regular Session, 2023; Senate Bill (SB) 2032, 88th Texas Legislature, Regular Session, 2023; SB 879, 87th Texas Legislature, Regular Session, 2021; HB 189, 87th Texas Legislature, Regular Session, 2021; SB 1615, 87th Texas Legislature, Regular Session, 2021; and SB 2293, 86th Texas Legislature, 2019.

**REASONED JUSTIFICATION:** Chapter 100, Subchapter AA, outlines the commissioner's rules concerning open-enrollment charter schools. The adopted revisions reorganize the chapter, amend existing rules, and add new rules. Following is a summary of the significant changes adopted regarding Chapter 100, Subchapter AA.

Section 100.1001, Definitions, includes new definitions for various types of charter schools referenced throughout Chapter 100, as defined in TEC, Chapter 12. They provide clarity throughout Chapter 100 as to which types of charter schools are being addressed in each section. The section includes a definition for "related party transactions" as required by TEC, §12.1166. The definition of "former charter holder" is updated to include provisions for high quality operators. A provision for allowing scaled scores to be used in lieu of academic accountability ratings when such ratings are not issued for any reason is also included.

Based on public comment, the following revisions to §100.1001 were made at adoption. Section 100.1001(5)(B) was modified to revise the definition of a Subchapter E charter school to align with current statute. A technical edit was made to the definition of a former charter holder to align with the new section number. A revision to the definition of a related party transaction was made to include a former officer of a charter school to align with statute. The definition of shared services cooperative or shared services agreement was revised to indicate that other Texas governmental entities means school districts or education service centers.

Section 100.1002, Application and Selection Procedures and Criteria, is adopted as new §100.1011, Application Requirements and Selection Process, and contains changes, including grammatical edits, organization of information into smaller paragraphs and subparagraphs, and a reformatted reference structure that assumes all paragraphs and subparagraphs are applicable to all charter applications unless expressly provided elsewhere. The reformatted reference structure provides a clearer applicability of rule to each of TEA's authorization pathways.

Based on public comment and due to a drafting error, §100.1011(i) and (j) have been added at adoption to re-introduce no-contact provisions, which were accidentally omitted from the revised language as proposed. These modifications also resulted in the re-lettering of the remaining subsections.

Section 100.1003, Application to Dropout Recovery Charters, is adopted as new §100.1015 and modifies eligibility criteria to align with updated statute.

Section 100.1004, Application to Public Senior College or University Charters and Public Junior College Charters, and §100.1015, Applicants for an Open-Enrollment Charter, Public Senior College or University Charter, or Public Junior College Charter, are combined and adopted as new §100.1017, Applicant Eligibility and Form Contents. The new section contains the following changes: a new section title to more accurately reflect the section's contents, grammatical edits, organization of information into smaller paragraphs and subparagraphs, and a reformatted reference structure that assumes all paragraphs and subparagraphs are applicable to all charter applications unless expressly provided elsewhere. The reformatted reference structure provides a clearer applicability of rule to each of TEA's authorization pathways. Additionally, new applicability of the TEC, Subchapter G application pathway and educational, financial, governance, and operational standards by which applicants are assessed is updated to better align with statute and current organizational priorities. The new section also includes a change to reflect TEC, §12.265(c), regarding the enrollment cap for adult high school charter programs.

Based on public comment, §100.1017(b) has been modified at adoption to include that existing entities must attest that any failure to maintain good standing with state agencies in Texas or in their home state will be considered a material violation of the charter contract and may be grounds for revocation.

Section 100.1005, Notification of Charter Application, is adopted as new §100.1013 and contains the following changes: updates to who is responsible for notification of charter and a clarification of who is required to be notified. These changes were made to decrease the administrative burden on applicants and provide a streamlined method of communication with potentially impacted stakeholders.

Section 100.1006, Optional Open-Enrollment Charter Provisions for Contracting and Purchasing, is adopted as new §100.1079 and includes non-substantive technical edits; no content changes were made.

Section 100.1007, Annual Report on Open-Enrollment Charter Governance, is adopted as new §100.1111 and contains the following changes: modifications to the filing of governance information on an annual basis from no later than December 1 to a timeline approved by the commissioner; removal of the requirement for the charter holder to file amendments, articles of incorporation, and bylaws because TEA already possesses these

documents; and removal of the requirement for a screenshot of the names of governing body members and a screenshot of the superintendent's salary, since the posting of this information is already required in statute. This new section also removes outdated language.

Section 100.1010, Performance Frameworks, is adopted as new §100.1031, Performance Frameworks for Subchapters D and E Charter Schools, and contains the following changes: clarification that Subchapter D and E charters will be evaluated against criteria set forth in the Charter School Performance Frameworks (CSPF) Manual and clarification that the manual will be updated annually to reflect the requirements and data sources for each indicator. Additional changes include clarification that tier ratings will be assigned based on academic, financial, operational, and governance criteria set forth in the CSPF Manual to allow further delineation as to the indicators that measure operational standards and those that measure governance standards. These changes are based on feedback from stakeholders to make the CSPF a more useful instrument that communicates charter performance in a clear and concise manner.

Based on public comment, §100.1031(a) was modified at adoption to adopt the CSPF Manual in rule as Figure: 19 TAC §100.1031(a).

Section 100.1013, Filing of Documents, is adopted as new §100.1003 and includes a change to define and outline the requirements for electronic transmission of documents.

Section 100.1017, Application of Law and Rules to Public Senior College or University Charters and Public Junior College Charters, is adopted as new §100.1021, Applicability of Law and Rules to Public Senior College or University Charters and Public Junior College Charters, and more accurately reflects statutory language.

Based on changes made to §100.1011 as the result of public comment, conforming changes were made to §100.1021 at adoption to detail which subsections of §100.1011 apply to these applications.

Section 100.1019, Application to Adult High School Charters, is adopted as new §100.1023, Applicability of Law and Rules to Adult High School Charters, and more accurately reflects statutory language. This new section includes provisions to govern applicability of TEC, Chapter 12, Subchapter D, to adult high school charter schools. These changes are made to account for programmatic requirements that were not otherwise explicitly addressed in existing law. The requirements are aligned to other provisions that govern charters and public schools as appropriate.

Based on changes made to §100.1011 as the result of public comment, conforming changes were made to §100.1023 at adoption to detail which subsections of §100.1011 apply to these applications.

Section 100.1021, Revocation and Modification of Governance of an Open-Enrollment Charter, is adopted as new §100.1049 and includes a change to remove outdated references to academic performance ratings and financial accountability performance ratings for specific years.

Section 100.1022, Standards to Revoke and Modify the Governance of an Open-Enrollment Charter, is adopted as new §100.1051 and includes the removal of language defining "imminently insolvent" as this is included in another rule.

Section 100.1023, Intervention Based on Charter Violations, is adopted as new §100.1045 with no substantive changes to rule text.

Section 100.1025, Intervention Based on Health, Safety, or Welfare of Students, is adopted as new §100.1047 with no changes in rule text.

New §100.1025, Authorization for High-Performing Entities, is added to implement TEC, §12.1011, which requires the commissioner to adopt rules regarding charter authorization for high-performing entities.

Based on public comment, §100.1025(b) was modified at adoption to indicate that only one of the criteria must be met to qualify as a high-performing entity, and §100.1025(g) was added to provide clarity regarding the commissioner's adoption of a separate application for high-performing entities.

Section 100.1026, Management of Charter Campus(es) Following Revocation, Surrender, or Expiration, is adopted as new §100.1053 with no substantive changes in rule text.

Section 100.1027, Accountability Ratings and Sanctions, is adopted as new §100.1041 and includes clarification that the commissioner may take any action relating to the charter holder or its campus as authorized by TEC, Chapter 39A. This change removes outdated language.

Section 100.1029, Agency Audits, Monitoring, and Investigations, is adopted as new §100.1043 and includes non-substantive technical edits; no content changes were made.

Section 100.1031, Renewal of an Open-Enrollment Charter, is adopted as new §100.1037, which includes a clarification that written notice from the commissioner regarding renewal decisions will be provided electronically and removes references to academic performance ratings and financial accountability performance ratings for specific school years. These changes remove outdated language.

Section 100.1032, Standards for Discretionary Renewal, is adopted as new §100.1039 and includes a change to remove failure to operate a campus with at least 50% of students in tested grades as a standard for non-renewal of a charter. This change reflects the current practice of some campuses serving only early childhood grades that are not considered tested grades.

A technical edit was made to §100.1039(2)(P) at adoption to change the word "mismanagement" to "management."

Section 100.1033, Charter Amendment, is adopted as new §100.1035 and includes reorganization of the text to eliminate duplicative and contradictory language. The following changes were also made. The timeline for amendment submission is updated from 18 to 36 months to reflect changes to statutory language. Language clarifies that expansion requests can be expedited expansion requests if charters meet the requirements in TEC, §12.101(b-4), or discretionary expansion requests if charters do not meet the expedited requirements. Geographic boundary is eliminated as a type of expansion amendment request. Language classifies types of non-expansion requests as material non-expansion amendments with the charter holder receiving a commissioner decision with 60 calendar days of a completed amendment request or non-material non-expansion requests that allow the charter to proceed with the request 30 calendar days after the submission of a completed amendment request unless otherwise notified by the commissioner. These

changes are made to reflect current best practices for authorizing as well as feedback from stakeholders to improve the overall process for amending a charter.

Based on public comment, the following changes to §100.1035 were made at adoption. The timeline for requesting a high-quality campus designation has been modified so that it is submitted prior to a school opening but not necessarily at the same time as the expansion amendment. The language for a high-quality campus designation has been modified to indicate that each campus that receives a rating, rather than all of the campuses that receive a rating, must be rated A or B. New §100.1035(c)(6)(E) was added to require that a decision related to a high-quality campus designation be made within 60 calendar days of the date the charter holder submits a completed request. Shared services cooperatives and shared services agreements were added to the list of material non-expansion amendments.

Section 100.1035, Compliance Records on Nepotism, Conflicts of Interest, and Restrictions on Serving, is adopted as new §100.1163 and includes non-substantive technical edits; no content changes were made.

Section 100.1041, State Funding, is adopted as new §100.1061 and includes clarification on statutory references on allowable and unallowable fees.

Based on public comment, revisions to §100.1061 were made at adoption to correct outdated statutory references.

Section 100.1043, Status and Use of State Funds; Depository Contract, is adopted as new §100.1063 with no changes to rule text.

Section 100.1045, Investment of State Funds, is adopted as new §100.1065 and includes non-substantive technical edits; no content changes were made.

Section 100.1047, Accounting for State and Federal Funds, is adopted as new §100.1067 and includes non-substantive technical edits; no content changes were made.

Section 100.1049, Disclosure of Campaign Contributions, is adopted as new §100.1071 and includes non-substantive technical edits; no content changes were made.

Section 100.1050, Disclosure of Financial Information, is adopted as new §100.1073 with no changes to rule text.

Section 100.1051, Audit by Commissioner; Records in the Possession of a Management Company, is adopted as new §100.1075 with no changes to rule text.

Section 100.1052, Final Audit Upon Revocation, Surrender, or Closure of an Open-Enrollment Charter, is adopted as new §100.1077 with no changes to rule text.

Section 100.1063, Use of Public Property by a Charter Holder, is adopted as new §100.1091 with no changes to rule text.

Section 100.1065, Property Acquired with State Funds Received Before September 1, 2001--Special Rules, is adopted as new §100.1093 and includes non-substantive technical edits; no content changes were made.

Section 100.1067, Possession and Control of the Public Property of a Former Charter Holder, is adopted as new §100.1095 with no changes to rule text.

Section 100.1069, Rights and Duties Not Affected, is adopted as new §100.1097 and includes non-substantive technical edits; no content changes were made.

New §100.1069, Disclosure of Related Party Transactions, includes requirements from TEC, §12.1166, which requires the commissioner to adopt a rule defining "related party."

Based on public comment, a revision to §100.1069(c) was made at adoption to remove the term "other" in order to eliminate any confusion regarding which types of related party transactions must be detailed in charter school audits.

Section 100.1071, Real Property Held in Trust, is adopted as new §100.1099 and includes non-substantive technical edits; no content changes were made.

Section 100.1073, Improvements to Real Property, is adopted as new §100.1101 and includes non-substantive technical edits; no content changes were made.

Section 100.1101, Delegation of Powers and Duties, is adopted as new §100.1113 and moves the non-delegable duties of board members and superintendents from another rule. This change aligns the provisions with other information on governance powers and duties.

In response to public comment, §100.1113(e) was modified at adoption to add the phrase "upon review" to provide clarification regarding the rescinding of delegation amendments.

Section 100.1102, Training for Members of Governing Bodies of Charter Holder and School, is adopted as new §100.1115, Training Requirements for Governing Board Members and Officers, and adds the opportunity for training to be provided online. This change removes outdated language.

Based on public comment, §100.1115(d) has been modified at adoption to include training provided asynchronously as long as it incorporates interactive activities that assess learning and provide feedback.

Section 100.1103, Training for Chief Executive and Central Administrative Officers, is adopted as new §100.1117, Core Training for New Governing Board Members and Officers, and clarifies core training content for governance board members and officers under each training topic. This change updates curriculum training requirements to reflect current statute, rule, and best practice.

Section 100.1104, Training for Campus Administrative Officers, is adopted as new §100.1119, Additional Training for New Governing Board Members and Officers, and clarifies additional training content for campus administrative officers under each training topic. This change updates curriculum training requirements to reflect current statute, rule, and best practice.

Section 100.1105, Training for Business Managers, is adopted as new §100.1121, Continuing Training for Governing Board Members and Officers, and outlines continuing training content for governance board members and officers under each training topic. This change updates curriculum training requirements to reflect current statute, rule, and best practice.

At adoption, §100.1121(b)(3) was modified to correct a typographical error.

Section 100.1106, Exemption for Participation in a Shared Services Cooperative, is adopted as new §100.1123 with no changes to rule text.

Section 100.1107, Course Providers, is adopted as new §100.1125, Training Providers, and clarifies that training for governance board members and officers must be provided by an authorized training provider; specify that training providers may be required to complete a charter training program prior to initial authorization as a trainer; and make initial authorization as a training provider effective for 24 months with re-registration available for a period of up to three years. These changes help ensure that the individuals who train charter governing boards and charter officers have a deep understanding of the statutes, rules, and best practices associated with Texas charter schools.

Section 100.1108, Record of Compliance and Disclosure of Non-compliance, is adopted as new §100.1127 and includes non-substantive technical edits; no content changes were made.

At adoption, §100.1127(1) was modified to correct a typographical error.

Section 100.1111, Applicability of Nepotism Provisions; Exception for Acceptable Performance, is adopted as new §100.1131 and includes non-substantive technical edits; no content changes were made.

Section 100.1112, General Nepotism Provisions, is adopted as new §100.1133 and includes non-substantive technical edits; no content changes were made.

Section 100.1113, Relationships By Consanguinity or By Affinity, is adopted as new §100.1135 with no changes to rule text.

Section 100.1114, Nepotism Prohibitions, is adopted as new §100.1137 and includes non-substantive technical edits; no content changes were made.

Section 100.1115, Nepotism Exceptions, is adopted as new §100.1139 and includes non-substantive technical edits; no content changes were made.

Section 100.1116, Enforcement of Nepotism Prohibitions, is adopted as new §100.1141 and includes non-substantive technical edits; no content changes were made.

Section 100.1131, Conflicts of Interest and Board Member Compensation; Exception, is adopted as new §100.1143 and includes non-substantive technical edits; no content changes were made.

Section 100.1132, General Conflict of Interest Provisions, is adopted as new §100.1145 and includes non-substantive technical edits; no content changes were made.

Section 100.1133, Conflicts Requiring Affidavit and Abstention From Voting, is adopted as new §100.1147 with no changes to rule text.

Section 100.1134, Conflicts Requiring Separate Vote on Budget, is adopted as new §100.1149 with no changes to rule text.

Section 100.1135, Acting as Surety and other Conflicts; Criminal Penalties, is adopted as new §100.1151 and includes non-substantive technical edits; no content changes were made.

Section 100.1151, Criminal History; Restrictions on Serving, is adopted as new §100.1153 and includes non-substantive technical edits; no content changes were made.

Section 100.1153, Substantial Interest in Management Company; Restrictions on Serving, is adopted as new §100.1155 and includes non-substantive technical edits; no content changes were made.

Section 100.1155, Procedures for Prohibiting a Management Contract, is adopted as new §100.1157 and aligns the process for review of proposed management contracts with the charter amendment process.

Section 100.1157, Loan from Management Company Prohibited, is adopted as new §100.1159 and includes non-substantive technical edits; no content changes were made.

Section 100.1159, Public Records Maintained by Management Company; Contract Provision, is adopted as new §100.1161 with no changes to rule text.

The amendment to §100.1203, Records Management, includes non-substantive technical edits.

The amendment to §100.1205, Procurement of Professional Services, includes non-substantive technical edits.

The amendment to §100.1207, Student Admission, includes changes regarding the updated requirements of TEC, §12.1173, which requires the commissioner to adopt rules to implement charter school waiting lists for admission, including a common application form published by TEA.

Based on public comment, §100.1207(e) regarding the charter school waitlist has been updated to align with statute and include all components that are required submissions.

The amendment to §100.1209, Municipal Ordinances, incorporates changes resulting from HB 1707, 88th Texas Legislature, Regular Session, 2023, by including notification to political subdivisions as required by TEC, §12.1058.

Based on public comment, proposed §100.1209(b) was removed at adoption to align with statutory changes made by HB 1707, 88th Texas Legislature, Regular Session, 2023, and adopted new subsection (b) was modified to align with statutory language regarding who must certify that they received no financial benefit from a real estate transaction with the charter school.

The amendment to §100.1211, Students, includes an updated cross reference.

The amendment to §100.1212, Personnel, requires charter schools to consult the do not hire registry prior to hiring and at least every three years thereafter.

Based on public comment, §100.1212(c) was revised at adoption to include prekindergarten teachers in the list of teachers who must meet state and federal certification requirements.

The amendment to §100.1213, Failure to Operate, updates provisions related to charter school dormancy and moves information related to written notice of suspended operation to §100.1035.

In response to public comment, §100.1213(c) was modified at adoption to reference §100.1035 in language relating to abandonment of an open-enrollment charter.

Section 100.1217, Eligible Entity; Change in Status or Revocation, is adopted as new §100.1055 with no changes to rule text.

**SUMMARY OF COMMENTS AND AGENCY RESPONSES:** The public comment period on the proposal began March 15, 2024, and ended April 15, 2024. Following is a summary of the public comments received and agency responses.

Comment: Compass Rose Public Schools, Inspire Academies, Odyssey Academy, YES Prep Public Schools, City Education

Partners, Texas Public Charter Schools Association (TPCSA), eight teachers and staff, seven board members, and two parents expressed support for the revisions to board member and charter school officer training requirements.

Response: The agency agrees. The revisions to the training requirements aim to streamline the training section and eliminate existing confusion from the field regarding training expectations. The revisions ensure that both charter school board members and officers receive appropriate training in a timely fashion.

Comment: Great Hearts Texas, Odyssey Academy, Uplift Education, YES Prep Public Schools, City Education Partners, Fort Worth Education Partners, Texas Public Charter Schools Association, 22 teachers and staff, 8 charter school board members, 7 parents, 5 community members, and 5 charter school alumni expressed support for the revisions to §100.1035 regarding charter school expansion amendments, noting that the revisions streamline the notification process, set clear expectations, and align with statutory changes that occurred during the 88th Texas Legislature, Regular Session, 2023.

Response: The agency agrees. The revisions made to §100.1035 ensure that the commissioner's rules align with all components of TEC, Chapter 12, Subchapter D, and provide clarification for the field after years of implementation and significant feedback and engagement with stakeholders.

Comment: Richard Milburn Academy, Choose to Succeed, Fort Worth Education Partners, TPCSA, 17 teachers and staff, 10 parents, 7 community members, and 5 charter school alumni expressed support for the revision and establishment of an application process for high-performing entities.

Response: The agency agrees. To establish the high-performing entities application pathway that has been permitted by statute since September 1, 2013, but never implemented, the agency revised §100.1025 to detail the criteria necessary for high-performing entities to be considered. This revision was included to ensure that administrative rule aligned with all components of TEC, Chapter 12, Subchapter D.

Comment: Compass Rose Public Schools, Great Hearts Texas, Inspire Academies, Odyssey Academy, Rise Academy, Uplift Education, YES Prep Public Schools, Choose to Succeed, City Education Partners, Fort Worth Education Partners, TPCSA, Yes. Every Kid., nine charter school board members, nine charter school teachers and staff, two community members, and one parent expressed support for the revision to remove geographic boundaries as a limitation on charter school enrollment.

Response: The agency agrees. The revisions to Chapter 100 aim to realign charter school administrative policy with TEC, Chapter 12, Subchapters D, E, and G. While charter schools are required to indicate in their application where they are likely to draw students, there is no requirement to identify a set geographic boundary as defined by independent school district (ISD) boundaries. At times, students were unable to continue attending a charter school if a family moved inadvertently to the boundaries of a new ISD that was not in the set geographic boundaries of a student. This revision will keep this from occurring in the future.

Comment: Great Hearts Texas, Inspire Academies, Rise Academy, Vanguard Academy, TPCSA, 20 charter school teachers and staff, 2 charter school board members, 1 charter school parent, and 1 community member expressed support for the

removal of the requirement that 50% of students in a charter school must be enrolled in tested grades under TEC, Chapter 39, Subchapter B, in order to qualify for a discretionary expansion amendment or discretionary renewal.

Response: The agency agrees. In TEC, §12.101(b-4), the requirement for a charter school to have at least 50% of its student population in grades assessed under Chapter 39, Subchapter B, only applies to expedited expansion. In order to align rule with statute and encourage the best practice of the slow growth of new charter schools, this requirement has been removed for discretionary expansion amendments and discretionary renewal.

Comment: ExcelinEd, 18 charter school parents, and 6 charter school teachers and staff expressed general support for the proposed revisions to Chapter 100, noting that the revisions would allow charter schools to continue to operate and meet the needs of Texas students.

Response: The agency agrees. The revisions to Chapter 100 include several changes based on statutory changes and will allow charter schools to continue to operate to meet the needs of their students while aligning the rules with current statute.

Comment: Ten charter school parents and five charter school teachers and staff expressed general support for the concept of charter schools in Texas.

Response: These comments are outside the scope of the current rule proposal.

Comment: TPCSA questioned whether the agency would employ the definition that allows the agency to utilize scaled scores to determine academically or academically unacceptable performance provided in §100.1001(8)(D) to make decisions regarding mandatory expiration or revocation of a charter. TPCSA requested additional language be added to the rule to prevent this possibility.

Response: The agency disagrees. The language included in the definition does not require the commissioner to utilize scaled scores when ratings are not issued. The determination of how and when to use these ratings is at the discretion of the commissioner.

Comment: TPCSA requested clarification as the rule references the incorrect section regarding the prohibitions detailed in the definition of a former charter holder that was previously designated high quality and had surrendered its charter provided that there was no settlement agreement requiring closure or a required closure under TEC, Chapter 39.

Response: The agency agrees and has modified §100.1001(12)(C) at adoption to reference §100.1011(c)(1) rather than §100.1017 in the definition.

Comment: TPCSA requested clarification regarding the definition of "shared services cooperative or shared services arrangement." TPCSA stated that the use of the term governmental entities could be interpreted to mean other entities besides education service centers (ESCs), while previous documentation has only referenced ESCs as the type of governmental entity with which a charter school may establish a shared services cooperative or agreement. TPCSA also shared that the broader term governmental entity could require charter schools to submit a greater number of documents for review as charter schools partner with a number of entities that may meet this definition but not through a shared services agreement.

Response: The agency agrees that clarification is needed and has modified §100.1001(26) at adoption to return to the original language using ESCs in place of governmental entities.

Comment: TPCSA and the law firm Schulman, Lopez, Hoffer, & Adelstein, LLP (SLHA, LLP) requested clarification regarding the agency's authority to review and approve shared services cooperatives or agreements and, dependent on that determination, requested clarification that the approval of these agreements be added to the list of material non-expansion amendments to ensure there is an established process and timeline for their review.

Response: The agency agrees in part and provides the following clarification. The agency believes the establishment of a shared services cooperative or agreement is a revision to the terms of the charter school's contract as it is a modification to the charter school's original application. The agency agrees with the need for clarification for the process of notification and approval of these agreements and has modified §100.1035(d)(2)(A) at adoption to include shared services cooperatives and agreements in the list of changes that are material non-expansion amendments.

Comment: TPCSA and SLHA, LLP requested clarification to the criteria detailed in §100.1025(b) as the language currently reads that an applicant must meet both criteria in order to be eligible for consideration as a high-performing entity.

Response: The agency agrees with this need for additional clarification. Section 100.1025 has been modified at adoption to include language that an eligible applicant must demonstrate one of the criteria and not both.

Comment: TPCSA and SLHA, LLP questioned whether a request for a high-quality designation must be paired with an expansion amendment due to the change in statute that allows a charter school to request an expansion amendment up to 36 months prior to opening.

Response: The agency agrees that the change in statute no longer requires the submission of these two requests at the same time. Section 100.1035(c)(6) has been modified at adoption to require that a charter school submit a high-quality designation prior to the opening of a new campus associated with an approved expansion amendment.

Comment: TPCSA and SLHA, LLP questioned whether a modification could be made to §100.1035(c)(6) to include a timeline for the agency to provide a determination regarding a high-quality designation determination.

Response: The agency agrees with the need for this additional clarification. Section 100.1035(c)(6) has been modified at adoption to include new subparagraph (E), which establishes a 60-calendar day timeline for charter schools to receive a determination regarding a high-quality designation.

Comment: TPCSA and SLHA, LLP questioned whether a modification could be made to §100.1115(d) to align charter school board member and officer training with other TEA-provided trainings to allow asynchronous online instruction as long as the training includes interactive activities to assess learning.

Response: The agency agrees with this proposed modification and alignment to other TEA training mechanisms. Section 100.1115(d) has been modified at adoption to include the ability to participate in training asynchronously as long as the training incorporates activities that assess learning and provide feedback to the learner.

Comment: TPCSA and SLHA, LLP requested clarification regarding the inclusion of prekindergarten teachers into §100.1212(c) as certification is required for prekindergarten teachers to align with the state's high-quality prekindergarten requirements.

Response: The agency agrees that clarification is needed. Section 100.1212(c) has been modified at adoption to include prekindergarten teachers in the list of teachers who are required to be certified in the fields in which they are assigned to teach as required by state and/or federal law.

Comment: TPCSA and SLHA, LLP requested clarifications regarding related party transactions. The commenters recommended that the definition of related party transaction be modified to explain a related party rather than a related party transaction. The commenters also requested clarification of the threshold for donor, donor advisor, or major donor and whether 100.1069(b) should be limited to related party real property transactions.

Response: The agency disagrees. The definition includes a related party transaction, a related party, and a related party property transaction and aligns with statutory requirements. As each charter school's finances are different, the agency has not established specific thresholds for donor, donor advisor, or major donor.

Comment: SLHA, LLP requested clarification for §100.1113 that, upon review, the commissioner may rescind any delegation amendment for any reason.

Response: The agency agrees. Section 100.1113(e) has been modified at adoption to add the phrase "upon review" to provide this clarification regarding the rescinding of delegation amendments.

Comment: SLHA, LLP requested clarification of the language in §100.1113 related to contracts for management services. The commenter raised concern that the current rules appear to conflict in various parts related to non-delegable duties.

Response: The agency disagrees. Section 100.1113 (a)(1) and (2) are clear that absent an approved commissioner delegation, the final authority of the board or superintendent in these areas cannot be delegated, including through a management contract. Additionally, §100.1113(e) is intended to apply to any delegated duties and is not limited to cases where the commissioner has approved delegation of specific duties detailed in §100.1113(a)(1) and (2).

Comment: SLHA, LLP expressed concern that the definition of campus administration officer in §100.1001(2) was vague and too broad for charter school settings.

Response: The agency disagrees and believes the definition captures the duties and functions of charter school administrators.

Comment: SLHA, LLP requested clarification regarding training requirements for charter school board members and officers, including who tracks the 25% of instructional training hours that may be rolled over to meet the following year's requirements, the carry-over of hours topic specific, the definition of instructional hours, the purpose of training providers issuing surveys to participants, and the process for holding poor training providers accountable.

Response: The agency provides the following clarification. The tracking of hours toward the requirements for charter school

board members and officers is the responsibility of charter school board members and officers. Charter school board members and officers may carry forward hours toward continuing training detailed in §100.1121. The definition of instructional hours is provided in §100.1115 and means time spent engaging in training excluding time spent for breaks, administrative tasks, and other non-instructional tasks. The agency believes that training providers should routinely assess whether their services are meeting the needs of charter school board members and officers. The agency may require training providers to submit information regarding their performance and records and may remove them from the list of providers.

Comment: SLHA, LLP requested clarification regarding the implementation and timeline of training requirements.

Response: The comment is outside of the scope of the current rule proposal. However, the agency will share information with charter school operators related to the implementation timeline of the rule once the rules are final.

Comment: SLHA, LLP requested clarification regarding §100.1023, specifically whether adult charter schools could be exempt from TEC, §12.104(a-1)(1), to align with public junior colleges and community colleges.

Response: The agency disagrees. TEC, §12.104(a-1)(1), allows the governing body of a charter, if it chooses, to employ security personnel and commission peace officers in the same manner as a board of trustees of a school district. The language in the statute ultimately gives adult charter schools the flexibility to make the best decision for their school.

Comment: SLHA, LLP questioned whether members of the legislature should receive notice of expansion amendments for charter schools due to concerns that a member of the legislature may not have the full context of the request and that they may potentially influence consideration of amendments.

Response: The agency disagrees. The agency believes that the appropriate stakeholders, including legislators, should be informed about potential expansion amendments.

Comment: SLHA, LLP questioned if the period of dormancy described in §100.1213 should be indefinite rather than for a one-year period that must be reapplied for at the end of the one-year period.

Response: The agency disagrees. The one-year period allows schools to request a period of dormancy and then annually reevaluate if they are ready to open the school for the upcoming year. This time period also allows the agency to hold necessary conversations with schools about their plans with their campuses and for the agency to have an in-depth understanding of the charter school portfolio.

Comment: SLHA, LLP questioned if the definition of property acquired, improved, or maintained using state funds is too expansive as it includes property acquired, improved, or maintained through a management company under a contract for management services and includes the proceeds of loans, credit, or other financing that is extended, in whole or in part, based on the charter holder's control over state funds. The commenter recommended that the definition should instead be based only on the charter holder's control over state funds, except for loans, credit, or other financing that are secured solely by real or personal property that is donated to the charter holder.

Response: The agency disagrees. The current language has not been modified by the revisions to Chapter 100 and is not an expansion of the current definition.

Comment: Senator Royce West, Association of Professional Educators (ATPE), Coalition for Education Funding, Every Texan, Fast Growth School Coalition (FGSC), Go Public, Intercultural Development Research Association (IDRA), Pastors for Texas Children, Texas American Federation of Teachers (Texas AFT), Texas Association of Community Schools (TACS), Texas Association of Latino Administrators and Superintendents (TALAS), Texas Association of Midsize Schools (TAMS), Texas Association of Rural Schools (TARS), Texas Association of School Administrators (TASA), Texas Association of School Boards (TASB), Texas Classroom Teachers Association (TCTA), Texas Council of Administrators of Special Education (TCASE), Texas Elementary Principals and Supervisors Association (TEPSA), Texas Rural Education Association (TREA), Texas School Alliance (TSA), and Texas State Teachers Association (TSTA) requested clarification regarding the use of scaled scores to determine "academically acceptable" and "unacceptable" classifications when academic ratings are not issued for any reason to ensure that the expansion of academically unacceptable charter schools are not allowed to expand.

Response: The agency agrees. The intent of this revision is not to weaken the standards for charter school expansions or renewals but to allow the agency to continue to use the most recent and accurate performance for charter school expansion and renewal decisions. There will be no separate rating system created for charter schools. Scaled scores refer to the overall number that is the result of the accountability rating calculation described in the accountability manual.

Comment: Senator Royce West, ATPE, Coalition for Education Funding, Every Texan, FGSC, Go Public, IDRA, Pastors for Texas Children, Texas AFT, TACS, TALAS, TAMS, TARS, TASA, TASB, TCTA, TCASE, TEPSA, TREA, TSA, and TSTA requested clarification regarding the revision to the rule language that previously allowed a charter school to count students enrolled in prekindergarten through Grade 2 toward the 50% of students in tested grades requirement for expansion amendments if the school used a commissioner-approved prekindergarten assessment or monitoring tool to assess student performance. The commenters expressed concern that this could potentially create a charter-by-charter accountability system.

Response: The agency agrees and provides the following clarification. Previously, §100.1033(b)(10)(D)(ii) established a requirement for a charter school to add an additional campus only if the charter school currently has at least 50% of the student population in grades assessed under TEC, Chapter 39, Subchapter B, regarding state-level academic assessments. The current rule language establishes that a charter school may include students in prekindergarten to count toward the 50% requirement if the charter school can demonstrate acceptable performance on a commissioner-approved prekindergarten assessment or monitoring tool as determined by §102.1003. Through the rule revisions, TEA is removing the 50% of students in tested grades requirement for discretionary expansion and renewal, as this requirement is not currently detailed in statute. The agency is, however, keeping this requirement in place for expedited expansion, as it is a requirement set forth by TEC, §12.101(b-4). The language in proposed §100.1051(b)(2)(F) is identical to the language that exists in current §100.1022(b)(2)(F), as the agency did not propose any revisions to this section except for one tech-



nical edit. For schools that offer only prekindergarten through Grade 2, TEA plans to include requirements through its application process and charter school contracts for these schools to utilize an assessment or tool from the commissioner's approved list of assessments or monitoring tools for prekindergarten through Grade 2. The agency will use the results of these assessments to make expansion and renewal decisions for these schools. The agency has no interest or desire to create a charter-by-charter accountability system.

Comment: Senator Royce West, ATPE, Coalition for Education Funding, Every Texan, FGSC, Go Public, IDRA, Pastors for Texas Children, Texas AFT, TACS, TALAS, TAMS, TARS, TASA, TASB, TCTA, TCASE, TEPSA, TREA, TSA, and TSTA requested clarification related to the revisions of the requirements for expedited expansion with concern that the revisions weaken the requirements for expedited expansion.

Response: The agency provides the following clarification. The proposed revision to the expedited expansion standards aligns the standards and processes for expedited expansion with the language of TEC, §12.101(b-4). The previous rule included requirements that go beyond the scope of the statute, and the agency is attempting to better align rule with the statutory framework established by the legislature.

Comment: Senator Royce West, ATPE, Coalition for Education Funding, Every Texan, FGSC, Go Public, IDRA, Pastors for Texas Children, Texas AFT, TACS, TALAS, TAMS, TARS, TASA, TASB, TCTA, TCASE, TEPSA, TREA, TSA, and TSTA requested clarification regarding the revisions to the notification requirements relating to new charter schools and charter school expansions along with the revisions to the definition of geographic area.

Response: The agency provides the following clarification. The agency shifted the notification requirement from charter school applicants to TEA based on conversations with multiple stakeholders. Charter school applicants are currently required to provide notice via certified mail to a significant number of stakeholders, which was an additional non-reimbursable expense for applicants. The agency wishes to remove this burden and cost from charter school applicants. TEC, §12.1101, requires that notice is provided on receipt by the commissioner of an application for a charter for an open-enrollment charter school under TEC, §12.110. To meet the statutory requirement of "on receipt," TEA plans to send notification letters within one week of the application deadline and will include this window in the timeline published in its charter school application materials. The new definition of geographic area better matches the notices with those impacted, as in years past, multiple notices created administrative burdens on ISDs that remained unimpacted by a school change.

Comment: Senator Royce West, ATPE, Coalition for Education Funding, Every Texan, FGSC, Go Public, IDRA, Pastors for Texas Children, Texas AFT, TACS, TALAS, TAMS, TARS, TASA, TASB, TCTA, TCASE, TEPSA, TREA, TSA, and TSTA requested clarification regarding the timeline and process for the adoption of the Charter School Performance Framework (CSPF) with concern that the proposed language creates confusion on whether the CSPF will continue to be adopted via rulemaking.

Response: The agency agrees. Section 100.1031(a) has been modified at adoption to include the adopted CSPF Manual. Annual updates to the manual will be limited to updated indicator requirements or data sources. Language is also included in §100.1031(a) to specify that substantial modifications to the

outlined framework will require a new version to be adopted via rulemaking.

Comment: Senator Royce West, ATPE, Coalition for Education Funding, Every Texan, FGSC, Go Public, IDRA, Pastors for Texas Children, Texas AFT, TACS, TALAS, TAMS, TARS, TASA, TASB, TCTA, TCASE, TEPSA, TREA, TSA, and TSTA requested clarification about the elimination of certain ethics provisions from proposed §100.1011 relating to charter contact with TEA during the period of the application process, specifically the exclusion of language previously found in §100.1015(b)(4).

Response: The agency agrees and provides the following clarification. The removal of this section was due to a drafting error. Section 100.1011 has been modified at adoption to add provisions regarding contact with TEA as well as providing any item of value to TEA staff.

Comment: ATPE, Coalition for Education Funding, Every Texan, FGSC, Go Public, IDRA, Pastors for Texas Children, Texas AFT, TACS, TALAS, TAMS, TARS, TASA, TASB, TCTA, TCASE, TEPSA, TREA, TSA, and TSTA commented that the academic indicator for the CSPF detailed in §100.1031(c)(1) is proposed to be a lower standard than it was previously because it will now only include the charter's overall rating instead of individual campus ratings.

Response: The agency disagrees. Due to updates to the accountability system that roll up campus ratings directly into the overall district ratings, this type of campus-level analysis is no longer needed.

Comment: ATPE, Coalition for Education Funding, Every Texan, FGSC, Go Public, IDRA, Pastors for Texas Children, Texas AFT, TACS, TALAS, TAMS, TARS, TASA, TASB, TCTA, TCASE, TEPSA, TREA, TSA, and TSTA questioned whether that the high-quality designation detailed in §100.1035(c)(6) should state each "each campus" rather than "all of the campuses" in order to ensure that an averaging methodology isn't utilized to determine high-quality designations.

Response: The agency disagrees that the language implies an averaging methodology but has modified the language at adoption to replace "all of the campuses" with "each campus."

Comment: ATPE, Coalition for Education Funding, Every Texan, FGSC, Go Public, IDRA, Pastors for Texas Children, Texas AFT, TACS, TALAS, TAMS, TARS, TASA, TASB, TCTA, TCASE, TEPSA, TREA, TSA, and TSTA questioned whether the removal of language previously located in §100.1015(b)(2)(B), related to affiliated entities, would mean that entities might be designated as high-performing entities even if their performance was below acceptable in another state.

Response: The agency disagrees. The language from §100.1025 regarding high-performing entities aligns directly with statute. In order to be eligible as a high-performing entity, the charter school must have performance that is comparable to Texas's highest and second-highest rating, which will prevent any entities with below-acceptable performance from being identified as high-performing.

Comment: ATPE, Coalition for Education Funding, Every Texan, FGSC, Go Public, IDRA, Pastors for Texas Children, Texas AFT, TACS, TALAS, TAMS, TARS, TASA, TASB, TCTA, TCASE, TEPSA, TREA, TSA, and TSTA requested clarification whether the language in §100.1025(b)(1) that requires an entity to "propose to operate the charter school program that is currently implemented in the affiliated charter operator's existing charter

school" would require an entity to implement potential Common Core curricula.

Response: The agency disagrees and provides the following clarification. Requiring a high-performing entity to operate the same "charter school program" they implement in other states means the same mission and model but not the same standards or instructional materials. All charter schools, including high-performing entities, must follow all state laws and ensure Texas Essential Knowledge and Skills-aligned instruction. The SBOE will have the ability to consider the commissioner's recommendations for high-performing entities just as they do for all other Subchapter D charter schools.

Comment: ATPE, Coalition for Education Funding, Every Texan, FGSC, Go Public, IDRA, Pastors for Texas Children, Texas AFT, TACS, TALAS, TAMS, TARS, TASA, TASB, TCTA, TCASE, TEPSA, TREA, TSA, and TSTA requested clarification regarding the standards for discretionary expansion amendments related to the 90% calculation, excluding Not Rated campuses from the calculation, and if Not Rated includes Not Rated: SB 1365 campuses.

Response: The agency provides the following clarification. Not Rated campuses would only be excluded in the proposed calculation when campuses are truly not rated, as is sometimes the case for campuses with small student counts, those at residential treatment facilities, or campuses that have yet to offer tested grades. While the rule language now includes a provision for charter schools that may have 75% to 89% of campuses rated A, B, or C, this provision will only be utilized with the submission of additional performance data. D ratings no longer count toward the acceptable rating calculation. The performance of Not Rated: SB 1365 campuses count toward the calculation of the 90% threshold and has since those scores were released.

Comment: ATPE, Coalition for Education Funding, Every Texan, FGSC, Go Public, IDRA, Pastors for Texas Children, Texas AFT, TACS, TALAS, TAMS, TARS, TASA, TASB, TCTA, TCASE, TEPSA, TREA, TSA, and TSTA requested clarification if prekindergarten charter school campuses would be matched with charter school State of Texas Assessments of Academic Readiness (STAAR®)-assessed campuses for rating purposes.

Response: The agency provides the following clarification. The agency will follow TEA's accountability manual regarding the pairing of any campuses. For schools that offer only prekindergarten through Grade 2, TEA plans to include requirements through its application process and charter school contracts for these schools to utilize an assessment or tool from the commissioner's approved list of assessments or monitoring tools for prekindergarten through Grade 2. The agency will use the results of these assessments to make expansion and renewal decisions for these schools.

Comment: ATPE, Coalition for Education Funding, Every Texan, FGSC, Go Public, IDRA, Pastors for Texas Children, Texas AFT, TACS, TALAS, TAMS, TARS, TASA, TASB, TCTA, TCASE, TEPSA, TREA, TSA, and TSTA commented that excluding a charter that was designated high quality before relinquishing their charter from the 10-year ban appears to circumvent statute.

Response: The agency disagrees. The agency may define by rule relinquishment and in doing so is distinguishing between charters that are required to close, through agreement or statute, and charters that simply cease to operate. The agency believes that the latter charter schools do not meet the threshold for the 10-year ban.

Comment: ATPE, Coalition for Education Funding, Every Texan, FGSC, Go Public, IDRA, Pastors for Texas Children, Texas AFT, TACS, TALAS, TAMS, TARS, TASA, TASB, TCTA, TCASE, TEPSA, TREA, TSA, and TSTA requested clarification as to the reason for the removal application criteria language in §100.1011 and §100.1017.

Response: The agency provides the following clarification. The agency streamlined the rule language and will continue to issue the charter school application aligned to charter school best practices. The agency does not anticipate any significant change in TEA practice or procedure related to the application process.

Comment: ATPE, Coalition for Education Funding, Every Texan, FGSC, Go Public, IDRA, Pastors for Texas Children, Texas AFT, TACS, TALAS, TAMS, TARS, TASA, TASB, TCTA, TCASE, TEPSA, TREA, TSA, and TSTA requested that the original language regarding no contact stating the commissioner "shall reject" an applicant if they violate the no-contact rule rather than the proposed language of "may reject" be returned to the rules.

Response: The agency disagrees. The decision to remove an applicant due to a violation of the no-contact provision is at the discretion of the commissioner.

Comment: ATPE, Coalition for Education Funding, Every Texan, FGSC, Go Public, IDRA, Pastors for Texas Children, Texas AFT, TACS, TALAS, TAMS, TARS, TASA, TASB, TCTA, TCASE, TEPSA, TREA, TSA, and TSTA requested clarification regarding whether the opening period of a charter school detailed in §100.1011(o) should be limited to a defined time period to open.

Response: The agency disagrees and provides the following clarification. The commissioner has the discretion to consider and then approve or deny any extensions of the pre-opening year. Extenuating circumstances, like those experienced during the pandemic, require revisions to the existing rule.

Comment: ATPE, Coalition for Education Funding, Every Texan, FGSC, Go Public, IDRA, Pastors for Texas Children, Texas AFT, TACS, TALAS, TAMS, TARS, TASA, TASB, TCTA, TCASE, TEPSA, TREA, TSA, and TSTA requested that the original language regarding written notice for failure to operate be returned to the rules.

Response: The agency disagrees. Closure of a campus or charter has been added to the list of non-expansion amendments, and in order to receive approval for this type of amendment, charter schools must detail their plans for closure, including notification to parents.

Comment: ATPE, Coalition for Education Funding, Every Texan, FGSC, Go Public, IDRA, Pastors for Texas Children, Texas AFT, TACS, TALAS, TAMS, TARS, TASA, TASB, TCTA, TCASE, TEPSA, TREA, TSA, and TSTA requested clarification on whether the provisions related to suspension of operations would still be a material violation of the charter contract.

Response: The agency provides the following clarification. The suspension of operations without notification is still a material violation of the charter contract. Section 100.1213(c) has been modified at adoption to also include reference to §100.1035 charter amendments.

Comment: ATPE, Coalition for Education Funding, Every Texan, FGSC, Go Public, IDRA, Pastors for Texas Children, Texas AFT, TACS, TALAS, TAMS, TARS, TASA, TASB, TCTA, TCASE, TEPSA, TREA, TSA, and TSTA requested that the addition of

geographic boundaries to the types of expansion amendments detailed in §100.1035 and that the penalty language for serving students outside of a charter school's approved geographic boundaries be returned to the rule proposal.

Response: The agency disagrees. Geographic boundaries are not detailed in statute and were removed in order to eliminate the administrative burden for schools and for students who at times were no longer able to attend their charter school if their family moved to a new location that was no longer inside the geographic boundary of the ISD that was associated with a charter school's geographic boundaries.

Comment: ATPE, Coalition for Education Funding, Every Texan, FGSC, Go Public, IDRA, Pastors for Texas Children, Texas AFT, TACS, TALAS, TAMS, TARS, TASA, TASB, TCTA, TCASE, TEPSA, TREA, TSA, and TSTA requested clarification as to why the language regarding administrative costs for charter schools was removed from the rules.

Response: The agency provides the following clarification. The language was removed because it was a duplication. This financial standard is captured and monitored through Charter FIRST, which has its own rules.

Comment: ATPE, Coalition for Education Funding, Every Texan, FGSC, Go Public, IDRA, Pastors for Texas Children, Texas AFT, TACS, TALAS, TAMS, TARS, TASA, TASB, TCTA, TCASE, TEPSA, TREA, TSA, and TSTA requested clarification if failure to maintain good standing with the Internal Revenue Service (IRS), Texas Secretary of State, Comptroller, and all regulatory agencies in its home state would still result in a material violation of the charter school.

Response: The agency provides the following clarification. The standard related to a material violation for existing entities would apply to maintaining good standing with the IRS, Texas Secretary of State, Comptroller, and all regulatory agencies in their home state. Section 100.1017(b) has been modified at adoption to include reference to failure to meet this standard as a material violation of the charter school.

Comment: ATPE, Coalition for Education Funding, Every Texan, FGSC, Go Public, IDRA, Pastors for Texas Children, Texas AFT, TACS, TALAS, TAMS, TARS, TASA, TASB, TCTA, TCASE, TEPSA, TREA, TSA, and TSTA requested clarification on whether the definition of related party should include a former officer in the definition.

Response: The agency agrees and provides the following clarification. Section 100.1001(25)(A)(iii) has been modified at adoption to include former officers.

Comment: ATPE, Coalition for Education Funding, Every Texan, FGSC, Go Public, IDRA, Pastors for Texas Children, Texas AFT, TACS, TALAS, TAMS, TARS, TASA, TASB, TCTA, TCASE, TEPSA, TREA, TSA, and TSTA requested clarification as to what the term "other" refers to in the rules related to related party transactions in audits detailed in §100.1069(c).

Response: The agency agrees and provides the following clarification. Section 100.1069(c) has been modified at adoption to remove the word "other."

Comment: ATPE, Coalition for Education Funding, Every Texan, FGSC, Go Public, IDRA, Pastors for Texas Children, Texas AFT, TACS, TALAS, TAMS, TARS, TASA, TASB, TCTA, TCASE, TEPSA, TREA, TSA, and TSTA commented that §100.1209(b)

should be updated to align with the statutory changes made by HB 1707, 88th Texas Legislature, Regular Session, 2023.

Response: The agency agrees, and the section has been modified at adoption to remove the exemption for charter schools located in a municipality with a population of 20,000 or less.

Comment: ATPE, Coalition for Education Funding, Every Texan, FGSC, Go Public, IDRA, Pastors for Texas Children, Texas AFT, TACS, TALAS, TAMS, TARS, TASA, TASB, TCTA, TCASE, TEPSA, TREA, TSA, and TSTA commented that the terms utilized in §100.1209 do not align with statute and should be modified to include administrator and officer and requested that the language match the statute.

Response: The agency agrees. Section 100.1209 has been modified at adoption to align with statute and include these terms.

Comment: ATPE, Coalition for Education Funding, Every Texan, FGSC, Go Public, IDRA, Pastors for Texas Children, Texas AFT, TACS, TALAS, TAMS, TARS, TASA, TASB, TCTA, TCASE, TEPSA, TREA, TSA, and TSTA commented that notification to ISDs and legislators should be the responsibility of charter schools and not TEA.

Response: The agency disagrees. The process for notification is at the discretion of the commissioner, and the agency seeks to streamline the process and limit the burden for charter schools.

Comment: ATPE, Coalition for Education Funding, Every Texan, FGSC, Go Public, IDRA, Pastors for Texas Children, Texas AFT, TACS, TALAS, TAMS, TARS, TASA, TASB, TCTA, TCASE, TEPSA, TREA, TSA, and TSTA requested clarification regarding whether the common application form could be modified under the current rules and recommended the language be modified to prevent this action.

Response: The agency agrees. Section 100.1207(a)(1)(C) has been modified at adoption to read "and may not add" any additional criteria.

Comment: ATPE, Coalition for Education Funding, Every Texan, FGSC, Go Public, IDRA, Pastors for Texas Children, Texas AFT, TACS, TALAS, TAMS, TARS, TASA, TASB, TCTA, TCASE, TEPSA, TREA, TSA, and TSTA commented that the rule language should be modified to ensure that the common application aligned with federal and state law.

Response: The agency disagrees. The rule language regarding the common application already aligns with state law. Federal law applies regardless.

Comment: ATPE, Coalition for Education Funding, Every Texan, FGSC, Go Public, IDRA, Pastors for Texas Children, Texas AFT, TACS, TALAS, TAMS, TARS, TASA, TASB, TCTA, TCASE, TEPSA, TREA, TSA, and TSTA commented that the rule language regarding the waitlist information submitted to the agency should include all components detailed in statute.

Response: The agency agrees. Section 100.1207(e) has been modified at adoption to include all submission requirements reference in statute.

Comment: ATPE, Coalition for Education Funding, Every Texan, FGSC, Go Public, IDRA, Pastors for Texas Children, Texas AFT, TACS, TALAS, TAMS, TARS, TASA, TASB, TCTA, TCASE, TEPSA, TREA, TSA, and TSTA commented that a charter school's primary and secondary geographic boundaries should be publicly available on a charter school's website.

Response: This comment is outside the scope of the current rule proposal.

Comment: The ATPE, Coalition for Education Funding, Every Texan, FGSC, Go Public, IDRA, Pastors for Texas Children, Texas AFT, TACS, TALAS, TAMS, TARS, TASA, TASB, TCTA, TCASE, TEPSA, TREA, TSA, and TSTA commented that §100.1061 refers to outdated language related to school finance.

Response: The agency agrees. Section 100.1061 has been modified at adoption to align with current statute.

Comment: ATPE, Coalition for Education Funding, Every Texan, FGSC, Go Public, IDRA, Pastors for Texas Children, Texas AFT, TACS, TALAS, TAMS, TARS, TASA, TASB, TCTA, TCASE, TEPSA, TREA, TSA, and TSTA commented that the definition in §100.1001(5)(B) refers to outdated language related to public junior and senior colleges and universities.

Response: The agency agrees. Section 100.1001(5)(B) has been modified at adoption to align with current statute.

Comment: ATPE, Coalition for Education Funding, Every Texan, FGSC, Go Public, IDRA, Pastors for Texas Children, Texas AFT, TACS, TAMS, TARS, TASA, TASB, TCTA, TEPSA, TREA, TSA, and TSTA requested clarification if out-of-state charter applicants or their affiliated organizations would be allowed to serve as a charter management organization (CMO) and if TEA would include the current CMO addendum as part of the high-performing entities application.

Response: The comment is outside of the scope of the current rule proposal. However, the agency will include information about charter management organizations in the high-performing entities application.

Comment: ATPE, Coalition for Education Funding, Every Texan, FGSC, Go Public, IDRA, Pastors for Texas Children, Texas AFT, TACS, TAMS, TARS, TASA, TASB, TCTA, TEPSA, TREA, TSA, and TSTA requested clarification if in-district charter schools approved by public school districts that receive SB 1882 benefits would be eligible to apply for the high-performing entities application.

Response: The agency provides the following clarification. Section 100.1025(b)(2) allows for an entity that currently operates Subchapter C or E charter schools and performs at an overall level in the highest or second highest performance rating category under TEC, Chapter 39, Subchapter C, to be considered for authorization as a high-performing entity.

Comment: ATPE, Coalition for Education Funding, Every Texan, FGSC, Go Public, IDRA, Pastors for Texas Children, Texas AFT, TACS, TAMS, TARS, TASA, TASB, TCTA, TEPSA, TREA, TSA, and TSTA requested that the agency further define a member entity that may be vested with the management of corporate affairs.

Response: The agency disagrees that further definition is required.

Comment: ATPE, Coalition for Education Funding, Every Texan, FGSC, Go Public, IDRA, Pastors for Texas Children, Texas AFT, TACS, TAMS, TARS, TASA, TASB, TCTA, TEPSA, TREA, TSA, and TSTA requested clarification on how high-performing entities will be assessed during the application process and if other authorizer processes will be used in place of an application review process.

Response: The agency provides the following clarification. Section 100.1025(g) has been modified at adoption to include information that the commissioner will adopt a separate application for high-performing entities that includes the timeline for selection, applicant conferences and training prerequisites, and the earliest date an open-enrollment charter school selected may open. Section 100.1025(f) details the criteria that the commissioner will consider in determining a charter award.

Comment: ATPE, Coalition for Education Funding, Every Texan, FGSC, Go Public, IDRA, Pastors for Texas Children, Texas AFT, TACS, TAMS, TARS, TASA, TASB, TCTA, TEPSA, TREA, TSA, and TSTA requested clarification regarding components of the application process, the application questions for high-performing entities, and if data would be used to replace detailed information in the high-performing entities charter application.

Response: The comment is outside of the scope of the current rule proposal. However, the agency will include information about the application process and components in the high-performing entities application.

Comment: ATPE, Coalition for Education Funding, Every Texan, FGSC, Go Public, IDRA, Pastors for Texas Children, Texas AFT, TACS, TAMS, TARS, TASA, TASB, TCTA, TEPSA, TREA, TSA, and TSTA requested clarification regarding how TEA will create a Texas equivalent to out-of-state accountability ratings.

Response: The comment is outside the scope of the current rule proposal. However, the agency will include information about how it will make this determination in the application materials.

Comment: Four individuals repeated the title of the Chapter 100 rule revision proposal rather than provide comment.

Response: The agency can neither agree nor disagree with the comment since it provided no context. TEA staff contacted the commenter for clarification but did not receive a response.

Comment: One individual commented N/A.

Response: The agency can neither agree nor disagree with the comment since it provided no context. TEA staff contacted the commenter for clarification but did not receive a response.

## DIVISION 1. GENERAL PROVISIONS

### 19 TAC §§100.1001 - 100.1007, 100.1010, 100.1013, 100.1015, 100.1017, 100.1019

STATUTORY AUTHORITY. The repeals are adopted under Texas Education Code (TEC), §12.101, which requires the commissioner to adopt rules regarding the criteria for granting a charter and providing notification for the establishment of new charters or campuses; TEC, §12.1011, which requires the commissioner to adopt rules regarding charter authorization for high-performing entities; TEC, §12.103, which allows the commissioner to adopt rules regarding applicable provisions to open-enrollment charter schools; TEC, §12.104, as amended by House Bill (HB) 189, 87th Texas Legislature, Regular Session, 2021, which allows the commissioner to adopt rules permitting an open-enrollment charter school to voluntarily participate in any state program available to school districts if the school complies with all terms of the program; TEC, §12.1055, which allows the commissioner to adopt rules regarding nepotism under Texas Government Code, Chapter 573; TEC, §12.1058, as amended by HB 1707, 88th Texas Legislature, Regular Session, 2023, which requires a political subdivision to consider an open-enrollment charter school as a school district for the

purposes of municipal ordinances if the open-enrollment charter school meets notification requirements; TEC, §12.110, which requires the commissioner to adopt an application form and procedure that must be used to apply for an open-enrollment charter school; TEC, §12.1101, which requires the commissioner to adopt a procedure for providing notice to the outlined persons on receipt by the commissioner of an application for a charter for an open-enrollment charter school or of notice of the establishment of a campus; TEC, §12.114, which allows the commissioner to define expansion amendment requests; TEC, §12.1141, as amended by Senate Bill (SB) 879, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to adopt a procedure for renewal, denial of renewal, or expiration of a charter for an open-enrollment charter school at the end of the term of the charter; TEC, §12.1166, which requires the commissioner to adopt a rule defining "related party;" TEC, §12.1173, as amended by SB 2293, 86th Texas Legislature, 2019, which requires the commissioner to adopt rules to implement charter school waiting lists for admission; TEC, §12.1181, requires the commissioner to adopt performance frameworks that establish standards by which to measure the performance of an open-enrollment charter school; TEC, §12.123, which requires the commissioner to adopt rules prescribing the training for members of the governing body of a charter school and its officers; TEC, §12.153, which allows the commissioner to adopt rules to implement college or university or junior college charter schools; TEC, §12.265, as amended by SB 1615, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to adopt rules necessary to administer adult high school charter school programs; and TEC, §39.0548, which requires the commissioner to authorize and determine designation as a dropout recovery school.

CROSS REFERENCE TO STATUTE. The repeals implement Texas Education Code, §§12.101; 12.1011; 12.103; 12.104, as amended by House Bill (HB) 189, 87th Texas Legislature, Regular Session, 2021; 12.1055; 12.1058, as amended by HB 1707, 88th Texas Legislature, Regular Session, 2023; 12.110; 12.1101; 12.114; 12.1141, as amended by Senate Bill (SB) 879, 87th Texas Legislature, Regular Session, 2021; 12.1166; 12.1173, as amended by SB 2293, 86th Texas Legislature, 2019; 12.1181; 12.123; 12.153; 12.265, as amended by SB 1615, 87th Texas Legislature, Regular Session, 2021; and 39.0548.

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 September 12, 2024.

TRD-202404415

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: October 2, 2024

Proposal publication date: March 15, 2024

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



### 19 TAC §100.1001, §100.1003

STATUTORY AUTHORITY. The new sections are adopted under Texas Education Code (TEC), §12.101, which requires the com-

missioner to adopt rules regarding the criteria for granting a charter and providing notification for the establishment of new charters or campuses; TEC, §12.1011, which requires the commissioner to adopt rules regarding charter authorization for high-performing entities; TEC, §12.103, which allows the commissioner to adopt rules regarding applicable provisions to open-enrollment charter schools; TEC, §12.104, as amended by House Bill (HB) 189, 87th Texas Legislature, Regular Session, 2021, which allows the commissioner to adopt rules permitting an open-enrollment charter school to voluntarily participate in any state program available to school districts if the school complies with all terms of the program; TEC, §12.1055, which allows the commissioner to adopt rules regarding nepotism under Texas Government Code, Chapter 573; TEC, §12.1058, as amended by HB 1707, 88th Texas Legislature, Regular Session, 2023, which requires a political subdivision to consider an open-enrollment charter school as a school district for the purposes of municipal ordinances if the open-enrollment charter school meets notification requirements; TEC, §12.110, which requires the commissioner to adopt an application form and procedure that must be used to apply for an open-enrollment charter school; TEC, §12.1101, which requires the commissioner to adopt a procedure for providing notice to the outlined persons on receipt by the commissioner of an application for a charter for an open-enrollment charter school or of notice of the establishment of a campus; TEC, §12.114, which allows the commissioner to define expansion amendment requests; TEC, §12.1141, as amended by Senate Bill (SB) 879, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to adopt a procedure for renewal, denial of renewal, or expiration of a charter for an open-enrollment charter school at the end of the term of the charter; TEC, §12.1166, which requires the commissioner to adopt a rule defining "related party;" TEC, §12.1173, as amended by SB 2293, 86th Texas Legislature, 2019, which requires the commissioner to adopt rules to implement charter school waiting lists for admission; TEC, §12.1181, requires the commissioner to adopt performance frameworks that establish standards by which to measure the performance of an open-enrollment charter school; TEC, §12.123, which requires the commissioner to adopt rules prescribing the training for members of the governing body of a charter school and its officers; TEC, §12.153, which allows the commissioner to adopt rules to implement college or university or junior college charter schools; TEC, §12.265, as amended by SB 1615, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to adopt rules necessary to administer adult high school charter school programs; and TEC, §39.0548, which requires the commissioner to authorize and determine designation as a dropout recovery school.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §§12.101; 12.1011; 12.103; 12.104, as amended by House Bill (HB) 189, 87th Texas Legislature, Regular Session, 2021; 12.1055; 12.1058, as amended by HB 1707, 88th Texas Legislature, Regular Session, 2023; 12.110; 12.1101; 12.114; 12.1141, as amended by Senate Bill (SB) 879, 87th Texas Legislature, Regular Session, 2021; 12.1166; 12.1173, as amended by SB 2293, 86th Texas Legislature, 2019; 12.1181; 12.123; 12.153; 12.265, as amended by SB 1615, 87th Texas Legislature, Regular Session, 2021; and 39.0548.

#### §100.1001. Definitions.

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

(1) Business manager--A person charged with managing the finances of a charter holder or charter school.

(2) Campus administration officer--A person charged with the duties of, or acting as, a principal or assistant principal of a charter school campus, including one or more of the following functions:

(A) approving teacher or staff appointments for a charter school campus, unless this function is performed by a central administration officer under the terms of the open-enrollment charter;

(B) setting specific education objectives for a charter school campus, unless this function is performed by a central administration officer under the terms of the open-enrollment charter;

(C) developing budgets for a charter school campus, unless this function is performed by a central administration officer under the terms of the open-enrollment charter;

(D) assuming the administrative responsibility or instructional leadership, under the supervision of a central administration officer, for discipline at a charter school campus;

(E) assigning, evaluating, or promoting personnel assigned to a charter school campus, unless this function is performed by a central administration officer under the terms of the open-enrollment charter; or

(F) recommending to a central administration officer the termination or suspension of an employee assigned to a charter school campus, or recommending the non-renewal of a term contract of such an employee.

(3) Capitalized personal property, fixed assets, ownership interest, cost basis, accumulated depreciation, loan, debt, credit, and fair market valuation--The definitions of these terms are as assigned either by §109.41 of this title (relating to Financial Accountability System Resource Guide) and/or by generally accepted accounting principles.

(4) Central administration officer--A person charged with the duties of, or acting as, a chief operating officer, director, or assistant director of a charter holder or charter school, including one or more of the following functions:

(A) assuming administrative responsibility and leadership for the planning, operation, supervision, or evaluation of the education programs, services, or facilities of a charter holder or charter school, or for appraising the performance of the charter holder's or charter school's staff;

(B) assuming administrative authority or responsibility for the assignment or evaluation of any of the personnel of the charter holder or charter school, including those employed by a management company;

(C) making recommendations to the governing body of the charter holder or the charter school regarding the selection of personnel of the charter holder or charter school, including those employed by a management company;

(D) recommending the termination, non-renewal, or suspension of an employee or officer of the charter holder or charter school, including those employed by a management company; or recommending the termination, non-renewal, suspension, or other action affecting a management contract;

(E) managing the day-to-day operations of the charter holder or charter school as its administrative manager;

(F) preparing or submitting a proposed budget to the governing body of the charter holder or charter school (except for de-

veloping budgets for a charter school campus, if this is a function performed by a campus administration officer under the terms of the open-enrollment charter);

(G) preparing recommendations for policies to be adopted by the governing body of the charter holder or charter school, or overseeing the implementation of adopted policies, except for legal services provided by an attorney licensed to practice law in this state or public accountancy services provided by a certified public accountant licensed to practice public accountancy services in this state;

(H) developing or causing to be developed appropriate administrative regulations to implement policies established by the governing body of the charter holder or charter school, except for legal services provided by an attorney licensed to practice law in this state or public accountancy services provided by a certified public accountant licensed to practice public accountancy services in this state;

(I) providing leadership for the attainment of student performance in a charter school operated by the charter holder, based on the indicators adopted under Texas Education Code (TEC), §39.053 and §39.054, or other indicators adopted by the charter holder in its open-enrollment charter; or

(J) organizing the central administration of the charter holder or charter school.

(5) Charter holder, governing body of a charter holder, and governing body of a charter school--The definitions of these terms are assigned in TEC, §12.1012. The charter holder shall reference an entity authorized by one or more of the following:

(A) TEC, Chapter 12, Subchapter D--An eligible entity as defined in TEC, §12.101, that is authorized to operate an open-enrollment charter school;

(B) TEC, Chapter 12, Subchapter E--A public junior college, public senior college, or university as defined in TEC, §61.003, that is authorized to operate an open-enrollment charter school; or

(C) TEC, Chapter 12, Subchapter G--An eligible entity as defined in TEC, §12.256, that is authorized to operate an open-enrollment charter school for adults ages 18-50.

(6) Charter school--A Texas public school operated by a charter holder under an open-enrollment charter contract granted either by the State Board of Education (SBOE) or commissioner of education, whichever is applicable, pursuant to TEC, §12.101, identified with its own county district number.

(A) An "employee of a charter school," as used in this subchapter, means a person paid to work at a charter school under the direction and control of an officer of a charter school, regardless of whether the person is on the payroll of the charter holder, a charter school operated by the charter holder, a management company providing management services to the charter holder, or any other person.

(B) A charter school "campus," as used in this subchapter, means an organizational unit of a charter school determined by the Texas Education Agency (TEA) to be an instructional campus for purposes of data collection and reporting. A campus may be a single site or may include multiple sites as described in subparagraph (C) of this paragraph.

(C) A charter school "site," as used in this subchapter, means an organizational unit of a charter school with administrative personnel identified by a separate street address within 25 miles of the campus with which it is associated and fully described in the open-enrollment charter. A "site" must be approved for instructional use either in the original open-enrollment charter as granted by the SBOE

or commissioner or in an amendment granted under §100.1035 of this title (relating to Charter Amendment).

(D) A charter school "facility," as used in this subchapter, means a building located on the same contiguous land as the campus with which it is associated or within one mile of the campus. The facility and its associated address must be approved for instructional use through the submission of a certificate of occupancy to the commissioner prior to serving students in said facility.

(7) Chief executive officer--A person (or persons) directly responsible to the governing body of the charter holder for supervising one or more central administration officers, campus administration officers, and/or business managers.

(8) Determination of academic accountability--The process used to determine the applicable year's accountability ratings to measure the academic performance of a charter.

(A) For the purposes of this chapter, the term "academically acceptable" for the following rating years shall mean:

(i) 2004-2011: the category of acceptable performance shall include a rating of Exemplary, Recognized, Academically Acceptable, and alternative education accountability (AEA): Academically Acceptable;

(ii) 2013-2016: the category of acceptable performance shall include a rating of Met Standard and Met Alternative Standard; and

(iii) 2017 and beyond: the category of acceptable performance shall include a grade of A, B, or C, or as otherwise indicated in the applicable year's academic accountability manual.

(B) For purposes of determination, an academic performance rating during the 2011-2012 school year will not be considered.

(C) For the purposes of this chapter, the term "academically unacceptable" performance means a rating of Academically Unacceptable, AEA: Academically Unacceptable, Improvement Required, or Unacceptable Performance or as otherwise indicated in the applicable year's academic accountability manual.

(D) If academic ratings are not issued for any reason, scaled scores may be used to determine "academically acceptable" and "academically unacceptable" performance.

(9) Determination of financial accountability--The process used to determine the applicable year's Financial Integrity Rating System of Texas (FIRST) rating to measure the financial performance of a charter.

(A) For purposes of this chapter, a satisfactory rating shall mean: Superior Achievement, Above Standard Achievement, or Standard Achievement.

(B) For the purposes of this chapter, a lower than satisfactory financial performance rating shall mean a FIRST rating of Substandard Achievement, Suspended: Data Integrity, or as otherwise indicated in the applicable year's financial accountability manual.

(10) Donate--Services are donated if:

(A) given free of any charge, cost, fee, compensation, reimbursement, remuneration, or any other thing of value or consideration, whether direct or indirect, from the donee to the donor, or from any other person or entity to the donor on behalf of the donee;

(B) given free of any condition, stipulation, promise, requirement, or any other obligation, whether direct or indirect, enforceable by the donor or by any other person or entity; and

(C) separately and clearly recorded in the accounting, auditing, budgeting, reporting, and recordkeeping systems for the management and operation of the charter school.

(11) Employee of a charter holder--A charter holder employee who engages in no charter school activity, is not compensated with public funds, and is not an officer of any charter school.

(12) Former charter holder--An entity that is or was a charter holder, but that has ceased to operate a charter school because its open-enrollment charter has been revoked, surrendered, abandoned, or denied renewal, or because all programs have been ordered closed under TEC, Chapter 39.

(A) A charter holder whose authority to operate has been suspended under TEC, §12.1162, is not a former charter holder.

(B) A charter holder with more than one open-enrollment charter is a former charter holder only with respect to the open-enrollment charter that authorizes a charter school that has ceased to operate. The charter holder is not a former charter holder with respect to an open-enrollment charter that authorizes a charter school that continues to operate.

(C) A charter holder who was eligible for high quality designation under §100.1035 of this title immediately prior to ceasing to operate that has surrendered its charter, provided that there was no settlement agreement requiring closure or a required closure under TEC, Chapter 39. A former charter holder that has relinquished its charter is not subject to the prohibitions in TEC, §12.101(b), or §100.1011(c)(1) of this title (relating to Application Requirements and Selection Process).

(13) High-performing entity--An entity that satisfies the criteria under TEC, §12.1011(a)(1), for out-of-state operations or an entity that satisfies the criteria for TEC, §12.1011(a)(2), for in-state operations that meets the performance criteria for the most recent rating years available.

(14) Lease interest--The legal rights obtained under a capital or operating lease. These include the right to occupy, use, and enjoy the real estate given by the property owner in exchange for rental payments or other consideration specified in the lease, together with any associated rights that the lease confers on the tenant under the lease or other law.

(15) Management company--A natural person or a corporation, partnership, sole proprietor, association, agency, or other legal entity that provides any management services to a charter holder or charter school, except that:

(A) a charter holder and its employees may provide management services to a charter school that is under the charter holder's supervision and control pursuant to the open-enrollment charter, and such charter holder is not thereby a management company;

(B) a nonprofit corporation that is exempt from taxation under 26 United States Code (U.S.C.), §501(c)(3), may donate management services to a charter holder, and the donor corporation is not thereby a management company if the donee charter holder is a subsidiary corporation controlled by the donor corporation under the articles of incorporation and bylaws of the donee charter holder;

(C) a regional education service center providing services to a charter school under TEC, Chapter 8, is not a management company;

(D) the fiscal agent of a shared services cooperative providing services to a member of the shared services cooperative is not a management company; and

(E) a nonprofit corporation that is exempt from taxation under 26 U.S.C., §115, is not a management company if it performs management services exclusively for a charter holder that is an eligible entity under TEC, §12.101(a)(1) or (4) or §12.152, and if:

(i) its articles of incorporation and bylaws, and any changes thereto, must be approved by such charter holder;

(ii) its board of directors must be appointed by such charter holder; and

(iii) its assets become the property of such charter holder upon dissolution.

(16) Management company breach--An action or failure to act by a management company that is contrary to a duty owed under a management contract, a rule adopted under TEC, Chapter 12, Subchapter D, or any other legal obligation, and constitutes sufficient grounds for action against the management company under TEC, §12.127 (Liability of Management Company), and/or §100.1157 of this title (relating to Procedures for Prohibiting a Management Contract). Where a provision in this subchapter uses this term, such use is for clarity and emphasis only and does not:

(A) establish that any breach of a duty occurred in a given case or what sanction is appropriate under the facts of that case; or

(B) imply that any other provision where the term is not used is not material or less important, or that the breach of a duty imposed by the provision is not grounds for action against the management company.

(17) Management services--Services related to the management or operation of a charter school. Management services include any of the following:

(A) planning, operating, supervising, or evaluating a charter school's educational programs, services, or facilities;

(B) making recommendations to the governing body of a charter holder or charter school relating to the selection of school personnel;

(C) managing a charter school's day-to-day operations as an administrative manager;

(D) preparing a proposed budget or budget amendments or submitting it to the governing body of a charter holder or charter school;

(E) recommending policies to be adopted by the governing body of a charter holder or charter school, except that legal services provided by an attorney licensed to practice law in this state, and public accountancy services provided by a certified public accountant licensed to practice public accountancy services in this state, are not management services, notwithstanding that such services may include recommending policies to be adopted by the governing body of a charter holder or charter school;

(F) developing procedures or practices to implement policies adopted by the governing body of a charter holder or charter school, except that legal services by an attorney licensed to practice law in this state and public accountancy services provided by a certified public accountant licensed to practice public accountancy services in this state are not management services, notwithstanding that such services may include developing procedures or practices to implement policies adopted by the governing body of a charter holder or charter school;

(G) overseeing the implementation of policies adopted by the governing body of a charter holder or charter school; or

(H) providing leadership for the attainment of student performance at a charter school based on the indicators adopted under TEC, §39.053 and §39.054, or adopted by the governing body of a charter holder or charter school.

(18) Material charter violation--An action or failure to act by a charter holder that is contrary to the terms of its open-enrollment charter and constitutes sufficient grounds for action against the charter holder under §§100.1049, 100.1045, 100.1047, and/or 100.1037 of this title (relating to Revocation and Modification of Governance of an Open-Enrollment Charter; Intervention Based on Charter Violations; Intervention Based on Health, Safety, or Welfare of Students; and Renewal of an Open-Enrollment Charter).

(19) Misuse or misapplication of funds or property--A use of state funds or public property that is contrary to:

(A) the open-enrollment charter under which a charter holder holds the funds or property;

(B) an agreement under which an employee or contractor holds the funds or property;

(C) a law, regulation, or rule that prescribes the manner of acquisition, sale, lease, custody, or disposition of the funds or property, including, but not limited to, violations of Local Government Code, §§171.002-171.007 and Chapter 271, Subchapter B, and TEC, §12.1053 and §12.1054, unless otherwise stated in the charter contract;

(D) a limited purpose for which the funds or property is delivered or received; or

(E) the use authorized by the governing body of the charter holder.

(20) Officer of a charter school--A person charged with the duties of, or acting as, a chief executive officer, a central administration officer, a campus administration officer, or a business manager, regardless whether the person is an employee or contractor of a charter holder, charter school, management company, or any other person; or a volunteer working under the direction of a charter holder, charter school, or management company. A charter holder employee or independent contractor engaged solely in non-charter activities for the charter holder is not an "officer of a charter school."

(21) Open-enrollment charter--A charter holder's authorization to operate a publicly funded charter school consistent with TEC, §12.102 (Authority Under Charter). The terms of an open-enrollment charter include:

(A) the applicable contract for charter ("charter contract") between the charter holder and the SBOE or commissioner of education;

(B) all applicable state and federal laws, rules, and regulations;

(C) the request for application issued by TEA to which the charter holder's application for open-enrollment charter responds;

(D) any condition, amendment, modification, revision, or other change to the open-enrollment charter adopted or ratified by the SBOE or the commissioner; and

(E) to the extent they are consistent with subparagraphs (A)-(D) of this paragraph, all statements, assurances, written submissions, commitments, and/or representations made by the charter holder in writing in its application for charter, attachments, or related documents or orally during its interview with the commissioner or commis-



sioner's designee or orally at a public meeting of the SBOE or any of its committees.

(22) Personal property--An interest in personal property recognized by Texas law, including:

(A) furniture, equipment, supplies, and other goods;

(B) computer hardware and software;

(C) contract rights, intellectual property such as patents, and other intangible property;

(D) cash, currency, funds, bank accounts, securities, and other investment instruments;

(E) the right to repayment of a loan, advance, or prepayment or to the payment of other receivables; and

(F) any other form of personal property recognized by Texas law.

(23) Property acquired, improved, or maintained using state funds--Property for which the title, control over the property, use of the property, or benefit from the property is obtained directly or indirectly through expenditure of or control over state funds. This includes property acquired, improved, or maintained through a management company under a contract for management services, and includes the proceeds of loans, credit, or other financing that:

(A) is secured with state funds, or with property acquired, improved, or maintained using state funds; or

(B) is extended, in whole or part, based on the charter holder's control over state funds.

(24) Real estate--An interest, including a lease interest, in real property recognized by Texas law or in improvements such as buildings, fixtures, utilities, landscaping, construction in progress, or other improvements.

(25) Related party transaction--Includes a transaction between the charter holder or charter school and:

(A) a person who is:

(i) a current or former (within the last five years) board member for the charter holder or the charter school;

(ii) a current or former (within the last five years) administrator for the charter holder or the charter school;

(iii) a current or former officer of a charter school;

(iv) a person who is related to a person described in clauses (i)-(iii) of this subparagraph within the third degree of consanguinity or second degree of affinity, as determined under Texas Government Code, Chapter 573;

(v) a person who within the last five years ending on the date of the transaction was in a position to exercise substantial influence over the organization including any "disqualified person" as defined under Internal Revenue Code (IRC), §4958, or Treasury Regulation 26 CFR §53.4958-3;

(vi) a family member of a person described in clause (v) of this subparagraph, which includes:

(I) the person's spouse or ancestor; or

(II) the person's children, grandchildren, great grandchildren, siblings, half-siblings, and their spouses;

(vii) any person described in clause (v) or (vi) of this subparagraph with respect to an organization described in IRC,

§509(a)(3), that was organized and operated exclusively for the benefit of, to perform the functions of, or to carry out the purposes of the charter holder; or

(viii) any person who is a donor or donor advisor;

(B) an entity that:

(i) is related to the charter holder;

(ii) is participating in a joint venture with the charter holder;

(iii) is jointly governed with the charter holder;

(iv) has a current or former (within last five years) board member, administrator, or officer who is either:

(I) a current board member, administrator or officer of the charter holder or charter school; or

(II) related to within the third degree of consanguinity or second degree of affinity of a person described in clause (i) of this subparagraph as determined under Texas Government Code, Chapter 573;

(v) is more than 35% controlled by individuals described in subparagraph (A)(v) and (vi) of this paragraph, including:

(I) a corporation in which such persons own more than 35% of the total combined voting power;

(II) a partnership in which such persons own more than 35% of the profits interest;

(III) a trust or estate in which such persons own more than 35% of the beneficial interest; or

(IV) for purposes of this subsection, an entity for which the constructive ownership rules of IRC, §4946(a)(3) and (a)(4), apply; or

(vi) any entity that is described in IRC, §509(a)(3), that:

(I) is organized and operated exclusively for the benefit of, to perform the functions of, or to carry out the purposes of the charter holder; and

(II) meets the control test in clause (v) of this subparagraph;

(C) a donor-advised fund if a donor (or any person appointed or designated by such donor) has, or reasonably expects to have, advisory privileges with respect to the distribution or investment of amounts held in such fund or account by reason of the donor's status as a donor;

(D) any person or entity associated with the section regarding sponsoring entity;

(E) a lender providing secured or unsecured debt to the charter holder or charter school other than bonds or tax-exempt facility financing, for any transaction other than the loan or note agreement; or

(F) a major donor to the charter holder or charter school under a written grant agreement or other contract, for any transaction with the donor other than the written grant agreement.

(26) Shared services cooperative or shared services arrangement--A contractual arrangement among charter holders or between a charter holder(s), school districts, and/or education service centers, through which one member of the cooperative, acting as the fiscal and administrative agent for the other members, provides educational services, operational services and/or management services

to member charter holders under a written contract executed by each member. A contract establishing a shared services cooperative must at a minimum:

(A) establish clear procedures for administering services under the direction and control of the cooperative and for assigning responsibility for all costs and liabilities associated with services provided under the contract;

(B) establish the duties, responsibilities, and accountability of the fiscal agent and of each member for services provided under the contract;

(C) establish clear procedures for withdrawal of a member from the agreement and for the dissolution and winding up of the affairs of the cooperative; and

(D) be approved in writing by the commissioner before any services are provided.

(27) State funds--Funds received by the charter holder under TEC, §12.106, and any grant or discretionary funds received through or administered by TEA, including all federal funds. The rules in this division apply to property acquired, improved, or maintained with federal funds to the extent that such application is consistent with applicable federal law or regulations.

(28) State funds received before September 1, 2001--State funds are received before September 1, 2001, if the Texas Comptroller of Public Accounts issued a warrant for such funds before that date, or if an electronic transfer of such funds was made before that date.

(29) State funds received on or after September 1, 2001--State funds are received on or after September 1, 2001, if the Texas Comptroller of Public Accounts issues a warrant for such funds on or after that date, or if an electronic transfer of such funds is made on or after that date.

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

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Director, Rulemaking

Texas Education Agency

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



## DIVISION 2. COMMISSIONER ACTION AND INTERVENTION

### 19 TAC §§100.1011, 100.1013, 100.1015, 100.1017, 100.1021, 100.1023, 100.1025

STATUTORY AUTHORITY. The new sections are adopted under Texas Education Code (TEC), §12.101, which requires the commissioner to adopt rules regarding the criteria for granting a charter and providing notification for the establishment of new charters or campuses; TEC, §12.1011, which requires the commissioner to adopt rules regarding charter authorization for high-performing entities; TEC, §12.103, which allows the commissioner

to adopt rules regarding applicable provisions to open-enrollment charter schools; TEC, §12.104, as amended by House Bill (HB) 189, 87th Texas Legislature, Regular Session, 2021, which allows the commissioner to adopt rules permitting an open-enrollment charter school to voluntarily participate in any state program available to school districts if the school complies with all terms of the program; TEC, §12.1055, which allows the commissioner to adopt rules regarding nepotism under Texas Government Code, Chapter 573; TEC, §12.1058, as amended by HB 1707, 88th Texas Legislature, Regular Session, 2023, which requires a political subdivision to consider an open-enrollment charter school as a school district for the purposes of municipal ordinances if the open-enrollment charter school meets notification requirements; TEC, §12.110, which requires the commissioner to adopt an application form and procedure that must be used to apply for an open-enrollment charter school; TEC, §12.1101, which requires the commissioner to adopt a procedure for providing notice to the outlined persons on receipt by the commissioner of an application for a charter for an open-enrollment charter school or of notice of the establishment of a campus; TEC, §12.114, which allows the commissioner to define expansion amendment requests; TEC, §12.1141, as amended by Senate Bill (SB) 879, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to adopt a procedure for renewal, denial of renewal, or expiration of a charter for an open-enrollment charter school at the end of the term of the charter; TEC, §12.1166, which requires the commissioner to adopt a rule defining "related party;" TEC, §12.1173, as amended by SB 2293, 86th Texas Legislature, 2019, which requires the commissioner to adopt rules to implement charter school waiting lists for admission; TEC, §12.1181, requires the commissioner to adopt performance frameworks that establish standards by which to measure the performance of an open-enrollment charter school; TEC, §12.123, which requires the commissioner to adopt rules prescribing the training for members of the governing body of a charter school and its officers; TEC, §12.153, which allows the commissioner to adopt rules to implement college or university or junior college charter schools; TEC, §12.265, as amended by SB 1615, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to adopt rules necessary to administer adult high school charter school programs; and TEC, §39.0548, which requires the commissioner to authorize and determine designation as a dropout recovery school.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §§12.101; 12.1011; 12.103; 12.104, as amended by House Bill (HB) 189, 87th Texas Legislature, Regular Session, 2021; 12.1055; 12.1058, as amended by HB 1707, 88th Texas Legislature, Regular Session, 2023; 12.110; 12.1101; 12.114; 12.1141, as amended by Senate Bill (SB) 879, 87th Texas Legislature, Regular Session, 2021; 12.1166; 12.1173, as amended by SB 2293, 86th Texas Legislature, 2019; 12.1181; 12.123; 12.153; 12.265, as amended by SB 1615, 87th Texas Legislature, Regular Session, 2021; and 39.0548.

#### §100.1011. Application Requirements and Selection Process.

(a) Except as expressly provided in the rules in this subchapter, provisions in this section apply to applications affiliated and published under the following Texas Education Code (TEC) subchapters:

- (1) TEC, Chapter 12, Subchapter D;
- (2) TEC, Chapter 12, Subchapter E; and
- (3) TEC, Chapter 12, Subchapter G.

(b) Prior to each application cycle, the commissioner of education shall approve an application form for submission by new and returning applicants seeking to operate a high quality open-enrollment charter school. The application form shall address the content requirements specified in TEC, §12.111, for the Subchapter D form; TEC, §12.154, for the Subchapter E form; and TEC, §12.257, for the Subchapter G form, and contain the following:

- (1) the timeline for selection;
- (2) applicant conferences and training prerequisites;
- (3) scoring criteria and procedures for use by the review panel selected under subsection (d) of this section;
- (4) the minimum score necessary for an application to be eligible for capacity interview; and
- (5) the earliest date an open-enrollment charter school selected in the cycle may open.

(c) The Texas Education Agency (TEA) shall review applications submitted under this section.

(1) No applicant will be considered if it meets either of the conditions in the following subparagraphs. This paragraph does not apply to an applicant that has previously relinquished a charter, under the circumstances described in §100.1001(12)(C) of this title (relating to Definitions).

(A) Within the preceding 10 years, the applicant had a charter under Texas law or similar charter under the laws of another state surrendered under a settlement agreement, revoked, denied renewal, or returned.

(B) The applicant is considered to be a corporate affiliate of, or substantially related to, an entity that within the preceding 10 years, had a charter under Texas law or similar charter under the laws of another state surrendered under a settlement agreement, revoked, denied renewal, or returned.

(2) The commissioner of education may not grant more than one charter for an open-enrollment charter school to any charter holder.

(3) Upon receipt, TEA shall review applications for completeness and provide each applicant with a notice that documents the status of each requirement as complete or incomplete.

(A) TEA shall remove applications without further processing if documents are:

- (i) received after the submission deadline as provided in the request for application;
- (ii) substantially incomplete; or
- (iii) determined not to meet the standards in TEC, §§12.101, 12.152, 12.257, or 12.255, or §100.1011 or §100.1017 of this title (relating to Application Requirements and Selection Process and Applicant Eligibility and Form Contents).

(B) If TEA determines that an application is not complete, TEA shall notify the applicant of all documents that are eligible for remedy and allow five business days for the applicant to submit the requested documentation.

(C) Once additional review is complete, the decision of the commissioner or commissioner's designee is final and may not be appealed.

(D) 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.

(E) Upon written notice to TEA and without penalty for future application cycles, an applicant may withdraw an application.

(F) Applications that are determined complete shall be reviewed and scored by an external application review panel.

(i) The external application review panel shall be selected from a pool of qualified candidates. To the greatest extent practicable, an external review panelist will not be assigned applications for schools planning to locate within the geographic area in which they have a primary physical address or employment address and served by the same regional education service center.

(ii) Members of the review panel shall disclose to TEA immediately the discovery of any past or present relationship with an open-enrollment charter applicant, including any current or prospective employee, agent, officer, or director of the sponsoring entity, an affiliated entity, or other party with an interest in the selection of the application.

(iii) Reviewers must be individuals with the knowledge and skills associated with one or more of the following: curriculum and instruction, education service and delivery, charter authorization, charter school organization and management, facilities use and management, pedagogy, innovative education programs or technologies, assessments, diverse learning populations, school leadership, human resources, school finance, and/or charter school governance and policy.

(iv) The panel shall review and score applications in accordance with the procedures and criteria established in the application form.

(v) Review panel members shall not discuss applications with anyone except TEA staff. Review panel members shall not accept meals, entertainment, gifts, or gratuities in any form from any person or organization with an interest in the results of the selection process for open-enrollment charters.

(vi) Applications that are not scored at or above the minimum score established in the application form are not eligible for commissioner selection during that cycle.

(vii) Upon completion of external review, TEA will provide all applicants with the results of their reviews by the panel, notice of their status as meeting or not meeting the minimum score, whether the applicant will advance to capacity interviews, the average scores, and individual scoring rubrics, including comments from independent external review panelists.

(G) The commissioner may, at the commissioner's sole discretion, decline to grant an open-enrollment charter to an applicant whose application was scored at or above the minimum score.

(i) No recommendation, ranking, or other type of endorsement by a member or members of the review panel is binding on the commissioner.

(ii) The commissioner or commissioner's designee shall provide written notice to any applicant that is removed under this paragraph.

(iii) The decision of the commissioner or commissioner's designee is final and may not be appealed.

(H) All parts of the application are releasable to the public under the Texas Public Information Act and will be posted to the TEA website; therefore, the following must be excluded or redacted:

- (i) personal email addresses;
- (ii) proprietary material;
- (iii) copyrighted material;

(iv) documents that could violate the Family Educational Rights and Privacy Act by identifying potential students of the charter school, including, but not limited to, sign-in lists at public meetings about the school, photographs of existing students if the school is currently operating or photographs of prospective students, and/or letters of support from potential charter school parents and/or students; and

(v) any other information or documentation that cannot be released in accordance with Texas Government Code, Chapter 552.

(I) The commissioner or the commissioner's designee(s) in coordination with TEA staff shall conduct a capacity interview with applicants whose applications received the minimum score established in the application form. The commissioner may specify individuals required to attend the interview and may require the submission of additional information and documentation prior or subsequent to an interview.

(d) The commissioner shall approve or deny a Subchapter D charter school application based on:

- (1) documented evidence gathered through the application review process;
- (2) merit;
- (3) criteria for applicants that apply as new operators that include, at a minimum:

(A) indications that the charter school will possess the capability to carry out responsibilities as provided in the charter;

(B) indications that the charter school will improve student performance and encourage innovative programs;

(C) indications that the charter school will be high-quality, including:

(i) evidence that the school will receive the highest or second highest performance rating category under TEC, Chapter 39, Subchapter C, beginning in the first year of eligibility; and

(ii) evidence that the charter school will earn seventy or more points without failing a critical indicator on the Charter Financial Integrity Rating System of Texas beginning in Year 1; and

(D) a statement from any school district whose enrollment is likely to be affected by the charter school, including information relating to any financial difficulty that a loss in enrollment may have on the district;

(4) criteria for applicants that apply as experienced operators that include, at a minimum:

(A) the criteria described in paragraphs (1)-(3) of this subsection;

(B) the strength of the applicant's existing portfolio, or their affiliate; and

(C) the likelihood of operating a high-quality charter; and

(5) all other criteria published in the application.

(e) The commissioner shall approve or deny a Subchapter E charter school application based on:

(1) the criteria described in subsection (d)(1)-(3) of this section;

(2) indications that the applicant's educational program will be implemented under the direct supervision of a member of the teaching or research faculty of the public junior college, senior college, or university;

(3) indications that the faculty member supervising the applicant's educational program has substantial experience and expertise in education research, teacher education, classroom instruction, or educational administration;

(4) indications that the applicant's educational program has been designed to meet specific goals described in the charter application and each aspect of the program is directed toward the attainment of the goals;

(5) indications that the financial operations of the applicant will be supervised by the business office of the public junior college, senior college, or university; and

(6) all other criteria published in the application.

(f) The commissioner shall approve or deny a Subchapter G charter school application based on:

(1) documented evidence gathered through the application review process;

(2) merit; and

(3) criteria that include:

(A) indications that the education program will enable program participants to successfully earn a diploma and take career and technology education courses that can lead to an industry certification;

(B) indications that the applicant, or a member of the applicant's executive leadership has a successful history of providing education services, including industry certifications and job placement services, to adults 18 years of age and older whose educational and training opportunities have been limited by educational disadvantages, disabilities, homelessness, criminal history, or similar marginalizing circumstances;

(C) indications that a significant portion of instruction will be delivered in a teacher-led, interactive classroom environment;

(D) indications that the educational program will provide access to:

(i) career readiness training;

(ii) postsecondary counseling; and

(iii) job-placement services;

(E) indications that the educational program will provide support services that include:

(i) child care at no cost to students;

(ii) life coaching services as outlined in TEC, §12.259;

(iii) mental health counseling;

(iv) instructional support services for students with identified disabilities; and

(v) transportation assistance;

(F) indications that the charter school will possess the capability to carry out responsibilities as provided in the charter;

(G) indications that the proposed governance structure will maintain sound fiscal management and administrative practices; and

(H) indications that the financial plan is viable.

(g) Priority shall be given to applicants that propose a school in an attendance zone of a school district campus assigned an unacceptable performance rating under TEC, §39.054, for two preceding years. This paragraph does not apply to an application form released under TEC, Chapter 12, Subchapter G.

(h) An applicant or any person or entity acting on behalf of an applicant for an open-enrollment charter shall not knowingly communicate with any member of an external application review panel concerning a charter school application beginning on the date the application is submitted and ending 90 days after the commissioner's proposal of a Subchapter D charter, or ending with the commissioner's notice of decision regarding a Subchapter E or G charter, whichever applies. On finding a material violation of the no-contact period, the commissioner may reject the application and deem it ineligible for award.

(i) An applicant or their representative must not initiate contact with any employee of TEA, other than the commissioner or commissioner's designee, regarding the content of its application from the time the application is submitted until the application cycle is final, following the 90-day State Board of Education (SBOE) veto period.

(j) An applicant or person or entity acting on behalf of the applicant may not provide any item of value, directly or indirectly, to the commissioner, any employee of TEA, or a member of the SBOE during the no-contact period.

(k) An applicant or any person or entity acting on behalf of an applicant for an open-enrollment charter shall not knowingly communicate with any member of the SBOE beginning on the date the application is submitted and ending on the date the applicant passes through an external review with a qualifying score. On finding a material violation of the no-contact period, the commissioner may reject the application and deem it ineligible for award. This paragraph does not apply to a charter the commissioner authorizes under TEC, Chapter 12, Subchapter E and Subchapter G.

(l) The commissioner shall notify the SBOE of each charter the commissioner proposes to authorize. A charter proposed by the commissioner will be granted on the 90th day after the date on which the SBOE receives the notice from the commissioner unless either of the conditions in the following paragraphs are met. This paragraph does not apply to a charter the commissioner authorizes under TEC, Chapter 12, Subchapters E and G.

(1) The SBOE votes against the charter in accordance with TEC, §12.101(b-0).

(2) The commissioner withdraws the proposal.

(m) The commissioner may defer granting an open-enrollment charter subject to contingencies and shall require fulfillment of such contingencies before the charter school is issued a contract. Such conditions must be fulfilled by the awardee, as determined by the commissioner, no later than 60 days after the date of the notification of contingencies by the commissioner or the proposal of the charter is withdrawn. The commissioner may establish timelines for submission by the awardee of any documentation to be considered by the commissioner in determining whether contingencies have been met.

(n) The commissioner may decline to finally grant or award a charter based on misrepresentations during the application process or failure to comply with commissioner rules, application requirements, or SBOE rules.

(o) An open-enrollment charter shall be in the form and substance of a written contract signed by the commissioner, the board chair of the charter holder or charter school, and the chief operating officer of the school but is not a contract for goods or services within the meaning of Texas Government Code, Chapter 2260. The chief operating officer of the school shall mean the chief executive officer of the open-enrollment charter holder under TEC, §12.1012.

(p) The charter contract shall be for an initial term of five years beginning on July 1 following the execution of the initial contract or July 1 following an approved extension under subsection (q) of this section.

(q) The charter must open and serve students within one school year of the awarding of the charter contract, unless an extension is approved by the commissioner. Failure to operate by the approved extension date shall constitute an automatic abandonment of the charter contract and the charter is automatically considered void and returned to the commissioner.

*§100.1017. Applicant Eligibility and Form Contents.*

(a) Except as expressly provided in the rules in this subchapter, provisions in this section apply to all applications affiliated and published under the following Texas Education Code (TEC) subchapters:

- (1) TEC, Chapter 12, Subchapter D;
- (2) TEC, Chapter 12, Subchapter E; and
- (3) TEC, Chapter 12, Subchapter G.

(b) Any existing entity applying for the charter must be in good standing with the Internal Revenue Service (IRS), the Texas Secretary of State, and the Texas Comptroller of Public Accounts. An existing entity must also be in good standing with all regulatory agencies in its home state. An existing entity must attest that any failure to maintain ongoing compliance with these requirements, if awarded a charter, will be considered a material violation of the charter contract and may be grounds for revocation.

(c) Notwithstanding any other provisions in this chapter, the following provisions apply to charter applicants and successful charter awardees authorized by the commissioner under requests for applications adopted after November 1, 2012.

(1) Financial standards. An applicant for a TEC, Chapter 12, Subchapter D, E, or G charter school, as applicable, shall meet each of the following financial standards to demonstrate the financial viability of the charter, as determined by the commissioner of education or the commissioner's designee, prior to being considered for award of a charter and must attest that any failure to maintain ongoing compliance with these requirements, if awarded a charter, will be considered a material violation of the charter contract and may be grounds for revocation.

(A) Each entity must provide evidence of financial competency and sustainability by providing evidence of an appropriate financial plan that includes each of the following:

(i) a brief analysis of the educational opportunities in the area(s) for the same students and the methods that the proposed school will use to recruit and retain students;

(ii) a brief narrative of the growth plan for the first five years of operation of the proposed school that matches all projections included in the budget;

(iii) an unqualified opinion as provided in the most recent audited financial statements of the applicant if the entity has been in existence at least a year;

(iv) a five-year budget projection of revenue and expenditures for the proposed charter using the template that will be provided in the application;

(v) a response, based on the revenue and expenditures provided in the template that will be provided in the application, detailing the ways in which the budget projections were derived, including any assumptions used; and

(vi) support documentation for budget projections as detailed in the budget template that will be provided with the application.

(B) Loans and lines of credit are liabilities that must be repaid and will be considered as available funding. Loans or lines of credit may be characterized as assets and as cash on hand.

(C) The applicant must identify in the template provided in the application available funding for start-up costs, as documented by current assets listed in the balance sheet and/or pledges for donation that do not require repayment.

(D) The applicant must identify revenue and expenses on a per-student amount and may not reflect a net operating loss for any projection year.

(E) To ensure financial viability, the entity must commit to serving a minimum of 100 students at all times.

(F) The entity applying for the charter must have liabilities that are less than 80% of its assets.

(G) The aggregate of projected budgeted expenses must be less than the aggregate of projected total revenues by the end of the first year of operation provided that:

(i) projected revenues are documented and use the amount per student designated in the application when calculating Foundation School Program funding that will begin during the first year of operation; and

(ii) all reasonable start-up and first-year expenditures are included in the budgets or an explanation for not needing to include them is included in the budget narratives.

(2) Governing standards. An applicant for a TEC, Chapter 12, Subchapter D, E, or G charter school, as applicable, shall meet each of the following governing standards to demonstrate sound establishment and oversight of the charter's educational mission, as determined by the commissioner or the commissioner's designee, prior to being considered for award of a charter and must attest that any failure to maintain ongoing compliance with these requirements, if awarded a charter, will be considered a material violation of the charter contract and may be grounds for revocation, except as provided by TEC, §12.1054(a)(2).

(A) To qualify as an eligible entity in accordance with TEC, §12.101(a)(3), as an organization that is exempt under 26 United States Code (U.S.C.), §501(c)(3), the applicant must have its own 501(c)(3) exemption in its own name, as evidenced by a 501(c)(3) letter of determination issued by the IRS.

(i) An applicant cannot attain status as an eligible entity that is exempt under 26 U.S.C., §501(c)(3), as a disregarded en-

tity, a supporting organization, or a member of a group exemption of a currently recognized 501(c)(3) tax-exempt organization.

(ii) Entities that have applied for 501(c)(3) status but have yet to receive the exemption from the IRS must provide the letter of determination of the 501(c)(3) status issued by the IRS prior to a recommendation by the commissioner. Failure to secure 501(c)(3) status deems an entity ineligible.

(iii) A religious organization, sectarian school, or religious institution that applies must have an established separate non-sectarian entity that is exempt under 26 U.S.C., §501(c)(3), to be considered an eligible entity.

(B) The articles of incorporation or certificate of formation as applicable, and the bylaws of the applicant must vest the management of the corporate affairs in the board of directors.

(i) The charter holder may not vest the management of corporate affairs in any member or members.

(ii) Articles of incorporation, certificate of formation, bylaws, or any policy or other agreement may not confer on or reserve to any other entity or person the ability to overrule, remove, replace, or name the members of the governing body or board of the charter holder or charter school at any time.

(C) Any other change in the aforementioned governance documents pursuant to the management of the corporate affairs of the nonprofit entity may only occur with the approval of the commissioner in accordance with §100.1035(b) of this title (relating to Charter Amendment) or in accordance with any other power granted to the commissioner in state law or rule.

(D) If the sponsoring entity is a 501(c)(3) nonprofit corporation, its bylaws must clearly state that the charter holder and charter school will comply with the Texas Open Meetings Act and will appropriately respond to Texas Public Information Act requests.

(E) No family members within the third degree of consanguinity or second degree of affinity shall simultaneously serve on the charter holder or charter school board.

(F) No family member within the third degree of consanguinity or second degree of affinity of any charter holder board member, charter school board member, or superintendent shall receive compensation in any form from the charter school, the charter holder, or any management company that operates or provides services to the charter school.

(G) The applicant shall specify that the governing body accepts and will not delegate ultimate responsibility for the school, including academic performance and financial and operational viability, and is responsible for overseeing any management company providing management services for the school.

(3) Educational and operational standards for applications published under TEC, Chapter 12, Subchapters D and E. An applicant shall successfully meet each of the following educational and operational standards to ensure alignment of curricula to the Texas Essential Knowledge and Skills, as determined by the commissioner or the commissioner's designee, prior to being considered for award of a charter and must attest that any failure to maintain ongoing compliance with these requirements, if awarded a charter, will be considered a material violation of the charter contract and may be grounds for revocation.

(A) The charter applicant must provide a succinct long-term vision for the proposed school and clearly explain the overall educational philosophy to be promoted at the school, if authorized.

(B) The charter applicant must provide a succinct explanation of the reasons for choosing the target location.

(C) The charter applicant must clearly explain in succinct terms the specific curricular programs that the school, if authorized, will provide to students and the ways in which the charter staff, board members, and others will use these programs to maintain high expectations for and the continuous improvement of student performance.

(D) The charter applicant must clearly explain in succinct terms the ways in which the school, if authorized, will improve student learning, increase the choice of high-quality educational opportunities in the proposed area, create professional environments that will attract new teachers to the public school system, set a high standard for school accountability and student achievement, and encourage different and innovative learning methods.

(E) The charter applicant must clearly explain how classroom practices will reflect the connections among curriculum, instruction, and assessment.

(F) The charter applicant must describe in succinct terms the specific ways in which the school, if authorized, will:

(i) address the instructional needs of students performing both below and above grade levels in major content areas;

(ii) differentiate instruction to meet the needs of diverse learners;

(iii) provide a continuum of services in the least restrictive environment for students with special needs as required by state and federal law;

(iv) provide bilingual and/or English as a second language instruction to English language learners as required by state law; and

(v) implement an educational program that supports compliance with all course requirements pursuant to state law.

(G) As evidenced in required documentation, the charter applicant must commit to hiring personnel with appropriate qualifications as follows.

(i) Except as provided in clause (iv) of this subparagraph, all teachers, regardless of subject matter taught, must have a baccalaureate degree.

(ii) Special education teachers, bilingual teachers, and teachers of English as a second language must be certified in the fields in which they are assigned to teach as required in state and/or federal law.

(iii) Paraprofessionals must be certified as required to meet state and/or federal law.

(iv) In an open-enrollment charter school that serves youth referred to or placed in a residential trade center by a local or state agency, a person may be employed as a teacher for a noncore vocational course without holding a baccalaureate degree, subject to the requirements described in §100.1212 of this title (relating to Personnel).

(H) With the exception of an early education (prekindergarten for age three through Grade 2) or prekindergarten-only model, the charter applicant must commit to serving, by its fourth year of operation, students in grades assessed for state accountability purposes.

(I) The charter applicant must provide a final copy of any management contract, if applicable, that will be entered into by the

charter holder that will provide any management services, including the monetary amount that will be paid to the management company for providing school services.

(J) This paragraph does not apply to an application published under TEC, Chapter 12, Subchapter G.

(4) Educational and operational standards for applications published under TEC, Chapter 12, Subchapter G. An applicant for an adult high school charter shall successfully meet each of the following educational and operational standards to ensure careful alignment of curricula to the industry-based certifications, and workforce preparation and training as determined by the commissioner or the commissioner's designee, prior to being considered for award of a charter and must attest that any failure to maintain ongoing compliance with these requirements, if awarded a charter, will be considered a material violation of the charter contract and may be grounds for revocation.

(A) The charter applicant must provide a succinct long-term vision for the proposed school and clearly explain the overall educational philosophy to be promoted at the school, if authorized.

(B) The charter applicant must clearly explain in succinct terms the specific curricular programs that the school, if authorized, will provide to program participants in order to earn a high school diploma and the ways in which the charter staff, board members, and others will use these programs to maintain high expectations for and the continuous improvement of student performance.

(C) The charter applicant must clearly explain in succinct terms the ways in which the school, if authorized, will offer interactive, teacher-led instruction to program participants.

(D) The charter applicant must clearly explain how career and technology programs for industry-based certifications will be implemented at the school.

(E) The charter applicant must submit a letter of intent if contracting with a public junior college, provider, organization approved by the Texas Workforce Commission to provide career and technology courses that lead to an industry certification.

(F) The charter applicant must provide evidence that the entity or a member of its executive leadership has a successful history of providing education services, including industry certifications and job placement services, to adults 18 years of age and older whose educational and training opportunities have been limited by educational disadvantages, disabilities, homelessness, criminal history, or similar marginalizing circumstances.

(G) The charter applicant must describe in succinct terms the specific ways in which the school, if authorized, will:

(i) address how participants can receive a diploma through successful completion of the Foundation High School program curriculum requirements or other appropriate curriculum requirements applicable to the program participant;

(ii) provide career readiness training, post-secondary counseling, and job placement services;

(iii) offer support services, including childcare at no cost, life coaching services, mental health counseling, and transportation assistance;

(iv) provide a continuum of services in the least restrictive environment for program participants with special needs as required by state and federal law;

(v) provide bilingual and/or English as a second language instruction to emergent bilingual students as required by state law; and

(vi) implement an educational program that supports compliance with all course requirements pursuant to state law.

(H) As evidenced in required documentation, the charter applicant must commit to hiring personnel with appropriate qualifications as follows.

(i) Except as provided in §100.1212(b) of this title, all teachers, regardless of subject matter taught, must have a baccalaureate degree.

(ii) Special education teachers, bilingual teachers, and teachers of English as a second language must be certified in the fields in which they are assigned to teach as required in state and/or federal law.

(iii) Paraprofessionals must be certified as required to meet state and/or federal law.

(I) The charter applicant may not propose to serve more than 2,000 students.

(J) The charter applicant must provide a final copy of any management contract, if applicable, that will be entered into by the charter holder that will provide any management services, including the monetary amount that will be paid to the management company for providing school services.

(K) The charter applicant must provide a final memorandum of understanding if partnering with a public junior college, provider, organization approved by the Texas Workforce Commission to provide career and technology courses that lead to an industry certification.

*§100.1021. Applicability of Law and Rules to Public Senior College or University Charters and Public Junior College Charters.*

(a) Except as expressly provided in the rules in this subchapter, or where required by Texas Education Code (TEC), Chapter 12, Subchapter E (College or University or Junior College Charter School), a provision of the rules in this subchapter applies to a public senior college or university charter school or junior college charter school as though the public senior college or university charter school or junior college charter school were granted a charter under TEC, Chapter 12, Subchapter D (Open-Enrollment Charter School).

(b) Section 100.1011(b) of this title (relating to Application Requirements and Selection Process) applies, except that the commissioner of education may adopt a separate application form for applicants seeking a charter to operate a public senior college or university charter school or a public junior college charter school, which need not be similar to the application form adopted under that subsection for other charter applicants. The commissioner may approve or amend this separate application form without regard to the selection cycle referenced in that subsection.

(c) Section 100.1011(b), (c), (e), (g), (h), (j) and (m)-(q) of this title apply unless provided otherwise in the charter contract.

(d) The following provisions of this subchapter do not apply to a public senior college or university charter school or a public junior college charter school:

(1) §100.1035(d) and §100.1113 of this title (relating to Charter Amendment and Delegation of Powers and Duties), except as authorized in the charter contract upon written request of the governing body of the university, college, or junior college;

(2) §100.1127 of this title (relating to Record of Compliance and Disclosure of Non-compliance);

(3) §100.1101 of this title (relating to Improvements to Real Property);

(4) §§100.1131-100.1141 of this title (relating to Applicability of Nepotism Provisions; Exception for Acceptable Performance; General Nepotism Provisions; Relationships By Consanguinity or By Affinity; Nepotism Prohibitions; Nepotism Exceptions; and Enforcement of Nepotism Prohibitions);

(5) §100.1145 and §100.1147 of this title (relating to General Conflict of Interest Provisions and Conflicts Requiring Affidavit and Abstention from Voting);

(6) §100.1203(a) of this title (relating to Records Management); and

(7) §100.1205 of this title (relating to Procurement of Professional Services).

*§100.1023. Applicability of Law and Rules to Adult High School Charters.*

The following provisions apply as indicated in this section to an adult education charter school as though the adult education charter school was granted a charter under Texas Education Code (TEC), Chapter 12, Subchapter D.

(1) Section 100.1011(b) of this title (relating to Application Requirements and Selection Process) applies, except that the commissioner of education may adopt a separate application form for applicants seeking a charter to operate an adult education charter school, which need not be similar to the application form adopted under that subsection for other charter applicants. The commissioner may approve or amend this separate application form without regard to the selection cycle referenced in that subsection.

(2) Section 100.1011(b); (c)(3)(A)(i), (B)-(E), (F)(i)-(v) and (vii), and (G)-(I); (f); (h); (j); and (m)-(q) apply unless provided otherwise in the charter contract.

(3) The following sections of TEC, Chapter 12.

(A) TEC, §12.1012, related to definitions.

(B) TEC, §12.10125, related to open-enrollment charter schools not in operation.

(C) TEC, §12.105, related to status.

(D) TEC, §12.1051, related to open meetings and public information laws.

(E) TEC, §12.1052, related to local government records applicability.

(F) TEC, §12.1053, related to public purchasing and contracting laws.

(G) TEC, §12.1054, related to conflict of interest law applicability.

(H) TEC, §12.1055, related to nepotism law applicability.

(I) TEC, §12.1056, related to immunity from liability and suit.

(J) TEC, §12.1057, related to membership in Teacher Retirement System of Texas.

(K) TEC, §12.1059, related to employment requirements.



- (L) TEC, §12.107, related to status and use of funds.
- (M) TEC, §12.108, related to tuition and fees.
- (N) TEC, §12.109, related to transportation.
- (O) TEC, §12.1141, related to renewal and expiration.
- (P) TEC, §12.1162, related to sanctions.
- (Q) TEC, §12.1163, related to audit by commissioner.
- (R) TEC, §12.1164, related to notice to Teacher Retirement System of Texas.
- (S) TEC, §12.1166, related to related party transactions.
- (T) TEC, §12.1168, related to financial report of certain schools.
- (U) TEC, §12.117, related to admission.
- (V) TEC, §12.119, related to bylaws and annual report.
- (W) TEC, §12.101(b)(2), related to prohibition of charter holder having had a charter removed or surrendered in the 10 years prior.
- (X) TEC, §12.101(b-5), related to the initial term of a charter.
- (Y) TEC, §12.120, related to board member restrictions.
- (Z) TEC, §12.1202, related to qualified voter requirement.
- (AA) TEC, §12.1211, related to board website posting requirement.
- (BB) TEC, §12.122, related to liability of board members.
- (CC) TEC, §12.123, related to training for board members and officers.
- (DD) TEC, §12.124, related to management company loans.
- (EE) TEC, §12.125, related to management services contracts.
- (FF) TEC, §12.126, related to prohibitions of certain management services contracts.
- (GG) TEC, §12.127, related to management company liability.
- (HH) TEC, §12.128, related to property purchased or leased with state funds.
- (II) TEC, §12.129, related to minimum qualifications for principals and teachers.
- (JJ) TEC, §12.130, related to notice of teacher qualifications.
- (KK) TEC, §12.131, related to removal of students to disciplinary alternative education program and expulsion of students.
- (LL) TEC, §12.135, related to designation as charter district for purposes of bond guarantee.
- (MM) TEC, §12.136, related to posting of chief executive officer salary.
- (NN) TEC, §12.137, related to certain charter holders authorized to provide combined services for certain adult and high school dropout recovery programs.
- (OO) TEC, §12.141, related to reclaimed funds.
- (PP) TEC, §12.104(a-1)(1), related to security officer employment.
- (QQ) TEC, §12.104(a-1)(2), related to memorandums of understanding with law enforcement.
- (RR) TEC, §12.104(a-2), related to peace officer applicability.
- (SS) TEC, §12.104(b)(1), related to criminal offense.
- (TT) TEC, §12.104(b)(2), related to protections for reporting violations.
- (UU) TEC, §12.104(b)(3)(A), related to PEIMS.
- (VV) TEC, §12.104(b)(3)(B), related to criminal history records.
- (WW) TEC, §12.104(b)(3)(F), related to special education programs.
- (XX) TEC, §12.104(b)(3)(G), related to bilingual education.
- (YY) TEC, §12.104(b)(3)(J), related to discipline management techniques.
- (ZZ) TEC, §12.104(b)(3)(K), related to health and safety.
- (AAA) TEC, §12.104(b)(3)(L), related to accountability.
- (BBB) TEC, §12.104(b)(3)(M), related to accountability and investigations.
- (CCC) TEC, §12.104(b)(3)(N), related to reporting educator misconduct.
- (DDD) TEC, §12.104(b)(3)(O), related to intensive programs of instruction.
- (EEE) TEC, §12.104(b)(3)(P), related to right of employees to report crimes.
- (FFF) TEC, §12.104(b)(3)(R), related to the right to place a student in a disciplinary alternative education program or to expel the student for certain behaviors.
- (GGG) TEC, §12.104(b)(3)(S), related to right to report assault or harassment.
- (HHH) TEC, §12.104(b)(3)(T), related to parent rights to information regarding interventions.
- (III) TEC, §12.104(b)(3)(V), related to school safety requirements.
- (JJJ) TEC, §12.104(b)(3)(X), related to college, career, and military readiness plans.
- (KKK) TEC, §12.104(b)(3)(Y), related to parent option to retain a student.
- (LLL) TEC, §12.1058, related to applicability of municipal and government codes.

§100.1025. *Authorization for High-Performing Entities.*

(a) In accordance with Texas Education Code (TEC), §12.1011, notwithstanding TEC, §12.101(b), the commissioner of education may grant a charter to high-performing entities.

(b) For an applicant to be eligible for consideration as a high-performing entity, the applicant must demonstrate one of the following criteria.

(1) The entity is affiliated with a charter operator that operates one or more charter schools in another state. The affiliated charter operator must have performed at an overall level that is comparable to the highest or second highest performance rating category under TEC, Chapter 39, Subchapter C.

(A) The entity must propose to operate the charter school program that is currently implemented in the affiliated charter operator's existing charter schools.

(B) A charter operator may be considered affiliated with an entity if it utilizes shared structures, practices, or materials, including, but not limited to, a shared management structure, shared financial management or staff development practices, or shared proprietary materials, including those related to instruction.

(2) The entity is currently operating charter programs under TEC, Chapter 12, Subchapter C or E. The entity must have performed at an overall level in the highest or second highest performance rating category under TEC, Chapter 39, Subchapter C.

(c) Failure to disclose past or present accountability data is a material violation of the charter.

(d) If the applicant or its affiliate is a high-performing entity, then it may vest management of corporate affairs in a member provided that the entity may change the members of the governing body of the charter holder prior to the expiration of a member's term only with commissioner's written approval.

(e) Entities granted a charter under this provision have an initial contract term of five years.

(f) In determining a charter award for a high-performing entity, the commissioner will consider the criteria identified in §100.1011(d)(4) of this title (relating to Application Requirements and Selection Process) as established for experienced operators.

(g) Section 100.1011(b)(1), (2), and (5) of this title apply, except that the commissioner may adopt a separate application form for high-performing entities seeking a charter to operate a Subchapter D charter school, which need not be similar to the application form adopted under that subsection for other charter applicants. The commissioner may approve or amend this separate application form without regard to the selection cycle referenced in that subsection.

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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## DIVISION 2. COMMISSIONER ACTION AND INTERVENTION

### 19 TAC §§100.1021 - 100.1023, 100.1025 - 100.1027, 100.1029, 100.1031 - 100.1033, 100.1035

STATUTORY AUTHORITY. The repeals are adopted under Texas Education Code (TEC), §12.101, which requires the commissioner to adopt rules regarding the criteria for granting a charter and providing notification for the establishment of new charters or campuses; TEC, §12.1011, which requires the commissioner to adopt rules regarding charter authorization for high-performing entities; TEC, §12.103, which allows the commissioner to adopt rules regarding applicable provisions to open-enrollment charter schools; TEC, §12.104, as amended by House Bill (HB) 189, 87th Texas Legislature, Regular Session, 2021, which allows the commissioner to adopt rules permitting an open-enrollment charter school to voluntarily participate in any state program available to school districts if the school complies with all terms of the program; TEC, §12.1055, which allows the commissioner to adopt rules regarding nepotism under Texas Government Code, Chapter 573; TEC, §12.1058, as amended by HB 1707, 88th Texas Legislature, Regular Session, 2023, which requires a political subdivision to consider an open-enrollment charter school as a school district for the purposes of municipal ordinances if the open-enrollment charter school meets notification requirements; TEC, §12.110, which requires the commissioner to adopt an application form and procedure that must be used to apply for an open-enrollment charter school; TEC, §12.1101, which requires the commissioner to adopt a procedure for providing notice to the outlined persons on receipt by the commissioner of an application for a charter for an open-enrollment charter school or of notice of the establishment of a campus; TEC, §12.114, which allows the commissioner to define expansion amendment requests; TEC, §12.1141, as amended by Senate Bill (SB) 879, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to adopt a procedure for renewal, denial of renewal, or expiration of a charter for an open-enrollment charter school at the end of the term of the charter; TEC, §12.1166, which requires the commissioner to adopt a rule defining "related party;" TEC, §12.1173, as amended by SB 2293, 86th Texas Legislature, 2019, which requires the commissioner to adopt rules to implement charter school waiting lists for admission; TEC, §12.1181, requires the commissioner to adopt performance frameworks that establish standards by which to measure the performance of an open-enrollment charter school; TEC, §12.123, which requires the commissioner to adopt rules prescribing the training for members of the governing body of a charter school and its officers; TEC, §12.153, which allows the commissioner to adopt rules to implement college or university or junior college charter schools; TEC, §12.265, as amended by SB 1615, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to adopt rules necessary to administer adult high school charter school programs; and TEC, §39.0548, which requires the commissioner to authorize and determine designation as a dropout recovery school.

CROSS REFERENCE TO STATUTE. The repeals implement Texas Education Code, §§12.101; 12.1011; 12.103; 12.104, as amended by House Bill (HB) 189, 87th Texas Legislature, Regular Session, 2021; 12.1055; 12.1058, as amended by HB 1707, 88th Texas Legislature, Regular Session, 2023; 12.110; 12.1101; 12.114; 12.1141, as amended by Senate Bill (SB) 879, 87th Texas Legislature, Regular Session, 2021; 12.1166;

12.1173, as amended by SB 2293, 86th Texas Legislature, 2019; 12.1181; 12.123; 12.153; 12.265, as amended by SB 1615, 87th Texas Legislature, Regular Session, 2021; and 39.0548.

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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### DIVISION 3. COMMISSIONER ACTION, PERFORMANCE MONITORING, AND INTERVENTION

**19 TAC §§100.1031, 100.1035, 100.1037, 100.1039,  
100.1041, 100.1043, 100.1045, 100.1047, 100.1049, 100.1051,  
100.1053, 100.1055**

STATUTORY AUTHORITY. The new sections are adopted under Texas Education Code (TEC), §12.101, which requires the commissioner to adopt rules regarding the criteria for granting a charter and providing notification for the establishment of new charters or campuses; TEC, §12.1011, which requires the commissioner to adopt rules regarding charter authorization for high-performing entities; TEC, §12.103, which allows the commissioner to adopt rules regarding applicable provisions to open-enrollment charter schools; TEC, §12.104, as amended by House Bill (HB) 189, 87th Texas Legislature, Regular Session, 2021, which allows the commissioner to adopt rules permitting an open-enrollment charter school to voluntarily participate in any state program available to school districts if the school complies with all terms of the program; TEC, §12.1055, which allows the commissioner to adopt rules regarding nepotism under Texas Government Code, Chapter 573; TEC, §12.1058, as amended by HB 1707, 88th Texas Legislature, Regular Session, 2023, which requires a political subdivision to consider an open-enrollment charter school as a school district for the purposes of municipal ordinances if the open-enrollment charter school meets notification requirements; TEC, §12.110, which requires the commissioner to adopt an application form and procedure that must be used to apply for an open-enrollment charter school; TEC, §12.1101, which requires the commissioner to adopt a procedure for providing notice to the outlined persons on receipt by the commissioner of an application for a charter for an open-enrollment charter school or of notice of the establishment of a campus; TEC, §12.114, which allows the commissioner to define expansion amendment requests; TEC, §12.1141, as amended by Senate Bill (SB) 879, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to adopt a procedure for renewal, denial of renewal, or expiration of a charter for an open-enrollment charter school at the end of the term of the charter; TEC, §12.1166, which requires the commissioner to adopt a

rule defining "related party;" TEC, §12.1173, as amended by SB 2293, 86th Texas Legislature, 2019, which requires the commissioner to adopt rules to implement charter school waiting lists for admission; TEC, §12.1181, requires the commissioner to adopt performance frameworks that establish standards by which to measure the performance of an open-enrollment charter school; TEC, §12.123, which requires the commissioner to adopt rules prescribing the training for members of the governing body of a charter school and its officers; TEC, §12.153, which allows the commissioner to adopt rules to implement college or university or junior college charter schools; TEC, §12.265, as amended by SB 1615, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to adopt rules necessary to administer adult high school charter school programs; and TEC, §39.0548, which requires the commissioner to authorize and determine designation as a dropout recovery school.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §§12.101; 12.1011; 12.103; 12.104, as amended by House Bill (HB) 189, 87th Texas Legislature, Regular Session, 2021; 12.1055; 12.1058, as amended by HB 1707, 88th Texas Legislature, Regular Session, 2023; 12.110; 12.1101; 12.114; 12.1141, as amended by Senate Bill (SB) 879, 87th Texas Legislature, Regular Session, 2021; 12.1166; 12.1173, as amended by SB 2293, 86th Texas Legislature, 2019; 12.1181; 12.123; 12.153; 12.265, as amended by SB 1615, 87th Texas Legislature, Regular Session, 2021; and 39.0548.

*§100.1031. Performance Frameworks for Subchapters D and E Charter Schools.*

(a) The performance of an open-enrollment charter school will be measured annually against a set of criteria set forth in the Charter School Performance Framework (CSPF) Manual established under Texas Education Code (TEC), §12.1181, and provided in this subsection. Notwithstanding substantial modifications to the framework, the manual will be updated annually to reflect the requirements and data sources for each indicator.

Figure: 19 TAC §100.1031(a)

(b) The CSPF Manual will include measures for Subchapters D and E charter schools registered under the standard accountability system and measures for charters registered under the alternative education accountability system as adopted under §97.1001 of this title (relating to Accountability Rating System).

(c) The assignment of performance levels, Tier 1, Tier 2, or Tier 3 for charter schools on the CSPF report is based on specific criteria described in the CSPF Manual provided in subsection (a) of this section, which include:

(1) Academic Indicator: the charter school's overall academic rating as assigned under TEC, §39.053. For charter schools not issued a rating under TEC, §39.053, the CSPF Manual will identify substitute academic indicators;

(2) Financial Indicator: the charter school's overall financial rating as assigned under TEC, Chapter 39, Subchapter D;

(3) Operational Indicators, which evaluate each charter school's compliance with educational, operational, safety, and reporting requirements as required by federal law, state law, state rules or regulations, and/or the charter contract, including those outlined in TEC, Chapter 12, and this chapter; and

(4) Governance Indicators, which evaluate each charter school's compliance with state law, state rules or regulations with

governance requirements, including those outlined in TEC, Chapter 12, and this chapter.

§100.1035. *Charter Amendment.*

(a) Subject to the requirements of this section, the terms of an open-enrollment charter may be revised with the consent of the charter holder by expansion or non-expansion amendment as approved by the commissioner of education.

(b) Information relevant to all amendment requests.

(1) Filing of amendment request. Prior to implementation, the charter holder shall file a request, in the form prescribed, with the Texas Education Agency (TEA) division responsible for charter schools.

(2) Board resolution. The request must be attached to a written resolution adopted by the governing body of the charter holder and signed by a majority of the members indicating approval of the requested amendment.

(3) Relevant information considered. As directed by the commissioner, a charter holder requesting an amendment shall submit current information required by the prescribed amendment form, as well as any other information requested by the commissioner. In considering the amendment request, the commissioner may consider any relevant information concerning the charter holder, including its performance on the Charter School Performance Frameworks (CSPF) adopted by rule in §100.1031 of this title (relating to Performance Frameworks for Subchapters D and E Charter Schools); student and other performance; compliance, staff, financial, and organizational data; and other information.

(4) Best interest of students. The commissioner may approve an amendment only if the charter holder meets all applicable requirements, and only if the commissioner determines that the amendment is in the best interest of students. The commissioner may consider the performance of all charters operated by the same charter holder in the decision to finally grant or deny an amendment.

(5) Conditional approval. The commissioner may grant the amendment without condition or may require compliance with such conditions and/or requirements as may be in the best interest of students.

(6) Required forms and formats. The TEA division responsible for charter schools may develop and promulgate, from time to time, forms or formats for requesting charter amendments under this section. If a form or format is promulgated for a particular type of amendment, it must be used to request an amendment of that type.

(7) Ineligibility. The commissioner will not consider any amendment that is submitted by a charter holder that has been notified by the commissioner of the commissioner's intent to allow the expiration of the charter or intent to revoke the charter. This subsection does not limit the commissioner's authority to accept the surrender of a charter.

(c) Expansion amendments.

(1) Timeline for submission. A charter holder may submit a request for approval for an expansion amendment:

(A) up to 36 months before the date on which the expansion will be effective; and

(B) no later than the first day of March before the school year for which the expansion will be effective.

(2) Notification.

(A) Upon receipt of an expansion amendment request by a charter holder, the TEA division responsible for charter schools will notify the following:

(i) the superintendent and the board of trustees of each school district from which the proposed open-enrollment charter school or campus is likely to draw students, as defined in §100.1013 of this title (relating to Notification of Charter Application); and

(ii) each member of the legislature that represents the geographic area to be served by the proposed school or campus, as defined in §100.1013 of this title.

(B) To be considered a school district for purposes related to land development standards, licensing, zoning, and various purposes and services, a charter school must meet the notification requirements as outlined in §100.1209 of this title (relating to Municipal Ordinances).

(C) Should a change in the location of a campus be approved after notification but prior to opening, the commissioner of education or the commissioner's designee is required to notify as required by subparagraph (A) of this paragraph based on the zip code of the new location.

(3) Expansion types. A charter holder of an open-enrollment charter may submit, as described by this section, a request for approval for either:

(A) expedited expansion; or

(B) discretionary expansion.

(4) Expedited expansion amendments. An expedited expansion amendment allows for the establishment of a new charter campus under Texas Education Code (TEC), §12.101(b-4).

(A) In order to submit an expedited expansion amendment, the charter school must meet the following requirements:

(i) an accreditation status of Accredited;

(ii) currently has at least 50% of its student population in grades assessed under TEC, Chapter 39, Subchapter B, or has had at least 50% of the students in the grades assessed enrolled in the school for at least three years;

(iii) is currently evaluated under the standard accountability procedures for evaluation under TEC, Chapter 39, and received a district rating in the highest or second highest performance rating category under TEC, Chapter 39, Subchapter C, for three of the last five ratings;

(iv) at least 75% of the campuses rated under the charter school also received a rating in the highest or second highest performance rating category in the most recent ratings; and

(v) no campus received a rating in the lowest performance rating category in the most recent ratings.

(B) Unless the commissioner provides written notice that the charter holder does not meet the requirements outlined in TEC, §12.101(b-4), within 60 days of the date the charter holder submits a completed expedited expansion amendment, the amendment is considered enacted. If the commissioner denies the amendment, the commissioner must identify the legal and factual basis for denial, including the specific criteria under TEC, §12.101(b-4), that was not met.

(5) Discretionary expansion amendments. A discretionary expansion amendment permits commissioner-approved changes to the terms of an open-enrollment charter school related to expansion.

(A) Discretionary expansion amendment types. There are three types of discretionary amendments.

(i) Maximum enrollment. The commissioner may approve an expansion amendment request seeking to increase maximum allowable enrollment.

(ii) Grade span. The commissioner may approve an expansion amendment request seeking to extend the grade levels it serves only if it is accompanied by appropriate educational plans for the additional grade levels in accordance with Chapter 74, Subchapter A, of this title (relating to Required Curriculum), and such plan has been reviewed and approved by the charter governing board.

(iii) Adding a campus or site. The commissioner may approve an expansion amendment request seeking to add a new campus or site under a campus only if it meets the following criteria:

(I) the charter holder has operated at least one charter school campus in Texas for a minimum of three consecutive years; and

(II) a new site under an existing campus will be located within 25 miles of the campus with which it is associated.

(B) Board certification. Before voting to request a discretionary expansion amendment, the charter holder governing board must certify that they have considered a business plan and has determined by majority vote of the board that the growth proposed is financially prudent relative to the financial and operational strength of the charter school and includes such a statement in the board resolution. The commissioner may request submission of the business plan, which must be comprised of the following components:

(i) a statement discussing the need for the expansion;

(ii) a statement discussing the current and projected financial condition of the charter holder and charter school;

(iii) an unaudited statement of financial position for the current fiscal year;

(iv) an unaudited statement of financial activities for the current fiscal year;

(v) an unaudited statement of cash flows for the current fiscal year;

(vi) a pro forma budget that includes the costs of operating the charter school, including the implementation of the expansion amendment;

(vii) a statement or schedule that identifies the assumptions used to calculate the charter school's estimated Foundation School Program revenues;

(viii) a statement discussing the use of debt instruments to finance part or all of the charter school's incremental costs;

(ix) a statement discussing the incremental cost of acquiring additional facilities, furniture, and equipment to accommodate the anticipated increase in student enrollment;

(x) a statement discussing the incremental cost of additional on-site personnel and identifying the additional number of full-time equivalents that will be employed;

(xi) the required statement that the growth proposed is financially prudent relative to the financial and operational strength of the charter school;

(xii) there are no instances of nepotism, conflicts of interest, or revelations in criminal history checks that deemed any board member or employee ineligible to serve as reported in the Governance Reporting Forms submitted to TEA for the previous three years; and

(xiii) the charter holder meets all other requirements applicable to expansion amendment requests and other amendments.

(C) Requirements. The commissioner may approve a discretionary expansion amendment only if:

(i) the expansion will be effective no earlier than the start of the fourth full school year at the affected charter school. This restriction does not apply if the affected charter school has a district rating of an A, B, or C and is operated by a charter holder that operates multiple charter campuses and all of that charter holder's most recent campus ratings of an A, B, or C;

(ii) the charter school has an accreditation status of Accredited;

(iii) the most recent district rating for the charter school is an A, B, or C;

(iv) the most recent district financial accountability rating for the charter school in the Financial Integrity Rating System of Texas for charter schools is "satisfactory" as defined by §100.1001(9) of this title (relating to Definitions);

(v) a charter holder that operates multiple charter campuses meets the criteria in subclause (I) or (II) of this clause. When calculating the percentages described, campuses that receive a 'Not Rated' rating shall not be included in the calculation.

(I) At least 90% of the campuses that receive an accountability rating are rated as an A, B, or C.

(II) If 75-89% of campuses that receive an accountability rating under the charter school are rated as an A, B, or C, the charter holder must provide additional information with the expansion request; and

(vi) the most recent designation for the charter school under the CSPF is "Tier 1" or "Tier 2" as defined by §100.1031 of this title.

(D) Discretionary expansion amendment determination timeline. Notice of the commissioner's decision regarding a discretionary expansion amendment will be made within 60 calendar days of the date the charter holder submits a completed amendment request. The notice of the commissioner's determination may be sent electronically.

(6) High-quality campus designation. A high-quality campus designation is a separate designation and must be requested prior to the opening of a new campus associated with an approved expansion amendment. Charter holders of charter schools that receive high-quality campus designation from the commissioner will be eligible to participate in the charter school program competitive grant process when federal funding for the Texas charter school program is available.

(A) The commissioner may approve a high-quality campus designation for a charter only if:

(i) the charter holder meets all requirements applicable to an expansion amendment set forth in this section and has operated at least one charter school campus in Texas for a minimum of five consecutive years;

(ii) the charter school has been evaluated under the accountability rating system established in §97.1001 of this title (relat-

ing to Accountability Rating System), has an accreditation status of Accredited, is currently evaluated under the standard accountability procedures, currently has an "A" or "B" rating at the local education agency level, and has an "A" or "B" rating in the previous two years in which ratings were issued with each campus that received a rating and operated under the charter also receiving an "A" or "B" rating as defined by §100.1001(8) of this title in the most recent state accountability ratings;

(iii) no charter campus has been identified for federal interventions in the most current report;

(iv) the charter school is not under any sanction imposed by TEA authorized under TEC, Chapter 39; Chapter 97, Subchapter EE, of this title (relating to Accreditation Status, Standards, and Sanctions); or federal requirements;

(v) is rated "Tier 1" in the most recent CSPF and meets the requirements of federal law and TEC, §12.111(a)(3) and (4);

(vi) the charter holder completes an application approved by the commissioner;

(vii) the amendment complies with all requirements of this paragraph; and

(viii) the commissioner determines that the designation is in the best interest of students.

(B) In addition to the requirements of subparagraph (A) of this paragraph, the commissioner may approve a high-quality campus designation only if the campus with the proposed designation:

(i) satisfies each element of the definition of a public charter school as set forth in federal law, including:

(I) admits students on the basis of a lottery, consistent with Elementary and Secondary Education Act, §4303(c)(3)(A), if more students apply for admission than can be accommodated; or

(II) in the case of a school that has an affiliated charter school (such as a school that is part of the same network of schools), automatically enrolls students who are enrolled in the immediate prior grade level of the affiliated charter school and, for any additional student openings or student openings created through regular attrition in student enrollment in the affiliated charter school and the enrolling school, admits students on the basis of a lottery as described in subclause (I) of this clause;

(ii) is separate and distinct from the existing charter school campus(es) established under the open-enrollment charter school with a separate facility and county-district-campus number; and

(iii) holds a valid charter contract issued by TEA.

(C) In making the findings required by subparagraph (B)(i) and (iii) of this paragraph, the commissioner shall consider:

(i) the terms of the open-enrollment charter school as a whole, as modified by the high-quality campus designation; and

(ii) whether the campus with the proposed designation shall be established and recognized as a separate school under Texas law.

(D) Failure to meet any standard or requirement for high-quality campus designation or agreed to in a performance agreement shall mean the immediate termination of any federal charter school program grant and/or any waiver exempting a charter from some of the expansion amendment requirements that may have been granted to a charter holder as a result of the high-quality campus designation.

(E) Notice of the commissioner's decision regarding a high-quality campus designation will be made within 60 calendar days of the date the charter holder submits a completed request. The notice of the commissioner's determination may be sent electronically.

(d) Non-expansion amendment. A non-expansion amendment permits changes to the terms of an open-enrollment charter school not related to expansion.

(1) Timeline for submission. All non-expansion amendments may be filed with the commissioner at any time throughout the year.

(2) Non-expansion amendment types. A non-expansion amendment is either material or non-material.

(A) Material non-expansion amendments include changes to the terms of an open-enrollment charter, including the following: relocation of a campus, campus or charter dormancy, closing or returning an active campus or site, charter holder governance, articles of incorporation, corporate bylaws, management company, admission and enrollment policy, shared services cooperatives or shared services agreements, and curriculum programs not already approved by TEA.

(i) Relocation amendment. A material non-expansion amendment to relocate solely permits a charter holder to relocate an existing campus or site to an alternate address while serving the same students and grade levels without a significant disruption to the delivery of the educational services. The alternate address of the relocation shall not be in excess of 25 miles from the existing campus address.

(ii) Material charter language change. Any material non-expansion amendment that requires changes to charter language shall set forth the text and page references in electronic format of the current open-enrollment charter language to be changed, and the text proposed as the new open-enrollment charter language.

(B) Non-material non-expansion amendments include changes to the terms of an open-enrollment charter, including the following: charter holder name, charter school (district) name, charter campus name, grade levels served on a campus, campus start date change, closing or returning a dormant campus or site, and fiscal year change.

(C) Any non-expansion amendment not identified in subparagraph (A) or (B) of this paragraph is subject to commissioner determination as material or non-material.

(D) The following timelines apply to non-expansion amendment requests.

(i) Charter holders that submit material non-expansion requests will receive notice of the commissioner's decision within 60 calendar days of a completed amendment request.

(ii) Charter holders that submit non-material non-expansion requests may proceed with the request 30 calendar days after the date the charter holder submits a completed amendment request unless otherwise notified by the commissioner.

*§100.1039. Standards for Discretionary Renewal.*

Criteria for discretionary renewal. The following criteria shall be considered by the commissioner of education during the discretionary renewal process. The commissioner may non-renew a charter contract based on any of the following.

(1) Academic:

(A) assignment of an "academically unacceptable" rating as defined in §100.1001(8) of this title (relating to Definitions);

(B) failure to meet academic performance standards for students not measured in the accountability system;

(C) unsatisfactory academic performance of subpopulations; and

(D) failure to meet program requirements for special populations, including, but not limited to, special education, bilingual/English as a second language, and career and technical education.

(2) Financial:

(A) failure to use state funds for purposes for which a school district may use local funds under Texas Education Code (TEC), §45.105(e);

(B) failure to hold state funds in trust for the benefit of the students of the charter school;

(C) failure to satisfy generally acceptable accounting standards of fiscal management;

(D) failure to resolve a lien, levy, or other garnishment within 30 days;

(E) existence of a Foundation School Program (FSP) allotment subject to a warrant hold and that warrant has not been removed within 30 days;

(F) failure to timely file annual financial report required under TEC, §44.008;

(G) existence of an annual financial report containing adverse, qualified, or disclaimed opinion(s);

(H) assignment of a lower than satisfactory financial performance rating as defined in §100.1001(9) of this title;

(I) submission of attendance accounting data resulting in an overallocation from the FSP;

(J) existence of the following interested transactions:

(i) failure to comply with Local Government Code, Chapter 171;

(ii) failure to record and report on the governance reporting forms all financial transactions between charter school and non-charter activities of charter holder; and

(iii) failure to timely and accurately record and report on the governance reporting forms all financial transactions required in the governance reporting form;

(K) failure to post all financial information, including the salary of the chief executive officer (CEO), annual financial statement, most current annual financial report, and approved budget, on the charter school's website;

(L) payment of salaries of the CEO and/or other administrative position(s) that exceed reasonable fair market value for the services provided. Fair market value shall be based on size of school, individual's education, prior salary history, job duties actually performed, and what a typical person with similar skills, experience, and job duties would earn;

(M) renting or purchasing property for amounts in excess of fair market value;

(N) loss of eligibility to participate in the child nutrition program for more than 30 days;

(O) charter holder being imminently insolvent as defined by this chapter;

(P) failure to conduct fiscal management, including, but not limited to, the loss of financial records or a material non-compliance with State Board of Education or commissioner accounting requirements and failure to comply with the Financial Accountability System Resource Guide adopted under §109.41 of this title (relating to Financial Accountability System Resource Guide); and

(Q) failure to comply with applicable purchasing requirements, including Local Government Code, Chapter 271, if applicable.

(3) Operational:

(A) Governance:

(i) failure to timely file accurate and complete governance reporting forms;

(ii) non-compliance with required charter board training;

(iii) failure to timely and accurately report board training in the annual financial report;

(iv) failure to maintain verification of criminal history check/fingerprinting;

(v) failure to maintain verification of compliance with reporting requirements of the Secretary of State, the Texas Family Code, the Texas Open Meetings Act, the Texas Public Information Act, government and local records, applicability of public purchasing and contracting, and conflicts of interest and nepotism;

(vi) allowing a person with a criminal record to be employed or serve as a volunteer, officer, or board member in violation of TEC, Chapters 12 and 22;

(vii) failure of an employee or officer of the charter school to report child abuse or neglect as required by the Texas Family Code, Chapter 261;

(viii) failure to disclose and report all conflict of interest and nepotistic relationships to the Texas Education Agency (TEA) in the applicable minutes of the charter holder's corporate records;

(ix) failure to submit to the Secretary of State a listing of all current members of the charter holder, the articles of incorporation, the by-laws, assumed name, and any other matter of the corporate business required to be reported to the Secretary of State; and

(x) failure to maintain the 501(c)(3) status of the charter holder at all times;

(B) Complaints: failure to timely respond to and correct any complaints as directed by TEA;

(C) Property and campus operations (campuses of charter holders that provide instructional services within residential detention, treatment, or adjudication facilities are not subject to clauses (ii) and (iii) of this subparagraph):

(i) operation of any campus that does not meet the definition of a campus according to §100.1001(6)(B) of this title and that does not serve a minimum of 100 students as reflected in the Public Education Information Management System (PEIMS) fall snapshot;

(ii) failure of the charter holder to serve a minimum of 100 students, as reflected in the PEIMS fall snapshot, unless a lower number is declared and approved in the charter contract or approved by the commissioner;

(iii) failure to document and fully disclose any step transactions in the purchase or sale of property; and

(iv) failure to ensure that all charter holder buildings used for educational purposes have a valid certificate of occupancy for educating children;

(D) Activity fees and volunteer requirements:

(i) requiring any activity fees or any compulsory fees that are not authorized by TEC, §11.158, or other law; and

(ii) requiring any parental involvement, donation, or volunteerism as a condition of enrollment or continued enrollment;

(E) Management contracts:

(i) charter holder board allowing any entity to exercise control or ultimate responsibility for the school, including the academic performance, financial accountability, or operational viability;

(ii) charter holder board not retaining or exercising ultimate responsibility for the management of the charter school without regard to execution of a management contract with a charter management organization (CMO);

(iii) failure to timely file a current copy of the executed management contract, including any and all amendments, with TEA;

(iv) failure of the board of directors of the charter holder to ensure that both the charter holder and CMO are compliant with all the rules applicable to charter schools, including, but not limited to:

- (I) financial accounting;
- (II) record retention;
- (III) health, safety, and welfare of students;
- (IV) educational program accountability;
- (V) Texas Open Meetings Act;
- (VI) Texas Public Information Act; and

(VII) policies, procedures, and legal requirements found in state and federal laws/guidelines and the charter contract; and

(v) failure to comply with requirements in §100.1155 of this title (relating to Substantial Interest in Management Company; Restrictions on Serving) prohibiting a board member from having a substantial interest in the CMO; and

(F) Charter school performance framework: failure to satisfy applicable performance framework measures as prescribed in the Charter School Performance Framework Manual established under TEC, §12.1181.

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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Cristina De La Fuente-Valadez

Director, Rulemaking

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



### DIVISION 3. CHARTER SCHOOL FUNDING AND FINANCIAL OPERATIONS

#### 19 TAC §§100.1041, 100.1043, 100.1045, 100.1047, 100.1049 - 100.1052

STATUTORY AUTHORITY. The repeals are adopted under Texas Education Code (TEC), §12.101, which requires the commissioner to adopt rules regarding the criteria for granting a charter and providing notification for the establishment of new charters or campuses; TEC, §12.1011, which requires the commissioner to adopt rules regarding charter authorization for high-performing entities; TEC, §12.103, which allows the commissioner to adopt rules regarding applicable provisions to open-enrollment charter schools; TEC, §12.104, as amended by House Bill (HB) 189, 87th Texas Legislature, Regular Session, 2021, which allows the commissioner to adopt rules permitting an open-enrollment charter school to voluntarily participate in any state program available to school districts if the school complies with all terms of the program; TEC, §12.1055, which allows the commissioner to adopt rules regarding nepotism under Texas Government Code, Chapter 573; TEC, §12.1058, as amended by HB 1707, 88th Texas Legislature, Regular Session, 2023, which requires a political subdivision to consider an open-enrollment charter school as a school district for the purposes of municipal ordinances if the open-enrollment charter school meets notification requirements; TEC, §12.110, which requires the commissioner to adopt an application form and procedure that must be used to apply for an open-enrollment charter school; TEC, §12.1101, which requires the commissioner to adopt a procedure for providing notice to the outlined persons on receipt by the commissioner of an application for a charter for an open-enrollment charter school or of notice of the establishment of a campus; TEC, §12.114, which allows the commissioner to define expansion amendment requests; TEC, §12.1141, as amended by Senate Bill (SB) 879, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to adopt a procedure for renewal, denial of renewal, or expiration of a charter for an open-enrollment charter school at the end of the term of the charter; TEC, §12.1166, which requires the commissioner to adopt a rule defining "related party;" TEC, §12.1173, as amended by SB 2293, 86th Texas Legislature, 2019, which requires the commissioner to adopt rules to implement charter school waiting lists for admission; TEC, §12.1181, requires the commissioner to adopt performance frameworks that establish standards by which to measure the performance of an open-enrollment charter school; TEC, §12.123, which requires the commissioner to adopt rules prescribing the training for members of the governing body of a charter school and its officers; TEC, §12.153, which allows the commissioner to adopt rules to implement college or university or junior college charter schools; TEC, §12.265, as amended by SB 1615, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to adopt rules necessary to administer adult high school charter school programs; and TEC,



§39.0548, which requires the commissioner to authorize and determine designation as a dropout recovery school.

CROSS REFERENCE TO STATUTE. The repeals implement Texas Education Code, §§12.101; 12.1011; 12.103; 12.104, as amended by House Bill (HB) 189, 87th Texas Legislature, Regular Session, 2021; 12.1055; 12.1058, as amended by HB 1707, 88th Texas Legislature, Regular Session, 2023; 12.110; 12.1101; 12.114; 12.1141, as amended by Senate Bill (SB) 879, 87th Texas Legislature, Regular Session, 2021; 12.1166; 12.1173, as amended by SB 2293, 86th Texas Legislature, 2019; 12.1181; 12.123; 12.153; 12.265, as amended by SB 1615, 87th Texas Legislature, Regular Session, 2021; and 39.0548.

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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#### DIVISION 4. PROPERTY OF OPEN-ENROLLMENT CHARTER SCHOOLS

##### **19 TAC §§100.1061, 100.1063, 100.1065, 100.1067, 100.1069, 100.1071, 100.1073, 100.1075, 100.1077, 100.1079**

STATUTORY AUTHORITY. The new sections are adopted under Texas Education Code (TEC), §12.101, which requires the commissioner to adopt rules regarding the criteria for granting a charter and providing notification for the establishment of new charters or campuses; TEC, §12.1011, which requires the commissioner to adopt rules regarding charter authorization for high-performing entities; TEC, §12.103, which allows the commissioner to adopt rules regarding applicable provisions to open-enrollment charter schools; TEC, §12.104, as amended by House Bill (HB) 189, 87th Texas Legislature, Regular Session, 2021, which allows the commissioner to adopt rules permitting an open-enrollment charter school to voluntarily participate in any state program available to school districts if the school complies with all terms of the program; TEC, §12.1055, which allows the commissioner to adopt rules regarding nepotism under Texas Government Code, Chapter 573; TEC, §12.1058, as amended by HB 1707, 88th Texas Legislature, Regular Session, 2023, which requires a political subdivision to consider an open-enrollment charter school as a school district for the purposes of municipal ordinances if the open-enrollment charter school meets notification requirements; TEC, §12.110, which requires the commissioner to adopt an application form and procedure that must be used to apply for an open-enrollment charter school; TEC, §12.1101, which requires the commissioner to adopt a procedure for providing notice to the outlined persons on receipt by the commissioner of an application for a charter for an open-enrollment charter school or of notice of the establishment of a cam-

pus; TEC, §12.114, which allows the commissioner to define expansion amendment requests; TEC, §12.1141, as amended by Senate Bill (SB) 879, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to adopt a procedure for renewal, denial of renewal, or expiration of a charter for an open-enrollment charter school at the end of the term of the charter; TEC, §12.1166, which requires the commissioner to adopt a rule defining "related party;" TEC, §12.1173, as amended by SB 2293, 86th Texas Legislature, 2019, which requires the commissioner to adopt rules to implement charter school waiting lists for admission; TEC, §12.1181, requires the commissioner to adopt performance frameworks that establish standards by which to measure the performance of an open-enrollment charter school; TEC, §12.123, which requires the commissioner to adopt rules prescribing the training for members of the governing body of a charter school and its officers; TEC, §12.153, which allows the commissioner to adopt rules to implement college or university or junior college charter schools; TEC, §12.265, as amended by SB 1615, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to adopt rules necessary to administer adult high school charter school programs; and TEC, §39.0548, which requires the commissioner to authorize and determine designation as a dropout recovery school.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §§12.101; 12.1011; 12.103; 12.104, as amended by House Bill (HB) 189, 87th Texas Legislature, Regular Session, 2021; 12.1055; 12.1058, as amended by HB 1707, 88th Texas Legislature, Regular Session, 2023; 12.110; 12.1101; 12.114; 12.1141, as amended by Senate Bill (SB) 879, 87th Texas Legislature, Regular Session, 2021; 12.1166; 12.1173, as amended by SB 2293, 86th Texas Legislature, 2019; 12.1181; 12.123; 12.153; 12.265, as amended by SB 1615, 87th Texas Legislature, Regular Session, 2021; and 39.0548.

##### *§100.1061. State Funding.*

(a) Funding formula elements. Pursuant to Texas Education Code (TEC), §12.106, a charter school is entitled to funding from both tiers of the Foundation School Program (FSP) in accordance with the funding formulas for school districts pursuant to TEC, Chapter 48.

(b) Tuition and fees. The governing board of the charter school shall adopt policies that clearly outline allowable and unallowable fees subject to requirements of TEC, §11.158 (a) and (b). A charter school shall not charge tuition and shall not charge a fee except:

(1) a charter school may charge a fee listed in TEC, §11.158(a), and shall not charge any fee prohibited under TEC, §11.158(b);

(2) if authorized under §100.1201(6) of this title (relating to Voluntary Participation in State Programs), a charter holder may charge tuition for certain prekindergarten classes in compliance with TEC, §29.1531 and §29.1532; and

(3) a charter school shall accept tuition for students holding certain student visas as described in TEC, §25.0031(a).

(c) Eligibility for state funding. A charter holder is not eligible to receive state funds, including grant funds, prior to execution of its contract by the charter holder or charter school board chair and the commissioner of education.

(1) If a charter holder, before or without approval of an amendment under §100.1035 of this title (relating to Charter Amendment), extends the grade levels it serves, adds or changes the address of a campus, facility, or site, or exceeds its maximum allowable enroll-

ment, then the charter holder is not eligible to receive state funds for the activities of the unapproved amendment of its charter school operations.

(2) A former charter holder is not eligible to receive state funds.

(d) Return of overallocated funds.

(1) Within 30 days of receiving notice of an overallocation and a request for refund under TEC, §42.258, a charter holder shall transmit to the Texas Education Agency (TEA) an amount equal to the requested refund. Failure to comply with a request for refund under this subsection is a material charter violation and a management company breach. Funds allocated for student attendance in a program affected by an unapproved expansion under subsection (d)(1) of this section are overallocated within the meaning of this subsection.

(2) If the charter holder fails to make the requested refund, TEA may recover the overallocation by any means permitted by law, including, but not limited to, the process set forth in TEC, §42.258.

(3) Notwithstanding paragraph (2) of this subsection, TEA may not garnish or otherwise recover funds actually paid to and received by a charter holder under TEC, §12.106, if:

(A) the basis of the garnishment or recovery is that:

(i) the number of students enrolled in the school during a school year exceeded the student enrollment described by the school's charter during that period; and

(ii) the school received the funds under TEC, §12.106, based on an accurate report of the school's actual student enrollment; and

(B) the school used all funds received under TEC, §12.106, to provide education services to students and:

(i) submits to the commissioner a timely request to revise the maximum student enrollment described by the school's charter and the commissioner does not notify the school in writing of an objection to the proposed revision before the 90th day after the date on which the commissioner received the request, provided that the number of students enrolled at the school does not exceed the enrollment described by the school's request; or

(ii) exceeds the maximum student enrollment described by the school's charter only because a court mandated that a specific child enroll in that school.

(4) Nothing in paragraph (3) of this subsection requires the agency to fund activities that are ineligible for state funding under subsection (d)(1) of this section.

§100.1069. *Disclosure of Related Party Transactions.*

(a) Related parties defined. A related party is such a party as defined in §100.1001 of this title (relating to Definitions) or identified as at least one of the following:

(1) a founder or current or former board member, administrator, or officer who meets the criteria in the following subparagraphs. For purposes of this paragraph, a person is a former board member, administrator, or officer if the person served in that capacity within one year of the date on which a financial transaction between the charter holder and a related party occurred:

(A) a board member, administrator, or officer of an open-enrollment charter school; or

(B) related within the third degree of consanguinity or affinity, as determined under Texas Government Code, Chapter 573, to

a board member, administrator, or officer of an open-enrollment charter school;

(2) a charter holder's related organizations, joint ventures, and jointly governed organizations, including a management company or any other charter schools or network in another state operated by the same charter management company or under the same charter school network brand-identity by license, other written agreement or otherwise;

(3) an open-enrollment charter school's board members, administrators, or officers or a person related to a board member, administrator, or officer within the third degree of consanguinity or affinity, as determined under Texas Government Code, Chapter 573; or

(4) any other disqualified person, as that term is defined by 26 United States Code, §4958(f), including:

(A) any person who was, at any time during the 5-year period ending on the date of such transaction, in a position to exercise substantial influence over the affairs of the organization, such as a voting member of the governing body, a person who has ultimate responsibility for implementing the decisions of the governing body or for supervising the management, administration, or operation of the organization, or a person who has ultimate responsibility for managing the finances of the organization;

(B) a member of the family of an individual described in subparagraph (A) of this paragraph; or

(C) a 35% controlled entity.

(b) Related party property transactions. A charter holder shall notify the commissioner of education that it intends to enter into a property transaction with a related party as defined by subsection (a) of this section and §100.1001 of this title.

(1) The charter holder shall provide such notice to the commissioner through the Texas Education Agency division responsible for charter schools no later than 10 days prior to the transaction.

(2) If the amount of the transaction exceeds \$5,000, upon request and by a date specified by the commissioner, the charter holder shall provide an appraisal from a certified appraiser to TEA.

(c) Related party transactions in audit. All related party transactions shall be reported in the annual audit as required by §100.1067(f) of this title (related to Accounting for State and Federal Funds).

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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DIVISION 4. PROPERTY OF OPEN-ENROLLMENT CHARTER SCHOOLS

**19 TAC §§100.1063, 100.1065, 100.1067, 100.1069, 100.1071, 100.1073**

STATUTORY AUTHORITY. The repeals are adopted under Texas Education Code (TEC), §12.101, which requires the commissioner to adopt rules regarding the criteria for granting a charter and providing notification for the establishment of new charters or campuses; TEC, §12.1011, which requires the commissioner to adopt rules regarding charter authorization for high-performing entities; TEC, §12.103, which allows the commissioner to adopt rules regarding applicable provisions to open-enrollment charter schools; TEC, §12.104, as amended by House Bill (HB) 189, 87th Texas Legislature, Regular Session, 2021, which allows the commissioner to adopt rules permitting an open-enrollment charter school to voluntarily participate in any state program available to school districts if the school complies with all terms of the program; TEC, §12.1055, which allows the commissioner to adopt rules regarding nepotism under Texas Government Code, Chapter 573; TEC, §12.1058, as amended by HB 1707, 88th Texas Legislature, Regular Session, 2023, which requires a political subdivision to consider an open-enrollment charter school as a school district for the purposes of municipal ordinances if the open-enrollment charter school meets notification requirements; TEC, §12.110, which requires the commissioner to adopt an application form and procedure that must be used to apply for an open-enrollment charter school; TEC, §12.1101, which requires the commissioner to adopt a procedure for providing notice to the outlined persons on receipt by the commissioner of an application for a charter for an open-enrollment charter school or of notice of the establishment of a campus; TEC, §12.114, which allows the commissioner to define expansion amendment requests; TEC, §12.1141, as amended by Senate Bill (SB) 879, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to adopt a procedure for renewal, denial of renewal, or expiration of a charter for an open-enrollment charter school at the end of the term of the charter; TEC, §12.1166, which requires the commissioner to adopt a rule defining "related party;" TEC, §12.1173, as amended by SB 2293, 86th Texas Legislature, 2019, which requires the commissioner to adopt rules to implement charter school waiting lists for admission; TEC, §12.1181, requires the commissioner to adopt performance frameworks that establish standards by which to measure the performance of an open-enrollment charter school; TEC, §12.123, which requires the commissioner to adopt rules prescribing the training for members of the governing body of a charter school and its officers; TEC, §12.153, which allows the commissioner to adopt rules to implement college or university or junior college charter schools; TEC, §12.265, as amended by SB 1615, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to adopt rules necessary to administer adult high school charter school programs; and TEC, §39.0548, which requires the commissioner to authorize and determine designation as a dropout recovery school.

CROSS REFERENCE TO STATUTE. The repeals implement Texas Education Code, §§12.101; 12.1011; 12.103; 12.104, as amended by House Bill (HB) 189, 87th Texas Legislature, Regular Session, 2021; 12.1055; 12.1058, as amended by HB 1707, 88th Texas Legislature, Regular Session, 2023; 12.110; 12.1101; 12.114; 12.1141, as amended by Senate Bill (SB) 879, 87th Texas Legislature, Regular Session, 2021; 12.1166; 12.1173, as amended by SB 2293, 86th Texas Legislature, 2019; 12.1181; 12.123; 12.153; 12.265, as amended by SB

1615, 87th Texas Legislature, Regular Session, 2021; and 39.0548.

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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Cristina De La Fuente-Valadez

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**DIVISION 5. PROPERTY OF OPEN-ENROLLMENT CHARTER SCHOOLS**

**19 TAC §§100.1091, 100.1093, 100.1095, 100.1097, 100.1099, 100.1101**

STATUTORY AUTHORITY. The new sections are adopted under Texas Education Code (TEC), §12.101, which requires the commissioner to adopt rules regarding the criteria for granting a charter and providing notification for the establishment of new charters or campuses; TEC, §12.1011, which requires the commissioner to adopt rules regarding charter authorization for high-performing entities; TEC, §12.103, which allows the commissioner to adopt rules regarding applicable provisions to open-enrollment charter schools; TEC, §12.104, as amended by House Bill (HB) 189, 87th Texas Legislature, Regular Session, 2021, which allows the commissioner to adopt rules permitting an open-enrollment charter school to voluntarily participate in any state program available to school districts if the school complies with all terms of the program; TEC, §12.1055, which allows the commissioner to adopt rules regarding nepotism under Texas Government Code, Chapter 573; TEC, §12.1058, as amended by HB 1707, 88th Texas Legislature, Regular Session, 2023, which requires a political subdivision to consider an open-enrollment charter school as a school district for the purposes of municipal ordinances if the open-enrollment charter school meets notification requirements; TEC, §12.110, which requires the commissioner to adopt an application form and procedure that must be used to apply for an open-enrollment charter school; TEC, §12.1101, which requires the commissioner to adopt a procedure for providing notice to the outlined persons on receipt by the commissioner of an application for a charter for an open-enrollment charter school or of notice of the establishment of a campus; TEC, §12.114, which allows the commissioner to define expansion amendment requests; TEC, §12.1141, as amended by Senate Bill (SB) 879, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to adopt a procedure for renewal, denial of renewal, or expiration of a charter for an open-enrollment charter school at the end of the term of the charter; TEC, §12.1166, which requires the commissioner to adopt a rule defining "related party;" TEC, §12.1173, as amended by SB 2293, 86th Texas Legislature, 2019, which requires the commissioner to adopt rules to implement charter school waiting lists for admission; TEC, §12.1181, requires the commissioner to adopt performance frameworks that establish standards by which to

measure the performance of an open-enrollment charter school; TEC, §12.123, which requires the commissioner to adopt rules prescribing the training for members of the governing body of a charter school and its officers; TEC, §12.153, which allows the commissioner to adopt rules to implement college or university or junior college charter schools; TEC, §12.265, as amended by SB 1615, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to adopt rules necessary to administer adult high school charter school programs; and TEC, §39.0548, which requires the commissioner to authorize and determine designation as a dropout recovery school.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §§12.101; 12.1011; 12.103; 12.104, as amended by House Bill (HB) 189, 87th Texas Legislature, Regular Session, 2021; 12.1055; 12.1058, as amended by HB 1707, 88th Texas Legislature, Regular Session, 2023; 12.110; 12.1101; 12.114; 12.1141, as amended by Senate Bill (SB) 879, 87th Texas Legislature, Regular Session, 2021; 12.1166; 12.1173, as amended by SB 2293, 86th Texas Legislature, 2019; 12.1181; 12.123; 12.153; 12.265, as amended by SB 1615, 87th Texas Legislature, Regular Session, 2021; and 39.0548.

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## DIVISION 5. CHARTER SCHOOL GOVERNANCE

**19 TAC §§100.1101 - 100.1108, 100.1111 - 100.1116, 100.1131 - 100.1135, 100.1151, 100.1153, 100.1155, 100.1157, 100.1159**

STATUTORY AUTHORITY. The repeals are adopted under Texas Education Code (TEC), §12.101, which requires the commissioner to adopt rules regarding the criteria for granting a charter and providing notification for the establishment of new charters or campuses; TEC, §12.1011, which requires the commissioner to adopt rules regarding charter authorization for high-performing entities; TEC, §12.103, which allows the commissioner to adopt rules regarding applicable provisions to open-enrollment charter schools; TEC, §12.104, as amended by House Bill (HB) 189, 87th Texas Legislature, Regular Session, 2021, which allows the commissioner to adopt rules permitting an open-enrollment charter school to voluntarily participate in any state program available to school districts if the school complies with all terms of the program; TEC, §12.1055, which allows the commissioner to adopt rules regarding nepotism under Texas Government Code, Chapter 573; TEC, §12.1058, as amended by HB 1707, 88th Texas Legislature, Regular Session, 2023, which requires a political subdivision to consider

an open-enrollment charter school as a school district for the purposes of municipal ordinances if the open-enrollment charter school meets notification requirements; TEC, §12.110, which requires the commissioner to adopt an application form and procedure that must be used to apply for an open-enrollment charter school; TEC, §12.1101, which requires the commissioner to adopt a procedure for providing notice to the outlined persons on receipt by the commissioner of an application for a charter for an open-enrollment charter school or of notice of the establishment of a campus; TEC, §12.114, which allows the commissioner to define expansion amendment requests; TEC, §12.1141, as amended by Senate Bill (SB) 879, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to adopt a procedure for renewal, denial of renewal, or expiration of a charter for an open-enrollment charter school at the end of the term of the charter; TEC, §12.1166, which requires the commissioner to adopt a rule defining "related party;" TEC, §12.1173, as amended by SB 2293, 86th Texas Legislature, 2019, which requires the commissioner to adopt rules to implement charter school waiting lists for admission; TEC, §12.1181, requires the commissioner to adopt performance frameworks that establish standards by which to measure the performance of an open-enrollment charter school; TEC, §12.123, which requires the commissioner to adopt rules prescribing the training for members of the governing body of a charter school and its officers; TEC, §12.153, which allows the commissioner to adopt rules to implement college or university or junior college charter schools; TEC, §12.265, as amended by SB 1615, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to adopt rules necessary to administer adult high school charter school programs; and TEC, §39.0548, which requires the commissioner to authorize and determine designation as a dropout recovery school.

CROSS REFERENCE TO STATUTE. The repeals implement Texas Education Code, §§12.101; 12.1011; 12.103; 12.104, as amended by House Bill (HB) 189, 87th Texas Legislature, Regular Session, 2021; 12.1055; 12.1058, as amended by HB 1707, 88th Texas Legislature, Regular Session, 2023; 12.110; 12.1101; 12.114; 12.1141, as amended by Senate Bill (SB) 879, 87th Texas Legislature, Regular Session, 2021; 12.1166; 12.1173, as amended by SB 2293, 86th Texas Legislature, 2019; 12.1181; 12.123; 12.153; 12.265, as amended by SB 1615, 87th Texas Legislature, Regular Session, 2021; and 39.0548.

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## DIVISION 6. CHARTER SCHOOL GOVERNANCE

**19 TAC §§100.1111, 100.1113, 100.1115, 100.1117, 100.1119, 100.1121, 100.1123, 100.1125, 100.1127, 100.1131, 100.1133, 100.1135, 100.1137, 100.1139, 100.1141, 100.1143, 100.1145, 100.1147, 100.1149, 100.1151, 100.1153, 100.1155, 100.1157, 100.1159, 100.1161, 100.1163**

STATUTORY AUTHORITY. The new sections are adopted under Texas Education Code (TEC), §12.101, which requires the commissioner to adopt rules regarding the criteria for granting a charter and providing notification for the establishment of new charters or campuses; TEC, §12.1011, which requires the commissioner to adopt rules regarding charter authorization for high-performing entities; TEC, §12.103, which allows the commissioner to adopt rules regarding applicable provisions to open-enrollment charter schools; TEC, §12.104, as amended by House Bill (HB) 189, 87th Texas Legislature, Regular Session, 2021, which allows the commissioner to adopt rules permitting an open-enrollment charter school to voluntarily participate in any state program available to school districts if the school complies with all terms of the program; TEC, §12.1055, which allows the commissioner to adopt rules regarding nepotism under Texas Government Code, Chapter 573; TEC, §12.1058, as amended by HB 1707, 88th Texas Legislature, Regular Session, 2023, which requires a political subdivision to consider an open-enrollment charter school as a school district for the purposes of municipal ordinances if the open-enrollment charter school meets notification requirements; TEC, §12.110, which requires the commissioner to adopt an application form and procedure that must be used to apply for an open-enrollment charter school; TEC, §12.1101, which requires the commissioner to adopt a procedure for providing notice to the outlined persons on receipt by the commissioner of an application for a charter for an open-enrollment charter school or of notice of the establishment of a campus; TEC, §12.114, which allows the commissioner to define expansion amendment requests; TEC, §12.1141, as amended by Senate Bill (SB) 879, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to adopt a procedure for renewal, denial of renewal, or expiration of a charter for an open-enrollment charter school at the end of the term of the charter; TEC, §12.1166, which requires the commissioner to adopt a rule defining "related party;" TEC, §12.1173, as amended by SB 2293, 86th Texas Legislature, 2019, which requires the commissioner to adopt rules to implement charter school waiting lists for admission; TEC, §12.1181, requires the commissioner to adopt performance frameworks that establish standards by which to measure the performance of an open-enrollment charter school; TEC, §12.123, which requires the commissioner to adopt rules prescribing the training for members of the governing body of a charter school and its officers; TEC, §12.153, which allows the commissioner to adopt rules to implement college or university or junior college charter schools; TEC, §12.265, as amended by SB 1615, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to adopt rules necessary to administer adult high school charter school programs; and TEC, §39.0548, which requires the commissioner to authorize and determine designation as a dropout recovery school.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §§12.101; 12.1011; 12.103; 12.104, as amended by House Bill (HB) 189, 87th Texas Legislature, Regular Session, 2021; 12.1055; 12.1058, as amended by HB 1707, 88th Texas Legislature, Regular Session, 2023; 12.110; 12.1101; 12.114; 12.1141, as amended by Senate Bill (SB) 879, 87th Texas Legislature, Regular Session, 2021; 12.1166; 12.1173, as amended by SB 2293, 86th Texas Legis-

lature, 2019; 12.1181; 12.123; 12.153; 12.265, as amended by SB 1615, 87th Texas Legislature, Regular Session, 2021; and 39.0548.

§100.1113. *Delegation of Powers and Duties.*

(a) Primary responsibility. The governing body of a charter holder has the primary responsibility for implementing the public school program authorized by the open-enrollment charter and ensuring the performance of the students enrolled in its charter schools in accordance with the Texas Education Code (TEC).

(1) Governing board non-delegable duties. The following powers and duties must generally be exercised by the governing body of the charter holder itself, acting as a body corporate in meetings posted in compliance with Texas Government Code, Chapter 551. Absent a specific written exception of this paragraph, setting forth good cause why a specific function listed in subparagraphs (A)-(F) of this paragraph cannot reasonably be carried out by the charter holder governing body, the commissioner of education may not grant an amendment delegating such functions to any person or entity through a contract for management services or otherwise. An amendment that is not authorized by such a specific written exception is not effective for any purpose. Absent such exception, the governing body of the charter holder shall not delegate:

(A) final authority to hear or decide employee grievances, citizen complaints, or parental concerns;

(B) final authority to adopt or amend the budget of the charter holder or the charter school or to authorize the expenditure or obligation of state funds or the use of public property;

(C) final authority to direct the disposition or safekeeping of public records, except that the governing body may delegate this function to any person, subject to the governing body's superior right of immediate access to, control over, and possession of such records;

(D) final authority to adopt policies governing charter school operations;

(E) final authority to approve audit reports under TEC, §44.008(d); or

(F) final authority to select, employ, direct, evaluate, renew, non-renew, terminate, or set compensation for the superintendent or, as applicable, the administrator serving as the educational leader and chief executive officer.

(2) Superintendent non-delegable duties. The following powers and duties must be exercised by the superintendent or, as applicable, the administrator serving as the educational leader and chief executive officer of the charter school. Absent a specific written exception of this paragraph, setting forth good cause why a specific function listed in subparagraphs (A)-(C) of this paragraph cannot reasonably be carried out by the superintendent or, as applicable, the administrator serving as the educational leader and chief executive officer of the charter school, the commissioner may not grant an amendment permitting the superintendent/chief executive officer to delegate such function through a contract for management services or otherwise. An amendment that is not authorized by such a specific written exception is not effective for any purpose. Absent such exception, the superintendent/chief executive officer of the charter school shall not delegate final authority:

(A) to organize the charter school's central administration;

(B) to approve reports or data submissions required by law; or

(C) to select and terminate charter school employees or officers.

(b) Alienation of open-enrollment charter. An open-enrollment charter grants to the governing body of a charter holder the authority to operate a charter school.

(1) The governing body of the charter holder shall, acting as a body corporate in meetings posted in compliance with Texas Government Code, Chapter 551, oversee the management of the charter school.

(2) Except as provided by this section, the governing body's powers and duties to operate the charter school shall not be delegated, transferred, assigned, encumbered, pledged, subcontracted, or in any way alienated by the governing body of the charter holder. Any attempt to do so shall be null and void and of no force or effect and shall constitute abandonment of the contract for charter.

(3) A charter holder shall notify the Texas Education Agency (TEA) in writing prior to initiating any type of bankruptcy proceeding respecting the charter holder. Filing for any form of bankruptcy relief prior to such notice shall constitute abandonment of the contract for charter.

(c) Exclusive method for delegating charter powers and duties. An open-enrollment charter must specify the powers or duties of the governing body of the charter holder that the governing body may delegate to an officer, employee, contractor, management company, creditor, or any other person. The exclusive method for making such a delegation shall be to file a request for a delegation amendment with the TEA division responsible for charter schools under §100.1035 of this title (relating to Charter Amendment), specifying the power or duty delegated and the particular person or entity to which it is delegated. The commissioner may approve a delegation amendment only if the conditions in the following paragraphs are met. The commissioner may grant the amendment without condition or may require compliance with such conditions and/or requirements as may be in the best interest of students:

(1) the charter holder meets all requirements applicable to delegation amendments and amendments generally;

(2) the amendment complies with all requirements of this division; and

(3) the commissioner determines that the amendment is in the best interest of students.

(d) Accountability for delegated powers and duties retained. The governing body of a charter holder remains responsible for the management, operation, and accountability of the charter school operated by the charter holder, regardless of whether the governing body delegates any of its powers or duties.

(e) Standards for delegated persons or entities. The person or entity to which any power or duty is delegated shall be held to the same standards as the governing body with respect to use of property, funds or resources, and including as fiduciaries to the students enrolled in the charter school and must act in the best interest of the students, and may be held liable under TEC, §12.122, for breach of fiduciary duty, including misapplication of public funds. Upon review, the commissioner may rescind any delegation amendment for any reason in the commissioner's sole discretion.

§100.1115. *Training Requirements for Governing Board Members and Officers.*

(a) Training required. All governing board members or officers of a charter school must complete all applicable training requirements under §§100.1117, 100.1119, and 100.1121 of this title (relat-

ing to Core Training for New Governing Board Members and Officers; Additional Training for New Governing Board Members and Officers; and Continuing Training for Governing Board Members and Officers), unless otherwise exempted by subsection (e) of this section.

(b) Instructional hours. All training requirements in this division are expressed as instructional hours, meaning they exclude time spent for breaks, administrative tasks, and other non-instructional tasks.

(c) Training providers. All training must be delivered by a training provider registered under §100.1125 of this title (relating to Training Providers).

(d) Training delivery. Unless otherwise specified by curriculum outlines disseminated by the commissioner of education under §100.1117 or §100.1119 of this title, training may be provided through online instruction by an authorized training provider, provided that the training offers an opportunity for interaction with the instructor in real time or incorporates interactive activities that assess learning and provide feedback to the learner.

(e) Exemptions.

(1) A member of the governing body of a charter holder who serves on the governing body of a governmental entity or an institution of higher education as defined under Texas Education Code, §61.003, is exempt from the training required by this section if, by virtue of such service, the member is subject to other mandatory training and the members of the governing body of the charter school operated by the charter holder comply with this section.

(2) A central administrative officer is exempt from the training required by this section if the person is the holder in good standing of a standard superintendent certificate, or its lifetime equivalent, issued by the State Board for Educator Certification and all other officers of the charter school comply with this division.

(3) A campus administrative officer is exempt from the training required by this section if the person is the holder in good standing of a standard principal certificate, or its lifetime equivalent, issued by the State Board for Educator Certification, and all other officers of the charter school comply with this division.

(4) A business manager is exempt from:

(A) the training required by this section if the person is the holder in good standing of one or more of the following credentials issued by the Texas Association of School Business Officials, and if all other officers of the charter school comply with this division:

(i) Registered Texas School Business Administrator;

(ii) Certified Texas School Business Official;

(iii) Certified Texas School Business Specialist;

(iv) Certified Texas School Business Administrator;

or

(v) Charter School Business Officer Certification;

and

(B) any single part of required training, if:

(i) the business manager is a certified public accountant (CPA) registered in good standing with the Texas State Board of Public Accountancy; and

(ii) the subject matter of the module of required training is covered by the Uniform CPA Examination administered by the Texas State Board of Public Accountancy.

*§100.1121. Continuing Training for Governing Board Members and Officers.*

(a) Training required. Any governing board member or officer who has completed the training requirements under §100.1117 and §100.1119 of this title (relating to Core Training for New Governing Board Members and Officers Additional Training for New Governing Board Members and Officers) must annually thereafter complete additional training as outlined in this section.

(b) Training content. Continuing training under this subsection shall:

(1) fulfill training needs determined by the charter based on charter needs;

(2) address updated items identified in the core training topics outlined in §100.1117(d) of this title or cover in greater depth than the curriculum outline indicates for initial training on those topics; or

(3) address applicable topics if a charter holder has lower than a C in the Texas A-F Accountability System, lower than a C in the Financial Integrity Rating System of Texas for charter schools, or is rated in TIER 3 on the Charter School Performance Framework, or is being sanctioned, investigated, or is required by the Texas Education Agency to take corrective action training.

(c) Governing board member requirements. Governing board members must annually receive six instructional hours of training.

(d) Officer requirements. An officer must complete additional training hours specific to their role as follows.

(1) Campus administrative officers must annually receive five instructional hours of training.

(2) Business managers must annually receive 15 instructional hours of training.

(3) Chief executive and central administrative officers must annually receive 15 instructional hours of training.

(e) Excess hours earned. Twenty-five percent of instructional hours earned in excess of the requirements set forth in this section by a governing board member or officer may be carried over to meet the following year's requirement under this section.

*§100.1127. Record of Compliance and Disclosure of Non-compliance.*

Record of compliance; non-compliance.

(1) Record of compliance. It is the obligation of the charter holder to comply with this section, including compliance with §§100.1115-100.1121 of this title (relating to Training Requirements for Governing Board Members and Officers; Core Training for New Governing Board Members and Officers; Additional Training for New Governing Board Members and Officers; and Continuing Training for Governing Board Members and Officers) by each member of the governing body of the charter holder, each member of any governing body of a charter school operated by the charter holder, and each chief executive officer, central administrative officer, campus administrative officer, and business manager of any charter school operated by the charter holder. The charter holder shall document its compliance with §§100.1115-100.1121 of this title and this section.

(2) Continued service. A person may not continue to serve as a member of the governing body of a charter holder, as a member of the governing body of a charter school, or as an officer of a charter school, unless the person is in compliance with §§100.1115-100.1121 of this title and this section.

(3) Audit disclosure. A charter holder shall separately disclose, in its annual audit report required by §100.1067(c) of this title (relating to Accounting for State and Federal Funds), any member of the governing body of the charter holder or a charter school, and any officer of a charter school, who fails to comply with §§100.1115-100.1121 of this title and this section and who continues to serve in such capacity as of the date of the audit report.

(4) Material charter violation. Failure to comply with §§100.1115-100.1121 of this title and this section is a material charter violation that may be considered by the commissioner of education in any action or intervention under Division 3 of this subchapter (relating to Commissioner Action, Performance Monitoring, and Intervention).

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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## DIVISION 7. CHARTER SCHOOL OPERATIONS

### 19 TAC §§100.1203, 100.1205, 100.1207, 100.1209, 100.1211 - 100.1213

STATUTORY AUTHORITY. The amendments are adopted under Texas Education Code (TEC), §12.101, which requires the commissioner to adopt rules regarding the criteria for granting a charter and providing notification for the establishment of new charters or campuses; TEC, §12.1011, which requires the commissioner to adopt rules regarding charter authorization for high-performing entities; TEC, §12.103, which allows the commissioner to adopt rules regarding applicable provisions to open-enrollment charter schools; TEC, §12.104, as amended by House Bill (HB) 189, 87th Texas Legislature, Regular Session, 2021, which allows the commissioner to adopt rules permitting an open-enrollment charter school to voluntarily participate in any state program available to school districts if the school complies with all terms of the program; TEC, §12.1055, which allows the commissioner to adopt rules regarding nepotism under Texas Government Code, Chapter 573; TEC, §12.1058, as amended by HB 1707, 88th Texas Legislature, Regular Session, 2023, which requires a political subdivision to consider an open-enrollment charter school as a school district for the purposes of municipal ordinances if the open-enrollment charter school meets notification requirements; TEC, §12.110, which requires the commissioner to adopt an application form and procedure that must be used to apply for an open-enrollment charter school; TEC, §12.1101, which requires the commissioner to adopt a procedure for providing notice to the outlined persons on receipt by the commissioner of an application for a charter for an open-enrollment charter school or of notice of the establishment of a campus; TEC, §12.114, which allows

the commissioner to define expansion amendment requests; TEC, §12.1141, as amended by Senate Bill (SB) 879, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to adopt a procedure for renewal, denial of renewal, or expiration of a charter for an open-enrollment charter school at the end of the term of the charter; TEC, §12.1166, which requires the commissioner to adopt a rule defining "related party;" TEC, §12.1173, as amended by SB 2293, 86th Texas Legislature, 2019, which requires the commissioner to adopt rules to implement charter school waiting lists for admission; TEC, §12.1181, requires the commissioner to adopt performance frameworks that establish standards by which to measure the performance of an open-enrollment charter school; TEC, §12.123, which requires the commissioner to adopt rules prescribing the training for members of the governing body of a charter school and its officers; TEC, §12.153, which allows the commissioner to adopt rules to implement college or university or junior college charter schools; TEC, §12.265, as amended by SB 1615, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to adopt rules necessary to administer adult high school charter school programs; and TEC, §39.0548, which requires the commissioner to authorize and determine designation as a dropout recovery school.

**CROSS REFERENCE TO STATUTE.** The amendments implement Texas Education Code, §§12.101; 12.1011; 12.103; 12.104, as amended by House Bill (HB) 189, 87th Texas Legislature, Regular Session, 2021; 12.1055; 12.1058, as amended by HB 1707, 88th Texas Legislature, Regular Session, 2023; 12.110; 12.1101; 12.114; 12.1141, as amended by Senate Bill (SB) 879, 87th Texas Legislature, Regular Session, 2021; 12.1166; 12.1173, as amended by SB 2293, 86th Texas Legislature, 2019; 12.1181; 12.123; 12.153; 12.265, as amended by SB 1615, 87th Texas Legislature, Regular Session, 2021; and 39.0548.

§100.1207. *Student Admission.*

(a) Application deadline. For admission to a charter school, a charter holder shall:

(1) require the applicant to complete and submit a common application form prescribed by the commissioner of education, referred to as the Texas Charter School Admission Application, beginning in the 2020-2021 school year. The application must be submitted not later than a reasonable deadline the charter holder establishes.

(A) The common application form shall be posted on the Texas Education Agency (TEA) website, and the form and all associated fields shall be posted on each open-enrollment charter school's website to be used by an applicant for admission to an open-enrollment charter school campus.

(B) The common application form and the student admission and enrollment policy under subsection (d) or (e) of this section, including the policies and procedures for admission, lotteries, enrollment, student waitlists, withdrawals, reenrollment, and transfers, shall be publicly accessible and easily available on the charter school's website. A charter school must make available the common application form and may not require the use of an account, email, password, or other condition as the sole means to access the information or the common application form. A charter school may also print copies of the common application form and make them available for use during the admission process.

(C) An open-enrollment charter school may not alter the form, unless to signify specific criteria that may not apply to their campus as permitted by TEA, and may not add any additional criteria,

questions, statements, advertisements, or solicitations or require any conditions for a person to access the form. An open-enrollment charter school may not sell, provide, or ask an applicant to agree to share or have the charter school share any student information provided in the application to any person or entity other than TEA;

(2) on receipt of more acceptable applications for admission under this section than available positions in the school:

(A) except as permitted by subsection (b) of this section, fill the available positions by lottery; or

(B) subject to subsection (d) of this section, fill the available positions in accordance with the open-enrollment charter school's approved student admission and enrollment policy; and

(3) create and manage a waitlist, as described in subsection (e) of this section, for applicants who are not admitted after all available positions in the charter school have been filled.

(b) Lottery exemption. The charter holder may exempt students from the lottery required by subsection (d) of this section to the extent this is consistent with the definition of a "public charter school" under the Elementary and Secondary Education Act (ESEA) as reauthorized under the Every Student Succeeds Act (ESSA), as interpreted by the United States Department of Education (USDE), including but not limited to, siblings of students already admitted to or attending the same charter school; children of a charter school's founders, teachers and staff, and children of employees in a work-site charter school (so long as the total number of students allowed under this exemption does not exceed 10% of the school's total enrollment).

(c) Newspaper publication. To the extent this is consistent with the definition of a "public charter school" under ESEA as reauthorized under ESSA, as interpreted by the USDE, a charter holder may fill applications for admission under subsection (a)(1) of this section only if it published a notice of the opportunity to apply for admission to the charter school. At a minimum, a notice published under this subsection must:

(1) state the application deadline; and

(2) be published in a newspaper of general circulation in the community in which the school is located not later than the seventh day before the application deadline. For purposes of this chapter, a newspaper of general circulation is defined as one that has more than a minimum number of subscribers among a particular geographic region, which has a diverse subscribership, and that publishes some news items of general interest to the community.

(d) Student admission and enrollment. Except as provided by this section, the governing body of the charter holder must adopt a student admission and enrollment policy that:

(1) unless as provided in subsection (f) of this section, prohibits discrimination on the basis of sex; national origin; ethnicity; religion; disability; academic, artistic, or athletic ability; or the district the child would otherwise attend under state law;

(2) specifies any type of non-discriminatory enrollment criteria to be used at each charter school operated by the charter holder. Such non-discriminatory enrollment criteria may make the student ineligible for enrollment based on a history of a criminal offense, a juvenile court adjudication, or discipline problems under Texas Education Code (TEC), Chapter 37, Subchapter A, documented as provided by local policy; and

(3) specifies whether students will be admitted to the charter school campus by lottery or on a first come, first served basis if the application is published in a newspaper of general circulation in the



community in which the school is located not later than the seventh day before the application deadline, as described in TEC, §12.117.

(e) Waitlist. Charter holders required to create and maintain a waitlist as a result of receiving more acceptable applications for admission than available positions at the school shall manage and update the student waitlist.

(1) Each school year, the following information must be maintained at the campus level for reporting to TEA no later than the last Friday in October of each school year:

- (A) the total number of students on the waitlist;
- (B) the number of students on the waitlist disaggregated by grade level;
- (C) the number of students enrolled;
- (D) the enrollment capacity; and
- (E) information necessary to identify each student, as specified in TEC, §12.1174 (Enrollment and Waiting List Report).

(2) The waitlist of each charter school campus shall be managed according to that charter holder's policy, which must include the following criteria.

(A) The names of eligible students with completed applications who apply and are not admitted shall be added to the end of the waitlist in the order in which the applications are received.

(B) As spaces become available at the charter school campus during the school year, the school must consult its campus waitlist and select a new student for enrollment in the order that students appear on the list.

(C) The charter school shall review each campus waitlist no less than every 60 days and eliminate duplicate entries and the names of students who have been admitted to the charter school.

(3) An open-enrollment charter school may not sell, provide, or ask a student to agree to share any student information on the waitlist with any person or entity other than TEA.

(f) Student admission and enrollment at charter schools specializing in performing arts. In accordance with TEC, §12.111 and §12.1171, a charter school specializing in performing arts, as defined in this subsection, may adopt a student admission and enrollment policy that complies with this subsection in lieu of compliance with subsections (a)-(d) of this section.

(1) A charter school specializing in performing arts as used in this subsection means a school whose open-enrollment charter includes an educational program that, in addition to the required academic curriculum, has an emphasis in one or more of the performing arts, which include music, theatre, and dance. A program with an emphasis in the performing arts may include the following components:

- (A) a core academic curriculum that is integrated with performing arts instruction;
- (B) a wider array of performing arts courses than are typically offered at public schools;
- (C) frequent opportunities for students to demonstrate their artistic talents;
- (D) cooperative programs with other organizations or individuals in the performing arts community; or
- (E) other innovative methods for offering performing arts learning opportunities.

(2) To the extent this is consistent with the definition of a "public charter school" as defined in ESEA as reauthorized under ESSA, as interpreted by the USDE, the governing body of a charter holder that operates a charter school specializing in performing arts must require the applicant to complete and submit a common admission application form as described in subsection (a)(1) of this section and may adopt an admission policy that requires a student to demonstrate an interest or ability in the performing arts or to audition for admission to the school.

(3) The governing body of a charter holder that operates a charter school specializing in performing arts must adopt a student admission and enrollment policy that prohibits discrimination on the basis of sex, national origin, ethnicity, religion, disability, academic or athletic ability, or the district the child would otherwise attend under state law.

(4) The governing body of a charter holder that operates a charter school specializing in performing arts must adopt a student admission and enrollment policy that specifies any type of non-discriminatory enrollment criteria to be used at the charter school. Such non-discriminatory enrollment criteria may make the student ineligible for enrollment based on a history of a criminal offense, a juvenile court adjudication, or discipline problems under TEC, Chapter 37, Subchapter A, documented as provided by local policy.

(g) Maximum enrollment. Total enrollment shall not exceed the maximum number of students approved in the open-enrollment charter. A charter school may establish a primary and secondary boundary. Students who reside outside the primary geographic boundary stated in the open-enrollment charter shall not be admitted to the charter school until all eligible applicants that reside within the primary boundary and have submitted a timely application have been enrolled. Then, if the open-enrollment charter so provides for a secondary boundary, the charter holder may admit students who reside within the secondary boundary to the charter school in accordance with the terms of the open-enrollment charter.

*§100.1209. Municipal Ordinances.*

(a) Municipal ordinances apply. A charter holder is subject to federal and state laws and rules governing public schools and to zoning and all other municipal ordinances governing public schools.

(b) Notification to political subdivisions. A political subdivision shall consider an open-enrollment charter school a school district for purposes related to land development standards, licensing, zoning, and various purposes and services pursuant to the following.

(1) The governing body of an open-enrollment charter school must certify in writing to the political subdivision that no administrator, officer, employee, member of the governing body of the charter school, or charter holder received any personal financial benefits from a real estate transaction with the charter school.

(2) The open-enrollment charter school files notice of the new property location within 10 business days of the completing the purchase or lease of real property for that location to the Texas Education Agency division responsible for charter schools and the division will notify the following within 10 business days:

(A) the superintendent and the board of trustees of each school district from which the proposed location is likely to draw students, as defined in §100.1013 of this title (relating to Notification of Charter Application); and

(B) each member of the legislature that represents the geographic area to be served by the location, as defined in §100.1013 of this title.

(c) Charter school related purposes. An agreement between a municipality and an open-enrollment charter school may require that any revised land development standards can only apply while the property is used for charter school related purposes and that any property in use subject to open-enrollment charter school land development standards must become compliant with all applicable non-school commercial development regulations after the closure or relocation of the charter school.

§100.1212. *Personnel.*

(a) Minimum qualifications. Except as provided by subsection (b) of this section, all persons employed as a principal or teacher by an open-enrollment charter school must hold a baccalaureate degree.

(b) Exception. In an open-enrollment charter school that serves youth referred to or placed in a residential trade center by a local or state agency, a person may be employed as a teacher for a noncore vocational course without holding a baccalaureate degree if the person has:

(1) demonstrated subject matter expertise related to the subject taught, such as professional work experience; formal training and education; holding a relevant active professional industry license, certification, or registration; or any combination of work experience, training and education, and industry license, certification, or registration; and

(2) received at least 20 hours of classroom management training, as determined by the governing body of the open-enrollment charter school. Documentation of the training is to be maintained locally and provided to the Texas Education Agency within 10 business days upon request.

(c) Certification. Special education teachers, prekindergarten teachers, bilingual teachers, and teachers of English as a second language must be certified in the fields in which they are assigned to teach as required by state and/or federal law.

(d) Paraprofessionals. All persons employed as paraprofessionals must be certified as required to meet state and/or federal law.

(e) Criminal history. A charter school shall obtain from the Department of Public Safety (DPS), prior to the hiring of personnel and at least every third year thereafter, all criminal history record information maintained by DPS that the charter school is authorized to obtain.

(f) Do not hire registry. A charter school is prohibited from hiring personnel who are not eligible for hire in a Texas public school if they are listed on the Registry of Persons Not Eligible for Employment in Public Schools.

§100.1213. *Failure to Operate.*

(a) Continuous operation. Except as provided in this section, a charter holder shall operate the program as described in the open-enrollment charter for the full school term described in the open-enrollment charter during each year that the open-enrollment charter is in effect.

(b) Delayed opening. A charter holder may not delay opening the charter school (district) or any charter campus for longer than 21 days without an amendment to its open-enrollment charter, approved by the commissioner of education, stating that the charter school district or campus is dormant and setting forth the date on which operations shall resume and any applicable conditions for resuming operation that may be imposed by the commissioner. The period of dormancy shall last no longer than 12 months and will expire no later than June 30 in the school year in which the dormancy occurs. At the end

of a period of dormancy the charter holder may request an additional period of dormancy of no more than 12 months through an amendment to its open-enrollment charter.

(c) Abandonment. Delay of opening or suspension of operations in violation of this section and §100.1035 of this title (relating to Charter Amendment) constitutes abandonment of the open-enrollment charter and constitutes a material violation of the charter contract.

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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Texas Education Agency

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



## DIVISION 6. CHARTER SCHOOL OPERATIONS

### 19 TAC §100.1217

STATUTORY AUTHORITY. The repeal is adopted under Texas Education Code (TEC), §12.101, which requires the commissioner to adopt rules regarding the criteria for granting a charter and providing notification for the establishment of new charters or campuses; TEC, §12.1011, which requires the commissioner to adopt rules regarding charter authorization for high-performing entities; TEC, §12.103, which allows the commissioner to adopt rules regarding applicable provisions to open-enrollment charter schools; TEC, §12.104, as amended by House Bill (HB) 189, 87th Texas Legislature, Regular Session, 2021, which allows the commissioner to adopt rules permitting an open-enrollment charter school to voluntarily participate in any state program available to school districts if the school complies with all terms of the program; TEC, §12.1055, which allows the commissioner to adopt rules regarding nepotism under Texas Government Code, Chapter 573; TEC, §12.1058, as amended by HB 1707, 88th Texas Legislature, Regular Session, 2023, which requires a political subdivision to consider an open-enrollment charter school as a school district for the purposes of municipal ordinances if the open-enrollment charter school meets notification requirements; TEC, §12.110, which requires the commissioner to adopt an application form and procedure that must be used to apply for an open-enrollment charter school; TEC, §12.1101, which requires the commissioner to adopt a procedure for providing notice to the outlined persons on receipt by the commissioner of an application for a charter for an open-enrollment charter school or of notice of the establishment of a campus; TEC, §12.114, which allows the commissioner to define expansion amendment requests; TEC, §12.1141, as amended by Senate Bill (SB) 879, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to adopt a procedure for renewal, denial of renewal, or expiration of a charter for an open-enrollment charter school at the end of the term of the charter; TEC, §12.1166, which requires the commissioner to adopt a

rule defining "related party;" TEC, §12.1173, as amended by SB 2293, 86th Texas Legislature, 2019, which requires the commissioner to adopt rules to implement charter school waiting lists for admission; TEC, §12.1181, requires the commissioner to adopt performance frameworks that establish standards by which to measure the performance of an open-enrollment charter school; TEC, §12.123, which requires the commissioner to adopt rules prescribing the training for members of the governing body of a charter school and its officers; TEC, §12.153, which allows the commissioner to adopt rules to implement college or university or junior college charter schools; TEC, §12.265, as amended by SB 1615, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to adopt rules necessary to administer adult high school charter school programs; and TEC, §39.0548, which requires the commissioner to authorize and determine designation as a dropout recovery school.

CROSS REFERENCE TO STATUTE. The repeal implements Texas Education Code, §§12.101; 12.1011; 12.103; 12.104, as amended by House Bill (HB) 189, 87th Texas Legislature, Regular Session, 2021; 12.1055; 12.1058, as amended by HB 1707, 88th Texas Legislature, Regular Session, 2023; 12.110; 12.1101; 12.114; 12.1141, as amended by Senate Bill (SB) 879, 87th Texas Legislature, Regular Session, 2021; 12.1166; 12.1173, as amended by SB 2293, 86th Texas Legislature, 2019; 12.1181; 12.123; 12.153; 12.265, as amended by SB 1615, 87th Texas Legislature, Regular Session, 2021; and 39.0548.

§100.1217. *Eligible Entity; Change in Status or Revocation.*

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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## CHAPTER 129. STUDENT ATTENDANCE

### SUBCHAPTER AA. COMMISSIONER'S RULES

#### 19 TAC §129.1025

The Texas Education Agency (TEA) adopts an amendment to §129.1025, concerning the student attendance accounting handbook. The amendment is adopted without changes to the proposed text as published in the June 21, 2024 issue of the *Texas Register* (49 TexReg 4564) and will not be republished, however, the handbook adopted by reference in the rule includes changes at adoption. The adopted amendment adopts by reference the *2024-2025 Student Attendance Accounting Handbook*. The handbook provides student attendance accounting rules for school districts and charter schools.

REASONED JUSTIFICATION: TEA has adopted its student attendance accounting handbook in rule since 2000. Attendance

accounting evolves from year to year, so the intention is to annually update §129.1025 to refer to the most recently published student attendance accounting handbook.

Each annual student attendance accounting handbook provides school districts and charter schools with the Foundation School Program (FSP) eligibility requirements of all students, prescribes the minimum requirements of all student attendance accounting systems, lists the documentation requirements for attendance audit purposes, and details the responsibilities of all district personnel involved in student attendance accounting. TEA distributes FSP resources under the procedures specified in each current student attendance accounting handbook. The final version of the student attendance accounting handbook is published on the TEA website. A supplement, if necessary, is also published on the TEA website.

The adopted amendment to §129.1025 adopts by reference the student attendance accounting handbook for the 2024-2025 school year. The currently adopted handbook is available on the TEA website at <https://tea.texas.gov/finance-and-grants/financial-compliance/student-attendance-accounting-handbook>.

Significant changes to the *2024-2025 Student Attendance Accounting Handbook* include the following.

#### *Section 1, Overview*

Texas Education Code (TEC), Chapter 48, specifically §48.008, establishes the requirements for adopting an attendance accounting system and reporting attendance accounting data through Texas Student Data System Public Education Information Management (TSDS PEIMS). The following changes implement reporting requirements for attendance and funding.

Language referring to the footnote has been revised to show TEC, §48.008.

#### *Section 2, Audit requirements*

TEC, Chapter 42, specifically §42.255, establishes the requirements for violation of presenting reports that contain false information. TEC, §42.008, authorizes the commissioner of education to require audit reports to be submitted for review and analysis. TEC, §44.010, allows for the review of budget, fiscal, and audit reports to determine whether all legal requirements have been met. The following changes implement reporting for audit requirements to account for attendance and funding.

Language has been revised to show the current website for the Texas State Library and Archives Commission.

Language has been revised to state that districts must use the coding structure defined in the Texas Education Data Standards (TEDS) as they relate to attendance.

Language has been revised to state that Student Detail Reports must contain instructional track (Calendar Code) attended by the student.

The language in the Student Detail, Campus Summary, and District Summary Reports has been revised to reflect the expiration of virtual instruction.

Language has been revised to state that charter schools (including those authorized under TEC, Chapter 12, Subchapter G) are required to submit six-week District Summary Reports via the FSP payment system.

Language has been revised to state that additional required documentation must include board-approved local policy that defines the instruction methods.

Language has been revised to state that additional required documents must include any and all bell schedules used during the school year.

### *Section 3, General Attendance Requirements*

TEC, §25.081, and Chapter 48, specifically §48.005, establish the general parameters for attendance and school operation. The following changes implement reporting requirements for attendance and funding.

Language has been revised to state that Average Daily Attendance (ADA) Code 0 will be used for a student receiving special education services who has graduated but returned or continues enrollment with less than two hours of daily instruction, as well as for students who receive special education and related services through an approved contract with a nonpublic day or nonpublic residential school.

Language has been revised to exclude children served in an Early Childhood Special Education (ECSE) program from ADA Code 0 who have visual impairments, who are deaf or hard of hearing (DHH), or both.

Language has been revised to say students who are 26 years old on September 1 of the current year and are not enrolled may be included in a TEC, Chapter 12, Subchapter G, Adult High School Charter School Program.

Language has been revised to state that ADA Code 9 applies to a student who is enrolled in a virtual learning program but not in membership.

Language referencing the funding table has been revised to show changes.

Language has been revised to state that, for funding purposes, the number of days of participation for any student in any special program cannot exceed the number of days present for the same reporting period for the same instructional track.

Language has been expanded to include students who are continuing enrollment to receive special education services or students who have returned to school to receive special education services after receiving a diploma as students who are eligible to continue to generate ADA for funding purposes.

Language has been revised to state that a student may also be entitled to receive special education services through age 21 if the student has a disability and the district determines the student would have met the Texas criteria to continue the receipt of special education services after having been awarded a diploma.

Language in the Age Eligibility table has been revised to align with terminology changes made in the adopted handbook.

Language has been revised to state that students aged 22 to 25 who previously received special education services and are enrolled to complete high school requirements are not eligible for special education weighted state funding but qualify for other weighted state funding.

The footnotes related to maximum age eligibility and enrollment procedures have been revised to show 19 TAC §89.1070(f) and TEC, §26.0125.

Language has been revised to state that a district may accept documentation of an updated address, telephone number, and

email address electronically for a student who is continuing enrollment in the district from the prior school year.

The footnotes containing the link and Frequently Asked Questions (FAQ) for residency requirements have been updated.

The name of the Compliance and Inquiries Division has been updated.

Language has been revised to state that students who begin school as homebound, including Compensatory Education Home Instruction (CEHI), may indicate their official entry date as the first day of the school year as long as all the documentation requirements are met and the full number of hours needed are provided by the end of that week.

Language referencing student entitlement to attend school in a particular district has been deleted.

Language stating that districts must accept the transfer application of students whose parent or guardian is an active military servicemember or peace officer and requests a transfer to another campus in the currently enrolled district or to another adjoining school district has been moved from the incorrect section and added to the correct sections.

Language has been revised to change the term "homeless" to "students who experience homelessness."

Language has been revised to state that a student who experiences homelessness or a student who is in foster care should be admitted temporarily for 30 days if acceptable evidence of vaccination is not available.

Language has been revised to list the requirements to enroll an infant or toddler in the district or the Regional Day School Program for the Deaf (RDSPD) that will be providing the appropriate services as described in the Individualized Family Services Plan (IFSP).

Language has been revised to state that once withdrawn, students in Grades 7-12 must be reported as school leavers and cannot be considered dropouts according to the Code 162 (C162) Exit Withdraw Type table in TEDS.

Language concerning student records and record transfer has been revised to include an original copy of the home language survey (HLS), Language Proficiency Assessment Committee (LPAC) documentation, and either parental permission/denial forms for bilingual education programs or English as a second language (ESL) program services, if applicable.

Language has been revised to include an alternative attendance-taking time for students receiving special education services through an 18 plus program that provides community-based instruction.

Language has been revised to state that if a school district provides instructional services for special education after school or on Saturday, the contact hours may be counted for job coaching for a student in a work-based learning opportunity that is available only in the evening.

Language has been revised in an example referring to attendance and students who are not in membership or are served outside the home district.

Language referring to effective dates for program changes has been deleted.

Language has been revised to state that the district providing instruction must establish a written agreement with the nonres-

idental treatment facility. Students receiving special education services in this situation may still be eligible for those services during their time at a nonresidential treatment facility.

Language has been revised to state that a student who has an infant (0-6 months) considered medically fragile and who meets the criteria for General Education Homebound (GEH) program may also be considered for the GEH program.

Language referring to provision of additional remote instruction in the GEH program has been removed.

Language in the footnote has been revised to show the current link to the Texas Medical Board.

References to supplementing in-person homebound instruction with virtual instruction has been deleted.

Language has been revised to state that students who begin school on GEH may indicate their official entry date as the first day of the school year as long as all the documentation requirements are met and the full number of hours needed are provided by the end of that week.

Language has been revised in the table showing required number of operational and instructional minutes to include Subchapter G, Adult High School Charter School Program. The footnote would be revised to show TEC, §12.251.

Language has been revised to state that all the students in a particular school or track will have the same number of school days (Number Days Taught).

Language has been revised to update waivers listed in Section 3.8, Calendar.

Language has been revised to state that days with low attendance that do not qualify for a waiver must still be reported as instructional days.

Language has been revised to state that, effective with the 2025-2026 school year, school districts and open-enrollment charter schools with four-day school weeks are not eligible to receive staff development waivers.

Language has been revised to state that the staff development waiver only covers real-time staff development involving all district staff at once, replacing student instruction. Exchange or trade days or individual professional development outside regular hours cannot count toward waiver requirements for staff development minutes.

Language has been revised to state that if TEA grants a district a waiver for a missed school day or a low-attendance day, the district must treat the day as a non-school day in the district's student attendance accounting system and report the day with a Calendar Waiver Event Type (E1570).

Language has been revised to state that a waiver for a dual credit course must be submitted using the Other Waiver application in TEA's automated waiver application system.

Language referencing a school safety training waiver has been added.

Language referencing footnote TEC, §25.0815, has been added.

Language has been revised to specify the date for initial TSDS PEIMS summer submission and the dates for resubmission.

Language has been revised to reflect changes in examples listed in Section 3.

Language has been added to state example for using the life-threatening illness provision to claim funding.

Language has been revised to show the change in numbering order of examples.

In response to public comment, Section 3.3.5 was modified at adoption to clarify that the entry date is the student's first day of school and not the first day of the school year.

In response to public comment, Section 3.8 was modified at adoption to clarify that some standalone programs, like early education (EE) programs, may be reported on the main campus calendar track.

In response to public comment, Section 3.8.1.4 was modified at adoption to clarify that staff development on staff development waiver days may be specific to the needs of individual campuses/workgroups and may be delivered at different physical locations.

In response to public comment, Section 3 of the Student Attendance Accounting Handbook (SAAH) was modified at adoption to include mealtime for combined prekindergarten and EE programs.

#### *Section 4, Special Education*

TEC, Chapter 48, specifically §48.102, authorizes funding for special education in certain circumstances. TEC, §48.004, authorizes the commissioner to require reports that may be necessary to implement and administer the FSP. The following changes implement reporting for special education to account for attendance and funding.

Language has been added to state that special education staff, not attendance staff, must provide coding information. Special education directors ensure accuracy of data and communicate to attendance personnel. Special education staff must check the Student Detail Report at the end of each six-week period.

Language has been revised to state that eligibility for special education and related services is determined for children aged birth to two years who have a visual impairment, who are DHH, or who are both.

Language has been revised to state that a student is coded as 00 in the TSDS PEIMS Student Special Education Program Association Entity when receiving only speech therapy, regardless of the delivery model, or when receiving speech therapy along with other related services but no instructional special education services.

Language has been revised to describe situations when a student will not have an instructional setting code of 00.

Language has been revised to state that for code 1, home instruction may be used for infants or toddlers (birth to two years of age) with visual impairment (VI) or DHH as determined by the IFSP committee, and for students aged three to five as decided by the admission, review, and dismissal (ARD) committee.

Language has been revised to state that in making eligibility and placement decisions for students six years of age and older, the ARD committee must consider information from a licensed physician.

Language has been revised to state that infants and toddlers (children from birth through two years of age) who are DHH, VI, or both may receive home instruction as determined by the IFSP team and be reported as homebound.

Language has been revised to state that students who begin school as homebound, including CEHI, may indicate their official entry date as the first day of the school year as long as all the documentation requirements are met and the full number of hours needed are provided by the end of that week.

Language has been revised to state that code 02 is used for students receiving special education in a hospital or residential care facility by district personnel. If a student in such a facility receives services on a campus outside their parent's district, they are coded with a residential care and treatment code. If the parent resides in the facility's district, the student is reported based on the arrangement at the campus. A student who is receiving special education services by school district personnel at the facility but is not residing in the facility is in an off-home campus instructional setting.

Language has been revised to state that code 08 is used for students in job training aligned with their postsecondary employment goals with direct special education involvement in an individualized education program (IEP) implementation. It covers services in Career Technical Education (CTE) classes or specified work-based learning. Eligibility requires the student's employment in a job with special education personnel directly involved, excluding mere employer consultation.

Language has been revised to state that a student must meet special education eligibility requirements to be reported as a student in special education.

Language has been revised to state that codes 41 or 42 are used for students receiving related services in a special education setting, except if they receive only speech therapy alongside other related services. If a student gets special education instruction and speech therapy, the resource room code is used and Special Education Program Service 25 is reported.

Language has been revised to state that code 60 is used for students who are served in off-campus programs as these are defined in 19 TAC §89.1094.

Language has been revised to include Student School Association Entity in code 71.

Language has been revised to state that codes 81-89 are used for students in residential care facilities who receive special education services on a local district campus where the facility is located, but their parents do not reside in that district. Students under Department of Family and Protective Services conservatorship in relative or kinship care or foster homes will not use this code, except those in cottage homes or congregate care meeting the criteria.

Language has been revised to state that Code 87 indicates that a student resides in a facility and receives special education and related services by school district personnel in a facility (other than the one in which the student resides and other than a non-public day school) not operated by a school district.

Language has been revised to state that codes 91-98 will be used when a student receives special education and related services at South Texas Independent School District or Windham School District. This includes partial hospitalization programs or other outpatient facilities at which school district personnel are providing instruction. The student is in a non-district community setting, aiding their transition to postsecondary education, integrated employment, or independent living, with instruction or involvement from district personnel aligning with their individual transition goals.

Language has been revised to state that code 96 also applies to students who are receiving services, after having met graduation requirements and determined eligible by the student's ARD committee, on property that is owned or operated by a school district.

Language has been revised to state that Student Detail Reports and the TSDS PEIMS Student Special Education Program Association Entity must contain speech therapy reporting information (Descriptor Table Special Education Program Service (C341)) for any student receiving special education services.

Language has been revised to state the specific usage of Special Education Program Service 24.

Language has been revised to state that for Special Education Program Service 25, the student's TSDS PEIMS Special Education Program Reporting Period Attendance Entity must display both the student's primary instructional setting code (other than 00) and code 00. However, if the student is in a mainstream setting and receives speech therapy, only code 00 should be reported.

Language has been revised to state the specific usage of Special Education Program Service 23.

Language has been revised to state that, starting from the 2025-2026 school year, TEA will gradually remove references to programs for children with disabilities (PPCD) in its publications to emphasize that children eligible for these services must be served in the least restrictive environment outlined in their IEP.

Language referencing ECSE services and Kindergarten programs has been deleted. A revision has been made to state that the PPCD indicator should be changed when a student turns six.

Language referencing ECSE services and Head Start has been deleted along with the footnotes.

Language referencing shared service agreements has been revised to state that students must be reported on the Student School Association Entity as a transfer student (attribution 06 - Transfer Student).

Language has been revised to include changes for students who receive instructional services through the RDSPD.

Language has been revised to reflect changes in the coding chart table detailing services for students with disabilities.

Language has been revised to state that district must report Extended School Year services data to TEA using Extended School Year Services Attendance Entity according to the TEDS.

Language has been revised to reflect changes in the examples for Vocational Adjustment Class specifically for the local credit course and the CTE classes.

Language has been revised in mainstream examples to indicate changes in reporting of instructional codes using Special Education Program Service.

Language referencing examples for resource room codes 41 and 42 has been revised.

Language has been revised to reflect changes in the Self-Contained, Regular Campus examples, specifically for the reporting of the instructional setting code.

Language has been revised to reflect changes in the Off Home Campus examples, specifically for the reporting of the instructional setting code.

Language has been revised to reflect changes in the Speech Therapy only and Speech Therapy with Other Services examples, specifically for the reporting of instructional setting code.

In response to public comment, Sections 3 and 4 of the SAAH as well as the glossary were modified to align with necessary edits to reflect the adoption of 19 TAC Chapter 89.

#### *Section 5, Career and Technical Education (CTE)*

TEC, Chapter 48, including §48.106, authorizes funding for CTE in certain circumstances. TEC, Chapter 29, Subchapter F, establishes general parameters for CTE programs. TEC, §48.004, authorizes the commissioner to require reports as may be necessary to implement and administer the FSP. The following changes implement reporting for CTE to account for attendance and funding.

Language has been revised to reflect the current link for state-approved CTE courses.

Language referencing enrollment procedures has been revised to state that the ARD committee will create the student's transition plan, aligning courses of study with their postsecondary goals and updating the personal graduation plan as needed for students receiving special education services.

Language has been revised to state that after five consecutive days without CTE services being provided, local education agency (LEA) personnel must remove the student from the TSDS PEIMS CTE Program Reporting Period Attendance Entity's eligible days present effective the first day of placement in the disciplinary setting.

Language has been revised to state that LEAs can claim a maximum of three contact hours (V3) for a single course. To qualify for CTE weighted funding, course periods must average a minimum of 45 minutes per day throughout the calendar year including pep rallies, assemblies, modified bell schedules etc., but excluding days covered under Attendance Accounting during Testing Days, Staff Professional Development Waivers, and Closures for Bad Weather or Other Health and Safety Issues.

Language has been revised to show updated CTE Weighted Funding Tiers as calculated by TEA.

Language has been revised to state that student instruction during one class period per week is required to be a minimum of 45 minutes in length in a practicum instructional arrangement.

Language has been revised to state that adaptations such as accommodations or modifications must be implemented as specified by a student's IEP, as applicable, for project-based capstone courses.

Language has been revised to state that to receive CTE weighted funding, class periods are required to be a minimum of 45 minutes in length and an average of 45 minutes during the calendar year.

Language throughout the examples in Section 5 has been revised to show the change from course Service ID to CTE Service ID.

In response to public comment, Section 5 of the SAAH was modified at adoption to clarify that LEAs that receive CTE weighted

funding must ensure CTE class periods are a minimum of 45 minutes on standard/regular bell scheduled days.

#### *Section 6, Bilingual/English as a Second Language (ESL)*

TEC, Chapter 48, specifically §48.105, authorizes funding for bilingual or special language programs in certain circumstances. TEC, Chapter 29, Subchapter B, establishes general parameters for bilingual and special language programs. TEC, §48.004, authorizes the commissioner to require reports as may be necessary to implement and administer the FSP. The following changes implement reporting for bilingual and special language programs to account for attendance and funding.

Language has been revised to state that reclassification is when the LPAC decides an emergent bilingual (EB) student meets criteria to be English proficient (EP), entering year one of monitoring. Exit occurs when the student is no longer classified as EB, ending bilingual or ESL program participation per LPAC recommendation and parental approval.

Language has been revised to state that LEAs are required to clarify in a timely manner which of the two non-English languages is used most of the time, if multiple languages are indicated in the HLS.

Language has been revised in the footnote to show the current link for appropriate bilingual program type codes.

Language has been revised to state that for students transferring within Texas, if the sending district cannot provide the original HLS, the receiving district documents that the original HLS was not included in the student's cumulative folder and documents the attempts and/or reason why the HLS was not obtained.

Language has been revised to state that after five consecutive days without participation in the bilingual or ESL education program, district personnel should remove the student's days from the TSDS PEIMS Bilingual ESL Program Reporting Period Attendance Entity.

Language has been revised to provide the current link for current reclassification requirements.

Language has been revised to update the list of required documents.

Language has been revised to provide the current link for additional resources for program implementation.

#### *Section 7, Prekindergarten (Pre-K)*

TEC, Chapter 29, Subchapter E, establishes special general parameters for prekindergarten (pre-K) programs. TEC, Chapter 48, including §48.005, establishes ADA requirements and authorizes funding for certain circumstances. TEC, §48.004, authorizes the commissioner to require reports that may be necessary to implement and administer the FSP. The following changes implement reporting for prekindergarten to account for attendance and funding.

Language has been revised to state that, regardless of whether a district runs a three-year-old pre-K program, students three years of age who are eligible for special education and related services may be placed in a pre-K class by the ARD committee.

Language has been revised to show a change in terminology from an English learner to emergent bilingual.

Language has been revised to include documentation regarding what languages were used in the home setting if the student had a previous home setting.

Language related to pre-K eligibility based on homelessness has been deleted.

In response to public comment, Section 7.2.3 of the SAAH was updated to include clarification regarding documentation for this criterion.

In response to public comment, the chart on page 128 of the SAAH was amended at adoption to include 3-year-old pre-K programs.

#### *Section 9, Pregnancy-Related Services (PRS)*

TEC, Chapter 48, including §48.104, authorizes funding for students who are pregnant under certain circumstances. TEC, §48.004, authorizes the commissioner to adopt reports that may be necessary to implement and administer the FSP. The following changes implement reporting for pregnancy-related services (PRS) to account for attendance and funding.

Language has been revised to state that students who do not come to school and who do not receive CEHI or general education or special education homebound services must be counted absent in accordance with the charts provided in this section.

Language has been revised to state the different entities that PRS student needs to identify within the TSDS PEIMS.

Language has been revised to include the current link for Texas Medical Board.

Language has been revised to state that for a baby recovery period, a note from a medical practitioner stating the infant's need for hospital confinement is required.

Language has been revised to state that a student who commences school on homebound (including CEHI) may indicate their official entry date as the first day of the school year as long as all the documentation requirements are met and the full number of hours needed are provided by the end of that week.

Language has been revised to state that a pregnant student's ARD committee and PRS program staff members must collaboratively address the student's service needs.

Language has been revised to state that the period of homebound postpartum services for a student receiving special education services may exceed 10 weeks if determined necessary by the ARD committee.

Language has been revised to state that a CEHI teacher may maintain additional documentation as to when a student physically returns to campus to resume their regular schedule. This may or may not be the date the student was scheduled to return.

Language has been revised to show the accurate CTE Program Association Entity.

Language has been revised in the example to state that if all of the required documentation is obtained and the student is provided the full amount of CEHI hours by the end of the first week, the district may claim her entry date.

In response to public comment, the SAAH was modified at adoption include the word "on-campus" to indicate that regular classes must be taken on campus.

#### *Section 10, Alternative Education Programs (AEPS) and Disciplinary Removals*

TEC, Chapter 48, specifically §48.270, establishes the requirements for violation of presenting reports that contain false information. TEC, §48.004, authorizes the commissioner to adopt

reports that may be necessary to implement and administer the FSP. TEC, §44.010, allows for the review of budget, fiscal, and audit reports to determine whether all legal requirements have been met. The following changes implement reporting for audit requirements to account for attendance and funding.

Language has been revised to state that the leaver code reported on the TSDS PEIMS Student School Association Entity is 98.

Language has been revised to state that neither the TEC nor the TAC outline teacher requirements for the disciplinary alternative setting of an in-school suspension program.

Language has been revised to state that a district should contact TEA to establish a separate campus for the district's Juvenile Justice Alternative Education Program (JJAEP) students and enroll students at this JJAEP campus as the students are placed at the JJAEP facility.

Language has been revised to state that while in a Disciplinary Alternative Education Program (DAEP) or JJAEP, a student served by special education must receive all current IEP-designated services.

Language has been revised to state that a student is not eligible for ADA if the student has been assigned out-of-school suspension for the first day of school. A student cannot be absent on the first day of school.

#### *Section 11, Nontraditional Programs*

TEC, Chapter 29, Subchapter A, establishes special general parameters for nontraditional programs. TEC, Chapter 48, including §48.005, establishes ADA requirements and authorizes funding for certain circumstances. TEC, §48.004, authorizes the commissioner to require reports that may be necessary to implement and administer the FSP. The following changes implement reporting for nontraditional programs to account for attendance and funding.

Language has been revised to reflect changes made to the College Credits Program table. Language has also been revised to state the requirements for a dual credit or dual enrollment course.

Language has been revised to state that dual credit includes a course for which a high school student may earn credit only at an institution of higher education (previously referred to as a dual enrollment course) if the course meets the requirements of 19 TAC Chapter 4, Subchapter D. Dual credit and dual enrollment are synonymous. An institution is not required to offer dual credit courses for high school students.

Language has been revised to state student eligibility requirements specific to dual credit courses.

Language referencing the table for minimum passing standards to demonstrate dual credit eligibility has been deleted.

Language has been revised to state that a student enrolled in a TEA-designated Early College High School or TEA-designated Pathway in Technology Early College High School program may enroll in dual credit courses if the student demonstrates college readiness in alignment 19 TAC §§4.51-4.63 and 4.81-4.86.

Language has been revised to state that Additional Days School Year (ADSY) provides half-day formula funding for school systems that add instructional days to any of their pre-K through Grade 5 campuses (TEC, §48.0051).



Language has been revised to state that should an LEA utilizing ADSY funding file for and receive a low attendance waiver, the granting of a low attendance waiver does not reduce the 180 days of instruction for ADSY purposes. An ADSY waiver is not required to be filed for the same date as an approved low-attendance-day waiver.

Language has been revised to state that special education services for students who have completed credit and assessment requirements for graduation and have been determined eligible by their ARD committee to continue enrollment as specified in 19 TAC §89.1070(h) or (i) do not meet the statutory eligibility for Optional Flexible School Day Program (OFSDP). The district should follow the schedule of services in the IEP and claim the applicable ADA funding.

Language has been revised to state that changing the record type during a reporting period is allowed in specific cases, like when a student starts OFSDP, when a student transitions in or out of DAEP, or when an OFSDP student begins receiving PRS CEHI services mid-reporting period.

Language referencing funding eligibility for students 21 through 25 years of age has been deleted.

Language has been revised to state that all attendance must be reported through the OFSDP Flexible Regular Program Reporting Period Attendance Entity.

Language has been revised to state that high school equivalency program attendance is reported using the Flexible Regular Program Reporting Period Attendance Entity.

#### *Section 12, Virtual, Remote, and Electronic Instruction*

TEC, Chapter 30A, establishes the general parameters for the Texas Virtual School Network (TXVSN). TEC, §30A.153, authorizes funding for the TXVSN for the FSP under certain circumstances. TEC, §48.004, authorizes the commissioner to adopt reports that may be necessary to implement and administer the FSP. The following changes implement reporting for the TXVSN to account for attendance and funding.

Language has been revised to provide the current link for a list of TXVSN online schools officially recognized by the agency.

Language has been deleted for Remote Instruction That is Not Delivered through the TXVSN.

Language has been revised to state that a student who has an infant (0-6 months) considered medically fragile and who meets the criteria for Remote Conferencing-Regular Students may also be considered for the GEH program. If a waiver is granted, the affected student will generate attendance according to the two-through-four-hour rule and based on if the student is virtually present at the official attendance-taking time.

Language has been revised to state that the district can submit a request for a general waiver using TEA's automated waiver application system, which is available in TEA Login (TEAL) and cite the requirements in the general waiver section.

Language has been deleted from Remote Conferencing-Students Receiving Special Education and Related Services.

Language has been revised to state if a waiver is approved, attendance will be tracked based on the two-through-four-hour rule. If a student is scheduled to be on campus, their attendance will be recorded if they are physically present. If they are scheduled to be off campus, they will be marked as present if they attend virtually at the official attendance time.

Language referencing the entire section on Virtual Instruction (Local Remote Learning Programs) under TEC, §29.9091, or as modified by TEC, §48.007(c), has been deleted.

#### *Section 13, Appendix: Average Daily Attendance (ADA) and Funding*

Language has been revised to state that days in attendance are the total number of days that a student was in attendance (present at the designated attendance-taking time or absent for a purpose described by 19 TAC §129.1025) during a specific period (for example, a 180-day school year) while that student was eligible to generate funding (in membership).

Language has been revised to provide the current link for the CTE Program Reporting Period Attendance Entity.

Language has been revised to provide the current link for the course level provided in the CTE Lookup - Table.

Language has been revised to provide the current link for further guidance on the Bilingual Education Allotment.

#### *Glossary*

Language has been revised to update the definition of at-risk.

Language has been revised to update the definition of bilingual/ESL eligible days.

Language referencing EP has been deleted.

Language has been revised to update the definition of in-school suspension, prekindergarten (pre-K), and reclassification.

**SUMMARY OF COMMENTS AND AGENCY RESPONSES:** The public comment period on the proposal began June 21, 2024, and ended July 22, 2024. Following is a summary of the public comments received and agency responses.

#### *Section 2 - Audit Requirements*

**Comment:** An education service center (ESC) employee requested the student social security number or state assigned alternative identification number not be included in the required Student Detail Report.

**Response:** The agency disagrees as the report and the required data used on the Student Detail Report is accurate as formatted.

#### *Section 3 - General Attendance*

**Comment:** An assistant superintendent requested that the SAAH assign numbers to the 19 funded absence codes rather than using bullet points.

**Response:** The agency disagrees as the use of bullet points in Section 3.6.3 is reflective of standard SAAH formatting.

**Comment:** A PEIMS coordinator requested that siblings be included in the group with parents, stepparents, and legal guardians for a state excused absence when missing school to visit with a deployed military service member.

**Response:** The agency disagrees. Including siblings in the group with parents, stepparents, and other legal guardians to be excused for attendance for state funding would require a legislative amendment to TEC, §25.087(b-4).

**Comment:** A PEIMS coordinator suggested that language in Section 3.3.5 be modified to indicate that a student cannot be reported absent on the student's first day of school rather than the first day of school.

Response: The agency agrees and has modified Section 3.3.5 of the SAAH at adoption to clarify that the entry date is the student's first day of school and not the first day of the school year.

Comment: Twenty-eight individuals expressed concern with the term attendance personnel in the SAAH when referring to the duties of local education agency (LEA) individuals who assign and review special program coding. These individuals suggest that the SAAH use the term data entry clerks instead.

Response: The agency disagrees as staff roles and responsibilities are a local LEA decision.

Comment: An ESC employee requested that Section 3.8 be updated to allow grade level EE be reported on the regular campus track.

Response: The agency agrees and has updated language in Section 3.8 of SAAH at adoption to clarify that some standalone programs like EE programs may be reported on the main campus calendar track.

Comment: Nine individuals and the superintendents of Kelton Independent School District (ISD), Boles ISD, Westbrook ISD, Crane ISD, Rochelle ISD, and Lovejoy ISD expressed concern with the proposed language in Section 3 of the SAAH that would repeal the Staff Development Waiver starting with the 2025-2026 school year for those LEAs that follow a 4-day week schedule.

Response: The agency disagrees. The agency is clarifying and implementing that staff development waiver minutes are not applicable to regular days of non-instruction for schools that function on a 4-day week calendar, as staff development is not being provided in lieu of student instruction on that day. Additionally, as LEAs on a 4-day instructional week calendar have a day available to them during the traditional work week on which to have staff development without reducing instructional days or time, no waiver is needed. A staff development waiver does not prevent or limit the amount of staff development that an LEA may provide, particularly on days where there is no scheduled student instruction.

Comment: An individual suggested that language be updated to require LEAs to retain copies of military orders received by military families for average daily attendance (ADA) and other funding purposes.

Response: The agency disagrees as documentation to prove military connection, active or otherwise, for the purpose of program eligibility or ADA is already required for audit.

Comment: Four individuals expressed concern with the proposed SAAH language that restricts the staff development waiver to real time, district-wide staff development that would cause districts to revise their calendars prior to the start of the school year.

Response: The agency disagrees that this change would cause districts to revise their calendar prior to the start of the school year. However, the agency has provided clarification at adoption in Section 3.8 regarding the application of staff development related to the staff development waiver both district and campus wide.

Comment: Two individuals expressed concern that the proposed changes to staff development waivers requiring synchronous staff development may require revisions of already approved LEA calendars.

Response: The agency agrees and has added language at adoption to Section 3.8 to clarify that staff development on staff development waiver days may be specific to the needs of individual campuses/workgroups and may be delivered at different physical locations. However, the professional development must be synchronous and scheduled to take place at the same time and for the same length of time for all staff employed at the same campus on the day(s) the district is claiming staff development waiver minutes for that campus. Staff development not utilized as part of the waiver may still take place; however, "exchange/trade" days or professional development that staff receive on their own time outside of the school/workday may not be counted toward the waiver minutes allotted for staff development.

Comment: An employee from an ESC requested that Section 3.3.2 be updated to indicate that student record requests are not allowed before July 1.

Response: The agency disagrees as TEC, §25.002(a-1), only mandates that records be sent in 10 working days but makes no provision to limit the time that an LEA may request records from another LEA.

Comment: An individual requested that Section 3.3.2 of the SAAH be modified to clarify the expectation for submission of student records through the Texas Records Exchange (TREx) system according to TEC, §25.002(a-1).

Response: The agency disagrees as TEC, §25.002(a-1), already mandates that LEAs must fulfill records requests made through TREx in 10 working days. The agency has clarified the SAAH at adoption to indicate that records may be requested upon a student seeking or intending to enroll in the LEA.

Comment: An employee from an ESC requested that mealtime and recess also apply to grade level EE as included in the instructional time.

Response: The agency agrees and has modified the language in the SAAH at adoption to include mealtime for combined pre-K and EE programs.

#### *Section 4 - Special Education*

Comment: Disability Rights Texas commented that the proposed changes to 19 TAC Chapter 89 should be adopted before the rules are reflected in the adopted version of the SAAH.

Response: The agency agrees and has made necessary edits to align with 19 TAC §§89.1049, 89.1065, and 89.1141 in Sections 3 and 4 of the SAAH as well as in the glossary.

Comment: An individual requested that the Texas Education Agency consider including dyslexia and dyslexia services in Section 4 of the SAAH.

Response: The agency disagrees as dyslexia is already included where appropriate throughout Section 4.

#### *Section 5 - Career and Technical Education (CTE)*

Comment: Twenty-nine individuals and the superintendent of Tomball ISD expressed concern with the proposed language in Section 5 of the SAAH requiring that all bell schedules, including shortened schedules for pep rallies and assemblies, be used to calculate the 45-minute average for CTE courses for funding.

Response: The agency agrees. LEAs that receive CTE weighted funding must ensure CTE class periods are a minimum of 45 minutes on standard regular bell scheduled days. At

adoption, proposed amendments to the SAAH were modified to remove the requirements that CTE average course lengths include shortened bell schedules and other schedules not following the regular or standard bell schedule.

#### *Section 7 - Prekindergarten (PRE-K)*

Comment: An individual commented that the current restriction in the SAAH that does not allow LEAs to verify prekindergarten (pre-K) eligibility before April 1 is a hinderance to their registration process.

Response: The agency disagrees that the pre-K eligibility verification date should begin prior to April 1. The agency has determined that, because the preregistration window is impliedly connected to emergent bilingual needs, moving the verification date could result in emergent bilingual students not having the same opportunity to preregister as other eligible groups of students.

Comment: Two individuals requested that the SAAH be modified to clarify that participation in the National School Lunch Program (NSLP) through Medicaid Free and Reduced benefits is a pre-K qualifier while participation in medical Medicaid alone is not a pre-K qualifier.

Response: The agency agrees that clarification is needed regarding acceptable documentation to determine student eligibility for free pre-K for educationally disadvantaged children. At adoption, the agency has updated Section 7.2.3, Pre-K Eligibility Based on Being Educationally Disadvantaged (Eligible for the NSLP), to include clarification regarding documentation for this criterion.

Comment: An individual requested that the note associated with the chart on page 128 of the SAAH be amended to include 3-year-old pre-K programs.

Response: The agency agrees and revised and adjusted the chart at adoption for clarification.

#### *Section 9 - Pregnancy Related Services*

Comment: A data specialist requested that a bullet point in Section 9 of the SAAH be modified to include the word "on-campus" to indicate that regular classes must be taken on campus.

Response: The agency agrees, and the SAAH has been modified at adoption include the word "on-campus" to indicate that regular classes must be taken on campus.

#### *Section 11 - Nontraditional Programs*

Comment: Two individuals and the superintendent of Pharr-San Juan-Alamo ISD requested that Section 11.6.2 be updated to allow for Optional Flexible School Day Program attendance to carry over beyond a 6-week term in order to count toward funding.

Response: The agency disagrees. The agency has interpreted the applicable portion of TEC, §29.0822, since its enactment as a limitation on the amount of attendance that can be accumulated within a 6-week term in the proposed and past versions of the SAAH. TEA will establish a working group to understand the programmatic implications along with determining the optimal attendance funding and will update the next version of the SAAH.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code, §7.055(b)(35), which states that the commissioner shall perform duties in connection with the Foundation School Program (FSP) as prescribed by TEC, Chapter

48; TEC §12.251, which states the definition of adult high school charter school programs; TEC, §25.001, which states that a school district must allow for an active duty member of the armed forces of the United States to be allowed 90 days to provide proof of residency; TEC, §25.0344, which states that a parent serving as a peace officer or service member may request a transfer to a district and campus of their choice; TEC, §25.081, which states that, for each school year, each school district must operate so that the district provides for at least 75,600 minutes, including time allocated for instruction, intermissions, and recesses, for students; TEC, §25.081(d), which authorizes the commissioner to adopt rules to implement the section; TEC, §25.081(g), which states that a school district may not provide student instruction on Memorial Day but that if a school district would be required to provide student instruction on Memorial Day to compensate for minutes of instruction lost because of school closures caused by disaster, flood, extreme weather conditions, fuel curtailment, or another calamity, the commissioner shall approve the instruction of students for fewer than the number of minutes required under TEC, §25.081(a); TEC, §25.0812, which states that school districts may not schedule the last day of school for students before May 15; TEC, §25.087, which provides purposes for which a school district shall excuse a student from attending school; TEC, §28.02124, which states that a parent may request that a student repeat a course for high school credit; TEC, §29.081, which states that attendance accounting and FSP funding for Optional Flexible School Day Program participation may be generated through a remote or hybrid dropout recovery education program; TEC, §29.0822, which enables a school district to provide a program under this section that meets the needs of students described by TEC, §29.0822(a), for a school district that meets application requirements, including allowing a student to enroll in a dropout recovery program in which courses are conducted online. TEC, §29.0822, authorizes the commissioner to adopt rules for the administration of the section; TEC, §30A.153, which states that, subject to the limitation imposed under TEC, §30A.153(a-1), a school district or open-enrollment charter school in which a student is enrolled is entitled to funding under TEC, Chapter 48, or in accordance with the terms of a charter granted under TEC, §12.101, for the student's enrollment in an electronic course offered through the state virtual school network in the same manner that the district or school is entitled to funding for the student's enrollment in courses provided in a traditional classroom setting, provided that the student successfully completes the electronic course; TEC, §30A.153(d), which authorizes the commissioner to adopt rules necessary to implement the section, including rules regarding student attendance accounting; TEC, §48.004, which states that the commissioner shall adopt rules, take action, and require reports consistent with TEC, Chapter 48, as necessary to implement and administer the FSP; TEC, §48.005, which states that average daily attendance (ADA) is the quotient of the sum of attendance for each day of the minimum number of days of instruction as described under TEC, §25.081(a), divided by the minimum number of days of instruction; TEC, §48.005(m), which authorizes the commissioner to adopt rules necessary to implement the section and subsections (m-1) and (m-2), which address virtual or remote instruction-related funding; TEC, §48.102, which states that for each student in average daily attendance in a special education program under TEC, Chapter 29, Subchapter A, in a mainstream instructional arrangement, a school district is entitled to an annual allotment equal to the adjusted basic allotment multiplied by 1.15. For each full-time equivalent student in average daily

attendance in a special education program under TEC, Chapter 29, Subchapter A, in an instructional arrangement other than a mainstream instructional arrangement, a district is entitled to an annual allotment equal to the adjusted basic allotment multiplied by a weight determined according to its instructional arrangement; TEC, §48.103, which states that for each student that a district serves who has been identified as having dyslexia or a related disorder, the district is entitled to an annual allotment equal to the basic allotment multiplied by 0.1 or a greater amount provided by appropriation; TEC, §48.104, which states that for each student who does not have a disability and resides in a residential placement facility in a district in which the student's parent or legal guardian does not reside, a district is entitled to an annual allotment equal to the basic allotment multiplied by 0.2 or, if the student is educationally disadvantaged, 0.275. For each full-time equivalent student who is in a remedial and support program under TEC, §29.081, because the student is pregnant, a district is entitled to an annual allotment equal to the basic allotment multiplied 2.41; TEC, §48.105, which states that for each student in average daily attendance in a bilingual education or special language program under TEC, Chapter 29, Subchapter B, a district is entitled to an annual allotment equal to the adjusted basic allotment multiplied by 0.1 or 0.15 if the student is in a bilingual education program using a dual language immersion/one-way or two-way program model, and for students not described in subdivision (1), 0.05 if the student is in bilingual education program using a dual language immersion/two-way program model; TEC, §48.106, which states that for each full-time equivalent student in average daily attendance in an approved career and technology education program in Grades 7-12 or in career and technology education programs, a district is entitled to an annual allotment equal to the basic allotment multiplied by a weight of 1.35 and \$50 for each student that is enrolled in two or more advanced career and technology classes for a total of three or more credits; a campus designated as a Pathways in Technology Early College High School (P-TECH) school under TEC, §29.556; or a campus that is a member of the New Tech Network and that focuses on project-based learning and work-based education; TEC, §48.108, which states that for each student in average daily attendance in Kindergarten-Grade 3, a district is entitled to an annual allotment equal to the basic allotment multiplied by 0.1 if the student is educationally disadvantaged or a student of limited English proficiency, as defined by TEC, §29.052, and in bilingual education or special language program under TEC, Chapter 29, Subchapter B; TEC, §48.109, which states that for each student in the gifted and talented category, the district is entitled to an annual allotment equal to the basic allotment multiplied by 0.07 for each school year or a greater amount provided by appropriation. If by the end of the 12th month after receiving an allotment for developing a program a district has failed to implement a program, the district must refund the amount of the allotment to the agency within 30 days. Not more than five percent of a district's students in average daily attendance are eligible for funding under this section. If the state funds exceed amount of state funds appropriated in any year for the programs, the commissioner shall reduce the districts tier one allotment. If funds are less than the total amount appropriated for the school year, the commissioner shall transfer the remainder to any program. After each district has received allotted funds for this program, the State Board of Education may use up to \$500,000 of the funds allocated under this section for other programs; TEC, §48.270, which states that when, in the opinion of the agency's director of school audits,

audits or reviews of accounting, enrollment, or other records of a school district reveal deliberate falsification of the records, or violation of the provisions of TEC, Chapter 48, through which the district's share of state funds allocated under the authority of this chapter would be, or has been, illegally increased, the director shall promptly and fully report the fact to the State Board of Education, the state auditor, and the appropriate county attorney, district attorney, or criminal district attorney; and TEC, §49.204, which states that a school district with a local revenue in excess of entitlement may reduce the district's local revenue level by serving nonresident students who transfer to the district and are educated by the district but who are not charged tuition.

**CROSS REFERENCE TO STATUTE.** The amendment implements Texas Education Code, §§7.055(b)(35), 12.251, 25.001, 25.0344, 25.081, 25.0812, 25.087, 28.02124, 29.081; 29.0822, 30A.153, 48.004, 48.005, 48.102, 48.103, 48.104, 48.105, 48.106, 48.108, 48.109, 48.270, and 49.204.

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 September 11, 2024.

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Director, Rulemaking

Texas Education Agency

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



## CHAPTER 150. COMMISSIONER'S RULES CONCERNING EDUCATOR APPRAISAL SUBCHAPTER AA. TEACHER APPRAISAL

### 19 TAC §150.1012

The Texas Education Agency (TEA) adopts an amendment to §150.1012, concerning local optional teacher designation systems. The amendment is adopted with changes to the proposed text as published in the June 7, 2024 issue of the *Texas Register* (49 TexReg 3997) and will be republished. The adopted amendment updates procedures and terminology and provides TEA additional discretion to allow system changes outside the existing approval timeline in certain situations.

**REASONED JUSTIFICATION:** Section 150.1012 implements Texas Education Code (TEC), §21.3521 and §48.112, by establishing the requirements for school districts and charter schools to implement local teacher designation systems.

Following is a description of the adopted amendment to §150.1012.

The adopted amendment to §150.1012(a)(1)(D) updates the definition of the term "data capture year" to align with current program terminology.

The adopted amendment to §150.1012(c)(1)(A) clarifies existing procedure to include resubmissions of applications for review.

Adopted new §150.1012(d)(2) allows flexibility for school districts by expanding TEA's authority to accept a modification of

a district's local optional designation system outside of the existing timeline in cases where the timeline is unfeasible based on circumstances outside of a district's control. Based on public comment, the language was changed at adoption to add clarity.

The adopted amendment to §150.1012(f)(1) updates language to align with current program terminology. The amended language specifies that a renewal application is required in a district's fourth year after the system application is accepted.

**SUMMARY OF COMMENTS AND AGENCY RESPONSES:** The public comment period on the proposal began June 7, 2024, and ended July 8, 2024. Following is a summary of the public comments received and agency responses.

**Comment:** The Texas Classroom Teachers Association (TCTA) recommended further defining "designated teacher" in §150.1012(a)(1)(E) and including eligibility requirements.

**Response:** The agency disagrees. The relevant definition refers only to existing designated teachers for purposes of this rule. Eligibility requirements are clarified in other parts of this rule and through policy.

**Comment:** TCTA suggested language to clarify §150.1012(d)(2).

**Response:** The agency agrees. Therefore, §150.1012(d)(2) has been modified at adoption to clarify that the paragraph applies to system changes outlined in subsection (d) and that TEA makes the determination of whether the application timeline is unfeasible due to circumstances beyond a district's control.

**Comment:** TCTA recommended defining the process for requesting system changes that are outside of the approval timeline, as well as additional requirements.

**Response:** The agency disagrees. For these types of changes, the agency anticipates needing to work with districts to identify the need so the district can continue to implement its local designation system. The agency will consider processes to ensure transparency for stakeholders.

**STATUTORY AUTHORITY.** The amendment is adopted under Texas Education Code (TEC), §21.3521, which establishes a local optional teacher designation system; and TEC, §48.112, which establishes a teacher incentive allotment.

**CROSS REFERENCE TO STATUTE.** The amendment implements Texas Education Code, §21.3521 and §48.112.

*§150.1012. Local Optional Teacher Designation System.*

(a) General provisions.

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

(A) Beginning of course--The first nine weeks of a year-long course or the first six weeks of a semester course.

(B) Charter school--A Texas public school that meets one of the following criteria:

(i) is operated by a charter holder under an open-enrollment charter granted either by the State Board of Education or commissioner of education pursuant to Texas Education Code (TEC), §12.101, identified with its own county district number;

(ii) has a charter granted under TEC, Chapter 12, Subchapter C, and is eligible for benefits under TEC, §11.174 and §48.252;

(iii) has a charter granted under TEC, §29.259, and Human Resources Code, §221.002; or

(iv) has a charter granted under TEC, §11.157(b).

(C) Classroom teacher--An educator, as defined by TEC, §5.001, who is employed by a school district and who, not less than an average of four hours each day, teaches in an academic instructional setting or a career and technical instructional setting. This term does not include an educational aide or a full-time administrator.

(D) Data capture year--The school year in which the teacher observation and student growth measure data is collected based on the accepted local teacher designation system.

(E) Designated teacher--An exemplary, master, or recognized teacher.

(F) Eligible teaching assignment--An assignment based on campus, subject taught, or grade taught.

(G) End of course--The last twelve weeks of a year-long course or the last six weeks of a semester course.

(H) National Board certification--Certification issued by the National Board for Professional Teaching Standards.

(I) Provisional approval--Conditional approval of a school district local optional teacher designation system that would require resubmission of system review, data validation, additional required documentation, video submission, and/or other technical assistance for further data submission.

(J) Reliability--The degree to which an instrument used to measure teacher performance and student growth produces stable and consistent results.

(K) Rural--A campus within a school district with fewer than 5,000 enrolled students that is categorized as a rural, non-metropolitan: stable, or non-metropolitan: fast growing district type by the Texas Education Agency (TEA); a campus within a school district with fewer than 5,000 enrolled students categorized as rural by the National Center for Education Statistics; or a campus defined in TEC, §48.112(a)(1).

(L) School district--The definition of a school district includes charter schools as defined in subparagraph (B) of this paragraph.

(M) Student growth--Student academic progress achieved in response to the pedagogical practices of teachers, as measured at the individual teacher level by one or more measures of student growth aligned to the standards of the course.

(N) Teacher category--One or more eligible teaching assignments evaluated with the same teacher observation rubric, student growth measure, and optional components and weighting as defined in a district's local designation system.

(O) Teacher observation--One or more observations of a teacher instructing students for a minimum of 45 minutes or multiple observations that aggregate to at least 45 minutes.

(P) Texas Student Data System (TSDS)--Data collected annually during the Class Roster Winter Submission.

(Q) Validity--The degree to which an instrument used to measure teacher performance and student growth measures what it is intended to measure.

(2) Fees for teacher incentive allotment teacher designation and system renewal. A school district requesting approval of a teacher designation system or renewal of such a system shall pay the applicable

fees listed in subparagraphs (A) and (B) of this paragraph. The following fees must be paid by the district and cannot be paid by the teachers submitted for designation:

(A) a \$500 fee for each teacher submitted for designation to TEA; and

(B) a \$2,500 system renewal fee for districts where all campuses meet the definition of rural pursuant to paragraph (1)(K) of this subsection the year prior to renewal application submission or a \$10,000 system renewal fee for districts where not all campuses meet the definition of rural pursuant to paragraph (1)(K) of this subsection.

(b) Teacher eligibility.

(1) Teachers eligible to earn or receive designations under an approved local optional teacher designation system must meet the following requirements:

(A) the teacher is employed by the recommending school district or charter partner pursuant to subsection (a)(1)(B)(ii) or (iv) of this section in a role ID coded as 087 (Teacher) and corresponding class roles of 01, 02, or 03, if applicable, in TSDS for 90 days at 100% of the day (equivalent to four and one-half months or a full semester) or 180 days at 50-99% of the day and compensated for that employment. A charter partner operating under subsection (a)(1)(B)(ii) or (iv) of this section is required to report teacher-level data in TSDS or provide teacher-level data to its partner school district for reporting by the district in TSDS;

(B) the teacher was employed by the recommending school district or charter partner pursuant to subsection (a)(1)(B)(ii) or (iv) of this section during the year the teacher's effectiveness was collected in alignment with the recommended designation;

(C) the teacher is not currently designated under a local optional teacher designation system, unless the teacher is being recommended for a higher designation; and

(D) the teacher does not have a suspension, revocation, permanent surrender, or surrender of a certificate issued by the State Board for Educator Certification and is not found on the registry of persons not eligible for employment in public schools under TEC, §22.092, and Chapter 153, Subchapter EE, of this title (relating to Commissioner's Rules Concerning Registry of Persons Not Eligible for Employment in Public Schools).

(2) School districts are eligible to receive funding for each designated teacher if the teacher meets the requirements in paragraph (1)(A) of this subsection for each district. TEA may exercise administrative discretion to determine the eligibility of a teacher if a district disputes TSDS data. Disputes must be received by TEA by the second Friday in May each year; however, TEA may exercise administrative discretion to allow disputes to be considered outside of this timeline.

(c) Application procedures and approval process.

(1) The following provisions apply to applications submitted under this section.

(A) If TEA determines that an application or resubmission is incomplete, TEA may provide the applicant with notice of the deficiency and an opportunity to submit missing required information. If the missing required information is not submitted within seven business days after the original submission deadline, the application will be denied.

(B) If TEA determines that a system application does not meet the standards established under TEC, §21.3521, and this section, TEA shall permit the applicant to resubmit the application by June

30. If no resubmission is made by the deadline, the application will be denied.

(C) Applicants that are determined to meet the standards established under TEC, §21.3521 and §48.112, and the requirements of the statutorily based framework provided in the figure in this subparagraph shall be approved.

Figure: 19 TAC §150.1012(c)(1)(C) (No change.)

(D) Applications that are determined to meet the standards established under TEC, §21.3521 and §48.112, and this section shall be approved for an initial term of five years. Applications that are determined to need ongoing support may result in provisional approval.

(2) The application shall include the following for each eligible teaching assignment:

(A) components of a local system for issuing designations, including:

(i) a teacher observation component that contains:

(I) a plan for calibration, using the rubric approved under subclause (II) of this clause, that includes congruence among appraisers, a review of teacher observation data and the correlation between teacher observation and student growth data, and implementation of next steps; and

(II) an approved teacher observation rubric including the Texas Teacher Evaluation and Support System, Marzano's Teacher Evaluation Model and rubric created by the National Institute for Excellence in Teaching and The Danielson Group, or another rubric that is based on observable, job-related behaviors that are described with progressive descriptors for each dimension, including alignment to §149.1001 of this title (relating to Teacher Standards) and a clear proficiency indicator. A school district may be required to provide teacher observation videos if the ratings cannot be verified from the data submitted; and

(ii) a specified student growth component by measure and/or assessment that:

(I) if using a student learning objective, is aligned to the Texas Student Learning Objectives (SLO) process described on the TEA website for SLOs at <https://texasslo.org>;

(II) if using a portfolio method, demonstrates that student work is aligned to the standards of the course, demonstrates mastery of standards, utilizes a skills proficiency rubric, and includes criteria for scoring various artifacts;

(III) if using school district- or teacher-created assessments, is aligned to the standards of the course and conforms to a district rubric for district- or teacher-created assessments. A school district must approve district- or teacher-created assessments for the purpose of determining student growth by using a district process and rubric for approval of such assessments. Assessments must measure beginning of course to end of course or from end of course from the previous course to end of current course;

(IV) if using a school district- or teacher-created assessment in conjunction with a third-party assessment, is aligned to the standards of the course and conforms to a district rubric for district- or teacher-created assessments. A school district must approve district- or teacher-created assessments for the purpose of determining student growth by using a district process and rubric for approval of such assessments. Assessments must measure beginning of course to end of course or from end of course from the previous course to end of current course;

(V) if using third-party assessments with third-party accompanying growth targets, is aligned to the standards for the course and contains questions that cover a range of student skill levels. Assessments must measure beginning of course to end of course or from end of course from the previous course to end of current course; or

(VI) if using third-party assessments with district-created growth targets, is aligned to the standards of the course and contains questions that cover a range of student skill levels. Assessments must measure beginning of course to end of course or from end of course from the previous course to end of current course. Mid-year data may be used in instances where the student was not present for the beginning of course administration.

(B) test administration processes for all student growth that will lead to validity and reliability of results, including:

- (i) test security protocols;
- (ii) testing windows;
- (iii) testing accommodations; and
- (iv) annual training for test administrators; and

(C) data for all teachers in eligible teaching assignments, including student growth, and observation data for all teachers in eligible teaching assignments for the data capture year in alignment with TEC, §21.351 or §21.352. Multi-year data shall include student growth and observation data from the same year and teacher category. Single-year data shall include student growth and observation data from the same teacher category. TEA may exercise administrative discretion regarding the requirements of this subparagraph in situations in which data is difficult to provide due to circumstances beyond a district's control and the district would otherwise be unable to provide sufficient data for application consideration.

(d) System expansion, spending modifications, and changes.

(1) School districts must apply for approval through the system application process the year prior to implementation if:

- (A) adding new eligible teaching assignments or campuses (if started with less than all campuses in the district);
- (B) adding a new teacher observation rubric;
- (C) changing a previously approved teacher observation rubric;
- (D) adding new student growth measures;
- (E) changing the student growth measure used by an eligible teaching assignment;
- (F) adding or changing the third-party assessment used in a student growth measure;
- (G) adding or changing the type of assessment used in a student growth measure;
- (H) removing a student growth measure used by an eligible teaching assignment;
- (I) removing an eligible teaching assignment; or
- (J) modifying a district's spending plan. TEA may exercise administrative discretion to allow spending modifications outside of the approval timeline outlined in this subsection.

(2) TEA may exercise administrative discretion to allow system changes outlined in this subsection outside of the approval timeline outlined in this subsection in situations in which TEA determines

that the application timeline is unfeasible due to circumstances beyond a district's control, causing the district to be unable to implement its current system with fidelity.

(e) Monitoring and annual program submission of approved local designation systems.

(1) For the program submission, approved school districts shall submit the following information regarding a local teacher designation system and associated spending:

(A) the distribution of allotment funds from the previous school year in accordance with the funding provisions of subsection (g) of this section;

(B) a response and implementation plan to annual surveys developed by TEA administered to teachers, campus principals, and human resources personnel gauging the perception of a school district's local designation system; and

(C) teacher observations and student growth measure data for all teachers in eligible teaching assignments if school districts are submitting new teacher designations collected in alignment with §150.1003(b)(5) and (1)(3) of this title (relating to Appraisals, Data Sources, and Conferences). TEA reserves the right to request data for the purposes of performance evaluation and investigation based on data review outcomes. TEA may exercise administrative discretion in circumstances where data is difficult to provide and a district would otherwise be unable to provide sufficient data for application consideration.

(2) Outcomes of the annual program submission may lead to a review, pursuant to TEC, §48.272(e), and subject to the period of review limitation in TEC, §48.272(f), of the local optional designation system that may be conducted at any time at the discretion of TEA staff.

(f) Continuing approval and renewal.

(1) Approved local optional teacher designation systems are subject to review at least once every five years. However, a review may be conducted at any time at the discretion of TEA. The renewal application is required in a district's fourth year after the system application is accepted and will follow the process and requirements outlined in subsection (c) of this section.

(A) Charter management organizations that operate approved systems with multiple campus district numbers shall submit an application for each system at the time of required renewal.

(B) Systems with provisional approval in a district's fourth year shall renew in the year after receiving system approval.

(2) Approval of local optional designation systems are voidable by TEA for one or more of the following reasons:

(A) failure to fulfill all local optional designation system requirements as defined in this section;

(B) failure to comply with annual program submission requirements;

(C) failure to comply with the provisions of TEC, §21.3521 and §48.112;

(D) failure to implement the local optional teacher designation system as approved by TEA;

(E) failure to remove district employees from the designation determination process who have a conflict of interest and acted in bad faith to influence designations; or

(F) at the discretion of the commissioner.

(3) Approval of individual teacher designations are voidable by TEA for one or more of the following reasons:

(A) a teacher has not fulfilled all designation requirements;

(B) the school district at which the designation was earned has had its local optional designation system voided;

(C) the National Board for Professional Teaching Standards revokes a National Board certification that provided the basis for a teacher's designation;

(D) the suspension, revocation, permanent surrender, or surrender of a certificate issued by the State Board for Educator Certification to a designated teacher;

(E) the addition of the designated teacher to the registry of persons not eligible for employment in public schools under TEC, §22.092, and Chapter 153, Subchapter EE, of this title;

(F) the district issued a designation in bad faith by not removing a district employee from the designation determination process who had a conflict of interest; or

(G) at the discretion of the commissioner.

(g) Funding.

(1) State funding.

(A) School districts will receive teacher incentive allotment funds based on prior-year estimates. The final amount will be based on data from the current school year as provided in subparagraph (D) of this paragraph. Any difference from the estimated amount will be addressed as part of the Foundation School Program settle-up process according to the provisions in TEC, §48.272.

(B) A school district is eligible to earn the base allotment for each designated teacher assigned to a zero-enrollment campus, a campus with fewer than 20 students, a juvenile justice alternative education program, a disciplinary alternative education program, a residential facility, or central administration if the designated teacher meets the requirements in subsection (b)(2) of this section, plus the multiplier based on the school district's average student point value and rural status, if applicable.

(C) Funding for teachers who work at multiple campuses shall be calculated and split equally among the campuses where the employee is working in a role coded as 087 (Teacher) in TSDS at each campus.

(D) Designated teacher campus and district of employment shall be determined annually by data collected in TSDS.

(E) School districts shall annually verify and confirm teacher designations and corresponding allotments.

(F) TEA may exercise administrative discretion to redirect or recalculate funds to the district where the designated teacher works if a district disputes TSDS data. Disputes must be received by the second Friday in May each year; however, TEA may exercise administrative discretion to allow disputes to be considered outside of this timeline.

(G) The average point value and rural status for the Texas School for the Deaf and the Texas School for the Blind and Visually Impaired will be calculated by utilizing the home districts of the schools' students.

(2) Status and use of state funds. A school district that receives teacher incentive allotment funding must comply with the requirements of TEC, §48.112, including the requirement that at least

90% of each allotment must be used for compensation of teachers employed at the campus at which the teacher for whom the district received the allotment is employed. School districts that receive funding for designated teachers employed by the charter partner for charter partnerships pursuant to subsection (a)(1)(B)(ii) or (iv) of this section shall pass along at least 90% of the teacher incentive allotment funding and 100% of fees pursuant to subsection (a)(2) of this section paid by the charter partner to the charter partner. Charter partners and districts shall work together to ensure that the spending requirements of TEC, §48.112, are met.

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 September 11, 2024.

TRD-202404397

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Texas Education Agency

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## TITLE 25. HEALTH SERVICES

### PART 1. DEPARTMENT OF STATE HEALTH SERVICES

#### CHAPTER 289. RADIATION CONTROL SUBCHAPTER E. REGISTRATION REGULATIONS

##### 25 TAC §289.229

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), adopts amendment to §289.229, concerning Radiation Safety Requirements for Accelerators, Therapeutic Radiation Machines, Simulators, and Electronic Brachytherapy Devices. The amendment to §289.229 is adopted with changes to the proposed text as published in the June 14, 2024, issue of the *Texas Register* (49 TexReg 4329). This rule will be republished.

##### BACKGROUND AND JUSTIFICATION

The adoption updates regulations concerning accelerator facilities and operations. These changes address concerns developing in the field, requiring a comprehensive update to ensure the safety, quality, and effectiveness of accelerator-based facilities.

Language was added to hold a facility using an accelerator to the requirements in §289.229, even if they are not registered. Veterinary requirements have been removed from this rule and incorporated into §289.233, concerning Radiation Control Regulations for Radiation Machines Used in Veterinary Medicine, which is dedicated to veterinary-specific facilities.

Equipment Performance Evaluation (EPE) requirements have been introduced for Computed Tomography (CT) units used in



simulation. This addition enhances safety and promotes the principle of ALARA (as low as reasonably achievable).

Safety interlock requirements have been included for add-on equipment. This measure ensures the addition of equipment into accelerator systems, after installation, meets specified safety standards protecting both patients and operators.

The rule has been reorganized with Electronic Brachytherapy (EBT) requirements relocated from the end of the rule to the general requirements section. This reorganization makes the rule more accessible and coherent.

#### COMMENTS

The 31-day comment period ended Monday, July 15, 2024.

During this period, DSHS received comments regarding the proposed rule from five commenters, including the American Society of Radiologic Technologists (ASRT), the Texas Medical Association (TMA), RefleXion, the Texas Society of Radiologic Technologists (TxSRT), and one internal comment from DSHS. A summary of comments relating to the §289.229 and DSHS responses follows.

Comment: The ASRT comments to commend DSHS, "by requiring persons operating radiation machines for human use to meet the credentialing requirements as specified under the Medical Radiologic Technologist Certification Act and limiting supervision to physicians, Texas is taking critical steps to ensure that Texans receive safe, high-quality care."

Response: DSHS Radiation Program appreciates ASRT's comment and agrees to keep the language as written.

Comment: TMA comments to express concern for language removed from §289.229(b) concerning "supervision."

Response: DSHS appreciates TMA's comment and agrees. The removal of this language does change the intent of the rule. DSHS added this language back into the adopted rule. The language is relocated to §289.229(c)(5) and (6) in the Prohibitions subsection.

Comment: RefleXion's comment requests clarity in §289.229(c)(4) because "this language is ambiguous as to whether it only applies to remote production of radiation or remote operation of all aspects of the system. We agree that remote production of radiation should be prohibited as a safety practice but other aspects of remote operations, including service should be allowed."

Response: DSHS Radiation Program appreciates RefleXion's comment. DSHS agrees the language needs clarification. The language is updated to "remote operation of radiation machines on humans is prohibited."

Comment: TxSRT's comment expresses support for the amendment to "§289.229(c)(4) which prohibits remote operation of any radiation machine."

Response: DSHS Radiation Program appreciates TxSRT's comment and updates language to include "on humans" as noted in the previous response.

Comment: DSHS internal comment notes the definition of "person" in §289.231 applies to §289.229 registrants because §289.229(b)(2)(F) requires registrants to follow the additional requirements in §289.231. The definition of "person" in §289.231 includes "any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency,

local government, any other state or political subdivision or agency thereof, or any other legal entity, and any legal successor, representative, agent, or agency of the foregoing, other than the NRC [Nuclear Regulatory Commission], and other than federal government agencies licensed or exempted by the NRC." The requirements in §289.229(d), (e)(48), (e)(58), (f)(3)(H)(v), (f)(4)(A), (h)(1)(C) and (E), (h)(3)(C)(i)(I), (h)(5)(E)(i)(V) and (VI), and (h)(5)(E)(ii) and (iii), are intended to apply to a human individual not a person as defined above.

Response: DSHS made changes to the rule references noted above. The word "person" is changed to "individual."

#### STATUTORY AUTHORITY

The amendment is authorized by Texas Health and Safety Code Chapter 401 (the Texas Radiation Control Act), which provides for DSHS radiation control rules and regulatory program to be compatible with federal standards and regulations; §401.051, which provides the required authority to adopt rules and guidelines relating to the control of sources of radiation; §401.064, which provides for the authority to adopt rules related to inspection of x-ray equipment; §401.101, providing for DSHS registration of facilities possessing sources of radiation; Chapter 401, Subchapter J, which authorizes enforcement of the Act; and Texas Government Code §531.0055 and Texas Health and Safety Code §1001.075, which authorize the Executive Commissioner of HHSC to adopt rules and policies for the operation and provision of health and human services by DSHS and the administration of Texas Health and Safety Code Chapter 1001.

*§289.229. Radiation Safety Requirements for Accelerators, Therapeutic Radiation Machines, Radiation Therapy Simulation Systems, and Electronic Brachytherapy Devices.*

(a) Purpose. This section establishes the following requirements for using accelerators, therapeutic radiation machines, radiation therapy simulation systems, and electronic brachytherapy (EBT) devices.

(1) Requirements for the registration of a person using radiation machines used in healing arts.

(A) A person must not use radiation machines except as authorized in a certificate of registration issued by the Department of State Health Services (department) as specified in the requirements of this section.

(B) A person who receives, possesses, uses, owns, or acquires radiation machines before receiving a certificate of registration is subject to the requirements of this chapter.

(2) Requirements are intended to control receipt, possession, use, and transfer of radiation machines by any person so the total radiation dose to an individual, excluding background radiation, does not exceed the standards for protection against radiation prescribed in this section. This section does not limit actions necessary to protect public health and safety during an emergency.

(3) Requirements for specific record keeping and general provisions of records and reports.

(b) Scope.

(1) This section applies to a person who receives, possesses, uses, acquires, or transfers an accelerator used in industrial operations and research and development, therapeutic radiation machines, radiation therapy simulation systems, and EBT devices used in the healing arts. The registrant is responsible for the administrative control and for directing the use of the accelerators, other therapeutic

radiation machines, radiation therapy simulation systems, and EBT devices.

(2) The requirements of this section are in addition to and not in substitution for other applicable requirements of:

(A) §289.203 of this chapter (relating to Notices, Instructions, and Reports to Workers; Inspections);

(B) §289.204 of this chapter (relating to Fees for Certificates of Registration, Radioactive Material Licenses, Emergency Planning and Implementation, and Other Regulatory Services);

(C) §289.205 of this chapter (relating to Hearing and Enforcement Procedures);

(D) §289.226 of this chapter (relating to Registration of Radiation Machine Use and Services);

(E) §289.227 of this chapter (relating to Use of Radiation Machines in the Healing Arts); and

(F) §289.231 of this chapter (relating to General Provisions and Standards for Protection Against Machine-Produced Radiation).

(3) Registrants engaged in industrial radiographic operations are subject to the requirements of §289.255 of this chapter (relating to Radiation Safety Requirements and Licensing and Registration Procedures for Industrial Radiography).

(4) Registrants engaged in veterinary accelerator operations are subject to the requirements of §289.233 of this chapter (relating to Radiation Control Regulations for Radiation Machines Used in Veterinary Medicine).

(5) An entity, defined in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) as a "covered entity" under 45 Code of Federal Regulations (CFR) Parts 160 and 164 may be subject to privacy standards governing how information identifying a patient can be used and disclosed. Failure to follow HIPAA requirements may result in the department referring a potential violation to the United States Department of Health and Human Services.

(c) Prohibitions.

(1) The department prohibits the use of accelerators, therapeutic radiation machines, radiation therapy simulation systems, or EBT devices posing a significant threat or danger to occupational and public health and safety, as specified in §289.205 and §289.231 of this chapter.

(2) An individual must not be exposed to the useful beam of accelerators, therapeutic radiation machines, radiation therapy simulation systems, or EBT devices except for healing arts purposes and unless a physician of the healing arts has authorized such exposure. This provision specifically prohibits the deliberate exposure of an individual for training, demonstration, or other non-healing arts purposes.

(3) Research and development using radiation machines on humans is prohibited unless approved by an Institutional Review Board (IRB) as required by 45 CFR Part 46 and 21 CFR Part 56. The IRB must include at least one physician of the healing arts to direct any use of radiation as specified in §289.231(b) of this chapter.

(4) Remote operation of radiation machines on humans is prohibited.

(5) Use of therapeutic radiation machines in the healing arts without the supervision of a physician of the healing arts is prohibited.

(6) Use of EBT devices in the healing arts without the supervision of a certified physician, as defined in subsection (e)(12) of this section, is prohibited.

(d) Exemptions. An individual who is a sole physician, sole operator, and the only occupationally exposed individual is exempt from the following requirements:

(1) §289.203(b) and (c) of this chapter; and

(2) subsection (h)(1)(G) of this section.

(e) Definitions. When used in this section, the following words and terms have the following meaning unless the context indicates otherwise.

(1) Absorbed dose (D)--The mean energy imparted by ionizing radiation to matter. Absorbed dose is determined as the quotient of dE by dM, where dE is the mean energy imparted by ionizing radiation to the mass dM. The System International (SI) unit of absorbed dose is joule per kilogram and the special name of the unit of absorbed dose is gray (Gy). The previously used special unit of absorbed dose (rad) is replaced by gray.

(2) Absorbed dose rate--Absorbed dose per unit time for machines with timers, or dose monitor unit per unit time for linear accelerators.

(3) Accelerator beam quality--The type and penetrating power of the ionizing radiation produced for certain machine settings.

(4) Air kerma--The kinetic energy released in air by ionizing radiation. Kerma is the quotient of dE by dM, where dE is the sum of the initial kinetic energies of all the charged ionizing particles liberated by uncharged ionizing particles in air of mass dM. The SI unit of air kerma is joule per kilogram and the special name for the unit of kerma is Gy.

(5) Barrier--See definition for protective barrier.

(6) Beam axis--The axis of rotation of the beam limiting device.

(7) Beam-flattening filter--See definition for field-flattening filter.

(8) Beam-limiting device--A field-defining collimator, integral to the therapeutic radiation machine, which provides a means to restrict the dimensions of the useful beam.

(9) Beam monitoring system--A system designed and installed in the radiation head to detect and measure the radiation present in the useful beam.

(10) Beam quality--The penetrating power of the x-ray beam identified numerically by the half-value layer and influenced by kilovolt peak (kVp) and filtration.

(11) Central axis of the beam--An imaginary line passing through the center of the useful beam and the center of the plane figure formed by the edge of the first beam-limiting device.

(12) Certified physician--A physician licensed by the Texas Medical Board and certified in radiation oncology or therapeutic radiology.

(13) Coefficient of variation or C--The ratio of the standard deviation to the mean value of a population of observations. It is estimated using the following equation:  
Figure: 25 TAC §289.229(e)(13)

(14) Collimator--A device or mechanism by which the x-ray beam is restricted in size.

(15) Computed tomography (CT)--The production of a tomogram by the acquisition and computer processing of x-ray transmission data.

(16) Continuous pressure type switch--A switch that can only power a device when the operator maintains continuous pressure on the switch.

(17) Control panel--The part of the radiation machine where the switches, knobs, push buttons, and other hardware necessary for manually setting the technique factors are located. For purposes of this section, console is an equivalent term.

(18) Conventional radiation therapy simulator--A radiation machine with radiographic or fluoroscopic capabilities uniquely designed for the direct purpose of simulating radiation therapy treatment ports.

(19) CT conditions of operation--All selectable parameters governing the operation of a CT x-ray system, including nominal tomographic section thickness, filtration, and the technique factors as defined in this subsection.

(20) CT radiation therapy simulator--CTs that interface with radiation therapy linear accelerators.

(21) Diaphragm--A device or mechanism by which the x-ray beam is restricted in size.

(22) Dose monitor unit (DMU)--A unit response from the beam monitoring system from which the absorbed dose can be calculated.

(23) Dosimetry system--An ion chamber used as a dosimeter for measurement of clinical photon and electron beams with calibration coefficients determined either in air or in water and traceable to a national primary standards dosimetry laboratory.

(24) Electronic brachytherapy--A method of radiation therapy using electrically generated x-rays to deliver a radiation dose at a distance of up to a few centimeters by intracavitary, intraluminal, or interstitial application, or by applications with the source in contact with the body surface or very close to the body surface.

(25) Electronic brachytherapy (EBT) device--The system used to produce and deliver therapeutic radiation, including the x-ray tube, the control mechanism, the cooling system, and the power source.

(26) External beam radiation therapy--Therapeutic irradiation in which the source of radiation is at a distance from the body.

(27) Field-flattening filter--A filter used to homogenize the absorbed dose rate over the radiation field.

(28) Field size--The dimensions along the major axes of an area in a plane perpendicular to the central axis of the beam at the nominal treatment or examination source-to-image distance and defined by the intersection of the major axes and the 50 percent isodose line.

(29) Focal spot--The area projected on the anode of the x-ray tube bombarded by the electrons accelerated from the cathode and from which the useful beam originates.

(30) Gantry--The part of the radiation therapy system that supports and allows possible movements of the radiation head about the center of rotation.

(31) Gray (Gy)--The SI unit of absorbed dose, kerma, and specific energy imparted equal to 1 joule per kilogram. The previous unit of absorbed dose (rad) is replaced by the gray (1 Gy = 100 rad).

(32) Half-value layer (HVL)--The thickness of a specified material that attenuates x-radiation or gamma radiation to the extent

the exposure rate (air kerma rate) or absorbed dose rate is reduced to one-half of the value measured without the material at the same point.

(33) Healing arts--Any treatment, operation, diagnosis, prescription, cure, relief, palliation, adjustment, or correction of any human disease, ailment, deformity, injury, or unhealthy or abnormal physical or mental condition.

(34) Image receptor--Any device that transforms incident x-ray photons either into a visible image or into another form made into a visible image by further transformations.

(35) Institutional Review Board (IRB)--Any board, committee, or other group formally designated by an institution to review, approve the initiation of, and conduct a periodic review of biomedical research involving human subjects.

(36) Image-Guided Radiation Therapy (IGRT)--Radiation therapy employing advanced imaging to maximize accuracy and precision throughout the entire process of treatment delivery with the goal of optimizing the accuracy and reliability of radiation therapy to the target while minimizing dose to normal tissues.

(37) Intensity-Modulated Radiation Therapy (IMRT)--A technology for delivering highly conformal external beam radiation to a well-defined treatment volume with radiation beams whose intensity varies across the beam.

(38) Interlock--A device preventing the start or continued operation of equipment unless certain predetermined conditions prevail.

(39) Interruption of irradiation--The stopping of irradiation with the possibility of continuing irradiation without resetting of operating conditions at the control panel.

(40) Irradiation--The exposure of a living being or matter to ionizing radiation.

(41) Irradiation filter (filter)--Radiation absorbers or beam-modifying devices placed in the useful high-energy beam to shape the beam and optimize the target volume dose distribution in therapeutic radiation machines subject to subsection (h) of this section. Irradiation filter types are defined as follows.

(A) Dynamic or virtual wedge--A wedge produced by computer-controlled movement of one or more collimator jaws. The wedge generates a spatial dose distribution similar to a physical wedge. The wedge-shaped graduated attenuation across the radiation beam can produce symmetric or asymmetric radiation fields.

(B) Multileaf collimator (MLC) wedge filter--A beam-limiting device made of individual "leaves" of a high atomic numbered material, usually tungsten, that can move independently in and out of the path of a radiotherapy beam to shape and vary its intensity.

(C) Physical wedge filter--Physical wedges are made of metallic material and are manually placed in the useful radiation beam. The wedges are shaped in such a way as to produce graduated attenuation across the radiation field.

(D) Stereotactic radiosurgery (SRS) filter--A precise form of target localization delivering radiation through narrow circular cones or circular collimator tubes with lenses or computer leaf-driven systems enabling more precise beam filtering or shaping for complex radiation fields.

(42) Isocenter--The center of the sphere through which the useful beam axis passes while the gantry moves through its full range of motions.

(43) Kilovolt (kV) (kilo electron volt (keV))--The energy given to a particle with one electron charge when passing through a potential difference of one thousand volts in a vacuum. (Note: current convention is to use kV for photons and keV for electrons.)

(44) Kilovolt peak (kVp)--See definition for peak tube potential.

(45) Lead equivalent--The thickness of lead affording the same attenuation, under specified conditions, as the material in question.

(46) Leakage radiation--Radiation emanating from the source assembly except for the useful beam and radiation produced when the exposure switch or timer is not activated.

(47) Leakage technique factors--The technique factors associated with the source assembly used when measuring leakage radiation.

(48) Licensed medical physicist--An individual holding a current Texas license under the Medical Physics Practice Act, Texas Occupations Code Chapter 602.

(49) Light field--The area illuminated by light, simulating the radiation field.

(50) Medical event--An event meeting the criteria specified in subsection (i) of this section.

(51) Megavolt (MV) (megaelectron volt (MeV))--The energy given to a particle with one electron charge when passing through a potential difference of one million volts in a vacuum.

(52) Mobile EBT device--An EBT device transported from one address to be used at another address.

(53) Moving beam radiation therapy--Radiation therapy with any planned displacement of radiation field or patient relative to each other, or with any planned change of absorbed dose distribution. It includes arc, skip, conformal, intensity modulation, and rotational therapy.

(54) Nominal treatment distance--The following nominal treatment distances apply.

(A) For electron irradiation, the distance from the scattering foil, virtual source, or exit window of the electron beam to the entrance surface of the irradiated object along the central axis of the useful beam, as specified by the manufacturer.

(B) For x-ray irradiation, the virtual source or target to isocenter distance along the central axis of the useful beam to the isocenter. For non-isocentric equipment, this distance is specified by the manufacturer.

(55) Output--The exposure rate (air kerma rate), dose rate, or a quantity related to these rates from a therapeutic radiation machine.

(56) Peak tube potential--The maximum value of the potential difference in kilovolts across the x-ray tube during exposure.

(57) Phantom--An object behaving in essentially the same manner as tissue, with respect to absorption or scattering of the ionizing radiation in question.

(58) Physician--An individual licensed by the Texas Medical Board to practice medicine under Texas Occupations Code Chapter 155.

(59) Port film--An x-ray exposure made with a radiation therapy system to visualize a patient's treatment area using radiographic film.

(60) Portable shielding--Moveable shielding placed in the primary or secondary beam to reduce radiation exposure to the patient, occupational worker, or a member of the public. The shielding can be easily moved to position using mobility devices or by hand.

(61) Prescribed dose--The total dose and dose per fraction as documented in the written directive. The prescribed dose is an estimation from measured data from a specified therapeutic machine using clinically acceptable and historically consistent assumptions for the treatment technique and calculations previously used for patients treated with the same clinical technique.

(62) Primary dose monitoring system--A system monitoring the useful beam during irradiation and terminating irradiation when a preselected number of monitor units are delivered.

(63) Protective apron--An apron made of radiation-absorbing materials used to reduce radiation exposure.

(64) Protective barrier--A barrier of radiation-absorbing materials used to reduce radiation exposure. The types of protective barriers are as follows.

(A) Primary protective barrier. A barrier sufficient to attenuate the useful beam to the required degree.

(B) Secondary protective barrier. A barrier sufficient to attenuate the scatter radiation to the required degree.

(65) Protective glove--A glove made of radiation-absorbing materials used to reduce radiation exposure.

(66) Quality assurance (QA) check--A test or analysis performed at a specified interval to verify the consistent output of radiation equipment.

(67) Radiation detector--A device providing, by either direct or indirect means, a signal or other indication suitable for use in measuring one or more quantities of incident radiation.

(68) Radiation field--See definition for useful beam.

(69) Radiation machine--Any device capable of producing ionizing radiation except those devices with radioactive material as the only source of radiation.

(70) Radiation therapy simulation system --An x-ray system intended for localizing and confirming the volume to be irradiated during radiation treatment and confirming the position and size of the therapeutic irradiation field.

(71) Radiation therapy system--A system utilizing machine-produced, prescribed doses of ionizing radiation for treatment.

(72) Radiation treatment head--The structure from which the useful beam emerges.

(73) Scan--The complete process of collecting x-ray transmission data to produce one or more tomograms.

(74) Scan increment--The amount of relative displacement of the patient with respect to the CT x-ray system between successive scans measured along the direction of such displacement.

(75) Scan sequence--A preselected set of two or more scans performed consecutively under preselected CT conditions of operation.

(76) Scan time--The period between the beginning and end of x-ray transmission data accumulation for a single scan.

(77) Scattered radiation--Secondary radiation occurring when the beam intercepts an object causing the x-rays to be scattered.

(78) Secondary dose monitoring system--A system terminating irradiation in the event of failure of the primary dose monitoring system.

(79) Shutter--A device attached to the tube housing assembly capable of completely intercepting the useful beam and with a lead equivalency greater than or equal to the tube housing assembly.

(80) Source-to-skin distance (SSD)--The distance from the source to the skin of the patient.

(81) Stationary beam therapy--Radiation therapy without displacement of one or more mechanical axes relative to the patient during irradiation.

(82) Supervision--Delegating the task of applying radiation to a person by a physician. The physician can only delegate tasks to an individual certified under the Medical Radiologic Technologist Act, Texas Occupations Code Chapter 601. The physician assumes full responsibility for these tasks and ensures the tasks are administered correctly.

(83) Target--The part of an x-ray tube or accelerator onto which a beam of accelerated particles is directed to produce ionizing radiation.

(84) Termination of irradiation--The stopping of irradiation in a fashion not permitting the continuation of irradiation without resetting operating conditions at the control panel.

(85) Therapeutic radiation machine--X-ray, particle, or electron-producing equipment designed and used for external beam radiation therapy.

(86) Traceable to a national standard--This indicates a quantity or a measurement has been compared to a national standard, for example the National Institute of Standards and Technology, directly or indirectly through one or more intermediate steps and that all comparisons have been documented.

(87) Tube housing assembly--The tube housing with tube installed.

(88) Useful beam--Radiation passing through the window, aperture, cone, or other collimating device of the source housing. Also referred to as the primary beam.

(89) Virtual simulation--A process using the import, manipulation, display, and storage of electronic patient images to create linear accelerator treatment ports.

(90) Virtual source--A point from which radiation appears to originate.

(91) Wedge transmission factor--The ratio of doses, with and without the wedge, at a point along the central axis of the useful beam that compensates for the decrease in dose produced by the filter.

(92) Written directive--An order in writing for the administration of radiation to a specific patient as specified in subsection (h)(1)(F)(ii) of this section.

(f) Accelerators used for research and development or industrial operations.

(1) Registration. Each person possessing an accelerator for non-human use must apply for and receive a certificate of registration from the department before beginning use of the accelerator. A person may energize the accelerator for purposes of installation and acceptance testing before receiving a certificate of registration from the department as specified in §289.226(i)(1) of this chapter.

(2) Facility requirements.

(A) Each accelerator facility must be provided with primary and secondary barriers necessary to assure compliance with §289.231(m) and (o) of this chapter.

(B) A radiation survey must be conducted when the accelerator is registered and capable of producing radiation to determine compliance with §289.231(m) and (o) of this chapter.

(C) The registrant must maintain a copy of the initial and all subsequent vault survey reports for inspection by the department as specified in subsection (l) of this section. Vault surveys must be performed:

(i) on all new and existing facilities not previously surveyed by, or under the direction of, the registrant; and

(ii) upon installation, replacement, or upgrade to a higher energy accelerator.

(D) The registrant must maintain a copy of the initial survey report for inspection by the agency in accordance with subsection (l) of this section. A completed survey report must include:

(i) a diagram of the facility detailing building structures and the position of the accelerator, control panel, and associated equipment;

(ii) a description of the accelerator, including the manufacturer, model and serial number, beam type, and beam energy;

(iii) a description of the instrumentation used to determine radiation measurements, including the date and source of the most recent calibration for each instrument used;

(iv) conditions under which radiation measurements were taken;

(v) survey data including:

(I) projected annual total effective dose equivalent (TEDE) in areas adjacent to the accelerator; and

(II) a description of workload, use, and occupancy factors employed in determining the projected annual TEDE; and

(vi) documentation of all instances where the facility violates this chapter's applicable requirements. Any deficiencies detected during the survey must be corrected before using the accelerator.

(3) Safety requirements.

(A) Interlock systems, including inherent, add-on, and aftermarket devices attaching to the accelerator, must comply with the following requirements.

(i) Instrumentation, readouts, and controls in the accelerator console are clearly identified.

(ii) Each entrance into a target room or other high radiation area is provided with a safety interlock terminating the useful beam under conditions of barrier penetration.

(iii) When the production of radiation has been interrupted, it is only possible to resume operation of the accelerator by manually resetting the interlock at the console.

(iv) Each safety interlock is on an electrical circuit allowing the interlock to operate independently of all other safety interlocks.

(v) All safety interlocks are designed so any defect or component failure in the interlock system prevents operating the accelerator.

(vi) A scram button or other emergency power cut-off switch is labeled. The scram button or cut-off switch includes a manual reset so the accelerator cannot be restarted from the accelerator console without resetting the cut-off switch.

(vii) The safety interlock system includes a visible or audible alarm indicating when any interlock has been activated.

(viii) All interlocks and visible or audible alarms are tested for proper operation at intervals meeting or exceeding nationally recognized, published guidelines from a professional body with expertise in accelerator radiation technologies, or manufacturer recommendations.

(ix) If an interlock or alarm is operating improperly, it is immediately labeled as defective and repaired within seven calendar days.

(x) Records of tests and repairs required by this paragraph are made and maintained as specified in subsection (l) of this section for inspection by the department.

(B) Each registrant must develop, implement, and maintain written operating and safety procedures (OSP) as specified in subsection (h)(1)(G) of this section.

(C) The registrant must ensure radiation measurements are performed with a calibrated dosimetry system. The dosimetry system calibration must be traceable to a national standard. Instruments and equipment must be calibrated at an interval not to exceed 24 months. Each accelerator facility must have appropriate portable monitoring equipment available that is operable and calibrated for the radiation produced at the facility.

(D) A radiation protection survey must be performed and the results recorded when changes have been made in shielding, operation, equipment, or occupancy of adjacent areas.

(E) For portable or mobile accelerators, such as neutron generators used at temporary job sites where permanent shielding is not available, radiation protection must be provided by temporary shielding or by providing an adequate exclusion area around the accelerator while it is in use.

(F) Records of calibration and survey results made as specified in subparagraphs (C) and (D) of this paragraph must be maintained according to subsection (l) of this section.

(G) The registrant must perform radiation surveys and contamination smears before the transfer or disposal of an accelerator operating at or above 10 MeV. The survey must be documented and maintained by the registrant for inspection by the department as specified in subsection (l) of this section.

(H) The registrant must retain records of receipt, transfer, and disposal of all radiation machines specific to each authorized use location. The records must be maintained by the registrant for inspection by the department as specified in subsection (l) of this section. The records must include the:

(i) date;

(ii) manufacturer name;

(iii) model;

(iv) serial number from the control panel or console of the radiation machine; and

(v) name of the individual making the record.

(4) Training requirements for operators.

(A) An individual must not operate an accelerator unless the individual has received instruction in and demonstrated competence with the following:

(i) OSP as specified in paragraph (3)(B) of this subsection;

(ii) radiation warning and safety devices incorporated into the equipment and in the room;

(iii) identification of radiation hazards associated with the use of the equipment; and

(iv) procedures for reporting a medical event or an actual or suspected exposure to the operator.

(B) Records of the training specified in subparagraph (A) of this paragraph must be made and maintained for department inspection as specified in subsection (l) of this section.

(g) Requirements for an accelerator used in industrial radiography. In addition to the requirements in subsections (f)(1), (f)(2), and (f)(3)(C) - (H) of this section, accelerators used for industrial radiography must meet the applicable requirements of §289.255 of this chapter.

(h) Requirements for therapeutic radiation machines, radiation therapy simulation systems used in the healing arts, and EBT devices.

(1) General requirements.

(A) Each person possessing a therapeutic radiation machine capable of operating at or above 1 MeV or an EBT device must apply for and receive a certificate of registration from the department before using the accelerator for human use. A person may energize the accelerator for purposes of installation and acceptance testing before receiving a certificate of registration from the department.

(B) A person possessing a radiation therapy simulation system or a therapeutic radiation machine capable of operating below 1 MeV must apply for a certificate of registration within 30 days after energizing the equipment.

(C) An individual who operates a radiation machine for human use must meet the appropriate credentialing requirements as specified in the Medical Radiologic Technologist Certification Act, Texas Occupations Code Chapter 601. Copies of the credentialing document must be maintained at the location where the individual is working. A copy of the credentialing document must be maintained by the registrant for inspection by the department as specified in subsection (l) of this section.

(D) The EBT registration requires the physician to be:

(i) licensed by the Texas Medical Board; and

(ii) certified in:

(I) radiation oncology or therapeutic radiology by the American Board of Radiology; or

(II) radiation oncology by the American Osteopathic Board of Radiology.

(E) The registrant must ensure an operator of an EBT device completes device-specific training and maintains a record of each individual's training as specified in subsection (l) of this section. The device-specific training must include:

(i) completing a training program provided by the manufacturer; or

(ii) training substantially equivalent to the manufacturer's training program from a certified physician or a licensed medical physicist trained to use the device.

(F) Each facility must develop a written QA program or an electronic reporting system. The QA program must be implemented to minimize deviations from facility procedures and to document preventative measures taken before serious patient injury or therapeutic misadministration.

(i) The QA program must include the following topics:

- (I) treatment planning and patient simulation;
- (II) charting and documenting treatment field parameters;
- (III) dose calculation and review procedures;
- (IV) review of daily treatment records; and
- (V) for EBT devices, verification of catheter placement and device exchange procedures.

(ii) A written directive must be prepared before administration of a therapeutic radiation dose except where a delay in providing a written directive would jeopardize the patient's health. If an oral directive must be made, the information contained in the oral directive must be documented immediately in the patient's record. A written directive must be prepared within 24 hours of the oral directive.

(iii) A written directive changing an existing written directive for any therapeutic radiation procedure is only acceptable if the revision is dated and signed by a certified physician before the administration of the therapeutic dose, or the next fractional dose.

(iv) Deviations from the prescribed treatment, from the facility's QA program, or from the OSP must be investigated and brought to the attention of the certified physician or licensed medical physicist, and the radiation safety officer (RSO).

(v) The patient's identity must be verified by more than one method as the individual named in the written directive before administration.

(vi) The discovery of each medical event must be reported as specified in subsections (i) and (j) of this section.

(vii) The review of the QA program must include all the deviations from the prescribed treatment and must be conducted at intervals not to exceed 14 months. A signed record of each dated review must be maintained for inspection by the department as specified in subsection (I) of this section and must include evaluations and findings of the review.

(G) Written OSP must be developed by a licensed medical physicist with a specialty in therapeutic radiological physics and must include any restrictions required for the safe operation of each therapeutic radiation machine. These procedures must be available in the control area of the therapeutic radiation machine, radiation therapy simulation system, or EBT device. The registrant must maintain records of OSP as specified in subsection (I) of this section for inspection by the department. The operator must be able to demonstrate familiarity with these procedures. The OSP must address the following requirements:

(i) therapeutic radiation machines must not be used for irradiation of a patient unless full calibration measurements and QA checks have been completed;

(ii) therapeutic radiation machines must not be used in the administration of radiation therapy if a QA check indicates a significant change in the operating characteristics of a system as specified in the written procedures;

(iii) therapeutic radiation machines must not be left unattended unless secured by a locking device, or computerized password system, preventing unauthorized use;

(iv) mechanical supporting or restraining devices must be used when there is a need to immobilize a patient or port film for radiation therapy;

(v) no individual, other than the patient, is allowed in the treatment room during exposures from therapeutic radiation machines operating above 150 kV;

(vi) at energies less than or equal to 150 kV, any individual in the treatment room, other than the patient, must be protected by a barrier sufficient to meet the requirements of §289.231(m) and (o) of this chapter;

(vii) a technique chart for radiation therapy simulation systems must be used as specified in paragraph (5)(A)(i) of this subsection;

(viii) occupational and public radiation dose must be controlled as specified in §289.231(m) and (o) of this chapter;

(ix) occupational dose must be monitored as specified in §289.231(n) of this chapter;

(x) protective devices must be used for radiation therapy simulation systems as specified in paragraph (5)(A)(iii) of this subsection;

(xi) operators of radiation machines must be credentialed as specified in subparagraph (C) of this paragraph;

(xii) film processing program for conventional radiation therapy simulation systems must be performed as specified in paragraph (5)(E)(i) of this subsection;

(xiii) procedures for restriction and alignment of the beam for conventional radiation therapy simulation systems as specified in paragraph (5)(F)(iii) of this subsection;

(xiv) methods utilized for testing interlocks, entrance controls, and alarm systems;

(xv) notifications and reports must be provided to individuals as specified in §289.203(d) of this chapter; and

(xvi) notices to workers must be posted as specified in §289.203(b) of this chapter.

(H) A registrant with equipment granted variances by the United States Food and Drug Administration (FDA) to 21 CFR Part 1020 must maintain copies of those variances at authorized use locations as specified in subsection (I) of this section.

(I) The registrant must perform radiation surveys and contamination smears before the transfer or disposal of an accelerator operating at or above 10 MeV. Surveys must be documented and maintained by the registrant for inspection by the department as specified in subsection (I) of this section.

(J) Where applicable, the licensed medical physicist must perform acceptance testing on the treatment planning system of therapy-related computer systems as specified in protocols accepted by nationally recognized, published guidelines, from a professional body with expertise in the use of therapeutic radiation technologies.

In the absence of such a published protocol, the manufacturer's current protocol must be followed.

(2) Therapeutic radiation machines capable of operating at energies below 1 MeV.

(A) Equipment requirements.

(i) When the tube is operated at its leakage technique factors, the leakage radiation must not exceed the values specified at the distance stated for the classification of the radiation machine system shown in the following Table I. The leakage technique factors are the maximum-rated peak tube potential and the maximum-rated continuous tube current for the maximum-rated peak tube potential.

Figure: 25 TAC §289.229(h)(2)(A)(i)

(ii) Permanent fixed diaphragms or cones used for limiting the useful beam must provide the same or a higher degree of protection as required for the tube housing assembly.

(iii) Removable and adjustable beam-limiting devices must meet the following requirements.

(I) Removable beam-limiting devices must, for the portion of the useful beam to be blocked by these devices, transmit not more than 1 percent of the useful beam at the maximum kVp and maximum treatment filter. This requirement does not apply to auxiliary blocks or materials placed in the x-ray field to shape the useful beam to the individual patient.

(II) Adjustable beam-limiting devices must, for the portion of the x-ray beam to be blocked by these devices, transmit not more than 5 percent of the useful beam at the maximum kVp and maximum treatment filter.

(III) Adjustable beam-limiting devices must meet the requirements of subclause (I) of this clause.

(iv) The filter system must be designed so:

(I) the filters cannot be accidentally displaced at any possible tube orientation;

(II) an interlock system prevents irradiation if the proper filter is not in place;

(III) the air kerma rate escaping from the filter slot must not exceed 1 centigray/hour (cGy/hr) at 1 meter (m) under any operating conditions; and

(IV) each filter is marked as to its material of construction and its thickness. For wedge filters, the wedge angle must appear on the wedge or wedge tray.

(v) The tube housing assembly must be capable of being immobilized for stationary treatments.

(vi) The tube housing assembly must be marked so it is possible to determine the location of the focal spot to within 5 millimeters (mm), and such marking must be readily accessible for use during calibration procedures.

(vii) The contact therapy tube housing assembly must have a removable shield of at least 0.5 mm lead equivalency at 100 kVp capable of being positioned over the entire useful beam exit port during periods when the beam is not in use.

(viii) The timer must:

(I) have a display provided at the treatment control panel and a pre-set time selector;

(II) activate with the production of radiation and retain its reading after irradiation is interrupted;

(III) be reset to zero after irradiation is terminated and before irradiation can be re-initiated;

(IV) terminate irradiation when a pre-selected time has elapsed, if any dose monitoring system present has not previously terminated irradiation;

(V) permit selection of exposure times as short as 1 second;

(VI) not permit exposure if set at zero;

(VII) not activate until the shutter is opened when irradiation is controlled by a shutter mechanism unless calibration includes a timer factor to compensate for mechanical lag; and

(VIII) be accurate to within 1 percent of the selected value or 1 second, whichever is greater.

(ix) The control panel, in addition to the displays required in clause (viii)(I) of this subparagraph, must have the following:

(I) an indication of whether electrical power is available at the control panel and if activation of the x-ray tube is possible;

(II) an indication of whether x-rays are being produced;

(III) means for indicating x-ray tube potential and current;

(IV) means for terminating an exposure at any time;

(V) a locking device preventing unauthorized use of the therapeutic radiation system (a computerized password system also constitutes a locking device);

(VI) a positive display of specific filters in the beam; and

(VII) emergency buttons or switches clearly labeled as to their functions.

(x) There must be a means of initially determining the SSD to within 1 centimeter (cm) and of reproducing this measurement to within 2 mm.

(xi) Unless it is possible to bring the radiation output to the prescribed exposure parameters within 5 seconds, the beam must be attenuated by a shutter having a lead equivalency not less than that of the tube housing assembly. After the unit is at operating parameters, the shutter must be controlled electrically by the operator from the control panel. An indication of shutter position must appear at the control panel.

(xii) Each therapeutic radiation system equipped with a beryllium or other low-filtration window must be clearly labeled on the tube housing assembly and at the control panel.

(B) Facility requirements for therapeutic radiation systems capable of operating above 50 kVp.

(i) Provision must be made for continuous two-way aural communication between the patient and the operator at the control panel.

(ii) Windows, mirrors, closed-circuit television, or an equivalent system must be provided to permit continuous observation of the patient during irradiation and be located so the operator can observe the patient from the control panel.



(I) If the viewing system described in clause (ii) of this subparagraph fails or is inoperative, treatment must not be performed with the unit until the system is restored.

(II) If a facility has a primary viewing system by electronic means and an alternate viewing system, and both viewing systems described in clause (ii) of this subparagraph fail or are inoperative, treatment must not be performed with the unit until one of the systems is restored.

(C) Additional facility requirements for therapeutic radiation systems capable of operation above 150 kVp.

(i) Each installation must be provided with primary and secondary barriers as necessary to assure compliance with §289.231(m) and (o) of this chapter. All protective barriers must be fixed except for entrance doors or beam interceptors.

(ii) The control panel must be located outside the treatment room or in an enclosed booth inside the room.

(iii) Interlocks must be provided to ensure all entrance doors are closed, including doors to any interior booths, before treatment can be initiated or continued. If the radiation beam is interrupted by any door opening, it must not be possible to restore the machine to operation without closing the door and reinitiating irradiation by manual action at the control panel. When any door is opened while the x-ray tube is activated, the exposure at a distance of 1 m from the source must be reduced to less than 1 milligray per hour (mGy/hr) (100 millirad per hour (mrad/hr)).

(D) Surveys, calibrations, and QA checks.

(i) Surveys must be performed as follows.

(I) All new and existing facilities not previously surveyed must have an initial shielding survey made by a licensed medical physicist, as authorized by 22 Texas Administrative Code (TAC) §160.17 (relating to Medical Physicist Scope of Practice), who must provide a written report of the survey to the registrant. Additional surveys must be done after any change in the facility, facility design, or equipment that might cause a significant increase in radiation hazard.

(II) The registrant must maintain a copy of the initial survey report and all subsequent survey reports required by subclause (I) of this clause as specified in subsection (I) of this section for inspection by the department.

(III) The survey report must indicate all instances where the installation violates this chapter's applicable requirements.

(ii) Full calibrations must be performed as follows.

(I) The calibration of a therapeutic radiation system must be performed at intervals not to exceed 12 months and after any change or replacement of components that could cause a change in the radiation output. The calibrations must ensure the dose at a reference point in a water or plastic phantom can be calculated to within an uncertainty of 5 percent.

(II) The calibration of the radiation output of the therapeutic radiation system is performed by a licensed medical physicist with a specialty in therapeutic radiological physics, physically present at the facility during such calibration.

(III) The calibration of the therapeutic radiation system includes:

(-a-) verification the radiation therapy system is operating in compliance with the design specifications;

(-b-) HVL for each kV setting and filter combination used;

(-c-) the exposure rates (air kerma rates) as a function of field size, technique factors, filter, and treatment distance used; and

(-d-) the degree of congruence between the radiation field and the field indicated by the localizing device, if such device is present, which must be within 5 mm for any field edge.

(IV) Calibration measurements of the radiation output of a therapeutic radiation system must be performed with a calibrated dosimetry system. Calibration of the dosimetry system must be performed and completed at intervals not to exceed 24 months and traceable to a national standard.

(V) Records of calibration measurements specified in this clause must be maintained by the registrant as specified in subsection (I) of this section for inspection by the department.

(VI) A copy of the latest calibrated absorbed dose rate measured on a particular therapeutic radiation system must be available at a designated area within the therapy facility housing the therapeutic radiation system.

(iii) QA checks must be performed on therapeutic radiation systems capable of operation at greater than 150 kVp. Such measurements must meet the following requirements.

(I) The QA check procedures must be in writing or documented in an electronic reporting system, and must have been developed by a licensed medical physicist with a specialty in therapeutic radiological physics.

(II) If a licensed medical physicist does not perform the QA check measurements, the results of the QA check measurements must be reviewed by a licensed medical physicist with a specialty in therapeutic radiological physics within five treatment days and a record made of the review. If the output varies by more than 5 percent from the expected value, a licensed medical physicist with a specialty in therapeutic radiological physics must be notified immediately.

(III) The written QA check procedures must specify the testing or measurement frequency and state that the QA check must be performed during the calibration specified in clause (ii) of this subparagraph. The acceptable tolerance for each parameter measured when compared to the value for that parameter determined in the calibration specified in clause (ii) of this subparagraph must be stated.

(IV) The written QA check procedures must include special operating instructions required to be carried out whenever a parameter in subclause (III) of this clause exceeds an acceptable tolerance.

(V) Whenever a QA check indicates a significant change in the operating characteristics of a system, as specified in the procedures, the system must be recalibrated, as required in clause (ii) of this subparagraph.

(VI) Records of written QA checks and any necessary corrective actions must be maintained by the registrant as specified in subsection (I) of this section for inspection by the department. A copy of the most recent QA check must be available at a designated area within the therapy facility housing the therapeutic radiation system.

(VII) QA checks must be obtained using a system satisfying the requirements of clause (ii)(IV) of this subparagraph.

(iv) All testing reports must meet or exceed nationally recognized, published guidelines from a professional body with expertise in the use of therapeutic radiation technologies or manufacturer recommendations.

(3) Therapeutic radiation machines capable of operating at energies of 1 MeV and above.

(A) Equipment requirements.

(i) For operating conditions producing maximum leakage radiation, the absorbed dose in rads (mGy) due to leakage radiation (including x-rays, electrons, and neutrons) must not exceed 0.1 percent of the maximum absorbed dose in rads (mGy) of the unattenuated useful beam. The absorbed dose for this leakage radiation requirement must be measured at any point in a circular plane of 2 m radius centered on and perpendicular to the central axis of the beam at the isocenter or nominal treatment distance and outside the maximum useful beam size. The unattenuated useful beam must be measured at the point of intersection of the central axis of the beam and the plane surface.

(I) Measurements excluding those for neutrons must be averaged over an area up to, but not exceeding, 100 square centimeters (cm<sup>2</sup>) at the positions specified.

(II) Measurements of the portion of the leakage radiation dose contributed by neutrons must be averaged over an area up to, but not exceeding, 200 cm<sup>2</sup>.

(III) For each system, the registrant must determine, or obtain from the manufacturer, the leakage radiation existing at the positions specified for the specified operating conditions.

(IV) Records on leakage radiation measurements must be maintained as specified in subsection (I) of this section for inspection by the department.

(ii) Irradiation filters.

(I) Dynamic or virtual wedge filter.

(-a-) An interlock system must be provided to prevent irradiation if any virtual or dynamic wedge selected in the treatment room does not agree with the virtual or dynamic wedge selection and operation carried out at the treatment console.

(-b-) The dose distribution selected must include:

- (-1-) beam energy;
- (-2-) field size; and
- (-3-) wedge angle.

(-c-) A virtual wedge transmission factor must be established and utilized.

(II) Multileaf collimator (MLC) filter.

(-a-) An interlock system must be provided to prevent irradiation if the spatial dose distribution selected in the treatment room does not agree with the filter selection and operation carried out at the treatment console.

(-b-) The distribution selected must include:

- (-1-) beam energy; and
- (-2-) MLC selection.

(III) Stereotactic radiosurgery (SRS) filter.

(-a-) An interlock system must be provided to prevent irradiation if the spatial dose distribution selected in the treatment room does not agree with the filter selection and operation carried out at the treatment console.

(-b-) The distribution selected must include:

- (-1-) beam energy;
- (-2-) SRS cone; or
- (-3-) MLC selection.

(-c-) A virtual wedge transmission factor must be established and utilized.

(IV) Physical wedge filter.

(-a-) Each wedge filter removable from the system must be marked with an identification number.

(-b-) Documentation must be available at the console containing a description of the filter.

(-c-) The wedge angle must appear on the wedge or wedge tray (if permanently mounted to the tray).

(-d-) If the wedge or wedge tray is damaged, the wedge must be removed from clinical service.

(-e-) Irradiation must not be possible until a selection of a filter or a positive selection to use "no filter" has been made at the treatment console, either manually or automatically.

(-f-) A display must be provided at the treatment console showing the accelerator beam quality in use.

(-g-) An interlock system must be provided to prevent irradiation if any filter selection operation carried out in the treatment room does not agree with the filter selection and operation carried out at the treatment console.

(iii) Beam Quality. The registrant must determine data sufficient to assure the following beam quality requirements in tissue equivalent material are met.

(I) The absorbed dose resulting from x-rays in a useful electron beam at a point on the central axis of the beam 10 cm greater than the practical range of the electrons must not exceed the values stated in Table II. Linear interpolation must be used for values not stated.

Figure: 25 TAC §289.229(h)(3)(A)(iii)(I) (No change.)

(II) Compliance with subclause (I) of this clause must be determined using:

(-a-) a measurement within a tissue equivalent phantom with the incident surface of the phantom at the nominal treatment distance and normal to the central axis of the beam;

(-b-) a field size of 10 cm by 10 cm; and

(-c-) a phantom whose cross-sectional dimensions exceed the measurement radiation field by at least 5 cm and whose depth is sufficient to perform the required measurement.

(III) The absorbed dose at a surface located at the nominal treatment distance, at the point of intersection of that surface with the central axis of the useful beam during x-ray irradiation, must not exceed the limits stated in the following Table III. Linear interpolation must be used for values not stated.

Figure: 25 TAC §289.229(h)(3)(A)(iii)(III) (No change.)

(IV) Compliance with subclause (III) of this clause must be determined by measurements:

(-a-) within a tissue equivalent phantom using an instrument allowing extrapolation to the surface absorbed dose;

(-b-) using a phantom whose size and placement meet the requirements of subclause (II) of this clause;

(-c-) after removal of all beam-modifying devices capable of being removed without the use of tools, except for beam-scattering or beam-flattening filters; and

(-d-) using the largest field size available not exceeding 15 cm by 15 cm.

(iv) All therapeutic radiation systems must be provided with radiation detectors in the gantry head. These must include the following, as appropriate.

(I) At least two independent radiation detectors must be used. The detectors must be incorporated into two independent dose monitoring systems.

(II) The incorporated detector and monitoring system must meet the following requirements.

(-a-) Each detector must be removable only with tools and must be interlocked to prevent incorrect positioning.

(-b-) Each detector must form part of a dose monitoring system from whose readings in dose monitor units the absorbed dose at a reference point in the treatment volume can be calculated.

(-c-) Each dose monitoring system must be capable of independently monitoring, interrupting, and terminating irradiation.

(-d-) The design of the dose monitoring systems must assure the malfunctioning of one system does not affect the correct functioning of the secondary system; and failure of any element common to both systems affecting the correct function of both systems must terminate irradiation.

(-e-) Each dose monitoring system must have a legible display at the treatment console. Each display must:

(-1-) maintain a reading until intentionally reset to zero;

(-2-) have only one scale and no scale multiplying factors;

(-3-) utilize a design so increasing dose is displayed by increasing numbers and if there is an overdosage of radiation, the absorbed dose may be accurately determined; and

(-4-) retain the dose monitoring information in at least one system for 15 minutes in the event of a power failure.

(v) For equipment inherently capable of producing useful beams with unintentional asymmetry exceeding 5 percent, the asymmetry of the radiation beam in two orthogonal directions must be monitored before the beam passes through the beam-limiting device. If the difference in dose rate between one region and another region symmetrically displaced from the central axis of the beam exceeds 5 percent of the central axis dose rate, an indication of this condition must be displayed at the console; and if this difference exceeds 10 percent of the central axis dose rate, the irradiation must be terminated.

(vi) Selection and display of dose monitor units must meet the following requirements.

(I) Irradiation must not be possible until a selection of dose monitor units has been made at the treatment console.

(II) The preselected number of dose monitor units must be displayed at the treatment console until reset manually for the next irradiation.

(III) After termination of irradiation, it must be necessary to reset the dosimeter display to zero before subsequent treatment can be initiated.

(IV) After termination of irradiation, the preselected dose monitor units must be reset manually before irradiation can be initiated.

(vii) Termination of irradiation by the dose monitoring system or systems during stationary beam therapy must meet the following requirements.

(I) Each primary system must terminate irradiation when the preselected number of dose monitor units has been detected by the system.

(II) A secondary dose monitoring system must be present. The system must be capable of terminating irradiation when not more than 10 percent or 25 dose monitoring units, whichever is smaller, above the preselected number of dose monitor units set at the console has been detected by the secondary dose monitoring system.

(III) An indicator on the console must show which dose monitoring system has terminated irradiation.

(viii) A locking device must be provided in the system to prevent unauthorized use of the x-ray system. A computerized password system would also constitute a locking device.

(ix) It must be possible to interrupt irradiation and equipment movements at any time from the operator's position at the treatment console. Following an interruption, it must be possible to restart irradiation by operator action without any reselection of operating conditions. If any change is made of a preselected value during an interruption, irradiation and equipment movements must be automatically terminated.

(x) It must be possible to terminate irradiation and equipment movements or go from an interruption condition to termination conditions at any time from the operator's position at the treatment console.

(xi) Timers must meet the following requirements.

(I) A timer with a display is provided at the treatment console. The timer has a preset time selector and an elapsed time indicator.

(II) The timer is a cumulative timer activating with the production of radiation and retaining its reading after irradiation is interrupted or terminated. After irradiation is terminated and before irradiation can be reinitiated, it is necessary to reset the elapsed time indicator to zero.

(III) After termination of irradiation and before irradiation can be reinitiated, the preset time selector is reset manually.

(IV) The timer terminates irradiation when a preselected time has elapsed if the dose monitoring systems have not previously terminated irradiation.

(xii) Equipment capable of producing more than one radiation type must meet the following additional requirements.

(I) Irradiation is not possible until a selection of radiation type has been made at the treatment console.

(II) An interlock system is provided to:  
(-a-) ensure the equipment can emit only the radiation type selected;

(-b-) prevent irradiation if any selected operations carried out in the treatment room do not agree with the selected operations carried out at the treatment console;

(-c-) prevent irradiation with x-rays except to obtain a port film when electron applicators are fitted; and

(-d-) prevent irradiation with electrons when accessories specific for x-ray therapy are fitted.

(III) The radiation type selected is displayed at the treatment console before and during irradiation.

(xiii) Equipment capable of generating radiation beams of different energies must meet the following requirements.

(I) Irradiation is not possible until a selection of energy has been made at the treatment console.

(II) An interlock system is provided to prevent irradiation if any selected operations carried out in the treatment room do not agree with the selected operations carried out at the treatment console.

(III) The nominal energy value selected is displayed at the treatment console before and during irradiation.

(xiv) Equipment capable of both stationary beam therapy and moving beam therapy must meet the following requirements.

(I) Irradiation is not possible until a selection of stationary beam therapy or moving beam therapy has been made at the treatment console.

(II) An interlock system is provided to prevent irradiation if any selected operations carried out in the treatment room do not agree with the selected operations carried out at the treatment console.

(III) The selection of stationary or moving beam is displayed at the treatment console. An interlock system must be provided to ensure the equipment can only operate in the selected mode.

(IV) An interlock system is provided to terminate irradiation if movement of the gantry occurs during stationary beam therapy or stops during moving beam therapy unless such stoppage is a preplanned function.

(V) Moving beam therapy is controlled to obtain the selected relationships between incremental dose monitor units and incremental angle of movement.

(-a-) An interlock system must be provided to terminate irradiation if the number of dose monitor units delivered in any 10 degrees of arc differs by more than 20 percent from the selected value.

(-b-) Where gantry angle terminates the irradiation in arc therapy, the dose monitor units must be within 5 percent from the value calculated from the absorbed dose per unit angle relationship.

(VI) Where the dose monitor system terminates the irradiation in moving beam therapy, the termination of irradiation must meet the requirements of clause (vii) of this subparagraph.

(xv) A system must be provided from whose readings the absorbed dose rate at a reference point in the treatment volume can be calculated. The radiation detectors specified in clause (iv) of this subparagraph may form part of this system. In addition, the dose monitor unit rate must be displayed at the treatment console. If the equipment can deliver, under any conditions, an absorbed dose rate at the nominal treatment distance more than twice the maximum value specified by the manufacturer for any machine parameters utilized, a device must be provided to terminate irradiation when the absorbed dose rate exceeds a value twice the specified maximum. The dose rate at which the irradiation will be terminated must be in a record maintained by the registrant as specified in subsection (I) of this section for department inspection.

(xvi) The registrant must determine, or obtain from the manufacturer, the location with reference to an accessible point on the gantry, of the x-ray target, or the virtual source of x-rays and the

electron window, or the virtual source of electrons if the system has electron beam capabilities.

(xvii) Capabilities must be provided so all radiation safety interlocks can be checked for correct operation.

(B) Facility and shielding requirements.

(i) Each installation must be provided with primary and secondary barriers as are necessary to assure compliance with §289.231(m) and (o) of this chapter.

(ii) All protective barriers must be fixed except for entrance doors or beam interceptors.

(iii) The console must be located outside the treatment room and all emergency buttons or switches must be clearly labeled as to their functions.

(iv) Windows, mirrors, closed-circuit television, or an equivalent system must be provided to permit continuous observation of the patient following positioning and during irradiation and must be located so the operator can see the patient from the console.

(I) If the viewing system described in clause (iv) of this subparagraph fails or is inoperable, treatment must not be performed with the unit until the system is restored.

(II) In a facility with a primary viewing system by electronic means and an alternate viewing system, if both viewing systems described in clause (iv) of this subparagraph fail or are inoperative, treatment must not be performed with the unit until one of the systems is restored.

(v) Provision must be made for continuous two-way aural communication between the patient and the operator at the console independent of the accelerator. However, where excessive noise levels or treatment requirements make aural communication impractical, other methods of communication must be used. When this is the case, a description of the alternate method must be submitted to and approved by the department.

(vi) Treatment room entrances must be provided with a warning light in a readily observable position near the outside of all access doors to indicate when the useful beam is "on."

(vii) Interlocks must be provided to ensure all entrance doors are closed before treatment can be initiated or continued. If the radiation beam is interrupted by any door opening, it must not be possible to restore the machine to operation without closing the door and reinitiating irradiation by manual action at the console.

(C) Surveys, dose calibrations, QA checks, and operational requirements.

(i) Surveys must be performed as follows.

(I) All new and existing facilities not previously surveyed must have an initial shielding survey made by a licensed medical physicist as authorized by 22 TAC §160.17 who must provide a written report of the survey to the registrant. The physicist who performs the survey must be an individual who:

(-a-) did not consult in the design of the therapeutic radiation machine installation and;

(-b-) is not employed by or within any corporation or partnership with the person who consulted in the design of the installation.

(II) The survey report must include:

(-a-) a diagram of the facility detailing building structures and the position of the console, therapeutic radiation machine, and associated equipment;

(-b-) a description of the therapeutic radiation system, including the manufacturer, model and serial number, beam type, and beam energy;

(-c-) a description of the instrumentation used to determine radiation measurements, including the date and source of the most recent calibration for each instrument used;

(-d-) conditions under which radiation measurements were taken; and

(-e-) survey data including:

(-1-) projected annual TEDE in areas adjacent to the therapy room; and

(-2-) a description of workload, use, and occupancy factors employed in determining the projected annual TEDE.

(III) The registrant must maintain a copy of the survey report, and a copy of the survey report must be provided to the department within 30 days of completion of the survey. Records of the survey report must be maintained as specified in subsection (I) of this section for inspection by the department.

(IV) The survey report must include documentation of all instances where the installation is in violation of applicable regulations. Any deficiencies detected during the survey must be corrected before using the machine.

(V) In addition, such surveys must be done after any change in the facility or equipment that might cause a significant increase in radiation hazard.

(ii) Dose calibrations. Records of calibration measurements specified in subclause (I) of this clause and dosimetry system calibrations specified in subclause (III) of this clause must be maintained by the registrant as specified in subsection (I) of this section for inspection by the department. A copy of the latest calibrated absorbed dose rate measured as specified in subclause (I) of this clause must be available at a designated area within the facility housing the radiation therapy system. Calibrations of therapeutic systems must be performed as follows.

(I) The calibration of systems subject to this subsection are performed as specified in an established calibration protocol before the system is first used for irradiation of a patient and then at intervals not exceeding 12 months and after any change significantly altering the calibration, spatial distribution, or other characteristics of the therapy beam.

(-a-) The calibration procedures must be in writing, or documented in an electronic reporting system, and must have been developed by a licensed medical physicist with a specialty in therapeutic radiological physics.

(-b-) Acceptance testing, commissioning, and dose calibration must be performed as specified in current published recommendations from a nationally recognized professional association with expertise in the use of therapeutic radiation technologies. In the absence of a protocol published by a national professional association, the manufacturer's protocol, or equivalent quality, safety, and security protocols, must be followed.

(-c-) At a minimum, the calibration protocol must include all items in subclauses (III) - (V) of this clause.

(II) The calibration is performed by a licensed medical physicist with a specialty in therapeutic radiological physics who is physically present at the facility during the calibration.

(III) Calibration radiation measurements required by subclause (I) of this clause are performed using a dosimetry system:

(-a-) having a calibration factor for cobalt-60 gamma rays traceable to a national standard;

(-b-) traceable to a national standard and at an interval not to exceed 24 months;

(-c-) calibrated to the extent an uncertainty can be stated for the radiation quantities monitored by the system; and

(-d-) having constancy checks performed as specified by the licensed medical physicist with a specialty in therapeutic radiological physics.

(IV) Calibrations must be in sufficient detail to ensure the dose at a reference point in a tissue equivalent phantom can be calculated to within an uncertainty of 5 percent.

(V) The calibration of the therapy unit must include the following determinations.

(-a-) Verification that the equipment is operating in compliance with the design specifications concerning the light field, patient positioning lasers, and back-pointer lights with the isocenter when applicable; variation in the axis of rotation for the table, gantry, and collimator system; and beam flatness and symmetry at the specified depth.

(-b-) Verification of the accuracy of the absorbed dose rate at various depths in a tissue equivalent phantom for the range of field sizes and effective energies used in all therapy procedures.

(-c-) Uniformity of the radiation field to include symmetry, flatness, and dependence on the gantry angle.

(-d-) Verification that existing isodose charts applicable to the specific machine continue to be valid or are updated to existing machine conditions.

(-e-) Verification of transmission factors for all accessories such as wedges, block trays, and universal and custom-made beam modifying devices.

(VI) Calibration of therapeutic systems containing asymmetric jaws, multileaf collimation, or dynamic or virtual wedges must be performed with an established protocol. The procedures must be developed by a licensed medical physicist with a specialty in therapeutic radiological physics and must be in writing or documented in an electronic reporting system.

(iii) QA checks must be performed on systems subject to this paragraph during calibrations and then at weekly intervals with the period between QA checks not to exceed five treatment days. Such radiation output measurements must meet the following requirements.

(I) The QA check procedures must be performed as specified in established protocol, be in writing or documented in an electronic reporting system, and be developed by a licensed medical physicist with a specialty in therapeutic radiological physics. The protocol must meet or exceed nationally recognized, published guidelines from a professional body with expertise in the use of therapeutic radiation technologies or manufacturer recommendations. At a minimum, the QA check protocol must include all items in subclauses (III) - (VI) of this clause.

(II) If a licensed medical physicist does not perform the QA check measurements, the results of the QA check measurements must be reviewed by a licensed medical physicist at a frequency not to exceed five treatment days and a record kept of the review. If the output varies by more than 3 percent from the expected value, a licensed medical physicist must be notified immediately.

(III) The written QA check procedures must specify the frequency at which tests or measurements are performed and the acceptable tolerance for each parameter measured in the QA

check when compared to the value for that parameter determined in the calibration.

(IV) Where a system has built-in devices providing a measurement of any parameter during irradiation, such measurement must not be utilized as a QA check measurement.

(V) A parameter exceeding a tolerance set by a licensed medical physicist must be corrected before the system is used for patient irradiation.

(VI) Whenever a QA check indicates a significant change in the operating characteristics of a system, as specified in a licensed medical physicist's written procedures, the system must be recalibrated.

(VII) Records of QA check measurements and any necessary corrective actions must be maintained by the registrant as specified in subsection (I) of this section for inspection by the department.

(VIII) QA checks must be completed using a system satisfying the requirements of clause (ii)(III) of this subparagraph.

(iv) Facilities with therapeutic radiation machines with energies of 1 MeV and above must procure the services of a licensed medical physicist with a specialty in therapeutic radiological physics.

(I) The physicist must be responsible for:

- (-a-) dose calibration of radiation machines;
- (-b-) supervision and review of beam and

clinical dosimetry;

- (-c-) measurement, analysis, and tabulation

of beam data;

- (-d-) establishment of QA procedures and performance of QA check review; and
- (-e-) review of absorbed doses delivered to

patients.

(II) The licensed medical physicist described in subclause (I) of this clause must also be available and responsive to immediate problems or emergencies.

(4) Requirements for EBT devices. In addition to the requirements in paragraph (1) of this subsection, EBT devices must meet the requirements in this paragraph.

(A) Technical requirements for EBT devices.

(i) The timer must:

(I) have a display provided at the treatment control panel and a pre-set time selector;

(II) activate with the production of radiation and retain its reading after irradiation is interrupted;

(III) be reset to zero after irradiation is terminated and before irradiation can be re-initiated;

(IV) terminate irradiation when a pre-selected time has elapsed, if any dose monitoring system present has not previously terminated irradiation;

(V) permit selection of exposure times as short as 1 second;

(VI) not permit an exposure if set at zero; and

(VII) be accurate to within 1 percent of the selected value or 1 second, whichever is greater.

(ii) The control panel, in addition to the displays required in subparagraph (A)(i) of this paragraph, must have:

(I) an indication of whether electrical power is available at the control panel and if activation of the x-ray tube is possible;

(II) means for indicating x-rays are being produced;

(III) means for indicating x-ray tube potential and current; and

(IV) means for terminating an exposure at any time.

(iii) All emergency buttons or switches must be clearly labeled as to their functions.

(B) Surveys, calibrations, and QA checks.

(i) Survey procedures.

(I) All new and existing facilities with an EBT device must have an initial shielding survey made by a licensed medical physicist, as authorized by 22 TAC §160.17, who must provide a written survey report to the registrant. Additional surveys must be done when:

(-a-) making any change in the portable shielding; and

(-b-) relocating the electronic therapy device.

(II) The registrant must maintain a copy of the initial survey report and all subsequent survey reports as specified in subsection (I) of this section for inspection by the department.

(III) The survey report must indicate all instances where the installation is in violation of the applicable requirements of this chapter.

(ii) Calibrations procedures. Records of calibration measurements must be maintained by the registrant as specified in subsection (I) of this section for inspection by the department. A copy of the latest calibrated absorbed dose rate measured on the EBT device must be available at a designated area within the therapy facility housing the EBT device.

(I) Calibration procedures must be in writing, or documented in an electronic reporting system, and must have been developed by a licensed medical physicist with a specialty in therapeutic radiological physics.

(II) The registrant must make calibration measurements required by this section as specified in any current recommendations from a recognized national professional association (such as the American Association of Physicists in Medicine Report Number 152) for an EBT device, when available. Equivalent alternative methods are acceptable. In the absence of a protocol by a national professional association, a published protocol included in the device manufacturer operator's manual must be followed.

(III) The calibration of the EBT device must be performed after changing the x-ray tube or replacing components that could cause a change in the radiation output. The calibration must ensure the dose at a reference point in a water or plastic phantom can be calculated to within an uncertainty of 5 percent.

(IV) The calibration of the radiation output of the EBT device must be performed by a licensed medical physicist with a specialty in therapeutic radiological physics who is physically present at the facility during such calibration.

(V) The calibration of the therapeutic EBT device must include verification that the EBT device is operating in compliance with the design specifications.

(VI) Calibration of the radiation output of the EBT device must be performed with a calibrated dosimetry system. The dosimetry calibration must be traceable to a national standard. The calibration interval must not exceed 24 months.

(iii) QA check. Records of the written QA checks and any necessary corrective actions must be maintained by the registrant as specified in subsection (I) of this section for inspection by the department. A copy of the most recent QA check must be available at a designated area within the therapy facility housing the therapeutic radiation system.

(I) QA check procedures must be in writing, or documented in an electronic reporting system, and must have been developed by a licensed medical physicist with a specialty in therapeutic radiological physics.

(II) If a licensed medical physicist does not perform the QA check measurements, the results of the QA check measurements must be reviewed by a licensed medical physicist with a specialty in therapeutic radiological physics within two treatment days, and a record made of the review.

(III) The written QA check procedures must specify the operating instructions required to be carried out whenever a parameter exceeds an acceptable tolerance as established by the licensed medical physicist.

(IV) The certified physician or licensed medical physicist must prevent the clinical use of a malfunctioning device until the malfunction identified in the QA check has been evaluated and corrected or, if necessary, the equipment repaired.

(V) QA checks must be completed using a dosimetry system satisfying the requirements of clause (ii)(VI) of this subparagraph.

(5) Radiation therapy simulation systems.

(A) General requirements. In addition to the requirements in paragraph (1)(B), (C), (F), and (H) of this subsection, radiation therapy simulation systems must comply with the following:

(i) Technique chart. A technique chart relevant to the radiation machine is provided or electronically displayed in the vicinity of the console and used by all operators.

(ii) Operating and safety procedures. Each registrant develops, implements, and maintains written OSP as specified in paragraph (1)(G) of this subsection and §289.227(i)(2)(A) of this chapter.

(iii) Protective devices. When utilized, protective devices meet the following requirements.

(I) Protective devices must be made of no less than 0.25 mm lead equivalent material.

(II) Protective devices, including aprons, gloves, and shields, are checked annually for defects, such as holes, cracks, and tears. The registrant must perform these checks by visual, tactile, or x-ray imaging. If a defect is found, equipment must be replaced or removed from service until repaired. A record of this test is made and maintained by the registrant as specified in subsection (I) of this section for inspection by the department.

(iv) Viewing system. Windows, mirrors, closed circuit television, or an equivalent system is provided to permit the opera-

tor to continuously observe the patient during irradiation. The operator is able to maintain continuous verbal, visual, and aural contact with the patient.

(v) Operator position. The operator's position during the exposure ensures the operator's exposure is as low as reasonably achievable (ALARA). The operator is a minimum of 6 feet from the source of radiation or protected by an apron, gloves, or other shielding having a minimum of 0.25 mm lead equivalent material.

(vi) Holding of the tube. An individual does not hold the tube or tube housing assembly supports during any radiographic exposure.

(vii) No individuals other than the patient and the operator are allowed in the treatment room during the operation of the simulator.

(B) Facility design requirements.

(i) Provision must be made for two-way aural communication between the patient and the operator at the control panel.

(ii) Windows, mirrors, closed-circuit television, or an equivalent must be provided to permit continuous patient observation during irradiation and be located so the operator can see the patient from the console. If the viewing system described in this clause fails or is inoperable, the unit must not be used until the system is restored.

(iii) In a facility with a primary viewing system by electronic means and an alternate viewing system, and both viewing systems described in this clause fail or are inoperative, the unit must not be used until one of the systems is restored.

(C) Requirements for radiation therapy simulation systems utilizing standard CT systems.

(i) Equipment requirements.

(I) Tomographic systems must meet the following requirements.

(-a-) For any single tomogram system, means must be provided to permit visual determination of the tomographic plane or a reference plane offset from the tomographic plane.

(-b-) For any multiple tomogram system, means must be provided to permit visual determination of the tomographic plane or a reference plane offset from the tomographic plane.

(-c-) If a device using a light source is used to satisfy the requirements of item (-a-) or (-b-) of this subclass, the light source must provide illumination levels sufficient to permit visual determination of the location of the tomographic plane or reference plane under ambient light conditions of up to 500 lux.

(II) The CT system must be designed so the CT conditions of operation to be used during a scan or a scan sequence are indicated before the initiation of a scan or a scan sequence. For equipment having all or some of these conditions of operation at fixed values, this requirement may be met by permanent markings. Indication of CT conditions must be visible from any position from which scan initiation is possible.

(III) The CT control and gantry must provide visual indication whenever x-rays are produced and, if applicable, whether the shutter is open or closed.

(IV) Means must be provided to require operator initiation of each individual scan or series of scans.

(V) All emergency buttons or switches must be clearly labeled as to their functions.

(VI) Termination of exposure must meet the following requirements.

(-a-) Means must be provided to terminate the x-ray exposure automatically by either de-energizing the x-ray source or shuttering the x-ray beam in the event of equipment failure affecting data collection. Such termination must occur within an interval limiting the total scan time to no more than 110 percent of its preset value using either a backup timer or a device that monitors equipment function.

(-b-) A signal visible to the operator must indicate when the x-ray exposure has been terminated through the means required by item (-a-) of this subclause.

(-c-) The operator must be able to terminate the x-ray exposure at any time during a scan or series of scans under CT system control of greater than 0.5 second duration. Termination of the x-ray exposure must necessitate resetting the CT conditions of operation before initiation of another scan.

(VII) CT systems containing a gantry must meet the following requirements.

(-a-) The total error in the indicated location of the tomographic plane or reference plane must not exceed 5 mm.

(-b-) If the x-ray production period is less than 0.5 seconds, the indication of x-ray production must be actuated for at least 0.5 seconds. Indicators at or near the gantry must be discernible from any point external to the patient opening, where insertion of any part of the human body into the primary beam is possible.

(-c-) The deviation of indicated scan increment versus actual increment must not exceed plus or minus 1 mm with any mass from 0 to 100 kilograms (kg) resting on the support device. The patient support device must be incremented from a typical starting position to the maximum incremented distance or 30 cm, whichever is less, and then returned to the starting position. Measurement of actual versus indicated scan increment can be taken anywhere along this travel.

(ii) Additional requirements for CT systems integrated with virtual simulation features and linear accelerator capabilities (e.g., 3-D cone beam or modulation).

(I) QA procedures for the CT simulation system must be performed with an established protocol meeting or exceeding nationally recognized, published guidelines from a professional body with expertise in the use of therapeutic radiation technologies or manufacturer recommendations.

(II) QA procedures for the CT simulation system must be in writing, or documented in an electronic reporting system, by a licensed medical physicist with a specialty in therapeutic radiological physics.

(III) The electronic transfer of the treatment delivery parameters to the delivery system must be verified at the treatment location. The CT simulation treatment planning and the linear accelerator must interface accurately.

(iii) QA for CT simulation software.

(I) QA procedures for CT simulation software systems must be in writing, or documented in an electronic reporting system, by a licensed medical physicist with a specialty in therapeutic radiological physics.

(II) The protocol established must meet or exceed nationally recognized, published guidelines from a professional body with expertise in the use of therapeutic radiation technologies or manufacturer recommendations.

(III) The CT QA procedures must include:

(-a-) spatial/geometry accuracy tests;

(-b-) evaluation of digitally reconstructed radiographs; and

(-c-) periodic QA testing.

(IV) The electronic transfer of the treatment delivery parameters to the delivery system must be verified at the treatment location. The software for the CT simulation treatment planning computer and the linear accelerator must interface accurately.

(iv) Dose measurements of the radiation output of the CT system.

(I) Dose measurements must be completed as specified in §289.227(n)(3) of this chapter.

(II) Equipment performance evaluations (EPEs) must be completed as specified in §289.227(o) of this chapter.

(III) Records of dose measurements and EPEs specified in subclause (I) and (II) of this clause must be maintained by the registrant as specified in subsection (l) of this section for inspection by the department.

(D) A maintenance schedule must be developed as specified by the manufacturer. The schedule must include:

(i) dose measurements required by subparagraph (C)(iv) of this paragraph; and

(ii) acquisition of images obtained with phantoms using the same processing mode and CT conditions of operation as are used to perform dose measurements required by subparagraph (F) of this paragraph. The registrant must maintain either of the following as specified in subsection (l) of this section for inspection by the department:

(I) copies of the images obtained from the image display device; or

(II) images stored in digital form.

(E) Conventional radiation therapy simulation systems designed with x-ray or fluoroscopic capabilities.

(i) Film processing.

(I) Films must be developed according to the time-temperature relationships recommended by the film manufacturer. The specified developer temperature for automatic processing and the time-temperature chart for manual processing must be posted in the darkroom. If the registrant determines an alternate time-temperature relationship is more appropriate for a specific facility, the time-temperature relationship must be documented and posted.

(II) Chemicals must be replaced according to the chemical manufacturer's or supplier's recommendations or at an interval not to exceed three months.

(III) Darkroom light leak tests must be performed and any light leaks corrected at intervals not to exceed six months.

(IV) Lighting in the film processing and loading area must be maintained with the filter, bulb wattage, and distances recommended by the film manufacturer for that film emulsion or with products providing an equivalent level of protection against fogging.

(V) Corrections or repairs of the light leaks or other deficiencies in subclauses (II), (III), and (IV) of this clause must be initiated within 72 hours of discovery and completed no longer than 15 days from detection of the deficiency unless a longer time is authorized by the department. Records of the correction or repairs must in-



clude the date and initials of the individual performing these functions and must be maintained as specified in subsection (l) of this section for inspection by the department.

(VI) Documentation of the items in subclauses (II), (III), and (V) of this clause must be maintained at the site where performed and must include the date and initials of the individual completing these items. These records must be kept as specified in subsection (l) of this section for inspection by the department.

(ii) Alternative processing systems. Users of daylight processing systems, laser processors, self-processing film units, or other alternative processing systems must follow the manufacturer's recommendations for image processing. Documentation that the registrant is following the manufacturer's recommendations must include the date and initials of the individual completing the document and must be maintained at the site where performed as specified in subsection (l) of this section for inspection by the department.

(iii) Digital imaging acquisition systems. Users of digital imaging acquisition systems must follow the QA protocol for image processing established by the manufacturer or, if no manufacturer's protocol is available, by the registrant. The registrant must include the protocol, whether established by the registrant or the manufacturer, in its OSP. The registrant must document the frequency at which the QA protocol is performed. Documentation must include the date and initials of the individual completing the document and must be maintained at the site where performed as specified in subsection (l) of this section for inspection by the department.

(F) Additional requirements for conventional radiation therapy simulation systems used in the general radiographic mode of operation for radiation therapy port documentation.

(i) Beam quality. The half-value layer of the useful beam for a given x-ray tube potential must not be less than the values shown in Table IV. If it is necessary to determine such half-value layer at an x-ray tube potential not listed in Table IV, linear interpolation may be made.

Figure: 25 TAC §289.229(h)(5)(F)(i)

(ii) Technique and exposure indicators.

(I) The technique factors to be used during an exposure must be indicated before the exposure begins except when automatic exposure controls are used, in which case the technique factors set before the exposure must be indicated.

(II) The indicated technique factors must meet the manufacturer's specifications. If these specifications are not available from the manufacturer, the factors must be accurate to within plus or minus 10 percent of the indicated setting.

(iii) Beam limitation.

(I) The beam limiting device (collimator) must restrict the useful beam to the area of clinical interest.

(II) A method must be provided to visually define the center (cross-hair centering) of the x-ray field to within a 2 mm diameter.

(III) A method must be provided to accurately indicate the distance to within 2 mm.

(IV) The delineator wires must be accurate with the indicated setting within 2 mm.

(V) The x-ray field must be congruent with the light field within 2 mm.

(iv) Timers. Means must be provided to terminate the exposure at a preset time interval, a preset product of current and time, a preset number of pulses, or a preset radiation exposure to the image receptor. In addition, it must not be possible to make an exposure when the timer is set to a "zero" or "off" position and a visual and audible signal must indicate when an exposure has been terminated.

(v) Automatic exposure control (AEC). When an AEC is provided, an indication must be made on the control panel when this mode of operation is selected.

(vi) Timer reproducibility. When all technique factors are held constant, including control panel selections associated with AEC systems, the coefficient of variation of exposure interval for both manual and AEC systems must not exceed 0.05. This requirement applies to clinically used techniques.

(vii) Exposure reproducibility. When all technique factors are held constant, including control panel selections associated with AEC systems, the coefficient of variation of exposure for both manual and AEC systems must not exceed 0.05. This requirement applies to clinically used techniques.

(viii) Linearity.

Figure: 25 TAC §289.229(h)(5)(F)(viii)

(G) Additional requirements for radiation therapy simulation systems utilizing fluoroscopic capabilities.

(i) X-ray production in the fluoroscopic mode must be controlled by a device requiring continuous pressure by the fluoroscopist for the entire time of the exposure (continuous pressure type switch).

(ii) During fluoroscopy and cinefluorography, the kV and the Milliampere (mA) must be continuously indicated at the control panel and the fluoroscopist's position.

(iii) The SSD must not be less than 20 cm for image-intensified fluoroscopes used for examinations as specified in the registrant's OSP. The written OSP must provide precautionary measures to be adhered to during the use of this device. The procedures must provide information on the means to restore the unit to a 30 cm SSD when the unit is returned to general service.

(iv) Fluoroscopic timers must meet the following requirements.

(I) Means must be provided to preset the cumulative on-time of the fluoroscopic x-ray tube. The maximum cumulative time of the timing device must not exceed five minutes without resetting.

(II) A signal audible to the fluoroscopist must indicate the completion of any preset cumulative on-time. The signal must continue to sound while x-rays are produced until the timing device is reset. In lieu of such a signal, the timer must terminate the beam after the preset cumulative on-time is completed.

(v) The exposure foot switch must be permanently mounted in the control booth to ensure the operator cannot enter the simulator room while the fluoroscope is activated.

(vi) Radiation therapy simulation systems must duplicate the geometric conditions of the radiation therapy equipment plan, and therefore measurements regarding geometric conditions must be performed as specified in subsection (h)(3)(C)(iii)(I) of this section.

(vii) If the treatment-planning system is different from the treatment-delivery system, the accuracy of electronic transfer

of the treatment-delivery parameters to the treatment-delivery unit must be verified at the treatment location.

(i) Medical events.

(1) Medical events involving equipment operating at energies below 1 MeV and EBT devices must be reported when:

(A) the event involves the wrong individual, or the wrong treatment site;

(B) the treatment consists of three or fewer fractions, and the calculated total administered dose differs from the total prescribed dose by more than 10 percent; or

(C) the calculated total administered dose differs from the total prescribed dose by more than 20 percent.

(2) Medical events involving equipment operating with energies of 1 MeV and above must be reported when:

(A) the event involves the wrong individual, wrong type of radiation, wrong energy, or wrong treatment site;

(B) the treatment consists of three or fewer fractions, and the calculated total administered dose differs from the total prescribed dose by more than 10 percent;

(C) the calculated total administered dose differs from the total prescribed dose by more than 20 percent; or

(D) the combination of external beam radiation therapy and radioactive material therapy causes over-radiation of a patient resulting in physical injury or death.

(j) Reports of medical events.

(1) For a medical event, a registrant must do the following:

(A) notify the department by telephone no later than 24 hours after the discovery of the event;

(B) notify the referring physician and the patient of the event no later than 24 hours after its discovery, unless the referring physician personally informs the registrant that either the referring physician will inform the patient or that based on medical judgment, telling the patient would be harmful. The registrant is not required to notify the patient without first consulting the referring physician. If the referring physician or patient cannot be reached within 24 hours, the registrant must notify the patient as soon as possible. The registrant may not delay any appropriate medical care for the patient, including any necessary remedial care as a result of the event, because of any delay in notification;

(C) submit a written report to the department within 15 days after the discovery of the event. The report must not include the patient's name or other information that could lead to the identification of the patient. The written report must include the following:

(i) registrant's name and certificate of registration number;

(ii) prescribing physician's name;

(iii) a brief description of the event;

(iv) why the event occurred;

(v) the effect on the patient;

(vi) what improvements are needed to prevent recurrence;

(vii) actions taken to prevent recurrence;

(viii) whether the registrant notified the patient, or the patient's responsible relative or guardian (this person will be subsequently referred to as "the patient"); and if not, why not; and

(ix) if the patient was notified, what information was provided to the patient; and

(D) furnish the following to the patient within 15 days after discovery of the event if the patient was notified:

(i) a copy of the report that was submitted to the department; or

(ii) a brief description of both the event and the consequences, as they may affect the patient, provided a statement is included that the report submitted to the department can be obtained from the registrant.

(2) Each registrant must retain a record of each event as specified in subsection (1) of this section for inspection by the department. The record must contain the following:

(A) the names of all involved (including the prescribing physician, allied health personnel, the patient, and the patient's referring physician);

(B) the patient's identification number;

(C) a brief description of the event;

(D) why it occurred;

(E) the effect on the patient;

(F) what improvements are needed to prevent recurrence; and

(G) the actions taken to prevent a recurrence.

(3) Aside from the notification requirement, nothing in subsection (i) of this section and paragraphs (1) and (2) of this subsection affects any rights or duties of registrants, and physicians in relation to each other, patients, or the patient's responsible relatives or guardians.

(k) Emerging and future technologies.

(1) Each registrant must develop, implement, and maintain a dedicated quality management program to control the process of administering therapeutic radiation with newly acquired FDA-cleared emerging technologies or previously unused features of a future technology system.

(2) Implementation and ongoing clinical use of the technology dated before the technology arrives at the facility or the new features are used must include:

(A) an explicit strategy to ensure the quality of processes and patient safety; and

(B) an approval from facility management and the radiation oncology safety team before the technology arrives or new features are used.

(3) The radiation oncology safety team must develop the quality management program.

(4) The quality management program must address, at a minimum:

(A) education and training about the new technology and features;

(B) a system and timeline for ongoing competency assessment;

(C) a system for real-time recording of ongoing issues related to the technology and clinical use of the new technology or features;

(D) a strategy for timely investigation and adjudication of accidents and process deviations that may be captured in the system developed in paragraph (2) of this subsection;

(E) a strategy for routine review at intervals not to exceed 12 months of the clinical use of the new technology and features, which includes an assessment of the current use compared to paragraph (2) of this subsection and plan to either update the clinical use plan or steps to bring the clinical use back into alignment with paragraph (2) of this subsection;

(F) a strategy to ensure the quality of equipment functions; and

(G) an explicit strategy for ensuring quality after hardware and software updates and after equipment repair.

(5) The quality management program must follow current published recommendations from a recognized national professional association with expertise in therapeutic radiation technologies. In the absence of a protocol published by a national professional association, the manufacturer's protocol or equivalent quality, safety, and security protocol must be followed.

(6) New technology issues must be reported to the manufacturer and the department, and be reviewed and addressed via the registrant's reporting system.

(l) Records for department inspection. The registrant must maintain the following records at the time intervals specified, for inspection by the department. The records may be maintained in electronic format.

Figure: 25 TAC §289.229(l)

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

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## TITLE 26. HEALTH AND HUMAN SERVICES

### PART 1. HEALTH AND HUMAN SERVICES COMMISSION

#### CHAPTER 550. LICENSING STANDARDS FOR PRESCRIBED PEDIATRIC EXTENDED CARE CENTERS

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts amendments to §§550.1, 550.5, 550.101 - 550.106, 550.108 - 550.115, 550.118

- 550.123, 550.202, 550.203, 550.205 - 550.207, 550.210, 550.211, 550.301, 550.303 - 550.306, 550.308 - 550.311, 550.402 - 550.406, 550.409 - 550.411, 550.413, 550.415, 550.417, 550.418, 550.504, 550.506 - 550.508, 550.510, 550.511, 550.601 - 550.608, 550.701, 550.703, 550.705, 550.707, 550.802, 550.803, 550.901 - 550.906, 550.1001 - 550.1003, 550.1101, 550.1102, 550.1202 - 550.1204, 550.1206, 550.1207, 550.1211, 550.1215, 550.1217 - 550.1220, 550.1222, 550.1224, 550.1301 - 550.1305, and 550.1401 - 550.1408.

The amendments to §§550.1, 550.5, 550.101 - 550.106, 550.108 - 550.115, 550.118 - 550.123, 550.202, 550.203, 550.205 - 550.207, 550.210, 550.211, 550.301, 550.303 - 550.306, 550.308 - 550.311, 550.402 - 550.406, 550.409 - 550.411, 550.413, 550.415, 550.417, 550.418, 550.504, 550.506 - 550.508, 550.510, 550.511, 550.705, 550.707, 550.802, 550.803, 550.901 - 550.906, 550.1001 - 550.1003, 550.1101, 550.1102, 550.1202 - 550.1204, 550.1206, 550.1207, 550.1211, 550.1215, 550.1217 - 550.1220, 550.1222, 550.1224, 550.1301 - 550.1305, and 550.1401 - 550.1408 are adopted without changes to the proposed text as published in the June 14, 2024, issue of the *Texas Register* (49 TexReg 4357). These rules will not be republished.

#### BACKGROUND AND JUSTIFICATION

The amendments are necessary to comply with House Bill (H.B.) 1009 and H.B. 3550 from the 88th Legislature, Regular Session, 2023, that apply to Prescribed Pediatric Extended Care Centers (PPECC). H.B. 1009 requires a facility to suspend an employee who has been found by HHSC to have engaged in reportable conduct for purposes of inclusion on the Employee Misconduct Registry during any appeals. H.B. 3550 establishes minimum standards for transportation services whereby a center coordinates the schedule of transportation services with a minor's parent, guardian, or other legally authorized representative; determines what type of provider needs to be present during transportation; and permits a minor's parent, guardian, or other legally authorized representative to decline a center's transportation services entirely or only on a specific date. The rules also set forth that a center may not require a plan of care or physician's order to document a minor's need for transportation services to access PPECC services or consider transportation services as nursing services in a minor's plan of care. The amendments also update terminology and references throughout the chapter and reflect current processes.

#### COMMENTS

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

During this period, HHSC received two comments regarding the proposed rules from two commenters, Earth Angels Pediatric Day Center and one individual. A summary of comments relating to the rules and HHSC's responses follows.

Comment: One commenter expressed full agreement with the amended rules.

Response: HHSC appreciates the support of the rules.

Comment: One commenter suggested an amendment to §550.418 to allow providers to place employees in temporary roles rather than suspend them, or to pay employees while they are on suspension during the appeals process when HHSC makes a referral to the Employee Misconduct Registry. The commenter also suggested clearing the suspension from the employee's personnel record if the employee wins on appeal.

Response: HHSC declines to make the suggested change. HHSC Long-term Care regulations do not address employee assignments or pay. Also, the rule reflects the language used in H.B. 1009 from current Texas Health and Safety Code §253.0025. Section 253.0025 requires the PPECC to suspend the employment of the employee HHSC finds engaged in reportable conduct throughout any applicable appeals process.

## SUBCHAPTER A. PURPOSE, SCOPE, LIMITATIONS, COMPLIANCE, AND DEFINITIONS

### 26 TAC §§550.1, §550.5

#### STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §248A.101, which provides that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 248A, including for prescribing minimum standards to protect the health and safety of the public and to ensure the health, safety, and comfort of minors being served in PPECCs.

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

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Karen Ray

Chief Counsel

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## SUBCHAPTER B. LICENSING APPLICATION, MAINTENANCE, AND FEES

### 26 TAC §§550.101 - 550.106, 550.108 - 550.115, 550.118 - 550.123

#### STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §248A.101, which provides that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 248A, including for prescribing minimum standards to protect the health and safety of the public and to ensure the health, safety, and comfort of minors being served in PPECCs.

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## SUBCHAPTER C. GENERAL PROVISIONS DIVISION 1. OPERATIONS AND SAFETY PROVISIONS

### 26 TAC §§550.202, 550.203, 550.205 - 550.207, 550.210, 550.211

#### STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §248A.101, which provides that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 248A, including for prescribing minimum standards to protect the health and safety of the public and to ensure the health, safety, and comfort of minors being served in PPECCs.

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## DIVISION 2. ADMINISTRATION AND MANAGEMENT

### 26 TAC §§550.301, 550.303 - 550.306, 550.308 - 550.311

#### STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §248A.101, which provides that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 248A, including for prescribing minimum standards to protect the health and safety of the public and to

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### DIVISION 3. NURSING AND STAFFING REQUIREMENTS

**26 TAC §§550.402 - 550.406, 550.409 - 550.411, 550.413, 550.415, 550.417, 550.418**

#### STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §248A.101, which provides that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 248A, including for prescribing minimum standards to protect the health and safety of the public and to ensure the health, safety, and comfort of minors being served in PPECCs.

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### DIVISION 4. GENERAL SERVICES

**26 TAC §§550.504, 550.506 - 550.508, 550.510, 550.511**

#### STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §248A.101, which provides that the

Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 248A, including for prescribing minimum standards to protect the health and safety of the public and to ensure the health, safety, and comfort of minors being served in PPECCs.

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### DIVISION 5. ADMISSION CRITERIA, CONFERENCE, ASSESSMENT, INTERDISCIPLINARY PLAN OF CARE, AND DISCHARGE OR TRANSFER

**26 TAC §§550.601 - 550.608**

#### STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §248A.101, which provides that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 248A, including for prescribing minimum standards to protect the health and safety of the public and to ensure the health, safety, and comfort of minors being served in PPECCs.

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### DIVISION 6. PHYSICIAN, PHARMACY, MEDICATION, AND LABORATORY SERVICES

**26 TAC §§550.701, 550.703, 550.705, 550.707**

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §248A.101, which provides that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 248A, including for prescribing minimum standards to protect the health and safety of the public and to ensure the health, safety, and comfort of minors being served in PPECCs.

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**DIVISION 7. CARE POLICIES, COORDINATION OF SERVICES, AND CENSUS**

**26 TAC §§550.802, §550.803**

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §248A.101, which provides that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 248A, including for prescribing minimum standards to protect the health and safety of the public and to ensure the health, safety, and comfort of minors being served in PPECCs.

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**DIVISION 8. RIGHTS AND RESPONSIBILITIES, ADVANCE DIRECTIVES, ABUSE, NEGLECT, AND EXPLOITATION, INVESTIGATIONS, DEATH REPORTING, AND INSPECTION RESULTS**

**26 TAC §§550.901 - 550.906**

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §248A.101, which provides that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 248A, including for prescribing minimum standards to protect the health and safety of the public and to ensure the health, safety, and comfort of minors being served in PPECCs.

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**DIVISION 9. MEDICAL RECORDS, QUALITY ASSESSMENT AND PERFORMANCE IMPROVEMENT, DISSOLUTION AND RETENTION OF RECORDS**

**26 TAC §§550.1001 - 550.1003**

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §248A.101, which provides that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 248A, including for prescribing minimum standards to protect the health and safety of the public and to ensure the health, safety, and comfort of minors being served in PPECCs.

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 September 9, 2024.

TRD-202404361  
Karen Ray  
Chief Counsel  
Health and Human Services Commission  
Effective date: October 16, 2024  
Proposal publication date: June 14, 2024  
For further information, please call: (512) 438-3161



## SUBCHAPTER D. TRANSPORTATION

### 26 TAC §§550.1101, §550.1102

#### STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §248A.101, which provides that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 248A, including for prescribing minimum standards to protect the health and safety of the public and to ensure the health, safety, and comfort of minors being served in PPECCs.

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 September 9, 2024.

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Karen Ray  
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For further information, please call: (512) 438-3161



## SUBCHAPTER E. BUILDING REQUIREMENTS

### 26 TAC §§550.1202 - 550.1204, 550.1206, 550.1207, 550.1211, 550.1215, 550.1217 - 550.1220, 550.1222, 550.1224

#### STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §248A.101, which provides that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 248A, including for prescribing minimum standards to protect the health and safety of the public and to ensure the health, safety, and comfort of minors being served in PPECCs.

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 September 9, 2024.

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Karen Ray  
Chief Counsel  
Health and Human Services Commission  
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For further information, please call: (512) 438-3161



## SUBCHAPTER F. INSPECTIONS AND VISITS

### 26 TAC §§550.1301 - 550.1305

#### STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §248A.101, which provides that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 248A, including for prescribing minimum standards to protect the health and safety of the public and to ensure the health, safety, and comfort of minors being served in PPECCs.

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

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Karen Ray  
Chief Counsel  
Health and Human Services Commission  
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Proposal publication date: June 14, 2024  
For further information, please call: (512) 438-3161



## SUBCHAPTER G. ENFORCEMENT

### 26 TAC §§550.1401 - 550.1408

#### STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §248A.101, which provides that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 248A, including for prescribing minimum standards to protect the health and safety of the public and to ensure the health, safety, and comfort of minors being served in PPECCs.

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 September 9, 2024.

TRD-202404364

Karen Ray

Chief Counsel

Health and Human Services Commission

Effective date: October 16, 2024

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For further information, please call: (512) 438-3161



## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### PART 11. TEXAS JUVENILE JUSTICE DEPARTMENT

#### CHAPTER 341. GENERAL STANDARDS FOR JUVENILE PROBATION DEPARTMENTS

##### SUBCHAPTER C. CHIEF ADMINISTRATIVE OFFICER RESPONSIBILITIES

###### 37 TAC §341.304

The Texas Juvenile Justice Department (TJJD) adopts new 37 TAC §341.304, Requirement to Apply for Diversion Funds, with changes to the proposed text as published in the June 21, 2024, issue of the *Texas Register* (49 TexReg 4577). The new rule will be republished.

###### SUMMARY OF CHANGES

Section 341.304 explains that, prior to a court committing a juvenile to TJJD, the chief administrative officer or designee must submit an application for diversion funds to divert a youth from commitment to TJJD. The new section also describes situations in which the requirement does not apply.

The new change to §341.304 adds an additional situation in which the requirement does not apply: when a youth has been previously committed to TJJD.

###### PUBLIC COMMENTS

TJJD received a public comment from El Paso County.

Comment: For a diversion application to be submitted to TJJD, a facility must have first accepted that youth for placement. When no facility is willing to accept a youth, there will be no alternative other than commitment to TJJD. This should be an exception to the requirement to submit a diversion application prior to commitment.

Response: The revision proposed in the comment was discussed at length in collaboration with county stakeholders,

and TJJD believes sufficient processes can be developed to address the issue. The approval process for Regional Diversion Alternatives applications is not contained within rule, and TJJD will make changes to this non-rule process so that an approved facility is not a requirement for an application to be considered complete.

###### STATUTORY AUTHORITY

The new section is adopted under §223.001(d-1), Human Resources Code, which requires a juvenile probation department to apply for the placement of a child in a regional specialized program before a juvenile court commits the child to the department's custody and allows for the establishment of exceptions to this requirement.

No other statute, code, or article is affected by this adoption.

§341.304. *Requirement to Apply for Diversion Funds.*

(a) Prior to a court committing a juvenile to TJJD, the chief administrative officer or designee must submit an application for diversion funds to divert a juvenile from commitment to TJJD.

(b) The requirement in subsection (a) does not apply if:

(1) the youth has committed conduct that is eligible for a determinate sentence under §51.031 or §53.045, Family Code, whether or not the petition was approved by the grand jury;

(2) the youth has been previously placed and discharged within the last year from a post-adjudication secure juvenile correctional facility;

(3) the juvenile has been previously committed to TJJD;

(4) the youth is at least 17 years of age on the date of disposition or modification of disposition; or

(5) a juvenile probation department is not recommending commitment.

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 September 12, 2024.

TRD-202404429

Jana L. Jones

General Counsel

Texas Juvenile Justice Department

Effective date: October 15, 2024

Proposal publication date: June 21, 2024

For further information, please call: (512) 490-7278





# REVIEW OF AGENCY RULES

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039.

Included here are proposed rule review notices, which invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

## Proposed Rule Reviews

Texas Health and Human Services Commission

### Title 26, Part 1

The Texas Health and Human Services Commission (HHSC) proposes to review and consider for re-adoption, revision, or repeal the chapter listed below, in its entirety, contained in Title 26, Part 1, of the Texas Administrative Code (TAC):

Chapter 742, Minimum Standards for Listed Family Homes

This review is conducted in accordance with the requirements of Texas Government Code §2001.039, which requires state agencies, every four years, to assess whether the initial reasons for adopting a rule continue to exist. After reviewing its rules, the agency will readopt, readopt with amendments, or repeal its rules.

Comments on the review of Chapter 742, Minimum Standards for Listed Family Homes, may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247, or by email to [CCRRules@hhs.texas.gov](mailto:CCRRules@hhs.texas.gov). When emailing comments, please indicate "Comments on Proposed Rule Review Chapter 742" in the subject line. The deadline for comments is on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register*.

The text of the rule sections being reviewed will not be published but may be found in Title 26, Part 1, of the Texas Administrative Code or on the Secretary of State's website at State Rules and Open Meetings ([www.sos.texas.gov](http://www.sos.texas.gov)).

TRD-202404430

Jessica Miller

Director, Rules Coordination Office

Texas Health and Human Services Commission

Filed: September 13, 2024



Comptroller of Public Accounts

### Title 34, Part 1

The Comptroller of Public Accounts proposes to review Texas Administrative Code, Title 34, Part 1, Chapter 3, concerning Tax Administration; and Chapter 10, concerning Transparency.

The review will include, at the minimum, whether the reasons for readopting continue to exist.

The comptroller will accept comments regarding the review. The comment period will last for 30 days following the publication of this notice

in the *Texas Register*. Comments pertaining to this review may be directed accordingly.

### Chapter 3, Tax Administration

Jenny Burleson, Director, Tax Policy Division

P.O. Box 13528, Austin, Texas 78711-3528

or by email to: [Jennifer.Burleson@cpa.texas.gov](mailto:Jennifer.Burleson@cpa.texas.gov)

### Chapter 10, Transparency

Russell Gallahan, Manager, Local Government and Transparency

P.O. Box 13528, Austin, Texas 78711-3528

or by email to: [Russell.Gallahan@cpa.texas.gov](mailto:Russell.Gallahan@cpa.texas.gov)

TRD-202404507

Jenny Burleson

Director, Tax Policy Division

Comptroller of Public Accounts

Filed: September 18, 2024



## Adopted Rule Reviews

Texas Health and Human Services Commission

### Title 1, Part 15

The Texas Health and Human Services Commission (HHSC) adopts the review of the chapter below in Title 1, Part 15, of the Texas Administrative Code (TAC):

Chapter 361, Medicaid Buy-In Program for Children

Notice of the review of this chapter was published in the July 12, 2024, issue of the *Texas Register* (49 TexReg 5181). HHSC received no comments concerning this chapter.

HHSC has reviewed Chapter 361 in accordance with Texas Government Code §2001.039, which requires state agencies to assess, every four years, whether the initial reasons for adopting a rule continue to exist.

The agency determined that the original reasons for adopting all rules in the chapter continue to exist and readopts Chapter 361. Any amendments, if applicable, to Chapter 361 identified by HHSC in the rule review will be proposed in a future issue of the *Texas Register*.

This concludes HHSC's review of 1 TAC Chapter 361 as required by the Texas Government Code §2001.039.

TRD-202404414

Jessica Miller  
Director, Rules Coordination Office  
Texas Health and Human Services Commission  
Filed: September 11, 2024



Texas Health and Human Services Commission

**Title 26, Part 1**

The Texas Health and Human Services Commission (HHSC) adopts the review of the chapter below in Title 26, Part 1, of the Texas Administrative Code (TAC):

Chapter 52, Contracting for Community Services

Notice of the review of this chapter was published in the July 12, 2024, issue of the *Texas Register* (49 TexReg 5182). HHSC received no comments concerning this chapter.

HHSC has reviewed Chapter 52 in accordance with Texas Government Code §2001.039, which requires state agencies to assess, every four years, whether the initial reasons for adopting a rule continue to exist.

The agency determined that the original reasons for adopting all rules in the chapter continue to exist and readopts Chapter 52. Any amendments, if applicable, to Chapter 52 identified by HHSC in the rule review will be proposed in a future issue of the *Texas Register*.

This concludes HHSC's review of 26 TAC Chapter 52 as required by the Texas Government Code §2001.039.

TRD-202404459  
Jessica Miller  
Director, Rules Coordination Office  
Texas Health and Human Services Commission  
Filed: September 17, 2024



Texas Commission on Environmental Quality

**Title 30, Part 1**

The Texas Commission on Environmental Quality (TCEQ) has completed its Rule Review of 30 Texas Administrative Code (TAC) Chapter 35, Emergency and Temporary Orders and Permits; Temporary Suspensions or Amendment of Permit Conditions, as required by Texas Government Code (TGC), §2001.039. TGC, §2001.039, requires a state agency to review and consider for re-adoption, re-adoption with amendments, or repeal each of its rules every four years. TCEQ published its Notice of Intent to Review these rules in the May 31, 2024, issue of the *Texas Register* (49 TexReg 3938).

The review assessed whether the initial reasons for adopting the rules continue to exist, and TCEQ has determined that those reasons exist. The rules in Chapter 35 are required because the rules are needed to implement the commission's authority under Texas Water Code, Chapter 5, Subchapter L, to issue temporary or emergency mandatory, permissive, or prohibitory orders and by those orders to issue temporary permits or temporarily suspend or amend permit conditions.

**Public Comment**

The public comment period closed on July 1, 2024. TCEQ did not receive comments on the rules review of this chapter.

As a result of the review, TCEQ finds that the reasons for adopting the rules in 30 TAC Chapter 35 continue to exist and readopts these sections in accordance with the requirements of TGC, §2001.039.

TRD-202404411  
Charmaine Backens  
Deputy Director, Environmental Law Division  
Texas Commission on Environmental Quality  
Filed: September 11, 2024



# TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word “Figure” followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 16 TAC 401.160(h)

TEXAS LOTTERY COMMISSION RETAILER REGULATORY VIOLATIONS AND RELATED PENALTIES			
No.	DESCRIPTION OF VIOLATION	1st OCCURRENCE	2nd OCCURRENCE
<b>1st Tier Violations</b>			
1.	Licensee engages in telecommunication or printed advertising that the director determines to have been false, deceptive or misleading.	Warning Letter (Notification in writing to the licensee of the detected violation, including a warning that future violations will result in more severe administrative penalties including Suspension and/or revocation of the license.)	10-90 day Suspension
2.	Licensee conditions redemption of a lottery prize upon the purchase of any other item or service.	Warning Letter	30-90 day Suspension to Revocation
3.	Licensee imposes a restriction upon the redemption of a lottery prize not specifically authorized by the director.	Warning Letter	30-90 day Suspension to Revocation
4.	Licensee fails to follow instructions and procedures for the conduct of any lottery game, lottery special event or promotion.	Warning Letter	30-90 day Suspension to Revocation

5.	Licensee and/or its employee(s) exhibit discourteous treatment including, but not limited to, abusive language toward customers, commission employees or commission vendors.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
6.	Licensee fails to establish or maintain reasonable security precautions regarding the handling of lottery tickets and other materials.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
7.	Licensee fails to deface a validated ticket.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
8.	Licensee sells a draw game ticket for a draw that has already taken place.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
9.	Licensee fails to follow validation procedures, including, but not limited to, paying a claim without validating the ticket, failing to pay a valid prize after validating a customer's winning ticket, or retaining a customer's winning ticket that has not been validated.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
10.	Licensee violates any directive or instruction issued by the director of Lottery Operations.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
11.	Licensee violates any express term or condition of its license not specifically set forth in this subchapter.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
12.	Licensee sells a scratch ticket from a game that has closed after the date designated for the end of the game.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
13.	Licensee refuses to refund or properly cancel a Pick 3 or Daily 4 ticket.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation

14.	Licenses fail to return an exchange ticket to a prize claimant claiming a prize on a multi-draw ticket if an exchange ticket is produced by the licensee's terminal.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
15.	Licenses fail to keep accurate and complete records of all tickets that have not been sold from confirmed, active, and settled packs.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
16.	Licenses fail to meet any requirement under §401.368, Lottery Ticket Vending Machines rule, if the licensee has been supplied with a self-service lottery ticket vending machine by the commission.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
17.	Licenses fail to take readily achievable measures within the allowed time period to comply with the barrier removal requirements regarding the ADA.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
18.	Licenses fail to prominently post license.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
19.	Licenses sell tickets that were assigned to another licensed location.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
20.	Licenses knowingly sell a ticket or pay a lottery prize to another person who is: (A) an officer or an employee of the commission; (B) an officer, member, or employee of a lottery operator; (C) an officer, member, or employee of a contractor or subcontractor that is excluded by the terms of its contract from playing lottery games; (D) the spouse, child, brother, sister, or parent of a person described by (A), (B), or (C) above who resides within the same household as that person.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation

<b>2nd Tier Violations</b>				
21.	Licensee endangers the security and/or integrity of the lottery games operated by the commission.	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Revocation
22.	Licensee intentionally or knowingly sells a ticket at a price the licensee knows is greater than the price set by the executive director.	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Revocation
23.	Licensee charges a fee for lottery ticket purchases using a debit card and/or requires a minimum dollar amount for debit card purchases of only lottery tickets.	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Revocation
24.	Licensee sells tickets at a location that is not licensed.	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Revocation
25.	Licensee intentionally or knowingly sells a ticket by extending credit or lends money to enable a person to buy a ticket.	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Revocation
<del>[26.]</del>	<del>[Licensee intentionally or knowingly sells a ticket to a person that the licensee knows is younger than 18 years.]</del>	<del>[10-90 day Suspension to Revocation]</del>	<del>[10-90 day Suspension to Revocation]</del>	<del>[30-90 day Suspension to Revocation]</del>
26. <del>[27.]</del>	Licensee intentionally or knowingly sells a ticket and accepts anything for payment not specifically allowed under the State Lottery Act.	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Revocation
27. <del>[28.]</del>	Licensee sells tickets over the telephone or, via mail order sales, establishes or promotes a group purchase or pooling arrangement under which tickets are purchased on behalf of the group or pool and any prize is divided among the members of the group or pool, and the licensee intentionally or knowingly: (A) uses any part of the funds solicited or accepted for a purpose other than	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Revocation

				purchasing tickets on behalf of the group or pool; or (B) retains a share of any prize awarded as compensation for establishing or promoting the group purchase or pooling arrangement.		
28. [29-]		10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Licensee intentionally or knowingly alters or forges a ticket.		Revocation
29. [30-]		10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Licensee intentionally or knowingly influences or attempts to influence the selection of a winner of a lottery game.		Revocation
30. [31-]		10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Licensee intentionally or knowingly claims a lottery prize or a share of a lottery prize by means of fraud, deceit, or misrepresentation; or aids or agrees to aid another person or persons to claim a lottery prize or a share of a lottery prize by means of fraud, deceit, or misrepresentation.		Revocation
31. [32-]		10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Licensee intentionally or knowingly tampers with, damages, defaces, or renders inoperable any vending machine, electronic computer terminal, or other mechanical device used in a lottery game, or fails to exercise due care in the treatment of commission property.		Revocation
32. [33-]		10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Licensee: (A) induces another person to assign or transfer a right to claim a prize; (B) initiates or accepts an offer to sell the right to claim a prize; (C) initiates or accepts an offer of compensation from another person to claim a lottery prize; or (D) purchases, for anything of value, a lottery ticket from a person who is not a licensed lottery retailer.		Revocation

<u>33.</u> [34-]	Licensee intentionally or knowingly makes a statement or entry that the person knows to be false or misleading on a required report.	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Revocation
<u>34.</u> [35-]	Licensee fails to maintain or make an entry the licensee knows is required to be maintained or made for a required report.	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Revocation
<u>35.</u> [36-]	Licensee knowingly refuses to permit the director of the Lottery Operations Division, the executive director, commission, the lottery operator, the employees or agents of the lottery operator, or the state auditor to examine the agent's books, records, papers or other objects, or refuses to answer any question authorized under the State Lottery Act.	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Revocation
<u>36.</u> [37-]	Licensee intentionally or knowingly makes a material and false or incorrect, or deceptive statement, written or oral, to a person conducting an investigation under the State Lottery Act or a commission rule.	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Revocation
<u>37.</u> [38-]	Licensee commits an offense of conspiracy as defined in the State Lottery Act.	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Revocation
<u>38.</u> [39-]	Licensee sells or offers for sale any interest in a lottery of another state or state government or an Indian tribe or tribal government, including an interest in an actual lottery ticket, receipt, contingent promise to pay, order to purchase, or other record of the interest.	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Revocation
<b>3rd Tier Violations</b>				
<u>39.</u>	Licensee intentionally or knowingly sells or offers to sell a ticket to a person that the licensee knows is younger than 18 years.	Revocation	n/a	n/a



40.	Licensee incurs four (4) notices of nonsufficient fund transfers or non-transfer of funds within a 12-month period.	Revocation	n/a	n/a
41.	Licensee fails to pay the full amount of money owed to the commission after a nonsufficient funds transfer or non-transfer of funds to the commission's account.	Revocation	n/a	n/a

**DISCLOSURE AND CONSENT FORM  
ABORTION AND RELATED PROCEDURES PERFORMED  
ON AN UNEMANICIPATED MINOR**

This Form is available for downloading on the Texas Medical Board website at [www.tmb.state.tx.us](http://www.tmb.state.tx.us).

**Unemancipated Minor** is a patient who is under 18 years old, unmarried, and has not had the disabilities of minority removed by court order.

**PATIENT NAME:** \_\_\_\_\_ **DATE OF BIRTH:** \_\_\_\_\_ **AGE:** \_\_\_\_

**NOTICE:** When performing an abortion on an unemancipated minor a physician must obtain informed consent as required Chapter 33 of the Texas Family Code and Chapter 171 of the Texas Health and Safety Code.

This consent must be written consent obtained from one of the patient’s parents, legal guardian, or managing conservator before we can perform an abortion on an unemancipated minor.

This consent is not required if the unemancipated minor has a court order waiving the parental consent requirement (a “judicial bypass order”).

**REQUIRED DISCLOSURES AND SPECIFIC CONSENT**

The patient’s parent, legal guardian, or managing conservator must initial each page only after the physician performing the abortion provides information and answers all questions about the procedure and consent. This Form must also be signed by a witness present during the disclosure and consent process.

This process should be done in the presence of the unemancipated minor to ensure full understanding of the procedure in addition to the individual consenting.

\_\_\_\_\_  
Initials of parent, guardian, or conservator

**DISCLOSURES**

1. The physician performing the procedures is \_\_\_\_\_.
2. I have been told specifically:
  - (1) the probable gestational age of the fetus;
  - (2) the medical risks associated with carrying the child to term;

- (3) medical assistance benefits may be available for prenatal care, childbirth, and neonatal care;
- (4) the father is liable for assistance in the support of the child without regard to whether the father has offered to pay for the abortion;
- (5) public and private agencies provide pregnancy prevention counseling and media referrals for obtaining pregnancy medications or devices, including emergency contraception for victims of rape or incest; and
- (6) the woman has the right to review the printed materials provided by the Department of State Health Services.

3. The following list is not meant to scare the patient, but to give her and her parent, legal guardian, or managing conservator adequate information to be used in making their decisions to have the physician perform the particular procedures listed and the **Risks and Hazards** of the procedure.

The patient and consenting individual must initial the following blanks indicating their understanding of the information.

General Risks with any Surgical Procedure:

- (A) Potential for infection.
- (B) Blood clots in veins and lungs.
- (C) Hemorrhage.
- (D) Allergic reactions.
- (E) Death.

\_\_\_\_\_  
Initials of Parent,  
Guardian, or Conservator

\_\_\_\_\_  
Patient Initials

Surgical Abortion Procedures:

\_\_\_\_\_ Dilation and Curettage (D&C)

\_\_\_\_\_ Dilation and Evacuation (D&E)

\_\_\_\_\_ Manual Vacuum Aspiration

\_\_\_\_\_ Machine Vacuum Aspiration

Risks with Surgical Abortion Procedures:

- (A) Hemorrhage (heavy bleeding).
- (B) A hole in the uterus (uterine perforation) or other damage to the uterus.
- (C) Sterility.
- (D) Injury to the bowel and/or bladder.

- (E) A possible hysterectomy as a result of complication or injury during the procedure.
- (F) Failure to remove all products of conception that may result in an additional procedure.

Medical Abortion Procedures:

\_\_\_\_\_ Methotrexate

\_\_\_\_\_ Misoprostol

Risks with Medical Abortion Procedures:

- (A) Hemorrhage (heavy bleeding)
- (B) Failure to remove all products of conception that may result in an additional procedure.
- (C) Sterility.
- (D) Possible continuation of pregnancy.

\_\_\_\_\_  
Initials of parent,  
guardian, or conservator

\_\_\_\_\_  
Patient initials

Risks with any Abortion Procedure:

- (A) Cramping of the uterus or pelvic pain.
- (B) Infection of the female organs: uterus, tubes, and ovaries.
- (C) Cervical laceration, incompetent cervix.
- (D) Emergency treatment for any of the above-named complications.
- (E) Other as written:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Initials of parent,  
guardian, or conservator

\_\_\_\_\_  
Patient Initials

**Specific Consent and Acknowledgement**

**Each line must be initialed by the patient and the individual consenting:**

\_\_\_\_\_, \_\_\_\_\_ I understand that the physician listed above is going to perform an abortion on me, which will end my pregnancy and will result in the death of the fetus.

\_\_\_\_\_, \_\_\_\_\_ I am not being forced by anyone including the consenting individual to have this abortion and have the choice on whether to have this procedure.

\_\_\_\_\_, \_\_\_\_\_ I give my permission to this doctor and such other associates, technical assistants, and other health providers as the doctor thinks is needed to perform the abortion on me using the surgical and medical procedures checked above.

\_\_\_\_\_, \_\_\_\_\_ I understand that my physician may discover other or different conditions that require additional or different procedures than those planned.

\_\_\_\_\_, \_\_\_\_\_ I give my permission to my physician and such associates, technical assistants and other health care providers to perform such other procedures that are advisable in their professional judgment.

\_\_\_\_\_, \_\_\_\_\_ I  **do**  **do not give my permission for the use of blood** and blood products as deemed necessary.

\_\_\_\_\_, \_\_\_\_\_ I understand that my doctor cannot make any promise regarding the end results of the abortion or my care.

\_\_\_\_\_, \_\_\_\_\_ I understand that there are risks and hazards that could affect me if I have the surgical or medical procedures checked above.

\_\_\_\_\_, \_\_\_\_\_ I have been given an opportunity to ask questions about my condition, alternative forms of treatment, risk of nontreatment, the procedures to be used, and the risks and hazards involved.

\_\_\_\_\_, \_\_\_\_\_ I understand that information about abortion that is included in the law as the Woman’s Right to Know Act has been made available to me as required by §171.001, *et seq.*, Texas Health and Safety Code, specifically the “Women’s Right to Know Informational Brochure” and the “Women’s Right to Know Resource Directory.”

PATIENT ACKNOWLEDGEMENT: This Form has been fully explained to me. I have read it or have had it read to me, the blank spaces have been filled in, and I understand what it says.

\_\_\_\_\_  
Printed Name of Patient

\_\_\_\_\_  
Signature of Patient

\_\_\_\_\_  
Date

**CONSENTING PARTY ATTESTATION:**

I state and affirm that I am the patient's:

Father  Mother  Legal Guardian  Managing Conservator

By my signature below, I give permission for \_\_\_\_\_ (print the name of the patient), who is an unemancipated female, to have the surgical or medical procedure set out above.

\_\_\_\_\_  
Printed Name of Parent, Legal Guardian,  
or Managing Conservator

\_\_\_\_\_  
Signature of Parent, Legal Guardian,  
or Managing Conservator

\_\_\_\_\_  
Date

**Physician Declaration:**

I and/or my assistant have explained the procedure and the contents of this Form to the patient and her parent, legal guardian, or managing conservator as required and have answered all questions. To the best of my knowledge, the patient and her parent, legal guardian, or managing conservator have been adequately informed and have consented to the above-described procedure.

\_\_\_\_\_  
Signature of Physician

\_\_\_\_\_  
Date

**Authentication of Parent, Legal Guardian, or Managing Conservator.**

The signature of the parent, legal guardian, or managing conservator must be authenticated. This means that the parent, legal guardian, or managing conservator must sign this Form in front of

- (1) a person who is a notary public; or
- (2) a person, other than the physician or their assistant, who was present at the time the procedure and the contents of this Form were explained to the patient and her parent, legal guardian, or managing conservator.

The signing in front of a notary public can occur at any time and at any place prior to the procedure. The signed and initialed form with the notary statement then can be brought to the physician's office or clinic by the patient.

These signing requirements do not require the parent, legal guardian, or managing conservator to be present with the patient at the time of the actual procedure.

**To be completed by the notary public who notarizes the signing by the parent, legal guardian, or managing conservator, above:**

State of Texas §  
County of \_\_\_\_\_ §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, A.D., 20\_\_\_\_ by \_\_\_\_\_ (print name).

(SEAL)

\_\_\_\_\_  
Notary Public, State of Texas  
My commission expires: \_\_\_\_\_

**To be completed by the individual who was present when the physician or their assistant explained the Form and its content the parent, legal guardian, or managing conservator, listed above:**

Name: \_\_\_\_\_

Position: \_\_\_\_\_

I witnessed the physician, or their assistant fully explain this form and all its content to the parent, legal guardian, or managing conservator of the patient who signed this Form.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**COMPLEMENTARY AND ALTERNATIVE MEDICINE  
TREATMENT DISCLOSURE AND CONSENT FORM**

**This form is required to be completed prior to the initiation of therapy and maintained as part of the patient’s medical record.**

**Treating Physician:** \_\_\_\_\_

**Patient Name:** \_\_\_\_\_

This “Consent” includes detailed information about the treatment plan, anticipated laboratory and diagnostic testing, potential benefits, and possible risks of the complementary and alternative (CAM) treatment being offered.

You should take your time and carefully read through the Consent. Ask any questions you may have. When you are satisfied that your questions have been fully answered, you will be asked to sign the Consent, thereby giving your consent to receive the complementary and alternative (CAM) treatment being offered by the treating physician. At no time should you allow yourself to be pressured into agreeing to or receiving the CAM treatment. Once you give consent to receiving the CAM treatment, you may withdraw your consent at any time.

As the treating physician, I am required to go over this Consent in detail with you, and it must be kept as part of your patient record.

As the physician, I understand that I am required to keep an accurate and complete medical record, including my discussion with the patient whether off-label use or CAM is administered.

\_\_\_\_\_  
Physician signature

\_\_\_\_\_  
Date

**REQUIRED DISCLOSURE AND PATIENT ACKNOWLEDGMENT:**

**The treating physician and patient shall go over each line and initial where indicated. “N/A” may be used where not applicable.**

The condition(s) or diagnosis for which the CAM treatment(s) are being offered are:  
(List all)

- a. \_\_\_\_\_
- b. \_\_\_\_\_
- c. \_\_\_\_\_



d. \_\_\_\_\_

The CAM treatment(s) being offered for the above noted condition(s) or diagnosis are:  
(List all and link to specific condition or diagnosis for each CAM treatment(s):

- a. \_\_\_\_\_
- b. \_\_\_\_\_
- c. \_\_\_\_\_
- d. \_\_\_\_\_

**1. Assessment. (Initial each line or write “N/A” if not applicable)**

\_\_\_\_\_ Description given to patient of conventional methods of diagnosis and non-conventional methods of diagnosis;

\_\_\_\_\_ An appropriate medical history and physician examination of the patient has been completed;

\_\_\_\_\_ The conventional medical treatment options have been discussed with the patient and referral input, if necessary;

\_\_\_\_\_ Any prior conventional medical treatments and the outcomes have been obtained (including whether conventional options have been refused by the patient);

\_\_\_\_\_ Assessment completed of whether the complementary health care therapy could interfere with any other recommended or ongoing treatment.

**2. Disclosure - the following were discussed in detail and all questions answered. (Initial each line or write “N/A” if not applicable)**

\_\_\_\_\_ The objectives, expected outcomes, or goals of the proposed treatment, such as functional improvement, pain relief, or expected psychosocial benefit;

\_\_\_\_\_ The risks and benefits of the proposed treatment;

\_\_\_\_\_ The extent the proposed treatment could interfere with any ongoing or recommended medical care;

\_\_\_\_\_ A description of the underlying therapeutic basis or mechanism of action of the proposed treatment purporting to have a reasonable potential for therapeutic gain that is written in a manner understandable to the patient;

\_\_\_\_\_ If applicable, whether a drug, supplement, or remedy employed in the treatment is:

\_\_\_\_\_ approved for human use by the U.S. Food and Drug Administration (FDA);

\_\_\_\_\_ exempt from FDA preapproval under the Dietary Supplement and Health Education Act (DSHEA); or

\_\_\_\_\_ a pharmaceutical compound not commercially available and is subject to clinical investigation standards.

\_\_\_\_\_ Documented treatment plan that is tailored for the individual needs of the patient and considers the patient's pertinent medical history, previous medical records, and physical examination, as well as the need for further testing, consultations, referrals, or the use of other treatment modalities;

\_\_\_\_\_ The favorable risk/benefit compared to other treatments for the same condition;

\_\_\_\_\_ There is a reasonable expectation that the treatment will result in a favorable patient outcome, including preventive practices;

\_\_\_\_\_ The expectation that a greater benefit for the same condition will be achieved than what can be expected with no treatment; and

\_\_\_\_\_ The periodic review of the treatment will be made at reasonable intervals considering:

- a. the patient's progress under the treatment prescribed, ordered or administered; and
- b. any new information about etiology of the complaint in determining whether treatment objectives are being adequately met.

\_\_\_\_\_  
(Patient's Name Printed)

\_\_\_\_\_  
(Patient's Signature)

\_\_\_\_\_  
Date

**TEXAS MEDICAL BOARD  
HEALTH CARE LIABILITY CLAIMS REPORT**

**FILE ONE REPORT FOR EACH DEFENDANT LICENSEE**

**SUBMIT COMPLETED FORM TO: [es.response@tmb.state.tx.us](mailto:es.response@tmb.state.tx.us)**

**PART I. COMPLETE FOR ANY COMPLAINT FILED IN A LAWSUIT.** Attach a copy of the Complaint and Expert Report. If an Expert Report is not filed with the Court at the time the lawsuit is filed, the Expert Report shall be filed with the Board within 30 days after it is received.

1. Name of insurer:

Address of insurer:

2. Defendant licensee:

License number:

3. Plaintiff's name:

4. Patient Name (if different from plaintiff):

Patient DOB:

5. Policy number:

6. Date claim reported to insurer/self-insured licensee:

7. Date of Incident:

8. State of incident:

County of incident:

9. Cause No.:

Court:

County of Suit:

10. Initial reserve amount after investigation: \$

(If a reserve is not determined within 30 days, report this data within 30 days after determination.)

**Person completing this report:**

**Phone number:**

**Date:**

**PART II. COMPLETE UPON SETTLEMENT OF THE CLAIM.** Attach a copy of any Court Order or Settlement Agreement. "Settlement" is defined in 22 TEX. ADMIN. CODE, Section 176(1)(c), and includes payment on a claim on which a lawsuit has not been filed and dismissal, settlement, or judgment in a lawsuit that is based on a health care liability claim.

11. Date of Settlement:

12. Type of Settlement:

- (1) Payment or agreement to pay a claim or lawsuit
- (2) Judgment in a lawsuit after trial
- (3) Dismissal or Non-suit of a Lawsuit
- (4) Other (please specify)

13. Amount of indemnity agreed upon or ordered on behalf of this defendant:  
\$

Note: If percentage of fault was not determined by the court or insurer in the case of multiple defendants, the insurer may report the total amount paid for the claim followed by a slash and the number of insured defendants. (Example: \$100,000/3)

14. Appeal, if known:      Yes       No

If yes, which party:

**Person completing this report:**

**Phone number:**

**Date:**

**NOTICE CONCERNING COMPLAINTS**

Complaints about physicians, as well as other licensees and registrants of the Texas Medical Board, including physician assistants, acupuncturists, surgical assistants, medical radiologic technologists, non-certified radiologic technicians, respiratory care practitioners, medical physicists, and perfusionists may be reported for investigation at the following address:

**Texas Medical Board  
Attention: Investigations  
1801 Congress Avenue, Suite 9.200  
P.O. Box 2018  
Austin, Texas 78768-2018**

Assistance in filing a complaint is available by calling the following telephone number:  
**1-800-201-9353**

For more information please visit our website at  
**[www.tmb.state.tx.us](http://www.tmb.state.tx.us)**

## **AVISO SOBRE LAS QUEJAS**

Quejas sobre médicos, así como sobre otros profesionales médicos de la Junta Médica de Texas, incluyendo asistentes médicos profesionales, acupunturistas, asistentes quirúrgicos, tecnólogos médicos en radiología, técnicos radiólogos no certificados, profesionales de cuidados respiratorios, físicos médicos, y perfusionistas se pueden presentar en la siguiente dirección para ser investigadas:

**Texas Medical Board  
Attention: Investigations  
1801 Congress Avenue, Suite 9.200  
P.O. Box 2018  
Austin, Texas 78768-2018**

Si necesita ayuda para presentar una queja,  
llame al:  
**1-800-201-9353**

Para obtener más información, visite nuestro  
sitio web en  
**[www.tmb.state.tx.us](http://www.tmb.state.tx.us)**

Figure: 22 TAC §184.25(a)(8)

**Patient Notification Statement Concerning the Physician Evaluation**

I (patient's name) \_\_\_\_\_, am notifying the  
 acupuncturist (practitioner's name) \_\_\_\_\_ of the following:

\_\_\_ Yes \_\_\_ No I have been evaluated by a physician or dentist for the condition being  
 treated within 12 months before the acupuncture was performed. I recognize that I should  
 be evaluated by a physician or dentist for the condition being treated by the acupuncturist.

\_\_\_ Yes \_\_\_ No I have received a referral from my chiropractor within the last 30 days for  
 acupuncture.

Patient Signature \_\_\_\_\_ Date \_\_\_\_\_

Figure: 25 TAC §289.229(e)(13)

$$C = \frac{s}{\bar{X}} = \frac{1}{\bar{X}} \left[ \sum_{i=1}^n \frac{(X_i - \bar{X})^2}{n-1} \right]^{1/2}$$

Where: s = estimated standard deviation of the population  
 $\bar{X}$  = mean value of observations in sample  
 $X_i$  = ith observation in sample  
 n = number of observations in sample.

Figure: 25 TAC §289.229(h)(2)(A)(i)

TABLE I

System	Measurement Location	Leakage Limit
5-50 kV	5 centimeters (cm) from the tube housing assembly	1 milligray (mGy) in 1 hour (hr)
>50 and <500 kV	1 meter (m) from the target	1 cGy in 1 hr
	5 cm from the tube housing assembly	30 cGy in 1 hr

Figure: 25 TAC §289.229(h)(5)(F)(i)

TABLE IV.  
HALF-VALUE LAYER FOR SELECTED kVp

Designed operating range	X-ray tube voltage (kilovolt peak)	Measured operating potential	Minimum HVL (mm of aluminum)	Minimum HVL (mm of aluminum)
			X-ray systems (except dental) manufactured before June 10, 2006	X-ray systems (except dental) manufactured on or after June 10, 2006
Below 51 kVp		30	0.3	0.3
		40	0.4	0.4
		50	0.5	0.5
51 to 70 kVp		51	1.2	1.3
		60	1.3	1.5
		70	1.5	1.8
Above 70 kVp		71	2.1	2.5
		80	2.3	2.9
		90	2.5	3.2
		100	2.7	3.6
		110	3.0	3.9
		120	3.2	4.3
		130	3.5	4.7
		140	3.8	5.0
	150	4.1	5.4	

Figure: 25 TAC §289.229(h)(5)(F)(viii)

The average ratios of exposure in milliRoentgen (mR) to the indicated mAs product obtained at any two consecutive Milliampere (mA) or Milliampere-seconds (mAs) settings must not differ by more than 0.10 times their sum, where  $X_1$  and  $X_2$  are the average mR/mAs values obtained at each of two consecutive tube current settings:

$$|x\bar{x}_1 - x\bar{x}_2| \leq 0.10(x\bar{x}_1 + x\bar{x}_2)$$



Figure: 25 TAC §289.229(I)

Name of Record		Rule Cross-Reference	Time Interval Required for Record Keeping
Accelerators used for research and development and industrial operations			
(A)	Initial surveys	(f)(2)(C)	Until termination of registration
(B)	Tests and repairs	(f)(3)(A)(x)	5 years
(C)	Calibration, surveys	(f)(3)(F)	5 years
(D)	Contamination smear for units operating greater than 10 MeV	(f)(3)(G)	Until termination of registration
(E)	Receipt, transfers, and disposal	(f)(3)(H)	Until termination of registration
(F)	Training for operators	(f)(4)(B)	Until 2 years after the individual terminates employment
Therapeutic radiation machines, radiation therapy simulation systems, and EBT devices			
(G)	Credentials of operators	(h)(1)(C)	Until 2 years after the individual terminates employment
	EBT device operators	(h)(1)(E)	
(H)	Review of quality assurance program	(h)(1)(F)(vii)	5 years
(I)	Written OSP	(h)(1)(G)	Until transfer of machine or termination of registration
(J)	FDA variances	(h)(1)(H)	Until transfer of machine or termination of registration
(K)	Initial and Subsequent Surveys		Until termination of registration
	Therapy (below 1 MeV)	(h)(2)(D)(i)(II)	
	Therapy (1 MeV and above)	(h)(3)(C)(i)(III)	
	EBT device	(h)(4)(B)(i)(II)	

(L)	Calibration  Therapy (below 1 MeV)  Therapy (1 MeV and above)  EBT device	(h)(2)(D)(ii)(V)  (h)(3)(C)(ii)  (h)(4)(B)(ii)	5 years
(M)	Contamination smears for units operating greater than 10 MeV	(h)(1)(I)	Until termination of registration
(N)	QA checks and corrective actions  Therapy (below 1 MeV)  Therapy (1 MeV and above)  EBT device	(h)(2)(D)(iii)(VI)  (h)(3)(C)(iii)(VII)  (h)(4)(B)(iii)	5 years after the QA checks
(O)	Leakage measurements  Therapy (1 MeV and above)	(h)(3)(A)(i)	5 years
(P)	Protective devices for radiation therapy simulation systems	(h)(5)(A)(iii)(II)	3 years
(Q)	Film processing records for simulators	(h)(5)(E)(i)(V), (VI), and (ii)	3 years
(R)	Digital imaging acquisition systems	(h)(5)(E)(iii)	3 years
(S)	CT dose measurements	(h)(5)(C)(iv)(III)	5 years
(T)	CT films resulting from quality control tests	(h)(5)(D)(ii)	1 year or until a new phantom image is performed
(U)	Reports of medical events	(j)(2)	Until termination of registration

# IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

## Office of the Attorney General

### Request for Applications (RFA) for the Sexual Assault Prevention and Crisis Services (SAPCS)-Federal Program

The Office of the Attorney General (OAG) is soliciting applications from sexual assault programs and state sexual assault coalitions that wish to utilize funds for projects that support the primary prevention of sexual violence.

**Applicable Funding Source:** The source of federal funds includes the Federal Department of Health and Human Services, Injury Prevention and Control Research and State and Community Based Programs, CFDA Number 93.136. The federal funds are used for grant contracts supporting the primary prevention of sexual violence. All funding is contingent upon the appropriation of funds by the United States Congress and the Texas Legislature. The OAG makes no commitment that an application, once submitted, or a grant, once funded, will receive subsequent funding.

**Eligibility Requirements:** To be eligible for this grant opportunity, the Applicant must be the state sexual assault coalition or a sexual assault program who is a current FY 2025 SAPCS-State grantee. A current SAPCS-State grantee is one that has an active SAPCS-State grant contract for FY 2025 (September 1, 2024 through August 31, 2025).

**Sexual Assault Programs** - Any local public or private nonprofit corporation, independent of a law enforcement agency or prosecutor's office, that is operated as an independent program or as part of a municipal, county, or state agency and that provides the following minimum services to adult survivors of stranger and non-stranger sexual assault: 24-hour crisis hotline, crisis intervention, public education, advocacy, and accompaniment to hospitals, law enforcement offices, prosecutor offices, and courts and meets the Minimum Services Standards. Applicant must be a current SAPCS-State grantee to apply.

**State Sexual Assault Coalitions** - A statewide nonprofit organization that has been identified as a state sexual assault coalition by a state or federal agency authorized to make that designation.

**Eligibility:** The OAG will initially screen each application for eligibility. Applications will be deemed ineligible if the application is submitted by an ineligible applicant; the application is not filed in the manner and form required by the Application Kit; the application is filed after the deadline established in the Application Kit; or the application does not meet other requirements as stated in the RFA and the Application Kit.

**How to Obtain Application Kit:** The OAG will post the Application Kit on the OAG's website at <https://www.texasattorneygeneral.gov/divisions/grants>. Updates and other helpful reminders about the application process will also be posted at this location. Potential Applicants are encouraged to refer to the site regularly.

### Deadlines and Filing Instructions for the Grant Application:

**Create an On-Line Account:** Creating an on-line account in the Grant Offering and Application Lifecycle System (GOALS) is required to apply for a grant. If an on-line account is not created, the Applicant will be unable to apply for funding. To create an on-line account, the Applicant

must email the point of contact information to [Grants@oag.texas.gov](mailto:Grants@oag.texas.gov) with the following information:

First Name

Last Name

Email Address

Organization Legal Name

**Application Deadline:** The Applicant must submit its application, including all required attachments, to the OAG by the deadline established in the Application Kit.

**Filing Instructions:** Strict compliance with the submission instructions, as provided in the Application Kit, is required. The OAG will **not** consider an Application if it is not submitted by the due date. The OAG will **not** consider an Application if it is not in the manner and form as stated in the Application Kit.

**Minimum and Maximum Amounts of Funding Available:** The minimum and maximum amount of funding a sexual assault program may apply for is \$170,000 per fiscal year. The minimum and maximum amount of funding a state sexual assault coalition may apply for is \$475,000 per fiscal year.

The amount of an award is determined solely by the OAG. The OAG may award grants at amounts above or below the established funding levels and is not obligated to fund a grant at the amount requested.

**Start Date and Length of Grant Contract Period:** The grant period (term) is up to four years from February 1, 2025 through January 31, 2029, subject to and contingent on funding and/or approval by the OAG. Contracts will be awarded for a one-year period (term).

**No Match Requirements:** There are no match requirements for SAPCS-Federal projects.

**Award Criteria:** The OAG will make funding decisions that support the efficient and effective use of public funds. Review components will include, but are not limited to, information provided by the Applicant on the proposed project activities and budget. Funding decisions will be determined using a competitive allocation method.

**Grant Purpose Area:** All grant projects must address all of the purpose areas as stated in the Application Kit.

**SAPCS-Federal Purpose Area:** The purpose of the SAPCS-Federal program is to fund strategies and activities that support the primary prevention of sexual violence and any other purposes consistent with Texas Government Code, Chapter 420.

**Staffing:** All SAPCS-Federal projects must:

(a) Include a minimum of 75% of an Applicant's budget in the personnel and fringe budget categories.

(b) Designate and request funding for a Primary Prevention Coordinator that is responsible for the coordination and implementation of primary prevention efforts. This position must be for a full-time Primary Prevention Coordinator.

(c) Designate and request funding for a full-time position dedicated to Health Equity.

In addition, only those staff positions that are directly related to achieving the goals of this project will be funded.

*Preference:* The OAG reserves the right to consider all other appropriations or funding an Applicant currently receives when making funding decisions. The OAG may give priority to Applicants that do not receive other sources of funding, including funding that originates from the Texas Compensation to Victims of Crime Fund.

**Prohibitions on Use of Grant Funds:** OAG grant funds may not be used to support or pay the costs of lobbying; contracting for grant activities that would otherwise be provided by employees of the grantee's organization; any portion of the salary or any other compensation for an elected government official; the purchase of food and beverages except as allowed under Texas State Travel Guidelines; the purchase or lease of vehicles; the purchase of promotional items or recreational activities; costs of travel that are unrelated to the direct delivery of services that support the OAG funded program; the costs for consultants or vendors who participate directly in writing a grant application; or for any unallowable costs set forth in applicable state or federal law, rules, regulations, guidelines, policies, procedures, cost principles, or the Federal Notice of Award for Rape Prevention Education. Grant funds may not be used to purchase any other products or services the OAG identifies as inappropriate or unallowable within this RFA or the Application Kit.

**OAG Contact Person:** If additional information is needed, contact [grants@oag.texas.gov](mailto:grants@oag.texas.gov) or (512) 936-0792.

TRD-202404510

Justin Gordon

General Counsel

Office of the Attorney General

Filed: September 18, 2024

## Coastal Bend Workforce Development Board

Request for Proposals for Marketing Assessment & Strategic Plan (RFP 24-04)

Workforce Solutions Coastal Bend (WFSCB) is soliciting proposals from entities or individuals qualified to conduct a marketing and communications assessment and produce a strategic plan. The marketing assessment should evaluate processes and determine if there are efficiencies and/or improvements that could be implemented. The strategic plan should consider WFSCB's future growth and include recommendations on additional needs such as staffing FTE's, current job duties, infrastructure, equipment, and software.

**The RFP will be available on Monday, September 23, 2024 at 2:00 p.m. Central Time** and can be accessed on our website at: <https://www.workforcesolutionscb.org/about-us/procurement-opportunities/> or by contacting Esther Velazquez at (361) 885-3013 or [esther.velazquez@workforcesolutionscb.org](mailto:esther.velazquez@workforcesolutionscb.org).

Interested parties are encouraged to attend a **Pre-Proposal meeting** at WFSCB's Administrative Offices located at 400 Mann Street, Suite 800, Corpus Christi, Texas 78401, Main Conference Room on **Monday, September 30, 2024 at 10:00 a.m. Central Time**. The purpose of the meeting is to review the RFP requirements and answer any questions related to the RFP. While this meeting is not mandatory, attendance is strongly recommended. Parties unable to attend in person may participate virtually from a computer, tablet, or smart phone via Zoom:

**Join Zoom Meeting**

<https://us02web.zoom.us/j/81738340127?pwd=g2n7wAR-FEaq3cOrtA1WTujgvjKrnUn.1>

**US Toll-Free Call In:** (888) 475-4499

**Meeting ID:** 817 3834 0127

**Passcode:** 541959

**Proposals are due by Monday, October 21, 2024 at 4:00 p.m. Central Time** and may be submitted via email to [esther.velazquez@workforcesolutionscb.org](mailto:esther.velazquez@workforcesolutionscb.org) or hand delivered or mailed to: Workforce Solutions Coastal Bend, 400 Mann Street, Suite 800, Corpus Christi, Texas 78401.

Workforce Solutions Coastal Bend is an Equal Opportunity Employer/Program. Auxiliary aids and services are available upon request to individuals with disabilities. Relay Texas: (800) 735-2989 (TDD) and (800) 735-2988 or 711 (Voice). Historically Underutilized Businesses (HUBs) are encouraged to apply.

Este documento contiene información importante sobre los requisitos, los derechos, las determinaciones y las responsabilidades del acceso a los servicios del sistema de la fuerza laboral. Hay disponibles servicios de idioma, incluida la interpretación y la traducción de documentos, sin ningún costo y a solicitud.

TRD-202404482

Alba Silvas

Chief Operating Officer

Coastal Bend Workforce Development Board

Filed: September 18, 2024

## Comptroller of Public Accounts

Certification of the Average Closing Price of Gas and Oil - August 2024

The Comptroller of Public Accounts, administering agency for the collection of the Oil Production Tax, has determined, as required by Tax Code, §202.058, that the average taxable price of oil for reporting period August 2024 is \$49.14 per barrel for the three-month period beginning on May 1, 2024, and ending July 31, 2024. Therefore, pursuant to Tax Code, §202.058, oil produced during the month of August 2024, from a qualified low-producing oil lease, is not eligible for credit on the oil production tax imposed by Tax Code, Chapter 202.

The Comptroller of Public Accounts, administering agency for the collection of the Natural Gas Production Tax, has determined, as required by Tax Code, §201.059, that the average taxable price of gas for reporting period August 2024 is \$1.15 per mcf for the three-month period beginning on May 1, 2024, and ending July 31, 2024. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of August 2024, from a qualified low-producing well, is eligible for a 100% credit on the natural gas production tax imposed by Tax Code, Chapter 201.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of West Texas Intermediate crude oil for the month of August 2024 is \$75.43 per barrel. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall not exclude total revenue received from oil produced during the month of August 2024, from a qualified low-producing oil well.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of gas for the month of August 2024 is \$2.09 per MMBtu. Therefore, pursuant to Tax Code,

§171.1011(r), a taxable entity shall exclude total revenue received from gas produced during the month of August 2024, from a qualified low-producing gas well.

Inquiries should be submitted to Jenny Burleson, Director, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

TRD-202404512  
Jenny Burleson

Director, Tax Policy  
Comptroller of Public Accounts  
Filed: September 18, 2024



Local Sales Tax Rate Changes Effective October 1, 2024

A 1 percent city sales and use tax will become effective October 1, 2024 in the city listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Pine Island (Waller Co)	2237069	.020000	.082500

A 2 percent city sales and use tax will become effective October 1, 2024 in the city listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Gary (Panola Co)	2183045	.020000	.082500

The city sales and use tax will be increased to 1 1/2 percent as permitted under Chapter 321 of the Texas Tax Code, effective October 1, 2024 in the cities listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Avinger (Cass Co)	2034046	.020000	.082500
Brookside Village (Brazoria Co)	2020088	.020000	.082500
Nevada (Collin Co)	2043250	.020000	.082500

The city sales and use tax will be increased to 2 percent as permitted under Chapter 321 of the Texas Tax Code, effective October 1, 2024 in the city listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Jamaica Beach (Galveston Co)	2084107	.020000	.082500

An additional 1/4 percent city sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code will become effective October 1, 2024 in the city listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Ore City (Upshur Co)	2230020	.020000	.082500

The additional 1/2 percent city sales and use tax for property tax relief as permitted under Chapter 321 of the Texas Tax Code will be abolished effective September 30, 2024 and the city sales and use tax will be increased to 1 1/2 percent as permitted under Chapter 321 of the Texas Tax Code effective October 1, 2024 in the cities listed below. There will be no change in the local rate or total rate.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Jarrell (Williamson Co)	2246139	.020000	.082500
Temple (Bell Co)	2014013	.020000	.082500

The additional 1/2 percent city sales and use tax for property tax relief as permitted under Chapter 321 of the Texas Tax Code will be abolished effective September 30, 2024, the city sales and use tax will be increased to 1 1/4 percent as permitted under Chapter 321 of the Texas Tax Code and the additional city sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 505 of the Texas Local Government Code, Type B Corporations (4B) will be increased to 1/2 percent effective October 1, 2024 in the city listed below. There will be no change in the local rate or total rate.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Whitehouse (Smith Co)	2212040	.020000	.082500

The additional 1/2 percent city sales and use tax for property tax relief as permitted under Chapter 321 of the Texas Tax Code will be reduced to 1/4 percent effective September 30, 2024 and an additional 1/4 percent city sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 505 of the Texas Local Government Code, Type B Corporations (4B) will become effective October 1, 2024 in the cities listed below. There will be no change in the local rate or total rate.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Daingerfield (Morris Co)	2172011	.020000	.082500
Marlin (Falls Co)	2073011	.020000	.082500

The additional 1/2 percent city sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 505 of the Texas Local Government Code, Type B Corporations (4B) will be reduced to 1/8 percent effective September 30, 2024 and an additional 3/8 percent city sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code will become effective October 1, 2024 in the city listed below. There will be no change in the local rate or total rate.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Lorena (McLennan Co)	2161103	.020000	.082500

The additional 1/4 percent city sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 504 of the Texas Local Government Code, Type A Corporations (4A) will be abolished effective September 30, 2024 and the city sales and use tax Municipal Street Maintenance and Repair will be increased to 1/2 percent as permitted under Chapter 327 of the Texas Tax Code, effective October 1, 2024 in the city listed below. There will be no change in the local rate or total rate.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Sunray (Moore Co)	2171021	.020000	.082500

The additional 1/2 percent city sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 504 of the Texas Local Government Code, Type A Corporations (4A) will be abolished effective September 30, 2024 and an additional 1/2 percent city sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 505 of the Texas Local Government Code, Type B Corporations (4B) will become effective October 1, 2024 in the city listed below. There will be no change in the local rate or total rate.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Hale Center (Hale Co)	2095033	.020000	.082500

The additional 1/2 percent city sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 504 of the Texas Local Government Code, Type A Corporations (4A) and the additional 1/2 percent city sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 505 of the Texas Local Government Code, Type B Corporations (4B) will each be abolished effective September 30, 2024 and the city sales and use tax will

be increased to 2 percent as permitted under Chapter 321 of the Texas Tax Code effective October 1, 2024 in the city listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Knollwood (Grayson Co)	2091162	.020000	.082500

The additional 1/2 percent city sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 504 of the Texas Local Government Code, Type A Corporations (4A) will be abolished effective September 30, 2024 in the city listed below. There will be no change in the local rate or total rate.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Melissa (Collin Co)	2043170	.020000	.082500

The 1/2 percent Fort Worth MTA sales tax has been repealed and will be abolished effective September 30, 2024. The city sales and use tax will be increased to 1 1/2 percent as permitted under Chapter 321 of the Texas Tax Code, effective October 1, 2024 in the city listed below. There will be no change in the local rate or total rate.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Blue Mound (Tarrant Co)	2220291	.020000	.082500

A 1/4 percent special purpose district sales and use tax will become effective October 1, 2024 in the special purpose districts listed below.

SPD NAME	LOCAL CODE	NEW RATE	DESCRIPTION
Melissa Crime Control and Prevention District	5043553	.002500	SEE NOTE 1
Melissa Fire Control, EMS and Prevention District	5043562	.002500	SEE NOTE 2

A 1/2 percent special purpose district sales and use tax will become effective October 1, 2024 in the special purpose districts listed below.

SPD NAME	LOCAL CODE	NEW RATE	DESCRIPTION
Kaufman County Emergency Services District No. 3-A	5129603	.005000	SEE NOTE 3

A 1 percent special purpose district sales and use tax will become effective October 1, 2024 in the special purpose districts listed below.

SPD NAME	LOCAL CODE	NEW RATE	DESCRIPTION
Donley County Assistance District No. 1	5065501	.010000	SEE NOTE 4
Wise County Emergency Services District No. 1-A	5249555	.010000	SEE NOTE 5

A 1 1/2 percent special purpose district sales and use tax will become effective October 1, 2024 in the special purpose districts listed below.

SPD NAME	LOCAL CODE	NEW RATE	DESCRIPTION
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Atascosa County Emergency Services District No. 1	5007502	.015000	SEE NOTE 6
Frio County Emergency Services District No. 1	5082500	.015000	SEE NOTE 7
Wise County Emergency Services District No. 1	5249546	.015000	SEE NOTE 8

A 2 percent special purpose district sales and use tax will become effective October 1, 2024 in the special purpose districts listed below.

SPD NAME	LOCAL CODE	NEW RATE	DESCRIPTION
Jasper County Emergency Services District No. 3	5121558	.020000	SEE NOTE 9
Kaufman County Emergency Services District No. 3	5129596	.020000	SEE NOTE 10

The combined area has been created to administer the local sales and use tax between overlapping local jurisdictions as permitted under Chapter 321 of the Texas Tax Code, effective October 1, 2024 in the entities listed below.

COMBINED AREA NAME	LOCAL CODE	NEW RATE	DESCRIPTION
Glen Rose/Somervell County Assistance District	6213600	.020000	SEE NOTE 11
Needville/Fort Bend County Assistance District No. 20	6079621	.020000	SEE NOTE 12
Silsbee/Hardin County Emergency Services District No. 6	6100624	.020000	SEE NOTE 13

NOTE 1: The boundaries of the Melissa Crime Control and Prevention District are the same boundaries as the city of Melissa. Contact the district representative at 972-838-2338 for additional boundary information.

NOTE 2: The boundaries of the Melissa Fire Control, EMS and Prevention District are the same boundaries as the city of Melissa. Contact the district representative at 972-838-2338 for additional boundary information.

NOTE 3: The Kaufman County Emergency Services District No. 3-A is the portion of the district located in the Kaufman County portion of the city of Poetry. Contact the district representative at 469-596-3706 for additional boundary information.

NOTE 4: The Donley County Assistance District No. 1 has the same boundaries as the city of Howardwick. Contact the district representative at 806-874-3625 for additional boundary information.

NOTE 5: The Wise County Emergency Services District No. 1-A is the portion of the district located in the unincorporated portion of Wise County that overlaps the Aurora Municipal Development District, which has a special purpose district sales tax. Contact the district representative at 940-215-7937 for additional boundary information.

NOTE 6: The Atascosa County Emergency Services District No. 1 is located in the northwest portion of Atascosa County, which has a county sales and use tax. The district excludes the city of Lytle. The unincorporated areas of Atascosa County in ZIP Codes 78052 and 78069 are partially located in the Atascosa County Emergency Services District No. 1. Contact the district representative at 830-

266-9351 for additional boundary information.

NOTE 7: The Frio County Emergency Services District No. 1 has the same boundaries as Frio County. The district excludes the cities of Dilley and Pearsall. Contact the district representative at 210-542-0774 for additional boundary information.

NOTE 8: The Wise County Emergency Services District No. 1 is located in the south-central portion of Wise County, which has a county sales and use tax. The district excludes the city of Boyd for sales tax purposes. The unincorporated areas of Wise County in ZIP Codes 76023, 76071, 76073, 76078, 76082 and 76234 are partially located within the Wise County Emergency Services District No. 1. Contact the district representative at 940-215-7937 for additional boundary information.

NOTE 9: The Jasper County Emergency Services District No. 3 is located in the central portion of Jasper County. The unincorporated area of Jasper County in zip codes 75933 and 5956 are partially located within the Jasper County Emergency Services District No. 3. Contact the district representative at 409-423-0771 for additional boundary information.

NOTE 10: The Kaufman County Emergency Services District No. 3 is located in the northeast portion of Kaufman County. The district excludes the cities of Oak Ridge, Poetry, Post Oak Bend, McLendon-Chisholm, and Terrell. The unincorporated areas of Kaufman County in zip codes 75160, 75161, 75169 and 75474 are partially located in the district. Contact the district representative at 469-596-3706 for additional boundary information.

NOTE 11: The Glen Rose/Somervell County Assistance District combined area is the area within Somervell County Assistance District annexed by the city of Glen Rose on or after January 10, 2023.

NOTE 12: The Needville/Fort Bend County Assistance District No. 20 combined area is the area within Fort Bend County Assistance District No. 20 annexed by the city of Needville on or after June 27, 2022.

NOTE 13: The Silsbee/Hardin County Emergency Services District No. 6 combined area is the area within Hardin County Emergency Services District No. 6 annexed by the city of Silsbee on or after January 29, 2024.

TRD-202404511  
Jenny Burleson  
Director, Tax Policy  
Comptroller of Public Accounts  
Filed: September 18, 2024

◆ ◆ ◆  
**Office of Consumer Credit Commissioner**

**Notice of Rate Ceilings**

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003, §303.009, and §304.003 Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 09/23/24 - 09/29/24 is 18.00% for consumer<sup>1</sup> credit.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 09/23/24 - 09/29/24 is 18.00% for commercial<sup>2</sup> credit.

The postjudgment interest rate as prescribed by §304.003 for the period of 10/01/24 - 10/31/24 is 8.50%.

<sup>1</sup> Credit for personal, family, or household use.

<sup>2</sup> Credit for business, commercial, investment, or other similar purpose.

TRD-202404483  
Leslie L. Pettijohn  
Commissioner  
Office of Consumer Credit Commissioner  
Filed: September 18, 2024

◆ ◆ ◆  
**Credit Union Department**

**Applications for a Merger or Consolidation**

Notice is given that the following applications have been filed with the Credit Union Department (Department) and are under consideration.

An application was received from Texas Telcom Credit Union (Dallas) seeking approval to merge with America's Credit Union (Garland), with the latter being the surviving credit union.

An application was received from Family 1st Federal Credit Union (Fort Worth) seeking approval to merge with Texas Trust Credit Union (Mansfield), with the latter being the surviving credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all the information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-202404486  
Michael S. Riepen  
Commissioner  
Credit Union Department  
Filed: September 18, 2024



### Applications to Expand Field of Membership

Notice is given that the following applications have been filed with the Credit Union Department (Department) and are under consideration.

An application was received from Community Resource Credit Union #1, Baytown, Texas, to expand its field of membership. The proposal would permit persons who work, resides, worship or attend school, and businesses located within the boundaries of Montgomery County, Texas, to be eligible for membership in the credit union.

An application was received from Community Resource Credit Union #2, Baytown, Texas, to expand its field of membership. The proposal would permit persons who work, resides, worship or attend school, and businesses located within the 10-mile radius of the Community Resource Credit Union offices located at 21856 Market Place Drive, Ste. 900, New Caney, Texas, to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at <http://www.cud.texas.gov/page/bylaw-charter-applications>. Any written comments must provide all the information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-202404485  
Michael S. Riepen  
Commissioner  
Credit Union Department  
Filed: September 18, 2024



### Notice of Final Action Taken

In accordance with the provisions of 7 TAC §91.103, the Credit Union Department provides notice of the final action taken on the following application:

### Articles of Incorporation - Approved

An application was received from Texell Credit Union (Temple) to amend its Articles of Incorporation relating to Place of Business.

TRD-202404484  
Michael S. Riepen  
Commissioner  
Credit Union Department  
Filed: September 18, 2024



## Texas Commission on Environmental Quality

### Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **October 28, 2024**. TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on **October 28, 2024**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission's enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: ATKINSON CANDY COMPANY; DOCKET NUMBER: 2023-0030-WQ-E; IDENTIFIER: RN100598929; LOCATION: Lufkin, Angelina County; TYPE OF FACILITY: candy manufacturing company; RULES VIOLATED: TWC, §26.121(a)(1), by failing to prevent an unauthorized discharge of industrial process wastewater into or adjacent to any water in the state; and 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to maintain authorization to discharge stormwater associated with industrial activities; PENALTY: \$60,000; ENFORCEMENT COORDINATOR: Arti Patel, (512) 239-2514; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: B-TEXAS MULCH LLC; DOCKET NUMBER: 2023-0791-MSW-E; IDENTIFIER: RN109981779; LOCATION: Spicewood, Travis County; TYPE OF FACILITY: mulch recycling facility; RULES VIOLATED: 30 TAC §37.121 and §328.5(d) and (f)(3), by failing to provide an accurate estimate of closure cost for

financial assurance requirements for a facility that stores combustible materials outdoors; 30 TAC §324.1 and 40 Code of Federal Regulations (CFR) §279.22(b), by failing to ensure that containers used to store used oil are in good condition and not leaking; 30 TAC §324.6 and 40 CFR §279.22(c)(1), by failing to mark or clearly label used oil storage containers with the words "Used Oil"; 30 TAC §324.15 and 40 CFR §279.22(d), by failing to clean up and properly manage used oil, which was released onto the ground; and 30 TAC §328.5(f)(1), by failing to maintain recycling records to show compliance with the requirements for limitations on storage of recyclable materials; PENALTY: \$8,564; ENFORCEMENT COORDINATOR: Stephanie McCurley, (512) 239-2607; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(3) COMPANY: CAREFREE VALLEY MHP HARLINGEN TX, LLC; DOCKET NUMBER: 2022-1531-PWS-E; IDENTIFIER: RN101441830; LOCATION: Harlingen, Cameron County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(d)(2)(B) and §290.110(b)(4) and Texas Health and Safety Code, §341.0315(c), by failing to maintain a disinfectant residual of at least 0.5 milligrams per liter of total chlorine throughout the distribution system; PENALTY: \$188; ENFORCEMENT COORDINATOR: Ashley Lemke, (512) 239-1118; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(4) COMPANY: Chitwan Rhino LLC dba Kwik Pik Food Mart; DOCKET NUMBER: 2024-0035-PST-E; IDENTIFIER: RN101546315; LOCATION: Irving, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: \$3,375; ENFORCEMENT COORDINATOR: Ramyia Wendt, (512) 239-2513; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(5) COMPANY: Ellwood Texas Forge Navasota, LLC; DOCKET NUMBER: 2023-0675-IWD-E; IDENTIFIER: RN102343563; LOCATION: Navasota, Grimes County; TYPE OF FACILITY: iron and steel forging facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0004999000, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: \$17,875; ENFORCEMENT COORDINATOR: Samantha Smith, (512) 239-2099; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(6) COMPANY: INEOS Styrolution America LLC; DOCKET NUMBER: 2022-1110-AIR-E; IDENTIFIER: RN100542224; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), New Source Review (NSR) Permit Number 5252, Special Conditions (SC) Numbers 1 and 7.A.(1), Federal Operating Permit (FOP) Number O1625, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 12, and Texas Health and Safety Code (THSC), §382.085(b), by failing to comply with the maximum allowable emissions rate and concentration limit; and 30 TAC §116.115(c) and §122.143(4), NSR Permit Number 5252, SC Number 1, FOP Number O1625, GTC and STC Number 12, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$32,625; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$13,050; ENFORCEMENT COORDINATOR: Desmond Martin, (512) 239-2814; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(7) COMPANY: Karina Montiel dba MONTIEL SPRINKLERS KS LLC; DOCKET NUMBER: 2023-1403-LII-E; IDENTIFIER: RN111702973; LOCATION: Plano, Collin County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §30.5(a), TWC, §37.003, and Texas Occupations Code, §1903.251, by failing to hold an irrigator license prior to selling, designing, installing, maintaining, altering, repairing, servicing, providing consulting services relating to an irrigation system, or connecting an irrigation system to any water supply; PENALTY: \$872; ENFORCEMENT COORDINATOR: Iliia Perez-Ramirez, (713) 767-3743; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(8) COMPANY: Klondike Independent School District; DOCKET NUMBER: 2023-0423-PWS-E; IDENTIFIER: RN101455699; LOCATION: Lamesa, Dawson County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.117(e)(2), (h), and (i)(3), by failing to conduct water quality parameter sampling at each of the facility's entry points and the required distribution sample sites, have the samples analyzed, and report the results to the Executive Director for the January 1 - December 31, 2019, January 1 - December 31, 2020, January 1 - December 31, 2021, and January 1 - December 31, 2022, monitoring periods; PENALTY: \$4,968; ENFORCEMENT COORDINATOR: Ronica Rodriguez Scott, (361) 881-6990; REGIONAL OFFICE: 500 North Shoreline Boulevard, Suite 500, Corpus Christi, Texas 78401, (361) 881-6900.

(9) COMPANY: NEDERLAND TANK WASH, INCORPORATED; DOCKET NUMBER: 2022-0495-AIR-E; IDENTIFIER: RN101625713; LOCATION: Nederland, Jefferson County; TYPE OF FACILITY: tank truck washing facility; RULES VIOLATED: 30 TAC §101.4 and Texas Health and Safety Code (THSC), §382.085(a) and (b), by failing to prevent nuisance odor conditions; and 30 TAC §101.201(c) and THSC, §382.085(b), by failing to submit a final record for a reportable emissions event no later than two weeks after the end of the emissions event; PENALTY: \$59,004; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(10) COMPANY: Patrick Griffin; DOCKET NUMBER: 2023-0078-MLM-E; IDENTIFIER: RN109613638; LOCATION: Dayton, Liberty County; TYPE OF FACILITY: aggregate production operation; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge stormwater associated with industrial activities; and 30 TAC §334.127(a)(1), by failing to register an above-ground storage tank greater than 1,100 gallons; PENALTY: \$29,250; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$11,700; ENFORCEMENT COORDINATOR: Nancy M. Sims, (512) 239-5053; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(11) COMPANY: PRICEWISE LLC; DOCKET NUMBER: 2024-0095-PST-E; IDENTIFIER: RN101617165; LOCATION: Nederland, Jefferson County; TYPE OF FACILITY: temporarily out-of-service underground storage tank (UST) system; RULES VIOLATED: 30 TAC §334.7(d)(1)(B) and (3), by failing to notify the agency of any change or additional information regarding the UST system within 30 days of occurrence of the change or addition; and 30 TAC §37.815(a) and (b) and §334.54(b)(2), by failing to maintain all piping, pumps, manways, tank access points, and ancillary equipment in a capped, plugged, locked, and/or otherwise secure manner, and failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the

operation of petroleum USTs; PENALTY: \$5,655; ENFORCEMENT COORDINATOR: Lauren Little, (817) 588-5888; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(12) COMPANY: SOUTH HULEN VENTURES LLC; DOCKET NUMBER: 2024-0749-PST-E; IDENTIFIER: RN102374733; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §334.50(a)(1)(A), by failing to provide release detection for the underground storage tank system; PENALTY: \$2,625; ENFORCEMENT COORDINATOR: Adriana Fuentes, (956) 430-6057; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(13) COMPANY: SPEEDY STOP FOOD STORES, LLC dba Speedy Stop 105; DOCKET NUMBER: 2023-1196-PST-E; IDENTIFIER: RN102248937; LOCATION: Buda, Hays County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.225 and Texas Health and Safety Code, §382.085(b), by failing to comply with annual Stage I vapor recovery testing requirements; PENALTY: \$2,941; ENFORCEMENT COORDINATOR: Eunice Adegele, (512) 239-5082; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(14) COMPANY: STEWART, WILLIAM A JR; DOCKET NUMBER: 2024-1258-WOC-E; IDENTIFIER: RN104467782; LOCATION: Moore, Frio County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: \$175; ENFORCEMENT COORDINATOR: Arti Patel, (512) 239-2514; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(15) COMPANY: TEXAN OILERS LLC; DOCKET NUMBER: 2023-1210-PST-E; IDENTIFIER: RN106125354; LOCATION: Humble, Harris County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §334.50(b)(1)(A), by failing to monitor underground storage tanks for releases at least once every 30 days; PENALTY: \$2,625; ENFORCEMENT COORDINATOR: Danielle Fishbeck, (512) 239-5083; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(16) COMPANY: Texas Department of Transportation; DOCKET NUMBER: 2023-0751-MWD-E; IDENTIFIER: RN106479983; LOCATION: Richland, Navarro County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0014854001, Effluent Limitations and Monitoring Requirements Numbers 1 and 3, by failing to comply with permitted effluent limitations; PENALTY: \$14,250; ENFORCEMENT COORDINATOR: Samantha Smith, (512) 239-2099; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(17) COMPANY: Texas Water Systems, Incorporated; DOCKET NUMBER: 2023-0703-PWS-E; IDENTIFIER: RN101182475; LOCATION: Rosewood, Upshur County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.43(c), by failing to ensure that all potable water storage facilities are covered and designed, fabricated, erected, tested, and disinfected in strict accordance with current American Water Works Association standards; 30 TAC §290.43(d)(3), by failing to provide a device to readily determine air-water-volume for all pressure tanks greater than 1,000 gallons in capacity; 30 TAC §290.44(h)(4), by failing to have all backflow prevention assemblies tested upon installation and on an annual basis by a recognized backflow assembly tester and certified that they are operating within specifications; 30 TAC §290.45(b)(1)(C)(ii) and

Texas Health and Safety Code (THSC), §341.0315(c), by failing to provide a total storage capacity of 200 gallons per connection; 30 TAC §290.45(b)(1)(C)(iv) and THSC, §341.0315(c), by failing to provide a pressure tank capacity of 20 gallons per connection; 30 TAC §290.46(m)(4), by failing to maintain all water treatment units, storage and pressure maintenance facilities, distribution system lines, and related appurtenances in a watertight condition and free of excessive solids; 30 TAC §290.46(s)(1), by failing to calibrate the facility's two well meters at least once every three years; 30 TAC §290.46(s)(2)(C)(i), by failing to verify the accuracy of the manual disinfectant residual analyzer at least once every 90 days using chlorine solutions of known concentrations; and 30 TAC §290.46(v), by failing to ensure that the electrical wiring is securely installed in compliance with a local or national electrical code; PENALTY: \$24,239; ENFORCEMENT COORDINATOR: Samantha Salas, (512) 239-1543; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(18) COMPANY: Texas Water Utilities, L.P.; DOCKET NUMBER: 2024-0034-PWS-E; IDENTIFIER: RN102672664; LOCATION: Spicewood, Travis County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes, based on the locational running annual average; PENALTY: \$1,187; ENFORCEMENT COORDINATOR: Christiana McCrimmon, (409) 899-8741; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(19) COMPANY: Vaquerano Automotive, LLC dba Custom Auto II Collision Auto Repair; DOCKET NUMBER: 2022-1706-AIR-E; IDENTIFIER: RN111302238; LOCATION: Pearland, Brazoria County; TYPE OF FACILITY: automotive body repair and refinishing facility; RULES VIOLATED: 30 TAC §106.436(16)(A) - (C) and Texas Health and Safety Code, §382.085(b), by failing to maintain records at the site for a consecutive 24-month period and be made immediately available upon request; PENALTY: \$675; ENFORCEMENT COORDINATOR: Desmond Martin, (512) 239-2814; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(20) COMPANY: WILLIAMS, JERRY D; DOCKET NUMBER: 2024-1223-OSI-E; IDENTIFIER: RN103881322; LOCATION: Floresville, Wilson County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §285.61(4), by failing to ensure that an authorization to construct has been issued prior to beginning construction of an on-site sewage facility; PENALTY: \$175; ENFORCEMENT COORDINATOR: Nancy Sims, (512) 239-5053; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-202404456

Gitanjali Yadav

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: September 17, 2024



### Enforcement Orders

An agreed order was adopted regarding BELLVILLE SHELL, INC. dba Bellville Shell Food Court, Docket No. 2021-0546-PST-E on September 17, 2024 assessing \$4,500 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Barrett Hollingsworth, Staff Attorney at (512) 239-3400,

Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding CARRINGTON ASSOCIATES, INC., Docket No. 2022-1580-PWS-E on September 17, 2024 assessing \$255 in administrative penalties with \$51 deferred. Information concerning any aspect of this order may be obtained by contacting Ashley Lemke, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Serenity Light Recovery Holdings, LLC, Docket No. 2023-0599-PWS-E on September 17, 2024 assessing \$3,588 in administrative penalties with \$717 deferred. Information concerning any aspect of this order may be obtained by contacting Nick Lohret-Froio, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Samuel Alvarez, Docket No. 2023-0688-PST-E on September 17, 2024 assessing \$3,375 in administrative penalties with \$675 deferred. Information concerning any aspect of this order may be obtained by contacting Stephanie McCurley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding ARGUIJO CORPORATION, Docket No. 2023-0825-AIR-E on September 17, 2024 assessing \$2,500 in administrative penalties with \$500 deferred. Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding 2020 Landmark Capital, LLC, Docket No. 2023-1484-PWS-E on September 17, 2024 assessing \$587 in administrative penalties with \$117 deferred. Information concerning any aspect of this order may be obtained by contacting Daphne Greene, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding C & R WATER SUPPLY INC., Docket No. 2023-1620-PWS-E on September 17, 2024 assessing \$5,901 in administrative penalties with \$1,180 deferred. Information concerning any aspect of this order may be obtained by contacting Ilia Perez-Ramirez, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding LNT CAPITAL LLC and T & L Capital Investments, LLC, Docket No. 2023-1623-PST-E on September 17, 2024 assessing \$4,634 in administrative penalties with \$926 deferred. Information concerning any aspect of this order may be obtained by contacting Faye Renfro, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Jay H. Smith and Patti J. Smith, Docket No. 2024-0271-OSS-E on September 17, 2024 assessing \$375 in administrative penalties with \$75 deferred. Information concerning any aspect of this order may be obtained by contacting Kolby Farren, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202404521

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: September 18, 2024



### Example A Notice of Public Meeting Air Permit Renewal Permit Number 7711A

**APPLICATION.** Building Materials Investment Corporation has applied to the Texas Commission on Environmental Quality (TCEQ) for renewal of Air Quality Permit Number 7711A, which would authorize continued operation of an Asphalt Roofing Materials Manufacturing Facility located at 2600 Singleton Boulevard, Dallas, Dallas County, Texas 75212. **AVISO DE IDIOMA ALTERNATIVO.** El aviso de idioma alternativo en español está disponible en <https://www.tceq.texas.gov/permitting/air/newsourcereview/air-permits-pendingpermit-apps>. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For exact location, refer to application. <https://gisweb.tceq.texas.gov/LocationMapper/?marker=-96.863333,32.777777&level=13>. The existing facility is authorized to emit the following air contaminants: hazardous air pollutants, carbon monoxide, nitrogen oxides, organic compounds, particulate matter including particulate matter with diameters of 10 microns or less and 2.5 microns or less and sulfur dioxide. This application was submitted to the TCEQ on May 10, 2024.

The executive director has determined the application is administratively complete and will conduct a technical review of the application. Information in the application indicates that this permit renewal would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted. **The TCEQ may act on this application without seeking further public comment or providing an opportunity for a contested case hearing if certain criteria are met.**

**PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments to the Office of the Chief Clerk at the address below.** The TCEQ will consider all public comments in developing a final decision on the application. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application, and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. At the conclusion of the comment period, all formal comments will be considered before a decision is reached on the permit application. A written response to all formal comments will be prepared by the executive director and will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

**The Public Meeting is to be held:**

**Thursday, October 24, 2024 at 7:00 p.m.**

**West Dallas Multipurpose Center**

**2828 Fish Trap Road**

**Dallas, Texas 75212**

**INFORMATION.** Members of the public are encouraged to submit written comments anytime during the public meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at <https://www14.tceq.texas.gov/epic/eComment/>. If you need more information about the permit application or the permitting process, please call the TCEQ Public Education Program, toll free, at (800) 687-4040. General information can be found at our website at [www.tceq.texas.gov](http://www.tceq.texas.gov). *Si desea información en español, puede llamar al (800) 687-4040.*

**INFORMATION AVAILABLE ONLINE.** For details about the status of the application, visit the Commissioners' Integrated Database (CID) at [www.tceq.texas.gov/goto/cid](http://www.tceq.texas.gov/goto/cid). Once you have access to the CID using the link, enter the permit number at the top of this form.

The application will be available for viewing and copying at the TCEQ central office, TCEQ Dallas/Fort Worth regional office, and the Dallas West Branch Library, 2332 Singleton Boulevard, Dallas, Dallas County. The facility's compliance file, if any exists, is available for public review in the Dallas/Fort Worth regional office of the TCEQ. Further information may also be obtained from Building Materials Investment Corporation, 2600 Singleton Boulevard, Dallas, Texas 75212-3738 or by calling Mr. Thomas Richardson, VP Operations East, Building Materials Investment Corporation, at (812) 459-4773.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least five business days prior to the meeting.

Notice Issuance Date: September 17, 2024

TRD-202404518

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: September 18, 2024



**Notice of Application and Public Hearing for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls Proposed Air Quality Registration Number 177283**

**APPLICATION.** JD Woodruff Construction LLC, PO Box 2, Mc Queeney, Texas 78123-0002 has applied to the Texas Commission on Environmental Quality (TCEQ) for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls Registration Number 177283 to authorize the operation of a concrete batch plant. The facility is proposed to be located at 1.3 miles East of 1150 on Southside of Highway 90 Alt, Seguin, Guadalupe County, Texas 78638. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For exact location, refer to application. <https://gisweb.tceq.texas.gov/Location-Mapper/?marker=-97.754276,29.541241&level=13>. This application was submitted to the TCEQ on August 19, 2024. The primary function of this plant is to manufacture concrete by mixing materials including (but not limited to) sand, aggregate, cement and water. The executive director has determined the application was technically complete on September 10, 2024.

**PUBLIC COMMENT / PUBLIC HEARING.** Public written comments about this application may be submitted at any time during the

public comment period. The public comment period begins on the first date notice is published and extends to the close of the public hearing. Public comments may be submitted either in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087, or electronically at [www14.tceq.texas.gov/epic/eComment/](http://www14.tceq.texas.gov/epic/eComment/). Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record.

A public hearing has been scheduled, that will consist of two parts, an informal discussion period and a formal comment period. During the informal discussion period, the public is encouraged to ask questions of the applicant and TCEQ staff concerning the application, but comments made during the informal period will not be considered by the executive director before reaching a decision on the permit, and no formal response will be made to the informal comments. During the formal comment period, members of the public may state their comments into the official record. **Written comments about this application may also be submitted at any time during the hearing.** The purpose of a public hearing is to provide the opportunity to submit written comments or an oral statement about the application. **The public hearing is not an evidentiary proceeding.**

**The Public Hearing is to be held:**

**Wednesday, October 30, 2024, at 6:00 p.m.**

**American Legion Hall 245**

**618 E Kingsbury Street**

**Seguin, Texas 78155**

**RESPONSE TO COMMENTS.** A written response to all formal comments will be prepared by the executive director after the comment period closes. The response, along with the executive director's decision on the application, will be mailed to everyone who submitted public comments and the response to comments will be posted in the permit file for viewing.

The executive director shall approve or deny the application not later than 35 days after the date of the public hearing, considering all comments received within the comment period, and base this decision on whether the application meets the requirements of the standard permit.

**CENTRAL/REGIONAL OFFICE.** The application will be available for viewing and copying at the TCEQ Central Office and the TCEQ San Antonio Regional Office, located at 14250 Judson Road, San Antonio, Texas 78233-4480, during the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, beginning the first day of publication of this notice.

**INFORMATION. If you need more information about this permit application or the permitting process, please call the Public Education Program toll free at (800) 687-4040. Si desea información en español, puede llamar al (800) 687-4040.**

Further information may also be obtained from JD Woodruff Construction, LLC, PO Box 2, Mc Queeney, Texas 78123-0002, or by calling Mr. Paul W Henry PE, Engineer at (512) 281-6555.

Notice Issuance Date: September 11, 2024

TRD-202404520

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: September 18, 2024



## Notice of District Petition

Notice issued September 11, 2024

TCEQ Internal Control No. D-08082024-012: Political 399 LLC, Amazon Properties, LLC, and Vema Investments, LLC (Petitioners) filed a petition for creation of Caldwell County Municipal Utility District No. 6 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and Chapter 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioners hold title to a majority in value of the land to be included in the proposed District; (2) there are no lienholders other than BOM Bank and its lien on the land owned by Political 339 LLC and the lienholder has consented to the creation; (3) the proposed District will contain approximately 477.621 acres located within Caldwell County, Texas; and (4) the proposed District is not within the corporate boundaries or extraterritorial jurisdiction of any city. The purposes of and the general nature of the work proposed to be done by the District at the present time is the purchase, design, construction, acquisition, maintenance, ownership, operation, repair, improvement and extension of a waterworks and sanitary sewer system for residential and commercial purposes, and the construction, acquisition, improvement, extension, maintenance and operation of works, improvements, facilities, plants, equipment and appliances helpful or necessary to provide more adequate drainage for the District, and to control, abate and amend local storm waters or other harmful excesses of waters, all as more particularly described in an engineer's report filed simultaneously with the filing of the petition, to which reference is hereby made for more detailed description, and such other purchase, construction, acquisition, maintenance, ownership, operation, repair, improvement and extension of such additional facilities, including roads, systems, plants and enterprises as shall be consistent with all of the purposes for which the District is created. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners from such information as they have at this time, that such cost will be approximately \$64,410,000 (\$54,850,000 for waterworks system, sanitary sewer system, and drainage and storm sewer system projects, and \$9,560,000 for road projects).

### INFORMATION SECTION

To view the complete issued notice, view the notice on our website at [www.tceq.texas.gov/agency/cc/pub\\_notice.html](http://www.tceq.texas.gov/agency/cc/pub_notice.html) or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the website, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and

will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our website at [www.tceq.texas.gov](http://www.tceq.texas.gov).

TRD-202404513

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: September 18, 2024



## Notice of District Petition

Notice issued September 11, 2024

TCEQ Internal Control No. D-08212024-042: Meadow Ridge Farm, LP, a Texas limited partnership (Petitioner) and Village at Gateway, LLC, a Texas limited liability company, (earnest money contract holder to purchase all of the land), filed a petition for creation of Forney Municipal Management District No. 1 of Kaufman County (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59, and Article III, Sections 52 and 52(a) of the Texas Constitution, Chapter 375, Texas Local Government Code and Chapter 49, Texas Water Code, and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner holds title to a majority in value of the land to be included in the proposed District; (2) there are no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 152.4317 acres located within Kaufman County, Texas; and (4) the land within the proposed District is wholly within the corporate limits of City of Forney, Texas. By Resolution No. 24-50, approved on July 16, 2024, Forney, Texas, gave its consent to the creation of the proposed District, pursuant to Texas Local Government Code 375.022(c)(6). The petition further states that the proposed District will: (1) purchase, construct, acquire, maintain, own, operate, repair, improve and extend of a waterworks and sanitary sewer system for residential and commercial purposes; (2) construct, acquire, improve, extend, maintain and operate works, improvements, facilities, plants, equipment, and appliances helpful or necessary to provide more adequate drainage for the proposed District; (3) control, abate and amend local storm waters or other harmful excesses of waters; (4) such other purchase, construction, acquisition, improvement, maintenance and operation of such additional facilities, systems, plants and enterprises, and road facilities, as shall be consistent with all of the purposes for which the proposed District is created; (5) provide supplemental services to preserve, maintain, and enhance the economic health and vitality of the proposed District as a community and business center; and, (6) to provide services authorized under the laws governing the proposed District to serve the land.

According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners that the cost of said project will be approximately \$27,515,000 (\$16,935,000 for water, wastewater, and drainage plus \$10,580,000 for roads).

### INFORMATION SECTION



To view the complete issued notice, view the notice on our website at [www.tceq.texas.gov/agency/cc/pub\\_notice.html](http://www.tceq.texas.gov/agency/cc/pub_notice.html) or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the website, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our website at [www.tceq.texas.gov](http://www.tceq.texas.gov).

TRD-202404514

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: September 18, 2024



## Notice of District Petition

Notice issued September 11, 2024

TCEQ Internal Control No. D-03182024-040: WB West Alvin Land, LLC., a Texas limited company (Petitioner), filed a petition for the creation of Preservation Creek Municipal Utility District No. 1 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, § 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner holds title to a majority of land to be included in the proposed District; (2) there are two lienholders, Brazoria Meadows, L.P a Texas limited partnership and Star State Land L.P a Texas limited partnership, on the property to be included in the proposed District and information provided indicates that the lienholders consent to the creation of the proposed District; (3) the proposed District will contain approximately 2,962.37 acres located within Brazoria County, Texas; and (4) the land within the proposed District is located within the corporate limits or the extraterritorial jurisdiction of the City of Alvin (City). The petition further states that the proposed District will: (1) purchase, construct, acquire, maintain, own, operate, repair, improve, and extend a waterworks and sanitary sewer

system for residential and commercial purposes; (2) construct, acquire, improve, extend, maintain, and operate works, improvements, facilities, plants, equipment, and appliances helpful or necessary to provide more adequate drainage for the proposed District; (3) control, abate, and amend local storm waters or other harmful excesses of water; and (4) purchase, construct, acquire, improve, maintain, and operate such additional facilities, systems, plants, enterprises, road facilities, and park and recreational facilities as shall be consonant with all of the purposes for which the proposed District is created. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioner that the cost of said project will be approximately \$370,000,000 (\$300,000,000 for water, wastewater, and drainage \$15,000,000 District's Park and recreational facilities plus \$55,000,000 for roads).

## INFORMATION SECTION

To view the complete issued notice, view the notice on our website at [www.tceq.texas.gov/agency/cc/pub\\_notice.html](http://www.tceq.texas.gov/agency/cc/pub_notice.html) or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the website, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our website at [www.tceq.texas.gov](http://www.tceq.texas.gov).

TRD-202404515

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: (512) 239-3300



## Notice of District Petition

Notice issued September 11, 2024

TCEQ Internal Control No. D-06172024-033 Maple Meadows Development, LLC, a Texas limited liability company (Petitioner), filed a petition for the creation of Waller County Municipal Utility District

No. 59 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, § 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ.

The petition states that: (1) the Petitioner holds title to a majority of land to be included in the proposed District; (2) there is a lienholder, Independent Bank d/b/a Independent Financial to be included in the proposed District, and the lienholder consents to the creation of the proposed District; (3) the proposed District will contain approximately 248.176 acres located within Waller County, Texas; and (4) the proposed District is not within the corporate boundaries or extraterritorial jurisdiction of any city and will be developed for residential purposes. The petition further states that the proposed District will: (1) purchase, design, construct, acquire, maintain, own, operate, repair, improve, and extend a waterworks and sanitary sewer system for residential purposes; (2) construct, acquire, improve, extend, maintain, and operate works, improvements, facilities, plants, equipment, and appliances helpful or necessary to provide more adequate drainage for the proposed District; (3) control, abate, and amend local storm waters or other harmful excesses of water; and (4) purchase, construct, acquire, maintain, own, operate, repair, improve, and extend such additional facilities, including roads, parks and recreation facilities, systems, plants, and enterprises as shall be consonant with all of the purposes for which the proposed District is created.

According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioner that the cost of said project will be approximately \$97,510,000 (\$66,830,000 for water, wastewater, and drainage plus \$25,000,000 for roads and \$5,680,000 for recreation).

#### INFORMATION SECTION

To view the complete issued notice, view the notice on our website at [www.tceq.texas.gov/agency/cc/pub\\_notice.html](http://www.tceq.texas.gov/agency/cc/pub_notice.html) or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the website, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at

(512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our website at [www.tceq.texas.gov](http://www.tceq.texas.gov).

TRD-202404516

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: September 18, 2024

#### Notice of District Petition

Notice issued September 11, 2024

TCEQ Internal Control No. D-05232024-057: VORWERK FARMS, LLC, a Texas limited liability company (Petitioner) filed a petition for the creation of Williamson County Municipal Utility District No. 52 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 and Article III, §52 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner holds title to a majority in value of the land to be included in the proposed District; (2) there is no lienholder on the property other than Texas Farm Credit Services, FLCA; (3) the proposed District will contain approximately 152.29 acres of land, more or less, located entirely within Williamson County, Texas; (4) no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any city, town or village in Texas.

The petition further states that the proposed District will (1) purchase, construct, acquire, improve, or extend inside or outside of its boundaries any and all works, improvements, facilities, plants, equipment, and appliances necessary or helpful to supply and distribute water for municipal, domestic, and commercial purposes; (2) to collect, transport, process, dispose of and control domestic, and commercial wastes; (3) to gather, conduct, divert, abate, amend and control local stormwater or other local harmful excesses of water in the District; and (4) to purchase, construct, acquire, improve, or extend inside or outside or its boundaries such additional facilities, systems, plants and enterprises, road facilities, and park and recreational facilities, as shall be consonant with the purposes for which the District is created. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners, from the information available at this time, that the cost of said project will be approximately \$43,255,000 (\$35,200,000 for water, wastewater, and drainage facilities, \$1,955,000 for recreational and \$6,100,000 for road facilities).

#### INFORMATION SECTION

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The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the lo-

cation of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our website at [www.tceq.texas.gov](http://www.tceq.texas.gov).

TRD-202404517

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: September 18, 2024



#### Notice of Opportunity to Comment on a Default Order of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Order (DO). The commission staff proposes a DO when the staff has sent the Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **October 28, 2024**. The commission will consider any written comments received, and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of the proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on October 28, 2024**. The commission's attorney is available to discuss the DO and/or the comment procedure at the listed phone number; however, TWC, §7.075, pro-

vides that comments on the DO shall be submitted to the commission in **writing**.

(1) COMPANY: John Phillip Reeves; DOCKET NUMBER: 2022-0196-AIR-E; TCEQ ID NUMBER: RN110852522; LOCATION: 128 County Road 1100, Decatur, Wise County; TYPE OF FACILITY: residential property; RULES VIOLATED: Texas Health and Safety Code, §382.085(a) and (b) and 30 TAC §101.4, by failing to prevent nuisance odor conditions; PENALTY: \$6,250; STAFF ATTORNEY: Cynthia Sirois, Litigation, MC 175, (512) 239-3392; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-202404462

Gitanjali Yadav

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: September 17, 2024



#### Notice of Opportunity to Comment on an Agreed Order of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Order (AO) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AO, the commission shall allow the public an opportunity to submit written comments on the proposed AO. TWC, §7.075, requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **October 28, 2024**. TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of the proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on October 28, 2024**. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, TWC, §7.075, provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: Intercontinental Terminals Company LLC; DOCKET NUMBER: 2022-0827-IWD-E; TCEQ ID NUMBER: RN100210806; LOCATION: 1943 Independent Parkway, just north of the intersection of Miller Cutoff Road and State Highway 134, Deer Park, Harris County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0001984000, Effluent Limitations and Monitoring Requirements Number 1, for Outfall Number 002, by failing to comply with permitted effluent limitations; PENALTY: \$26,775; Supplemental Environmental Project offset amount of \$13,387 applied to Hous-

ton-Galveston Area Council Clean Vehicles Partnership Project;  
STAFF ATTORNEY: Cynthia Sirois, Litigation, MC 175, (512)  
239-3392; REGIONAL OFFICE: Houston Regional Office, 5425 Polk  
Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-202404461

Gitanjali Yadav

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: September 17, 2024



### Notice of Public Hearings and Opportunity for Comment on the Edwards Aquifer Protection Program

The Texas Commission on Environmental Quality (TCEQ or commission) conducts annual public hearings to receive comments from the public on actions the commission should take to protect the Edwards Aquifer from pollution, as required under Texas Water Code, §26.046. These annual public hearings are held by the Edwards Aquifer Protection Program and cover the TCEQ rules, found at Title 30, Texas Administrative Code, Chapter 213, which regulate development over the delineated contributing, recharge, and transition zones of the Edwards Aquifer. These annual public hearings assist the commission in its shared responsibility with local governments, such as cities, counties, and groundwater conservation districts, to protect the water quality of the aquifer.

This year the hearing will be conducted in person in two locations, TCEQ Headquarters in Austin and the TCEQ San Antonio Regional Office. The hearing in Austin will be at the TCEQ Headquarters located at 12100 Park 35 Circle, Austin, Texas 78753 on **Tuesday, October 29, 2024**, and begin at 10:00 a.m. in Building A, Room 172. The hearing in San Antonio will be at the TCEQ San Antonio Regional Office located at 14250 Judson Road, San Antonio, Texas 78233-4480 on **Wednesday, October 30, 2024**, and begin at 10:00 a.m. Persons who need special accommodations at the hearings should call the Office of the Chief Clerk at (512) 239-3300 or 1-800-RELAY-TX (TDD) at least five business days prior to the scheduled hearings.

The hearings will be structured for the receipt of oral or written comments by interested persons. There will be no open question and answer discussion during the hearing; however, agency staff members will be available to answer questions 30 minutes prior to and 30 minutes after the conclusion of the hearing. All other comments must be received by **5:00 p.m., Wednesday, October 30, 2024**.

Additional written comments submitted before or after the hearing should reference the Edwards Aquifer Protection Program and may be sent to Ms. Monica Reyes, Texas Commission on Environmental Quality, San Antonio Region, 14250 Judson Road, San Antonio, Texas 78233-4480 or emailed to [eapp@tceq.texas.gov](mailto:eapp@tceq.texas.gov). For further information or questions concerning these hearings, please contact Ms. Reyes, or visit <https://www.tceq.texas.gov/permitting/eapp/program.html>.

TRD-202404477

Booker Harrison

Acting Deputy Director, Environmental Law

Texas Commission on Environmental Quality

Filed: September 17, 2024



## Texas Ethics Commission

### List of Delinquent Filers

Below is a list from the Texas Ethics Commission naming the filers who failed to pay the penalty fine for failure to file the report, or filing a late report, in reference to the specified filing deadline. If you have any questions, you may contact Dave Guilianelli at (512) 463-5800.

#### Deadline: Semiannual report due January 16, 2024 for Commit- tees

#00087989 - Kimberly Snelgrooves, Panhandle First, P.O. Box 1652, Panhandle, Texas 79068

#00015843 - William Flowers, Area 5 Democratic Club, 410 Helen Dr., Deer Park, Texas 77536

#00016774 - Adrian Sifuentes, El Paso Federation of Teachers and Support Personnel C.O.P.E., 5848 Pickerel Drive, El Paso, Texas 79924

#00032201 - Christine LoCascio, DISCUS Texas PAC, 1250 I Street NW, Ste. 400, Washington, DC 20005

#00054064 - Logan Workman, Texas Stonewall Democratic Caucus, 506 W. Donovan St., Unit G, Houston, Texas 77091

#00065270 - Rafael Anchia, Mexican American Legislative Leadership Foundation, 202 West 13th St., Austin, Texas 78701

#00067191 - Justin D. Graham, Midland Political Action Committee, 1405 S. County Road 1110, Midland, Texas 79706

#00087773 - Larry Hicks, Stand with Paxton PAC, 10500 Northwest Freeway, Ste. 212, Houston, Texas 77092

#00087937 - Eloisa Pena, Watch on Weslaco PAC, 401 South Kansas, Weslaco, Texas 78596

#00087577 - Arthur Rodriguez, Vote YES Godley ISD Bond, P.O. Box 899, Godley, Texas 76044

#00087977 - Kristyn Kimbrell, Vote YES for MISD Bond, 1406 Stewart St., Merkel, Texas 79536

#00051074 - Lyle Larson, Texas Legislative Sportsman's Caucus, Inc., P.O. Box 2910, Austin, Texas 78768

#00085529 - Andrea P. Williams, TriCounty Republican Women's Club, 2404 Grand Blvd., Ste. 120, Pearland, Texas 77581

#00085911 - Rene O. Garza, Rio Forward PAC, 404 N. Britton Ave., Rio Grande City, Texas 78582

#00087913 - LuzDalia Sanchez, Early Childhood PAC, P.O. Box 270075, Houston, Texas 77277

#00055995 - Denise G Chavez, Cameron County Democratic Party Executive Committee (CEC), 7248 Mulberry St., Brownsville, Texas 78520

#00016112 - Juan G. Arellano, Brownsville Police Officers Association PAC, 5460 Paredes Line Rd., Ste. 197-B, Brownsville, Texas 78521

#00016366 - Jeanie M. Davilla, Heart Of Texas Apartment Assoc., 4201 Lake Short Dr., Ste. H, Waco, Texas 78710

#00017014 - Jana D. Hawkins, Jefferson County Association of Deputy Sheriffs and Correction Officers PAC, P.O. Box 20012, Beaumont, Texas 77720

#00017147 - Janet Ahmad, Homeowner-Taxpayer Association of Bexar County, Inc. Political Action Committee, 18 Silverhorn Drive, San Antonio, Texas 78216

#00024965 - Karen Y. Kirkpatrick, GMP Local Union #259, 2106 Montrose, Waco, Texas 76705

#00055453 - Glenda Macal, Fort Bend Employee Federation Committee on Political Education, 12621 W. Airport Blvd., Ste. 400, Sugar Land, Texas 77478

#00058143 - Jo Ann Baker, Texas Alliance Oil and Gas PAC, 705 8th St., Ste. 705, Wichita Falls, Texas 76301

#00063437 - Susan R. Fowler, Texas Motion Picture Alliance PAC, 4809 Comal St., Pearland, Texas 77581

#00064955 - Lawrence Collins, Alliance Against Sexual Assault, 1105 Angelina St., Austin, Texas 78702

#00065031 - Christopher V. Tyrone, Haltom City Firefighters Committee for Responsible Government, P.O. BOX 37045, Haltom City, Texas 76117

#00065928 - Adrian Patterson, Houston Business-Education Coalition PAC, 609 Main St., 40th Floor, Houston, Texas 77002

#00068179 - Kristen D. Johnson Eklund, A Better Grapevine, 1214 Bellaire Dr., Grapevine, Texas 76051

#00068739 - Joshua Williams, Business Leaders for Growth Political Action Committee, P.O. Box 270864, Houston, Texas 77277

#00069436 - Becky Allen, Preferred Care Partners Political Action Committee, 5500 W. Plano Pkwy, Plano, Texas 75093

#00080766 - George Castillo, Jr., South San Community PAC, P.O. Box 242221, San Antonio, Texas 78224

#00080881 - Chanley Delk, Big Spring Professional Firefighters PAC, 2210 S County Road 1085, Midland, Texas 79706

#00080982 - Gustavo Guerra, United Together, 2808 Granjeno Ave., Hidalgo, Texas 78557

#00082248 - Brian T. Stoller, Lone Star State of Mind PAC, 9311 N. FM 620 #148, Austin, Texas 78726

#00082537 - Maureen Ball, Freedom and Liberty Conservatives PAC, 15899 Highway 105 West, Suite A, Montgomery, Texas 77356

#00082766 - Irasema Gonzalez, Six Pac, 426 W. Caffery, Pharr, Texas 78577

#00082777 - Coymelle K. Murchison, Vote For Her, 4624 Weehaven Drive, Dallas, Texas 75232

#00082815 - Coymelle K. Murchison, Texas Truth In Politics, 4624 Weehaven Drive, Dallas, Texas 75232

#00083091 - Michael J. Warner, A Better Texas PAC, 301 Brazos #1512, Austin, Texas 78701

#00083407 - Syed F. Hassan, Coalition for a Better Arlington, 601 Engleside Dr., Arlington, Texas 76018

#00083564 - Travis Q. Parmer, Good Government Fort Worth, 3000 South Hulen St., Ste.124306, Fort Worth, Texas 76107

#00083796 - Anthony Carpenter, United Patriots PAC, P.O. Box 1386, Sugar Land, Texas 77487

#00083997 - Brian Stoller, South East Democratic Alliance, 8905 Panhandle Dr., Austin, Texas 78747

#00084062 - Brian Dungan, Carrollton Democrats Club, 2121 Marsh Ln., Apt. 209, Carrollton, Texas 75006

#00084324 - John J. Turner-McClelland, Allen Area Democrats Political Action Committee, P.O. Box 2404, Allen, Texas 75013

#00084688 - Ashley E. Maxwell, Texans for Life PAC, 219 Sardius Blvd., Granbury, Texas 76049

#00084696 - Christina A. Koob, Jolt PAC, 1709 Alleghany Dr., Ste. B, Austin, Texas 78741

#00085310 - Adrian Flores, Jr., Texas Pole PAC, 426 W. Craig, San Antonio, Texas 78212

#00085383 - Kristen Perez, Strength in Unity, 2717 Pease Dr., Forney, Texas 75126

#00085671 - Maria D. Betancourt, Proyecto Azul Advocacy & Engagement, 4516 Laurel Ave., McAllen, Texas 78501

#00085749 - Aaron R. Armijo, Sugar Land Professional Fire Fighters - PAC, 29014 Hauter Way, Fulshear, Texas 77441

#00085831 - Steve Klein, Friends of Good Government, 404 Ball Airport Rd., Victoria, Texas 77904

#00086532 - Asher Gillaspie, We Can Keep It, 3208 Collinsworth St., Fort Worth, Texas 76107

#00086606 - Phillip W. Carpenter, A United Allen, 1702 Woodsboro Ct., Allen, Texas 75013

#00086612 - Zach D. Maxwell, Hood County Republican PAC, 219 Sardius Blvd., Granbury, Texas 76049

#00086800 - Lydia Meeks, TarrantVote4Change PAC, P.O. Box 123766, Fort Worth, Texas 76121

#00086875 - Taylor J. Major, Lone Star Improvement Fund, P.O. Box 871, Austin, Texas 78767

#00086906 - John B. Austin, Texans for Justice, P.O. Box 461021, San Antonio, Texas 78217

#00086920 - Rachel Stoerkel, Texans For Working Families, 5900 Balcones Drive Ste. 100, Austin, Texas 78731

#00087062 - Rachel Stoerkel, ONE Texas, Inc., 1401 Cleburne Street, Houston, Texas 77004

#00087069 - Michael A. Kolenc, Harris Forward, 655 Yale Street, Apt. 461, Houston, Texas 77007

#00087075 - Brian M. Talbot, Jr., 2023 Solidarity Convention PAC, 306 McCarthur Dr., Leander, Texas 78641

#00087131 - Michael J. Warner, Friends of Texas Southern University, 301 Brazos #1512, Austin, Texas 78701

#00087134 - Walter C. Nevegold, III, Professional Firefighters of Sherman Committee for Responsible Government, P.O. Box 278, Sherman, Texas 75091

#00087313 - Nicole J. Donatelli, NWISD Family First PAC, 5 Llano Dr., Trophy Club, Texas 76262

#00087350 - Nicole J. Donatelli, Northwest Family First, 5 Llano Dr., Roanoke, Texas 76262

#00087431 - Yvette B. Martinez, Christians for a Better Bexar County, 1230 Duke Rd., San Antonio, Texas 78264

#00087590 - Nathan Gower Schwarz, Greenpoint Urban Living Political Association & Resident's Rights Group (GULP-ARRG), 4604 S. Sugar Road #928, Edinburg, Texas 78539

#00087651 - Chereen Fisher, Texas Professional Vacation Rental Coalition PAC, 3606 Arrowhead Dr., Austin, Texas 78731

#00087855 - Nancy Morales, Law Enforcement Community Partnership, 522 San Francisco, El Paso, Texas 79901

#00088020 - Weston Martinez, Texas Agriculture Partnership, 14546 Brookhollow Ste., 312TAP, San Antonio, Texas 78232

#00088215 - Miguel Escoto, El Paso Community Power, 1708 Montana Ave., Ste. A, El Paso, Texas 79902

#00080083 - Art Fierro, Texas House Border Caucus, P.O. Box 2910, Austin, Texas 78768

#00081032 - Scott Sanford, Texas Legislative Prayer Caucus, P.O. Box 147, Argyle, Texas 76226

#00087748 - Ryan Guillen, Texas Nuclear Caucus, P.O. Box 2910, Austin, Texas 78768

#00087391 - Rodney Foster, Forward Sweetwater, Together, 11 Vista Court, Sweetwater, Texas 79556

#00087627 - Max Moreno, Vote Yes for Odem-Edroy Kids, 3823 Angelita, Odem, Texas 78370

#00087701 - Amy Hedtke, VOTE NO MAYPEARL ISD, 106 Vanderbilt, Waxahachie, Texas 75165

#00087702 - Amy Hedtke, Vote No, Midlothian ISD, 106 Vanderbilt, Waxahachie, Texas 75165

#00087703 - Amy Hedtke, Vote No, Red Oak ISD, 106 Vanderbilt, Waxahachie, Texas 75165

#00087704 - Amy Hedtke, Vote No, Waxahachie ISD, 106 Vanderbilt, Waxahachie, Texas 75165

#00088001 - Dana Burkett, Concerned Citizens Against Proposition A, 303 Commerce St., Ladonia, Texas 75449

#00088022 - Michael Zweschper, Vote Yes For the SISD Bond, 3217 Piano Bridge Road, Schulenburg, Texas 78956

#00088139 - Aubree Campbell, Taking Back TX, 2300 Summer Oaks Ct., Arlington, Texas 76011

#00088154 - Amy Hedtke, Vote NO, Aquilla ISD, 106 Vanderbilt, Waxahachie, Texas 75165

#00065721 - Stacy A. Gonzalez, Houston Stonewall Young Democrats PAC, 902 Cleveland St. Apt. 6333, Houston, Texas 77019

#00086988 - Oscar Saenz, Jr., Judson Advancement for Children Committee, 1110 Passion Flower Way, Richmond, Texas 77406

#00083324 - Trent Ashby, Aggie Legislative Caucus, P.O. Box 2910, Austin, Texas 78768

#00085673 - Karla Davis, Lone Star Republican Women, 799 CR 3412, Pittsburg, Texas 75686

#00087047 - Kimberly Y. Evans, Friends of Public Education 4 Frisco ISD PAC, 11625 Custer Rd #110-244, Frisco, Texas 75035

#00057991 - Blake Brown, Pflugerville Firefighters Political Action Committee, 608 Cactus Bend Drive, Pflugerville, Texas 78660

#00086608 - Nicole Webb, The Progressive Bloc, P.O. Box 6063, Dallas, Texas 75260

#00085913 - Gina Bouvier, Santa Fe Students First, P.O. Box 588, Santa Fe, Texas 77517

#00081468 - Philip J. Ratisseau, Citizens For CCISD, 5327 Appleblossom Ln., Friendswood, Texas 77546

#00087633 - Brandon Tankersley, Save Our Schools Four Points, 11608 Hunters Green Trail, Austin, Texas 78732

**Deadline: Runoff report due January 22, 2024 for Committees**

#00088252 - Chad Shoemake, Texans United for a Conservative Majority PAC, 405 E. Convent St., Victoria, Texas 77901

**Deadline: 30 day pre-election report due February 5, 2024 for Committees**

#00070302 - Matthew T. Longhofer, Texas Property Tax Lienholders Association PAC, 190 E. Stacy Rd., Ste. 306 #106, Allen, Texas 75002

#00015825 - Tierrishia Gibson, Galveston County Democratic Party, P.O. Box 1071, La Marque, Texas 77568

#00087143 - Jennifer Bradbury, Westwood Political Action Committee, 2901 Dallas Parkway, Plano, Texas 75093

**Deadline: 8 day pre-election report due February 26, 2024 for Committees**

#00088515 - Justin Cooper, Public Progress Committee, 405 Howard Street, San Francisco, California 94105

#00015553 - Lorna L. Mayles, Texas Society Of Professional Surveyors PAC, 2525 Wallingwood Dr., Ste. 300, Austin, Texas 78746

#00017097 - Diana Lin Riley, Highland Lakes Republican Women, 871 Fir Lane, Cottonwood Shores, Texas 78657

#00087143 - Jennifer Bradbury, Westwood Political Action Committee, 2901 Dallas Parkway, Plano, Texas 75093

#00023875 - Lacey Riley, Denton County Republican Party (P), 2921 County Club Rd #102, Denton, Texas 76210

#00015825 - Tierrishia Gibson, Galveston County Democratic Party, P.O. Box 1071, La Marque, Texas 77568

**Deadline: 30 day pre-election report due April 4, 2024 for Committees**

#00067651 - Robert Woolery, Conroe Professional Firefighters Association - PAC, 4541 Duval Lane, Cleveland, Texas 77328

#00031918 - Kenneth Zarifis, Education Austin PAC, P.O. Box 26459, Texas 78755

**Deadline: 8 day pre-election report due April 26, 2024 for Committees**

#00088609 - Devan Stoglin, Sr., Vote for Our Kids - 2024 Connally ISD Bond, 628 Powers Street, Waco, Texas 76705

#00088683 - Ken Benson, Friends of the Dallas Public Library, 1515 Young Street 7th Floor, Dallas, Texas 75201

#00031918 - Kenneth Zarifis, Education Austin PAC, P.O. Box 26459, Texas 78755

#00088599 - Shannon O'Leary, Greater Solutions for Tomorrow, P.O. Box 341016, Austin, Texas 78734

**Deadline: Runoff report due May 20, 2024 for Committees**

#00053491 - Steve Rudner, Texas Equity PAC, 12740 Hillcrest Rd., Ste. 240, Dallas, Texas 75230

TRD-202404435

J.R. Johnson

Executive Director

Texas Ethics Commission

Filed: September 13, 2024



**General Land Office**

Official Notice to Vessel Owner/Operator (Pursuant to §40.254, Tex Nat. Res. Code)

**PRELIMINARY REPORT**

**Authority**

This preliminary report and notice of violation was issued by the Deputy Director, Oil Spill Prevention and Response Division (OSPR), Texas General Land Office, on 8/20/24.

**Facts**

Based on an inspection conducted on 7/12/24, the Commissioner of the General Land Office (GLO), has determined that the vessel identified as Vessel Id #67, is in a derelict condition in coastal waters without the consent of the Commissioner. The vessel is/or was located at 960 CR 209, in Matagorda County, Texas.

The GLO determined that pursuant to OSPRA §40.254(b)(2)(B), that the vessel does have intrinsic value.

20 Day Placard: USCG Vessel Documentation No./TPWD Reg. No. TX 6210 KA

The last registered owner(s) of this vessel is \_\_\_\_\_.

**Violation**

YOU ARE HEREBY GIVEN NOTICE, pursuant to the provisions of § 40.254 of the Texas Natural Resources Code, (OSPRA) that you are in violation of OSPRA §40.108(a) that prohibits a person from leaving, abandoning, or maintaining any structure or vessel in or on coastal waters, on public lands without the consent of the Commissioner, and the Commissioner determines the vessel is involved in an actual or unauthorized discharge of oil, a threat to the public health, safety, and welfare, or a hazard to the environment or navigation. The Commissioner is authorized by OSPRA §40.108(b) to dispose of or contract for the disposal of any vessel described in §40.108(a).

**Recommendation**

The Commissioner recommends that the vessel be removed immediately from Texas coastal waters and disposed of in accordance with OSPRA §40.108.

The owner or operator of this vessel can request a hearing to contest the violation and the removal and disposal of the vessel. If the owner or operator wants to request a hearing, a request in writing must be made within twenty (20) days of this notice being posted on the vessel. The request for a hearing must be sent to: Texas General Land Office, Oil Spill Prevention and Response Division, P.O. Box 12873, Austin, Texas 78711. Failure to request a hearing will result in the removal and disposal of the vessel by the TGLO. If the TGLO removes and disposes of the vessel, the TGLO has authority under TNRC §40.108(b) to recover the costs of removal and disposal from the vessel's owner or operator.

**For additional information contact the Hurricane Beryl Vessel Owner Hotline**

TRD-202404475

Jennifer Jones

Chief Clerk, Deputy Land Commissioner

General Land Office

Filed: September 17, 2024



**Texas Health and Human Services Commission**

**Public Notice: Amendment to the Texas State Plan for CMS Measures Reporting**

The Texas Health and Human Services Commission (HHSC) announces its intent to submit transmittal number 24-0032 to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act.

The proposed effective date of the amendment is December 31, 2024.

The purpose of this amendment is to assure HHSC compliance with the mandatory reporting of the Centers for Medicare and Medicaid Services (CMS) Child Core Set and the behavioral health measures of the Adult Core Set as per Sections 1139A(a)(4)(B) and 1139B(b)(3)(B) of the Social Security Act respectively, beginning in 2024, and annually reporting in subsequent years, on all measures on the Child Core Set and the behavioral health measures in the Adult Core Set as identified by the Secretary of Health and Human Services. The proposed amendment is estimated to have no fiscal impact.

Updates to Title 42 CFR Parts 433, 437, and 457, effective January 1, 2024, made federal reporting of certain CMS Core Measure Sets, including the Child Core Set and behavioral health measures of the Adult Core Set, a mandatory requirement. HHSC has been voluntarily submitting these measures to CMS since 2014. The costs for annually calculating and submitting the measure sets to CMS have been included in the contract with the External Quality Review Organization since 2013.

To obtain copies of the proposed amendment, interested parties may contact Nicole Hotchkiss, State Plan Coordinator, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, Texas 78711; by telephone at (512) 438-5035; or by email at Medicaid\_Chip\_SPA\_Inquiries@hhsc.state.tx.us. The Access and Eligibility Services for local benefit offices will post this notice for 30 days and will have copies of the amendment available for review.

TRD-202404458

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: September 17, 2024



**Public Notice: Texas State Plan for Medical Assistance Amendment**

The Texas Health and Human Services Commission (HHSC) announces its intent to submit amendments to the Texas State Plan for Medical Assistance under Title XIX of the Social Security Act.

The purpose of the amendment is to update the rate methodology and payment rates for Financial Management Services Agencies (FMSA). Provider Finance Department (PFD) staff evaluated the FMSA rate methodology and payment rates as part of the biennial fee review. The proposed amendment is effective October 1, 2024.

There is no anticipated fiscal impact for the proposed amendment due to no fee-for-service utilization in Federal Fiscal Year (FFY) 2023 and FFY 2024.

Further detail on specific reimbursement rates and percentage changes is available on the HHSC PFD website under the proposed effective date at <http://pfd.hhs.texas.gov/rate-packets>.

Rate Hearing. A rate hearing was held on May 21, 2024, at 9:00 a.m. in Austin, Texas. Information about the proposed rate change and the hearing can be found in the April 26, 2024, issue of the *Texas Register* (49 TexReg 2829) <http://www.sos.state.tx.us/texreg/index.shtml>.

Copy of Proposed Amendment(s). Interested parties may obtain additional information or a free copy of the proposed amendments by Nicole Hotchkiss, State Plan Policy Advisor, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, Texas 78711; by telephone at (512) 487-3349; by facsimile at (512) 730-7472; or by email at Medicaid\_Chip\_SPA\_In-

quiries@hhsc.state.tx.us. Copies of the proposed amendments will be available for review at the local county offices of HHSC (formerly the local offices of the Texas Department of Aging and Disability Services).

Written Comments. Written comments and requests to review comments may be sent by U.S. mail, overnight mail, special delivery mail, hand delivery, fax, or email:

U.S. Mail

Texas Health and Human Services Commission

Attention: Provider Finance Department

Mail Code H-400

P.O. Box 149030

Austin, Texas 78714-9030

Overnight mail, special delivery mail, or hand delivery

Texas Health and Human Services Commission

Attention: Provider Finance Department

North Austin Complex

Mail Code H-400

4601 West Guadalupe Street

Austin, Texas 78751

Phone number for package delivery: (512) 730-7401

Fax Attention: Provider Finance Department at (512) 730-7475

Email PFD-LTSS@hhs.texas.gov

Preferred Communication. For quickest response, please use e-mail or phone, if possible, for communication with HHSC related to this state plan amendment.

TRD-202404452

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: September 16, 2024

## Texas Department of Licensing and Regulation

### Notice of Vacancies on Board of Boiler Rules

The Texas Department of Licensing and Regulation (Department) announces one vacancy on the Board of Boiler Rules (Board) established by 16 Texas Administrative Code §110.14. The purpose of the Board of Boiler Rules is to provide advice and recommendations to the commission in the adoption of definitions and rules relating to the safe construction, installation, inspection, operating limits, alteration, and repair of boilers and appurtenances. **This announcement is for:**

- **one member representing person who owns or uses boilers in this state.**

The Board is composed of eleven members appointed by the presiding officer of the Commission, with the approval of the Commission. Members serve staggered six-year terms, with the terms of two or three members expiring on January 31 of each odd-numbered year. The Board is composed of the following members:

1. three members representing persons who own or use boilers in this state;

2. three members representing companies that insure boilers in this state;
3. one member representing boiler manufacturers or installers;
4. one member representing organizations that repair or alter boilers in this state;
5. one member representing a labor union; and
6. two public members.

Interested persons should submit an application on the Department website at: <https://www.tdlr.texas.gov/AdvisoryBoard/login.aspx>. Applicants can also request an application via e-mail at [advisory.boards@tdlr.texas.gov](mailto:advisory.boards@tdlr.texas.gov).

**This is not a paid position and there is no compensation or reimbursement for serving on the Board.**

TRD-202404412

Courtney Arbour

Executive Director

Texas Department of Licensing and Regulation

Filed: September 11, 2024

### Notice of Vacancies on Motorcycle Safety Advisory Board

The Texas Department of Licensing and Regulation (Department) announces four vacancies on the Motorcycle Safety Advisory Board (Board) established by the Transportation Code, Chapter 662.0037(b). The purpose of the Motorcycle Safety Advisory Board is to advise the Texas Commission of Licensing and Regulation and the Department on rules and educational and technical matters relevant to the administration of this chapter. The Board meets at the call of the Executive Director of the Department or the presiding officer of the Commission. Service as a Board member is voluntary, and compensation is not authorized by law. **This announcement is for:**

- **one member who is an instructor training provider;**

- **one representative of a law enforcement agency;**

- **one public member who hold a valid Class M driver's license issued under Chapter 521;**

- **one member: (a) of whom must be an instructor or represent a motorcycle school; and (b) who must collectively represent the diversity in size and type of the motorcycle schools licensed under this chapter.**

The Board consists of nine members appointed by the presiding officer of the Commission, with the approval of the Commission. The board consists of the following members:

**1. three members: (a) each of whom must be an instructor or represent a motorcycle school; and (b) who must collectively represent the diversity in size and type of the motorcycle schools licensed under this chapter;**

**2. one member who represents the motorcycle dealer retail industry;**

**3. one representative of a law enforcement agency;**

**4. one representative of the Texas A&M Transportation Institute;**

**5. one member who is an instructor training provider; and**

**6. two public members who hold a valid Class M driver's license issued under Chapter 521.**



Members serve staggered six-year terms. The terms of three members expire September 1 of each odd-numbered year. The presiding officer of the commission, on approval of the commission, shall designate a member of the advisory board to serve as the presiding officer of the advisory board for a one-year term. The presiding officer of the advisory board may vote on any matter before the advisory board.

Interested persons should submit an application on the Department website at: <https://www.tdlr.texas.gov/AdvisoryBoard/login.aspx>. Applicants can also request an application from the Department by telephone (800) 803-9202, fax (512) 475-2874 or e-mail [advisory.boards@tdlr.texas.gov](mailto:advisory.boards@tdlr.texas.gov).

**These are not paid positions and there is no compensation or reimbursement for serving on the board.**

TRD-202404410

Courtney Arbour

Executive Director

Texas Department of Licensing and Regulation

Filed: September 11, 2024



## Texas Lottery Commission

Scratch Ticket Game Number 2614 "BREAK THE BANK"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2614 is "BREAK THE BANK". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2614 shall be \$2.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2614.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 1, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 2X SYMBOL, 5X SYMBOL, \$2.00, \$4.00, \$5.00, \$10.00, \$15.00, \$20.00, \$50.00, \$200, \$1,000, \$3,000 and \$30,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2614 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
3	THR
4	FOR
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWN

30	TRTY
2X SYMBOL	DBL
5X SYMBOL	WINX5
\$2.00	TWO\$
\$4.00	FOR\$
\$5.00	FIV\$
\$10.00	TEN\$
\$15.00	FFN\$
\$20.00	TWY\$
\$50.00	FFTY\$
\$200	TOHN
\$1,000	ONTH
\$3,000	THTH
\$30,000	30TH

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2614), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 125 within each Pack. The format will be: 2614-0000001-001.

H. Pack - A Pack of the "BREAK THE BANK" Scratch Ticket Game contains 125 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One Ticket will be folded over to expose a front and back of one Ticket on each Pack. Please note the Packs will be in an A, B, C and D configuration.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "BREAK THE BANK" Scratch Ticket Game No. 2614.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "BREAK THE BANK" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose twenty-two (22) Play Symbols. If a player matches any of the YOUR NUMBERS Play Symbols to either of the WINNING NUMBERS Play Symbols, the player wins the PRIZE for that number. If the player reveals a "2X" Play Symbol, the player wins DOUBLE the PRIZE for that symbol. If the player reveals a "5X" Play Symbol, the player wins 5 TIMES the PRIZE for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly twenty-two (22) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Scratch Ticket shall be intact;

6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;
8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Scratch Ticket must not be counterfeit in whole or in part;
10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;
11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;
13. The Scratch Ticket must be complete and not miscut, and have exactly twenty-two (22) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;
14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;
15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the twenty-two (22) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the twenty-two (22) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

## 2.2 Programmed Game Parameters.

A. GENERAL: The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure.

B. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

C. KEY NUMBER MATCH: No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 04 and \$4).

D. KEY NUMBER MATCH: There will be no matching non-winning YOUR NUMBERS Play Symbols on a Ticket.

E. KEY NUMBER MATCH: There will be no matching WINNING NUMBERS Play Symbols on a Ticket.

F. KEY NUMBER MATCH: A non-winning Prize Symbol will never match a winning Prize Symbol.

G. KEY NUMBER MATCH: A Ticket may have up to two (2) matching non-winning Prize Symbols, unless restricted by other parameters, play action or prize structure.

H. KEY NUMBER MATCH: The "2X" (DBL) Play Symbol will only appear on winning Tickets, as dictated by the prize structure.

I. KEY NUMBER MATCH: The "5X" (WINX5) Play Symbol will only appear on winning Tickets, as dictated by the prize structure.

## 2.3 Procedure for Claiming Prizes.

A. To claim a "BREAK THE BANK" Scratch Ticket Game prize of \$2.00, \$4.00, \$5.00, \$8.00, \$10.00, \$15.00, \$20.00, \$50.00 or \$200, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$50.00 or \$200 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "BREAK THE BANK" Scratch Ticket Game prize of \$1,000, \$3,000 or \$30,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "BREAK THE BANK" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is \$1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "BREAK THE BANK" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "BREAK THE BANK" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial

bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 24,000,000 Scratch Tickets in Scratch Ticket Game No. 2614. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2614 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$2.00	2,304,000	10.42
\$4.00	1,344,000	17.86
\$5.00	288,000	83.33
\$8.00	96,000	250.00
\$10.00	480,000	50.00
\$15.00	192,000	125.00
\$20.00	192,000	125.00
\$50.00	90,000	266.67
\$200	10,000	2,400.00
\$1,000	300	80,000.00
\$3,000	130	184,615.38
\$30,000	10	2,400,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 4.80. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2614 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2614, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202404509

Bob Biard  
 General Counsel  
 Texas Lottery Commission  
 Filed: September 18, 2024

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### Motor Vehicle Crime Prevention Authority

Fiscal Year 2025 Request for Applications, 2nd Solicitation -  
 SB 224 Catalytic Converter Grant

Notice of Request for Applications

The Motor Vehicle Crime Prevention Authority (MVCPA) has authorized the issuance of the Fiscal Year 2025 (FY 2025) Request for Applications (RFA). Senate Bill 224 provides that, "The money deposited to the credit of the general revenue fund for coordinated regulatory and law enforcement activities intended to detect and prevent catalytic converter theft in this state... may be appropriated to the Authority for the activities required by this section." To implement SB 224, the MVCPA is providing grants to local law enforcement taskforces and agencies

to combat Catalytic Converter Theft. Eligible applicants may request funds for program operation by submission of an application consistent with the information, including the requirements and conditions stated in this RFA. This RFA is posted in the *Texas Register* for at least thirty (30) days prior to the due date for Applications.

All applications submitted will be for FY 2025. If awarded an FY 2025 SB 224 Catalytic Converter Grant, the MVCPA may provide a FY 2026 grant subject to availability of funding and grantees' positive program performance. The MVCPA may use the same FY 2025 application and prorated budget values as originally submitted for the additional period. Any ongoing program (scope) changes or budget changes will be submitted by grantees through the grant adjustment process after the creation of the second-year grants.

#### Due Date

Grant Applications from eligible applicants must be completely submitted on-line at <https://MVCPA.tamu.edu> on or before 5:00 p.m., November 12, 2024. First time applicants must establish an account and perform account setup steps prior to an application being able to be submitted.

The required Resolution and any optional supporting documents must be scanned and submitted as attachments to the application at <https://MVCPA.tamu.edu> on or before 5:00 p.m., November 12, 2024.

#### Applicable Authority and Rules

Motor Vehicle Crime Prevention Authority grant programs are governed by the following statutes, rules, standards, and guidelines:

Texas Transportation Code Chapter 1006 (<https://statutes.capitol.texas.gov/Docs/TN/htm/TN.1006.htm>)

Texas Administrative Code (TAC): Title 43; Part 3; Chapter 57 ([https://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac\\_view=3&ti=43&pt=3](https://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=3&ti=43&pt=3))

Texas Grant Management Standards (TxGMS) as promulgated by the Texas Comptroller of Public Accounts (<https://comptroller.texas.gov/purchasing/grant-management/>)

The current Motor Vehicle Crime Prevention Authority Grant Administrative Manual and any subsequent adopted grantee instruction manuals ([https://www.txdmv.gov/sites/default/files/body-files/MVCPA\\_FY20\\_Grant\\_Admin\\_Manual.pdf](https://www.txdmv.gov/sites/default/files/body-files/MVCPA_FY20_Grant_Admin_Manual.pdf))

This Request for Applications issued on September 16, 2024.

#### Eligible Applicants.

Only Texas law enforcement agencies through their city or county are eligible to apply for the FY 2025 SB 224 Catalytic Converter Grant funding.

#### Application Category

New Grant - These are potentially annual grants subject to available legislative funding. A 20% Cash Match is required for this application. Applicants meeting the eligibility requirements may submit a new grant application to the priority established by the MVCPA in the FY 2025 RFA. New applicants shall email MVCPA at [GrantsMVCPA@txdmv.gov](mailto:GrantsMVCPA@txdmv.gov) from an official governmental agency email account to request an account and that access be established.

#### Grant Type

Reimbursement - This is a total program budget reimbursement grant. Applicants that are awarded grants will expend local (agency) funds and then will be reimbursed quarterly, subject to compliance with standard and special conditions as contained in the Statement of Grant

Award (SGA), at the agreed rate for all allowable, reasonable, and necessary program costs incurred.

#### Grant Term

The FY 2025 grant cycle is a one (1) year funding cycle to begin on **Signing Date of Resolution by Authorized Official, 2024, and end August 31, 2025**. Subject to availability of funding and grantees' positive program performance the MVCPA may provide a FY 2026 grant using the same on-line application systems and prorated budget values as originally submitted. No obligations or expenses may be incurred or made outside of the grant period(s).

#### Method of Application

Grant Applications from eligible applicants shall be submitted on-line at <https://MVCPA.tamu.edu> on or before 5:00 p.m., November 12, 2024. All forms will be completed on-line. The Resolution and all supporting documents must be submitted as attachments.

#### Resolution Required

A Resolution (Order or Ordinance) by the applicant governing body is required to make application for these funds. The resolution shall provide that the governing body applies for the funds for the purpose provided in statute (SB 224 and this RFA) and agrees to return the grant funds in the event of loss or misuse and designate the officials that the governing body chooses as its agents to make uniform assurances and administer the grant if awarded.

Only the governing body that submits an application needs to adopt and submit a Resolution. Participating jurisdictions in multi-agency taskforces shall agree and commit to the grant through Interlocal Cooperation Contract or agreements as provided under Texas Local Government Code Chapter 362, Texas Government Code Chapter 791, and TxGMS.

In the event a governing body has delegated the application authority to a city manager, chief of police, sheriff or other official, then applicants must submit on-line a copy of the delegation order (documentation) along with the Resolution signed by the official. A sample Resolution is attached as Appendix A.

#### Program Category

To be eligible for consideration for funding, a law enforcement taskforce grant application must be designed to support one or more of the following MVCPA program categories (43 TAC §57.14):

Law Enforcement, Detection, and Apprehension - provide financial support to law enforcement agencies for catalytic converter theft and crime enforcement teams (referred to as taskforces). Taskforces will develop organized methods to combat catalytic converter theft through the enforcement of applicable law. This may include recovery of vehicles, clearance of cases, arrest of law violators, and disruption of organized motor vehicle crime. This category includes development of uniform programs to prevent stolen catalytic converters from entering Mexico or being removed from Texas through outbound seaports.

Prosecution/Adjudication/Conviction - provide financial support for taskforces to work with prosecutors and the judiciary to implement programs designed to reduce the incidence of catalytic converter theft.

Prevention, Anti-Theft Devices and Automobile Registration - provide financial support for taskforces to work with organizations and communities to reduce the incidence of catalytic converter theft. The application shall demonstrate how financial support will assist motor vehicle owners to reduce catalytic converter theft.

Reduction of the Sale of Stolen Vehicles or Parts - provide financial support for taskforces to work with businesses, organizations, and com-

munities to reduce the sale of catalytic converters. Applicants will develop organized methods to combat the sale of stolen catalytic converters using any of the following: vehicle identification number (VIN) inspections; inspections of motor vehicle part and component distribution enterprises; parts labeling and etching methods; and means to detect the fraudulent sale of stolen catalytic converters.

**Educational Programs and Marketing** - provide financial support for taskforces to work with individuals, businesses, organizations, and communities to assist motor vehicle owners in detecting and preventing catalytic converter theft. Develop and provide specialized training or education program(s) to the public on detecting and preventing catalytic converter theft, law enforcement on interdiction and prosecution, and government officials on detecting and preventing catalytic converter theft in this state.

#### Priority Funding

The MVCPA enabling statute provides that "The authority shall allocate grant funds primarily based on the number of motor vehicles stolen in, or the motor vehicle burglary or theft rate across, and the number of fraud-related motor vehicle crimes committed in the state rather than based on geographic distribution." (TTC Section 1006.151(c); SB 224). In addition, the following grant features will be given priority consideration in evaluating new grant applications:

**Continuing Funded Programs in Compliance with MVCPA Grant Conditions** - Applications that provide for the continuation of existing programs that currently meet the program and fiscal reporting conditions of the MVCPA grant program. Applicants must provide the ongoing need and their progress and impactful performance toward detecting and preventing catalytic converter theft.

The applicant must describe the experience and qualifications of investigators used in the program and how utilization of grant inventory and resources for continued operation of these specialized investigative grant programs are useful for state and local governments.

**Programs to Combat Organized Catalytic Converter Crime** - Applications for detecting and preventing catalytic converter theft enforcement teams that introduce, increase, or expand efforts to detect and prevent theft of catalytic converters by organized crime.

**Border and Port Security** - Applications that provide specific initiatives to identify and prevent stolen catalytic converters from crossing the border with Mexico using automatic license plate readers, training of local state and federal personnel in the identification of stolen vehicles, and bridge and port inspections.

**Use of Technology** - Applications that incorporate automatic license plate reader programs, surveillance equipment, and other uses of technology to increase the number of stolen catalytic converters recovered and the number of persons arrested for catalytic converter crimes.

**Theft of Parts from a Motor Vehicle** - Applications that incorporate a reasonable, objective plan to combat and prevent the theft of catalytic converters.

**Dedicated Prosecutors** - Applications that incorporate a dedicated prosecutor to increase the priority of catalytic converter theft prosecutions and decrease the number of repeat offenders through successful and timely prosecution efforts.

#### Supporting Documents

Documents that provide evidence of local support or commitment from other officials or agencies for the application may be submitted following the same instructions as the Resolution. Interagency agreements shall be submitted prior to payments being authorized if an award is made. MVCPA recommends that interagency agreements be com-

pleted after award determinations are made to ensure correct amounts are reflected in those agreements. All interagency agreements must meet the conditions and elements required in the TxGMS.

#### Supplanting Prohibited

Grant funds provided by the Authority under this RFA shall not be used to supplant federal, state, or local funds that otherwise would be available for the same purposes (43 Texas Administrative Code §57.9). Supplanting means the replacement of other funds with MVCPA grant funds. This shall include using existing resources already available to a program activity as cash match.

**NICB** - Applicants may enter into formal agreements with the National Insurance Crime Bureau (NICB) to work on grant funded activities. The amount of salary and other direct costs related to the work on grant activity provided by the NICB may be reported. Time certifications are required to be made by the employee for these positions as required by TXGMS.

#### In-Kind Match

Only include in-kind match if necessary for the local jurisdiction. In-kind match may be used to: 1) reflect the total level of jurisdictions' effort/costs to combat catalytic converter theft; 2) reflect how the grant program fits into jurisdictions' operation; 3) effectively operate a single program with multiple funding streams; and/or 4) contributions from the applicant or third parties that are for grant funded activity. Costs in detail line items shall not be split between in-kind match and grant funding. For example, the entire salary of an officer shall be placed in one expense type rather than split between grant and in-kind.

#### Reporting and Webinar Attendance Requirements

Applicants that are awarded grants will be required to provide:

**Quarterly Progress Reports** - The MVCPA requires the submission of quarterly progress reports to demonstrate progress toward meeting goals and activities provided in the grant application. These include: 1) Monthly progress toward meeting statutorily required performance measures; 2) Monthly progress recorded on the Goals, Strategies and Activities report; and 3) Quarterly Summary and Success section. Grantees designated as Border/Port Security grants are required to complete additional sections required by the Texas Legislature.

**Quarterly Financial Reports** - Reports of actual expenses incurred are required to request funds. All expenditures must be in accordance with local policies and procedures and grant requirements. Grantees shall review all expenditures, ensure all applicable regulations are followed, and maintain documentation that is accurate and complete. All expenses must be supported by appropriate documentation.

**Webinar Attendance**: One grant financial representative from the applicant agency is required to attend a monthly session via teleconference or webinar that includes information on MVCPA grant administration.

One law enforcement officer is required to attend the information sharing and networking sessions on a monthly session via teleconference or webinar that includes law enforcement issues and other MVCPA issues critical to the successful operation of MVCPA taskforces.

#### Funding Requirements and Conditions:

**State Funds Availability** - All awards by the MVCPA are subject to availability of state funds.

**Right of Refusal** - The Authority reserves the right to reject any or all the applications submitted.

**Awards** - Publishing the RFA does not legally obligate the Authority to fund any programs.



**Partial Funding** - The Authority may choose to offer funds for all, or any portion of a program submitted in an application.

**Substitution** - The Authority may offer alternative funding sources, special conditions, or alternative program elements in response to submitted Applications.

**Application Required** - Registration for on-line access is required. The MVCPA is not responsible for applicants that cannot complete the registration and application process on time.

**No Alternative Application Submission** - Paper applications and requests for funding are not accepted in lieu of the on-line grant application process.

**Review Criteria** - Authority staff and any designated MVCPA Board member(s) will review each grant using subjective and objective tools and comparative analysis. The weight given to each section or combination of sections is at the sole discretion of the Authority.

**Questions and Clarification** - During the review period, the applicant may be contacted by Authority staff to answer questions or to seek clarification regarding information provided in the application. Failure to promptly respond will not disqualify an applicant, but information that is submitted after the review period may not be considered.

**Final Selection** - The Authority may select and award programs that best meet the statutory and legislative purposes of SB 224 and that reflect its current priorities. No appeal may be made regarding the Authority's decisions.

**Changes in Application** - If an applicant proposes changes to be made in the program type or participation of jurisdictions after an award is determined, then the Authority will review the changes and may make modifications (including the amount) or cancel the award as deemed appropriate by the Authority.

**Delayed Start** - An applicant that is awarded a grant and does not begin operations within 30 days of the issuance of the Statement of Grant Award is considered terminated.

**Application instructions** - the MVCPA will provide additional details and instructions in the on-line application system that are incorporated by reference as part of this RFA and which must be followed during the application and award process.

**Program Income** - is defined in the TxGMS. Current grantees carrying forward program income to future years will follow the new rules established by the Texas Comptroller and MVCPA Grant Administrative Manual.

**TCOLE Certifications Required** - All law enforcement agencies regulated by Chapter 1701, Occupations Code must certify that they are in compliance with the Texas Commission on Law Enforcement standards or provide a certification from the Texas Commission on Law Enforcement that states that the requesting agency is in the process of achieving compliance with said rules.

**Selection Process:**

Eligible applications will be reviewed. Grant award decisions by MVCPA are final and not subject to judicial review.

Applications that do not meet the stated requirements of this RFA and that are not eligible for review will be notified within ten (10) working days after the due date.

### **Application Workshop**

**Potential applicants are requested to attend the on-line "Motor Vehicle Crime Prevention Authority SB224 Catalytic Converter Grant Application Workshop" which has been scheduled for: Wednesday November 20, 2024 (1:30 p.m. to 3:00 p.m.). Join by using the following links:**

### **THIS MEETING WILL BE HELD REMOTELY VIA MICROSOFT TEAMS MEETING**

Join on your computer, mobile app or room device.

[https://teams.microsoft.com/l/meetup-join/19%3ameeting\\_M2I-wNjI4MWYtNTQxYy00YTM5LTlkMTUyYWU2YTY2YzUz-ZWMx%40thread.v2/0?context=%7b%22Tid%22%3a%2272719f70-3533-46b3-9456-ec1235143768%22%2c%22Oid%22%3a%22a810f-53f-9b01-49b0-9a51-e2652a0e7c64%22%7d](https://teams.microsoft.com/l/meetup-join/19%3ameeting_M2I-wNjI4MWYtNTQxYy00YTM5LTlkMTUyYWU2YTY2YzUz-ZWMx%40thread.v2/0?context=%7b%22Tid%22%3a%2272719f70-3533-46b3-9456-ec1235143768%22%2c%22Oid%22%3a%22a810f-53f-9b01-49b0-9a51-e2652a0e7c64%22%7d)

Meeting ID: 299 797 027 424 Passcode: 5nydFF

Download Teams (<https://www.microsoft.com/en-us/microsoft-teams/download-app>)

Join on the web (<https://www.microsoft.com/microsoft-teams/join-a-meeting>)

Or call in (audio only)

+1 (737) 787-8456, 138752901# United States, Austin

Phone Conference ID: 138 752 901#

The informational session will provide details on the grant Application process including grant eligibility requirements, completing the various Application sections, and the grant cycle timeline. At least one representative of the potential grant applicant should be present at this workshop.

Contact Person

William Diggs, MVCPA Director,

Texas Motor Vehicle Crime Prevention Authority

4000 Jackson Avenue

Austin, Texas 78731

(512) 465-1485

GrantsMVCPA@txdmv.gov

Issued in Austin, Texas on April 12, 2024

William Diggs, MVCPA Director

Figure 1:

### **MVCPA Application Checklist**

Each Applicant must:

- 1) Complete the on-line Application on or before **5:00 PM, November 12, 2024.**
- 2) Complete the Resolution with the city or county and attach with other supporting documents on or before **5:00 PM, November 12, 2024.**

Figure 2:

**Appendix A**  
**Updated Sample Motor Vehicle Crime Prevention Authority Resolution**

Applicants must use the language below to meet the minimum legal elements to execute an agreement with the MVCPA through the grant application process. Cities and counties not wanting to use the sample below must address all the legal elements contained herein.

2025 **Blank City / County** Resolution or Order or Ordinance  
**Motor Vehicle Crime Prevention Authority**  
2025 **Blank City / County** Resolution  
**FY 25 SB 224 Catalytic Converter Grant Program**

WHEREAS, under the provisions of the Texas Transportation Code Chapter 1006 and Texas Administrative Code Title 43; Part 3; Chapter 57, entities are eligible to receive grants from the Motor Vehicle Crime Prevention Authority to provide financial support to law enforcement taskforces and agencies for economic motor vehicle theft, including catalytic converter theft; and

WHEREAS this grant program will assist this jurisdiction to combat catalytic converter theft; and

WHEREAS, [GOVERNMENTAL ENTITY] has agreed that in the event of loss or misuse of the grant funds, [GOVERNMENTAL ENTITY] agrees and assures that the grant funds will be returned in full to the Motor Vehicle Crime Prevention Authority.

NOW THEREFORE, BE IT RESOLVED and ordered that [NAME], [TITLE], is designated as the Authorized Official to apply for, accept, decline, modify, or cancel the grant application for the Motor Vehicle Crime Prevention Authority Grant Program and all other necessary documents to accept said grant; and

BE IT FURTHER RESOLVED that [Name] is designated as the Program Director and [Name] is designated as the Financial Officer for this grant.

Adopted this \_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
NAME  
TITLE: County Judge /Mayor/ City Manager

TRD-202404455  
David Richards  
MVCPA General Counsel  
Motor Vehicle Crime Prevention Authority  
Filed: September 16, 2024

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**Texas Parks and Wildlife Department**

Notices of Public Comment Hearing on Applications for Sand and Gravel Permits

**Notice of a Public Comment Hearing on an Application for a Sand and Gravel Permit**

ONEOK NGL Pipeline, LLC has applied to the Texas Parks and Wildlife Department (TPWD) for a General Permit pursuant to Texas Parks and Wildlife Code, Chapter 86, to remove or disturb 351 cubic

yards of sedimentary material within Battle Creek in Eastland County at coordinates 32.459990°, -99.107641° to cover an exposed natural gas pipeline by installing an armorform articulating block mat within the stream. The location is approximately 1.9-miles north, northeast of County Road 314 and Battle Creek, and approximately 1.1-miles south of County Road 122 and Battle Creek. This notice is being published and mailed pursuant to 31 TAC §69.105(d).

TPWD will hold a public comment hearing regarding the application at 11:00 a.m. on October 25, 2024 at TPWD headquarters, located at 4200 Smith School Road, Austin, Texas 78744. A remote participation option will be available upon request. Potential attendees should contact Beth Bendik at (512) 389-8521 or at [beth.bendik@tpwd.texas.gov](mailto:beth.bendik@tpwd.texas.gov) for information on how to participate in the hearing remotely. The hearing is not a contested case hearing under the Texas Administrative Procedure Act. Oral and written public comment will be accepted during the hearing.

Written comments may be submitted directly to TPWD and must be received no later than 30 days after the date of publication of this notice in the *Texas Register*. A written request for a contested case hearing from an applicant or a person with a justiciable interest may also be submitted and must be received by TPWD prior to the close of the public comment period. Timely hearing requests shall be referred to the State Office of Administrative Hearings. Submit written comments, questions, requests to review the application, or requests for a contested case hearing to: TPWD Sand and Gravel Program by mail: Attn: Beth Bendik, Texas Parks and Wildlife Department, Inland Fisheries Division, 4200 Smith School Road, Austin, Texas 78744; or via e-mail: [sand.gravel@tpwd.texas.gov](mailto:sand.gravel@tpwd.texas.gov).

#### **Notice of a Public Comment Hearing on an Application for a Sand and Gravel Permit**

Jill and Kerry Goad have applied to the Texas Parks and Wildlife Department (TPWD) for a General Permit pursuant to Texas Parks and Wildlife Code, Chapter 86, to remove or disturb twenty to sixty cubic yards of sedimentary material within Beaver Creek in Mason County. The purpose is to remove the existing collapsed crossing over Beaver Creek and construct a new crossing approximately within the existing crossing footprint. The location is 0.70 miles southwest of the intersection of Loeffler Ln and Cedar Bluff Rd; the project is 1,056 feet upstream from the crossing of Cedar Bluff Road (30.5749806, -99.1043111). This notice is being published and mailed pursuant to 31 TAC §69.105(d).

TPWD will hold a public comment hearing regarding the application at 9:00 a.m. on October 25, 2024 at TPWD headquarters, located at 4200 Smith School Road, Austin, Texas 78744. A remote participation option will be available upon request. Potential attendees should contact Beth Bendik at (512) 389-8521 or at [beth.bendik@tpwd.texas.gov](mailto:beth.bendik@tpwd.texas.gov) for information on how to participate in the hearing remotely. The hearing is not a contested case hearing under the Texas Administrative Procedure Act. Oral and written public comment will be accepted during the hearing.

Written comments may be submitted directly to TPWD and must be received no later than 30 days after the date of publication of this notice in the *Texas Register*. A written request for a contested case hearing from an applicant or a person with a justiciable interest may also be submitted and must be received by TPWD prior to the close of the public comment period. Timely hearing requests shall be referred to the State Office of Administrative Hearings. Submit written comments, questions, requests to review the application, or requests for a contested case hearing to: TPWD Sand and Gravel Program by mail: Attn: Beth Bendik, Texas Parks and Wildlife Department, Inland Fisheries Divi-

sion, 4200 Smith School Road, Austin, Texas 78744; or via e-mail: [sand.gravel@tpwd.texas.gov](mailto:sand.gravel@tpwd.texas.gov).

#### **Notice of a Public Comment Hearing on an Application for a Sand and Gravel Permit**

New Generation Gas Gathering LLC has applied to the Texas Parks and Wildlife Department (TPWD) for a General Permit pursuant to Texas Parks and Wildlife Code, Chapter 86, to remove or disturb twenty-nine cubic yards of sedimentary material within Tenaha Creek in Shelby County at the following coordinates: 31.7996528, -94.0524806. The purpose is to construct a 41.2-mile, 36 inch diameter steel pipeline to gather natural gas from a proposed facility site approximately 2.4 miles north of San Augustine, Texas to a delivery point approximately 3.3 miles southeast of Longstreet, Louisiana. The location is 3.0 miles downstream of Texas State Highway 87 and 0.9 miles upstream of County Road 2335. This notice is being published and mailed pursuant to 31 TAC §69.105(d).

TPWD will hold a public comment hearing regarding the application at 10:00 a.m. on October 25, 2024 at TPWD headquarters, located at 4200 Smith School Road, Austin, Texas 78744. A remote participation option will be available upon request. Potential attendees should contact Beth Bendik at (512) 389-8521 or at [beth.bendik@tpwd.texas.gov](mailto:beth.bendik@tpwd.texas.gov) for information on how to participate in the hearing remotely. The hearing is not a contested case hearing under the Texas Administrative Procedure Act. Oral and written public comment will be accepted during the hearing.

Written comments may be submitted directly to TPWD and must be received no later than 30 days after the date of publication of this notice in the *Texas Register*. A written request for a contested case hearing from an applicant or a person with a justiciable interest may also be submitted and must be received by TPWD prior to the close of the public comment period. Timely hearing requests shall be referred to the State Office of Administrative Hearings. Submit written comments, questions, requests to review the application, or requests for a contested case hearing to: TPWD Sand and Gravel Program by mail: Attn: Beth Bendik, Texas Parks and Wildlife Department, Inland Fisheries Division, 4200 Smith School Road, Austin, Texas 78744; or via e-mail: [sand.gravel@tpwd.texas.gov](mailto:sand.gravel@tpwd.texas.gov).

#### **Notice of a Public Comment Hearing on an Application for a Sand and Gravel Permit**

New Generation Gas Gathering LLC have applied to the Texas Parks and Wildlife Department (TPWD) for a General Permit pursuant to Texas Parks and Wildlife Code, Chapter 86, to remove or disturb 67 cubic yards of sedimentary material within Flat Fork Creek in Shelby County at the following coordinates: 31.8566500, -94.0541389. The purpose is to construct a 41.2-mile, 36-inch diameter steel pipeline to gather natural gas from a proposed facility site approximately 2.4 miles north of San Augustine, Texas to a delivery point approximately 3.3 miles southeast of Longstreet, Louisiana. The location is 3.1 miles downstream of Texas State Highway 7 and 1.1 miles upstream of County Road 3267. This notice is being published and mailed pursuant to 31 TAC §69.105(d).

TPWD will hold a public comment hearing regarding the application at 1:00 p.m. on October 25, 2024, at TPWD headquarters, located at 4200 Smith School Road, Austin, Texas 78744. A remote participation option will be available upon request. Potential attendees should contact Beth Bendik at (512) 389-8521 or at [beth.bendik@tpwd.texas.gov](mailto:beth.bendik@tpwd.texas.gov) for information on how to participate in the hearing remotely. The hearing is not a contested case hearing under the Texas Administrative Procedure Act. Oral and written public comment will be accepted during the hearing.

Written comments may be submitted directly to TPWD and must be received no later than 30 days after the date of publication of this notice in the *Texas Register*. A written request for a contested case hearing from an applicant or a person with a justiciable interest may also be submitted and must be received by TPWD prior to the close of the public comment period. Timely hearing requests shall be referred to the State Office of Administrative Hearings. Submit written comments, questions, requests to review the application, or requests for a contested case hearing to: TPWD Sand and Gravel Program by mail: Attn: Beth Bendik, Texas Parks and Wildlife Department, Inland Fisheries Division, 4200 Smith School Road, Austin, Texas 78744; or via e-mail: sand.gravel@tpwd.texas.gov.

TRD-202404474  
James Murphy  
General Counsel  
Texas Parks and Wildlife Department  
Filed: September 17, 2024

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### Texas Water Development Board

#### Correction of Error

The Texas Water Development Board proposed new 31 TAC Chapter 363, Subchapter A in the August 30, 2024, issue of the *Texas Register* (49 TexReg 6709). Due to an error by the Texas Register, the text of 31 TAC §363.33(a)(3) was published incorrectly. The correct text of the paragraph should read as follows:

(3) Interest rates for loans from the Water Loan Assistance Fund, or from funds from the board's sale of political subdivision bonds to the Texas Water Resources Finance Authority will be set and updated as necessary to meet changing market conditions according to the cost of funds to the board, risk factors of managing the board's loan portfolio, and market rate scales. [according to the Municipal Market Data A seale] To calculate the cost of funds, the board will weight the funds pro rata amount of funds available from each source, as applicable. The in-

terest rate scale will include the program subsidy, if any, as determined by the board. The board may establish different interest rates for loans under this paragraph if it finds such rates are legislatively directed or are necessary to promote major water initiatives designed to provide significant regional benefit.

TRD-202404476

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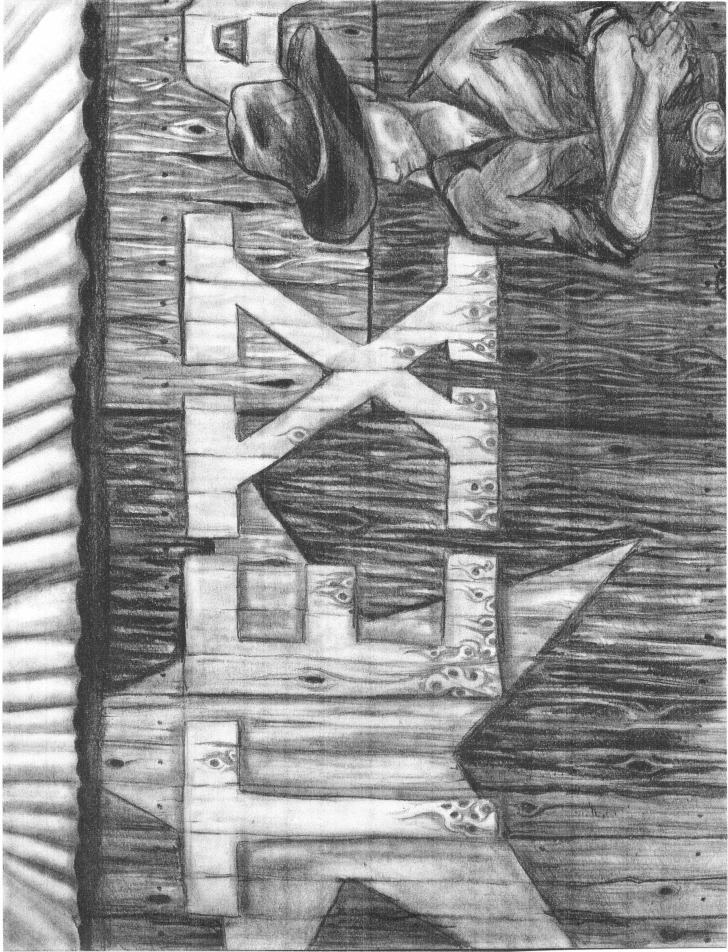
### Texas Workforce Commission

#### Request for Comments Regarding the Services Performed by WorkQuest

Notice is hereby given that the Texas Workforce Commission (Commission) intends to review the services provided by the central nonprofit agency, WorkQuest, during Fiscal Year 2024, as required by Texas Human Resources Code, §122.019(c) and the Texas Workforce Commission's Purchases of Products and Services from People with Disabilities rules under 40 Texas Administrative Code (TAC), §806.31(d). The Commission will review the WorkQuest program's performance to determine whether its performance complied with all applicable requirements during Fiscal Year 2024. The Commission requests that interested parties submit comments regarding WorkQuest's services operation of the State Use Program, under Texas Human Resources Code, §122.019 and 40 TAC Chapter 806, Subchapter C, no later than Wednesday, November 27, 2024.

Comments shall be submitted to Kelvin Moore at: Texas Workforce Commission, 1117 Trinity, Room 214T, Austin, Texas 78711, or via email to: purchasingfrompeoplewithdisabilities@twc.texas.gov

TRD-202404460  
Les Trobman  
General Counsel  
Texas Workforce Commission  
Filed: September 17, 2024



## How to Use the Texas Register

**Information Available:** The sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

**Governor** - Appointments, executive orders, and proclamations.

**Attorney General** - summaries of requests for opinions, opinions, and open records decisions.

**Texas Ethics Commission** - summaries of requests for opinions and opinions.

**Emergency Rules** - sections adopted by state agencies on an emergency basis.

**Proposed Rules** - sections proposed for adoption.

**Withdrawn Rules** - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

**Adopted Rules** - sections adopted following public comment period.

**Texas Department of Insurance Exempt Filings** - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

**Review of Agency Rules** - notices of state agency rules review.

**Tables and Graphics** - graphic material from the proposed, emergency and adopted sections.

**Transferred Rules** - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

**In Addition** - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

**How to Cite:** Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words “TexReg” and the beginning page number on which that document was published. For example, a document published on page 24 of Volume 49 (2024) is cited as follows: 49 TexReg 24.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written “49 TexReg 2 issue date,” while on the opposite page, page 3, in the lower right-hand corner, would be written “issue date 49 TexReg 3.”

**How to Research:** The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: <http://www.sos.state.tx.us>. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

## Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State’s website at <http://www.sos.state.tx.us/tac>.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
26. Health and Human Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

**How to Cite:** Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

**How to Update:** To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule’s *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

### TITLE 1. ADMINISTRATION Part 4. Office of the Secretary of State Chapter 91. Texas Register

1 TAC §91.1.....950 (P)

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