ADOPTED RULES

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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 353. MEDICAID MANAGED CARE
SUBCHAPTER E. STANDARDS FOR MEDICAID MANAGED CARE

1 TAC §353.421

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §353.421, concerning Special Disease Management for Health Care MCOs.

The amendment to §353.421 is adopted with changes to the proposed text as published in the July 19, 2024, issue of the *Texas Register* (49 TexReg 5221). This rule will be republished.

BACKGROUND AND JUSTIFICATION

The adopted amendment implements Texas Government Code, §533.009(c) as amended by House Bill (H.B.) 2658, 87th Legislature, Regular Session, 2021. The adopted amendment relates to managed care organization (MCO) requirements for special disease management (DM) programs. The purpose of the DM programs is to improve health outcomes for Medicaid members diagnosed with a disease or chronic health condition. The Texas Health and Human Services Commission (HHSC) identifies the diseases and chronic conditions for a member to be eligible for the MCO's DM program in HHSC's Uniform Managed Care Manual Chapter 9: Disease Management.

The adopted amendment organizes the definition of "special disease management" with the new definitions "active participation" and "high-risk member" into one rule. These definitions identify what these terms mean when used in the section.

The adopted amendment to implement Texas Government Code §533.009(c)(3), added by H.B. 2658, requires a health care MCO to include mechanisms to identify low active participation rates in the MCO's special DM program, the reason for the low rates, and to increase active participation in the program for high-risk members.

The adopted amendment also corrects formatting, uses consistent terminology, and corrects the use of acronyms to improve the readability of the section.

COMMENTS

The 31-day comment period ended August 19, 2024. During this period, HHSC did not receive any comments regarding the proposed rule.

HHSC revised references to the Texas Government Code citations in proposed §353.421(a)(1) and subsection (d) to implement H.B. 4611, 88th Legislature, Regular Session, 2023, which makes non-substantive revisions to the Texas Government Code that make the statute more accessible, understandable, and usable.

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §533.009, which requires the Executive Commissioner of HHSC, by rule, to prescribe the minimum standards that a managed care organization must meet in providing special disease management.

§353.421. Special Disease Management for a Health Care Managed Care Organization.

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

(1) Active participation--One or more encounters in a calendar year, either face-to-face or by an approved telehealth modality, between the disease management staff of a health care managed care organization (MCO) and a member or the member's representative. In determining active participation, a member who is assessed and provided supports and services that address a chronic disease, but is not participating in the MCO's special disease management program as described in Texas Government Code §540.0708 should not be counted as participating in the disease management program.

(2) High-risk member--A member at high-risk for non-adherence to the member's plan of care that addresses the member's disease or other chronic health condition, such as heart disease; chronic kidney disease and its medical complications; respiratory illness, including asthma; diabetes; end-stage renal disease; human immunodeficiency virus infection (HIV), or acquired immunodeficiency syndrome (AIDS). A high risk member has multiple or complex medical or behavioral health conditions, or both, with clinical instability undergoing active treatment and at risk of avoidable emergency room visits or hospitalizations.

(3) Special disease management--Coordinated healthcare interventions and communications for populations with conditions in which patient self-care efforts are significant.

(b) A health care MCO must provide special disease management services. A health care MCO must:

(1) implement policies and procedures to ensure that a member who requires special disease management services are identified and enrolled into the MCO's special disease management program;

(2) develop and maintain screening and evaluation procedures for the early detection, prevention, treatment, or referral of a member at risk for or diagnosed with chronic conditions such as heart disease; chronic kidney disease and its medical complications; respiratory illness, including asthma; diabetes; HIV infection; or AIDS;

(3) ensure a member who is enrolled in the MCO's special disease management program has the opportunity to disenroll from the program within 30 days while still maintaining access to all other covered services;

(4) show evidence of the ability to manage complex diseases in the Medicaid population by demonstrating the health care MCO's ability to comply with this section; and

(5) include mechanisms to:

(A) identify:

(i) low active participation rates in the MCO's special disease management program; and

(ii) the reason for the low rates; and

(B) increase active participation in the disease management program for high-risk members.

(c) A special disease management program must include:

(1) patient self-management education;

(2) patient education regarding the role of the provider;

(3) evidence-supported models, standards of care in the medical community, and clinical outcomes;

(4) standardized protocols and participation criteria;

(5) physician-directed or physician-supervised care;

(6) implementation of interventions that address the continuum of care;

(7) mechanisms to modify or change interventions that have not been proven effective;

(8) mechanisms to monitor the impact of the special disease management program over time, including both the clinical and the financial impact;

(9) a system to track and monitor all members enrolled in a special disease management program for clinical, utilization, and cost measures;

(10) designated staff to implement and maintain the program and assist members in accessing program services;

(11) a system that enables providers to request specific special disease management interventions; and

(12) provider information, including:

(A) the differences between recommended prevention and treatment and actual care received by a member enrolled in a special disease management program;

(B) information concerning the member's adherence to a service plan; and

(C) reports on changes in each member's health status.

(d) A health care MCO's special disease management program must have performance measures for particular diseases. HHSC reviews the performance measures submitted by a special disease management program for comparability with the relevant performance measures in Texas Government Code §540.0708, relating to contracts for disease management programs.

(e) A health care MCO implementing a special disease management program for chronic kidney disease and its medical complications that includes screening for and diagnosis and treatment of this disease and its medical complications, must, for the screening, diagnosis and treatment, use generally recognized clinical practice guidelines and laboratory assessments that identify chronic kidney disease on the basis of impaired kidney function or the presence of kidney damage.

(f) A health care MCO that develops and implements a special disease management program must coordinate participant care with a provider of a disease management program under Texas Human Resources Code §32.057, during a transition period for patients that move from one disease management program to another program.

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

Filed with the Office of the Secretary of State on November 8, 2024.

TRD-202405460
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Effective date: November 28, 2024
Proposal publication date: July 19, 2024
For further information, please call: (512) 438-2910

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CHAPTER 355. REIMBURSEMENT RATES
SUBCHAPTER J. PURCHASED HEALTH SERVICES
DIVISION 28. PHARMACY SERVICES: REIMBURSEMENT

1 TAC §355.8549

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §355.8549, concerning Medicaid Coverage and Reimbursement for Non-Opioid Treatments.

Section 355.8549 is adopted without changes to the proposed text as published in the August 2, 2024, issue of the *Texas Register* (49 TexReg 5614). This rule will not be republished.

BACKGROUND AND JUSTIFICATION

The amendment is necessary to comply with Texas Human Resources Code §32.03117, which requires HHSC to reimburse a Medicaid hospital provider who provides a non-opioid treatment to a Medicaid recipient. Section 32.03117 also requires HHSC by rule to ensure that, to the extent permitted by federal law, a hospital provider who provides outpatient department (OPD) services to a Medicaid recipient is reimbursed separately under Medicaid for any non-opioid treatment provided as part of those services. The adoption of the amendment codifies the current process HHSC follows that separately reimburses Medicaid providers who provide non-opioid treatment to Medicaid recipients as part of an OPD service.

COMMENTS

The 31-day comment period ended September 3, 2024. During this period, HHSC did not receive any comments regarding the proposed rule.

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.033, which requires the Executive Commissioner of HHSC to adopt rules necessary to carry out the commission's duties under Chapter 531; Texas Human Resources Code §32.021(c), which requires the executive commissioner to adopt rules necessary for the proper and efficient operation of the medical assistance program; and Texas Human Resources Code §32.03117, which requires the executive commissioner by rule to ensure that, to the extent permitted by federal law, a hospital provider that provides outpatient department services to a medical assistance recipient is reimbursed separately under the medical assistance program for any non-opioid treatment provided as part of those services.

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

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Karen Ray
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Effective date: November 28, 2024
Proposal publication date: August 2, 2024
For further information, please call: (512) 438-2910

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TITLE 7. BANKING AND SECURITIES

PART 8. JOINT FINANCIAL REGULATORY AGENCIES

CHAPTER 151. HOME EQUITY LENDING PROCEDURES

7 TAC §151.1

The Finance Commission of Texas and the Texas Credit Union Commission (commissions) adopt amendments to §151.1 (relating to Interpretation Procedures) in 7 TAC Chapter 151, concerning Home Equity Lending Procedures.

The commissions adopt the amendments to §151.1 without changes to the proposed text as published in the August 2, 2024, issue of the *Texas Register* (49 TexReg 5615). The amended rule will not be republished.

The commissions received no official comments on the proposed amendments.

The rules in 7 TAC Chapter 151 govern the procedures for requesting, proposing, and adopting interpretations of the home equity lending provisions of Texas Constitution, Article XVI, Section 50 ("Section 50"). In general, the purpose of the rule changes to 7 TAC Chapter 151 is to implement changes resulting from the commissions' review of the chapter under Texas Government Code, §2001.039. Notice of the review of 7 TAC Chapter 151 was published in the *Texas Register* on March 29, 2024 (49 TexReg 2095). The commissions received no official comments in response to that notice.

The rules in 7 TAC Chapter 151 are administered by the Joint Financial Regulatory Agencies ("agencies"), consisting of the Texas Department of Banking, Department of Savings and Mortgage Lending, Office of Consumer Credit Commissioner, and Texas Credit Union Department. The agencies distributed an early precomment draft of proposed changes to interested stakeholders for review. The agencies did not receive any informal precomments on the rule text draft.

Currently, §151.1(d) describes the requirements for formally requesting a home equity interpretation. Adopted amendments to §151.1(d)(1) specify that any petition for the Finance Commission to issue a home equity interpretation must be sent to the Department of Savings and Mortgage Lending, replacing current language that refers to the Office of Consumer Credit Commissioner. The Department of Savings and Mortgage Lending has the primary responsibility to license and regulate companies providing mortgage loans in Texas. The agencies anticipate that the Department of Savings and Mortgage Lending will take a leading role in coordinating future home equity interpretations.

The rule changes are adopted under Texas Finance Code, §11.308 and §15.413, which authorize the commissions to issue interpretations of Texas Constitution, Article XVI, §50(a)(5) - (7), (e) - (p), (t), and (u), subject to Texas Government Code, Chapter 2001. The rule changes are also adopted under Texas Government Code, §2001.021(b), which authorizes state agencies to adopt rules prescribing the procedure for submitting petitions for rulemaking.

The constitutional and statutory provisions affected by the adoption are contained in Texas Constitution, Article XVI, §50, and Texas Finance Code, Chapters 11 and 15.

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

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TRD-202405470
Matthew Nance
General Counsel, Office of Consumer Credit Commissioner
Joint Financial Regulatory Agencies
Effective date: November 28, 2024
Proposal publication date: August 2, 2024
For further information, please call: (512) 936-7660

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TITLE 16. ECONOMIC REGULATION

PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 41. AUDITING

SUBCHAPTER B. RECORDKEEPING & REPORTS

16 TAC §41.12

The Texas Alcoholic Beverage Commission (TABC) adopts amendments to 16 TAC §41.12, relating to Compliance Reporting by License and Permit Holders. The amendments are adopted without changes to the proposed text as published in the October 11, 2024, issue of the *Texas Register* (49 TexReg 8270). The amended rule will not be republished.

REASONED JUSTIFICATION. The amendments increase the amount of time licensees and permittees are allotted to complete and submit compliance reports to TABC and provides additional relief to businesses who fail to timely submit a report.

The current rule requires TABC-licensed businesses with a premises in Texas to complete a compliance self-assessment, known as a compliance report, each year. The report is due within 90 days from the date the agency notifies a licensee or permittee to complete the report. If a compliance report is not submitted within the 90-day period, TABC may issue a written warning for the failure and the business has 30 days to complete the report before TABC may initiate an administrative enforcement case. The proposed amendments to §41.12: (1) clarify that the rule applies to those permittees and licensees with a premises; (2) increase the time allotted to submit a compliance report from 90 days to 180 days; and (3) extend the time for initiating an administrative enforcement case by removing the 30-day grace period to complete an unsubmitted report and not initiating an administrative case until a subsequent report is due and not submitted for a second time.

SUMMARY OF COMMENTS. TABC did not receive any comments on the proposed amendments.

STATUTORY AUTHORITY. TABC adopts the amendments pursuant to TABC's rulemaking authority under Texas Alcoholic Beverage Code §§5.31 and 5.361. Section 5.31 authorizes TABC to prescribe and publish rules necessary to carry out the provisions of the Alcoholic Beverage Code. Section 5.361(a-1) states that TABC "by rule shall develop a plan for inspecting permittees and licensees using a risk-based approach that prioritizes public safety," and further states that "the inspection plan may provide for a virtual inspection of the permittee or licensee that may include a review of the permittee's or licensee's records..."

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

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TRD-202405545
Matthew Cherry
Senior Counsel
Texas Alcoholic Beverage Commission
Effective date: December 5, 2024
Proposal publication date: October 11, 2024
For further information, please call: (512) 206-3491

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SUBCHAPTER G. OPERATING AGREEMENTS BETWEEN PERMIT AND LICENSE HOLDERS

16 TAC §41.65

The Texas Alcoholic Beverage Commission (TABC) adopts new Subchapter G, relating to Operating Agreements Between Permit and License Holders, and new rule 16 TAC §41.65, relating to Contract Distilling Arrangements and Distillery Alternating Proprietorships. The rule is adopted with changes to the proposed text as published in the October 11, 2024, issue of the *Texas Register* (49 TexReg 8272). The rule will be republished.

REASONED JUSTIFICATION. The proposed rule is necessary to implement legislation. Senate Bill 60 (88th Regular Session) authorized holders of a distiller's and rectifier's permit and a nonresident seller's permit to enter into operating agreements for activities related to the production of distilled spirits. The bill required TABC to adopt implementing rules. The proposed rule implements SB 60 by providing a framework for permittees who engage in contract distilling arrangements and distillery alternating proprietorships as authorized in Alcoholic Beverage Code §§14.10 and 37.011.

Section 41.65(a) provides a citation to the provisions in the Alcoholic Beverage Code that this rule implements. Section 41.65(b) defines the two types of operating agreements for the production of distilled spirits that are authorized by Alcoholic Beverage Code §§14.10 and 37.011, while §41.65(c) provides a definition for the term "affiliate" as used in §§14.10(a)(6) and 37.011(a). Although the term "affiliate" appears elsewhere in the Alcoholic Beverage Code, the proposed definition applies solely to the use of the word in the context of contract distilling arrangements and distillery alternating proprietorships.

Section 41.65(d) sets forth and clarifies who must be a party to arrangements under Alcoholic Beverage Code §37.011(a), which governs arrangements between certain Nonresident Seller's Permit holders and Distiller's and Rectifier's Permit holders. To be a valid arrangement under this proposed provision, the nonresident seller must either own an out-of-state distillery or have an affiliate that itself owns an out-of-state distillery and has a Distiller's and Rectifier's Permit.

Section 41.65(e) implements Alcoholic Beverage Code §§14.10(d) and 37.011(c) by clarifying that the distiller who provides services on behalf of another distiller may neither consider the product to be owned by the distiller providing the services nor sell the product at their premises.

As explained below, §41.65(f) has been changed from the proposed text to clarify that product manufactured by another distiller under a contract distilling arrangement may be brought back to the product owner's premises and sold directly to consumers in conformity with the requirements under Alcoholic Beverage Code §14.05, provided that the product owner actually manufactures, bottles, packages, or labels its own distilled spirits at that premises. In conformity with the statutory requirements outlined in §41.65(e), the changes to the proposed text still prohibit a distiller who has product manufactured by another distiller under a contract distilling arrangement who does not also manufacture, bottle, package, or label its own distilled spirits from selling the product produced under the contract distilling arrangement directly to consumers at its premises. For additional clarity, this provision's reference to manufacturing refers to the actual distillation and rectification of distilled spirits and does not include

the ancillary processes necessary to create a marketable product such as bottling, packaging, and labeling distilled spirits.

Section 41.65(g) clarifies that when a distiller or nonresident seller who engages in the activities authorized in Alcoholic Beverage Code §§14.10(a) or 37.011(a), including manufacturing, bottling, or labeling product, on another distiller's ("host distiller") premises pursuant to a distillery alternating proprietorship, the product may not be sold to ultimate consumers on the host distiller's premises under §14.05.

Section 41.65(h) is the inverse of subsection (f) for purposes of selling distilled spirits to a consumer under Alcoholic Beverage Code §14.05. Under subsection (h), a distiller who manufactures (i.e. distills or rectifies) its own distilled spirits and has the product bottled, packaged, and/or labeled by someone else under a contract distilling arrangement may sell the product to consumers at the distiller's premises in accordance with §14.05.

Section 41.65(i) requires a written agreement to be submitted to TABC before permittees may engage in a contract distilling arrangement or alternating distillery proprietorship. Additionally, the subsection outlines certain provisions that must appear in the agreement so the agency may ensure that there is a strict separation between the businesses and operations of the involved permit holders as required by Alcoholic Beverage Code §§14.10(e) and 37.011(d).

Section 41.65(j) requires nonresident sellers who engage in authorized activities under the rule through an affiliate to submit an affidavit that describes the affiliate's qualifications under §41.65(c) of the proposed rule. This will provide the agency the ability to ensure that the nonresident seller meets the qualifications in Alcoholic Beverage Code §37.011(a).

Lastly, §41.65(k) authorizes transportation of distilled spirits between premises under a contract distilling arrangement or alternating distillery proprietorship before the product has been registered with TABC. Currently, 16 TAC §45.26 prohibits removing distilled spirits from a permitted premises unless the product has first been registered with TABC. This exception to the registration requirement is necessary in these arrangements to allow the product to be submitted to the Alcohol and Tobacco Tax and Trade Bureau for a Certificate of Label Approval, which is a prerequisite for registration with TABC under Alcoholic Beverage Code §101.671.

SUMMARY OF COMMENTS. TABC received a comment from the Texas Distilled Spirits Association requesting changes to proposed §41.65(f).

COMMENT: As proposed, §41.65(f) clarified that product manufactured by another distiller under a contract distilling arrangement may not be brought back to the product owner's premises and sold directly to consumers in conformity with the requirements under Alcoholic Beverage Code §14.05. The commenter claims that by prohibiting a distiller from selling its product that is manufactured at a separate facility under a contract distilling arrangement at the distiller's tasting room, the rule could unnecessarily limit the distiller's business opportunities and cause confusion for consumers visiting the tasting room expecting to purchase a particular product. The commenter requests that the rule be amended to allow for such sales.

AGENCY RESPONSE: The agency agrees with the comment and amends §41.65(f) accordingly. As adopted, the rule will allow a distiller to sell its product that is produced at a separate location under a contract distilling arrangement at the distiller's permitted premises, provided that the distiller actually manufactures, bottles, packages, or labels its own distilled spirits at that premises.

STATUTORY AUTHORITY. TABC adopts this rule pursuant to the agency's rulemaking authority under Texas Alcoholic Beverage Code §§5.31, 14.10, and 37.011. Section 5.31 authorizes TABC to prescribe and publish rules necessary to carry out the provisions of the Alcoholic Beverage Code. Sections 14.10 and 37.011 both direct the agency to "adopt rules regulating the shared use of the permitted premises under this section to ensure administrative accountability of each permit holder and a strict separation between the businesses and operations of the permit holders."

§41.65. Contract Distilling Arrangements and Distillery Alternating Proprietorships.

(a) This section implements Alcoholic Beverage Code §§14.10 and 37.011.

(b) Alcoholic Beverage Code §§14.10 and 37.011 authorize contract distilling arrangements and distillery alternating proprietorships.

(1) "Contract distilling arrangement" means an arrangement in which two distilleries contract for one distillery to engage in the activities authorized in Alcoholic Beverage Code §§14.10(a) or 37.011(a) on behalf of the other distillery.

(2) "Distillery alternating proprietorship" means an arrangement in which two or more parties take turns using the physical premises of a distillery as permitted under the Alcoholic Beverage Code.

(c) As used in this section and Alcoholic Beverage Code §§14.10 and 37.011, "affiliate" means a person who controls, is controlled by, or is under common control with the holder of a Nonresident Seller's Permit, including a subsidiary, parent, or sibling entity of the nonresident seller.

(d) The parties to an agreement under Alcoholic Beverage Code §37.011 shall consist of the holder of a Distiller's and Rectifier's Permit and the holder of a Nonresident Seller's Permit. The nonresident seller must either:

(1) own a distillery outside Texas; or

(2) have an affiliate who owns a distillery outside Texas who also holds a Distiller's and Rectifier's Permit.

(e) Pursuant to Alcoholic Beverage Code §§14.10(d) and 37.011(c), a distiller ("Distiller A") who manufactures, bottles, packages, or labels distilled spirits on behalf of another distiller ("Distiller B") or nonresident seller under a contract distilling arrangement may not consider the distilled spirits as being owned by Distiller A or sell those products on Distiller A's premises.

(f) A distiller who has its product(s) manufactured at a separate location under a contract distilling arrangement may not sell the product(s) directly to ultimate consumers under Alcoholic Beverage Code §14.05 unless the distiller manufactures, bottles, packages, or labels its own distilled spirits at its permitted premises.

(g) A distiller ("tenant distiller") or nonresident seller who engages in the activities authorized in Alcoholic Beverage Code §§14.10(a) or 37.011(a) on another distiller's ("host distiller") premises pursuant to a distillery alternating proprietorship may not sell the product to ultimate consumers on the host distiller's premises.

(h) A distiller who manufactures its own product, regardless of whether the product is bottled, packaged, or labeled at a separate

location under a contract distilling arrangement, may sell the product for consumption on or off the premises at which the manufacturing occurs in accordance with Alcoholic Beverage Code §14.05.

(i) Prior to engaging in the privileges authorized in this section and Alcoholic Beverage Code §§14.10 and 37.011, an agreement signed by each party to a contract distilling arrangement or distillery alternating proprietorship must be submitted to TABC by the permit holder who owns the ultimate product. The agreement must contain provisions specifying the nature, duration, and extent of the activities authorized under the agreement and provisions delineating a separation between each permit holder's business and operations. The agency's acceptance of the agreement does not constitute approval of the entirety of the agreement's terms and is merely an acknowledgement that an agreement containing the required provisions has been submitted.

(j) A nonresident seller who enters into a contract distilling arrangement or alternating distillery proprietorship through an affiliate must submit to TABC an affidavit describing the affiliate's qualifications under subsection (c) of this section.

(k) Notwithstanding §45.26, distilled spirits manufactured, bottled, packaged, or labeled pursuant to a contract distilling arrangement or distillery alternating proprietorship may be removed from, and transported between, distillery premises as necessary to accomplish the agreement's terms.

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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Matthew Cherry
Senior Counsel
Texas Alcoholic Beverage Commission
Effective date: December 5, 2024
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For further information, please call: (512) 206-3491

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CHAPTER 45. MARKETING PRACTICES

The Texas Alcoholic Beverage Commission (TABC) adopts amendments to 16 TAC §45.2, relating to Definitions. TABC also adopts new rules 16 TAC §45.28, relating to Standards of Fill for Distilled Spirits, and 16 TAC §45.29, relating to Standards of Fill for Wine. The amendments and new rules are adopted without changes to the proposed text as published in the October 11, 2024, issue of the *Texas Register* (49 TexReg 8274). The amended rule and new rules will not be republished.

REASONED JUSTIFICATION. The amendments are necessary to update TABC's rules to align with the Texas Alcoholic Beverage Code and federal regulations.

The proposed amendment to §45.2 updates the definition of "distilled spirits" to match the definition found in Alcoholic Beverage Code §1.04(3). The proposed new §45.28 and §45.29 adopt the container sizes and standards of fill for distilled spirits and wine authorized in the Alcoholic Beverage Code and established by the federal Alcohol and Tobacco Tax and Trade Bureau (TTB). These changes will ensure that the definition of "distilled spirits" in the agency's rules align with the definition in the Alcoholic Beverage Code, and that all container sizes eligible for a Certificate of Label Approval issued by the TTB, that are not otherwise prohibited in the Alcoholic Beverage Code, may legally be sold in Texas.

SUMMARY OF COMMENTS. TABC did not receive any comments on the proposed amendments or new rules.

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §45.2

STATUTORY AUTHORITY. TABC adopts the amendments pursuant to TABC's rulemaking authority under Texas Alcoholic Beverage Code §5.31. Section 5.31 authorizes TABC to prescribe and publish rules necessary to carry out the provisions of the Alcoholic Beverage Code.

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

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Matthew Cherry
Senior Counsel
Texas Alcoholic Beverage Commission
Effective date: December 5, 2024
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For further information, please call: (512) 206-3491

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SUBCHAPTER B. ENFORCEMENT

16 TAC §45.28, §45.29

STATUTORY AUTHORITY. TABC adopts the new rules pursuant to TABC's rulemaking authority under Texas Alcoholic Beverage Code §§5.31 and 5.39. Section 5.31 authorizes TABC to prescribe and publish rules necessary to carry out the provisions of the Alcoholic Beverage Code. Section 5.39 directs TABC to "adopt rules to standardize the size of containers in which liquor may be sold in the state."

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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Matthew Cherry
Senior Counsel
Texas Alcoholic Beverage Commission
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For further information, please call: (512) 206-3491

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 153. SCHOOL DISTRICT PERSONNEL

SUBCHAPTER BB. COMMISSIONER'S RULES CONCERNING PROFESSIONAL DEVELOPMENT

19 TAC §153.1015

The Texas Education Agency (TEA) adopts new §153.1015, concerning mental health training. The new section is adopted with changes to the proposed text as published in the July 19, 2024 issue of the *Texas Register* (49 TexReg 5250) and will be republished. The adopted new rule implements the mental health training requirement established by House Bill (HB) 3, 88th Texas Legislature, Regular Session, 2023.

REASONED JUSTIFICATION: HB 3, 88th Texas Legislature, Regular Session, 2023, added Texas Education Code (TEC), §22.904, to require each school district employee who regularly interacts with students enrolled in the district to complete an evidence-based mental health training program designed to provide instruction to participants regarding the recognition and support of children and youth who experience a mental health or substance use issue that may pose a threat to school safety. The bill also introduced an allotment to assist school districts in complying with the requirement, including costs incurred by the district for employees' travel, training fees, and compensation for the time spent completing the training.

Adopted new §153.1015 implements HB 3 by establishing criteria for the evidence-based mental health training program for school district employees and district special program liaisons who regularly interact with students enrolled in a district.

Subsection (a) defines evidence-based mental health training program.

Subsection (b) specifies the requirements for an evidence-based mental health training program.

Based on public comment, new subsections (b)(2)(D) and (E) were added at adoption to clarify additional criteria for completing the mental health training program requirements, including clarification that the training must be completed one time and that school districts shall participate and complete the mental health training program in accordance with the school district's professional development policy described in subsection (d)(8) of the rule.

Subsection (c) identifies the personnel requirements for completing the mental health training program.

Based on public comment, subsection (c)(2) was modified at adoption to add "school resource officers" to the list of personnel required to complete the evidence-based mental health training program.

Subsection (d) establishes the criteria for selecting an evidence-based training program. Subsection (d)(1) allows districts to select an evidence-based mental health training course that is on the recommended lists provided by TEA, Texas Health and Human Services Commission (HHSC), or an education service center (ESC).

Based on public comment, text was added in subsection (d)(1) at adoption to clarify that school districts may choose a training course "that is designated specifically on the list as a mental health training course that is compliant under this section."

Based on public comment, language from proposed subsection (d)(1) was moved to new subsection (d)(2) at adoption and modified to clarify when school districts may not require a district employee to complete the training.

Based on public comment, subsection (d)(3) was amended at adoption to establish requirements for a school district that selects an evidence-based training course that is not designated as compliant for this purpose on the recommended lists and to add clarification to the training course criteria.

Subsection (d)(4) establishes criteria for school districts that may provide opportunities for personnel to complete more specialized training.

Based on public comment, proposed new subsection (d)(4)(D) was deleted at adoption, as the agency has determined that information on mental health safety planning, including suicide prevention and intervention, is covered in subsection (d)(3)(I).

Based on public comment, subsection (d)(4)(H) was modified at adoption to clarify that collaboration within a community system of care is not limited to what is listed in the subsection and added local behavioral health authorities.

Based on public comment, subsection (d)(4)(K) has been amended at adoption to clarify that the establishment of strategies and support plans promoting mental health and wellness is for all staff, not just educators.

Subsection (d)(5) and (6) allows the training to be combined or coordinated with other required mental health training.

Based on public comment, subsection (d)(7) was amended at adoption to clarify how the training may be delivered to participants.

Subsection (e) requires additional training content to provide information on local district practices and procedures for mental health promotion in accordance with TEC, §38.351(i) and (j).

Subsection (f) establishes documentation requirements for the training.

Based on public comment, subsection (f)(3) was amended at adoption to establish additional criteria for the documentation of training for the mental health training program.

Subsection (g) introduces a phase-in timeline for districts to complete the mental health training.

Subsection (h) establishes criteria for mental health training reimbursement.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began July 19, 2024, and ended August 19, 2024. Following is a summary of public comments received and agency responses.

Comment: The Texas Counseling Association (TCA) commented that proper mental health training is imperative for school personnel to recognize children and youth who experience a mental health or substance use issue and use best practices to support them. TCA also commented that mental health training must be rigorous.

Response: The agency agrees and has modified subsection (d)(3) at adoption to specify that the course with evidence-based training materials must be delivered with sufficient instructional time and rigorous methods to appropriately address and assess the competencies listed in subsection (d)(3)(A)-(J) in a quality manner.

Comment: Five individuals requested additional options available for evidence-based mental health training programs outside of Youth Mental Health First Aid (YMHFA), stating concerns about the length of the training, accessibility, and limitations put on campuses to ensure compliance within the proposed timeline.

Response: The agency provides the following clarification. The only course currently identified by TEA and HHSC as compliant with evidence-based training for this purpose is Mental Health First Aid (MHFA) or YMHFA, as cited in the authorizing statute. The rule provides local education agencies (LEAs) the option to provide training in a locally selected course if the LEA identifies and delivers a course that is compliant with new subsection (d)(3)(A)-(J). Such an alternative course may be designed and provided by a partnering organization such as a mental health agency or an ESC.

Comment: An individual commented in support of proposed subsections (d) and (e) that allow ESCs and school districts to maintain rigorous controls and requested the production of local training materials in accordance with the requirements.

Response: The agency agrees with the comment on rigorous controls for the training and has modified subsection (f)(3) at adoption to specify that school districts must maintain documentation confirming that the training course meets the requirements in subsection (d)(3)(A)-(J).

Comment: An individual commented in support of the proposed new rule.

Response: The agency agrees.

Comment: An individual commented in support of the proposed new rule and the possibility of future allotments given to agencies and organizations equipped to provide evidence-based mental health training and resources.

Response: The agency agrees.

Comment: An individual requested that an approved list of the required mental health training be accessible for school districts and that language be added clarifying the expectation of the training to include due diligence and integrity even if constructed or delivered by the HHSC, Local Mental Health Authorities (LMHAs), ESCs, or other partners who qualify to provide evidence and research-based instruction.

Response: The agency agrees and has amended subsection (d)(1) at adoption to clarify that districts may select an evidence-based training course that is specifically designated on the recommended lists as meeting the requirements for the mental health training program. Currently TEA posts resources on the Best Practices Repository on the schoolmentalhealthtx.org website.

In addition, subsection (d)(3) has been revised at adoption to clarify the expectation of quality and rigor in delivering the competency-based instruction for the mental health training course.

Comment: An individual requested clarification on whether licensed mental health professionals could produce a workshop for school districts to satisfy training requirements.

Response: The agency agrees and has modified subsection (d)(7) at adoption to clarify that LEAs can designate qualified trainers to include licensed mental health professionals to deliver the selected training course. This does not apply to a course selected that may include specific certification for a trainer, such as for YMHFA.

Comment: TCA commented in support of the proposed new rule and requested revisions to proposed subsection (d)(1) and (2) establishing reporting requirements to TEA confirming LEAs' utilization of proper evidence-based mental health training, even if the training is not on the pre-approved list.

Response: The agency agrees and has clarified subsection (f)(3) at adoption to state that the documentation of training that must be kept by a school district includes the name of the course along with supporting documentation and that TEA may include a reporting process.

Comment: The Texas Council of Community Centers requested a change to subsection (d)(1) to establish requirements for updating training on a regular basis, clarify criteria for training certificates, and add "to be retrained" for clarification on general training program requirements.

Response: The agency disagrees because the authorizing statute does not designate a frequency for retraining or provide for retraining pursuant to TEC, §21.4515(c)(1), nor does the statute authorize the agency to determine the frequency of the training through explicit rulemaking pursuant to TEC, §21.4515(c)(2). In addition, the authorizing statute explicitly states that a school district may not require a district employee to complete the training required by this section if the employee has previously completed the YMHFA course provided by an LMHA. The statute does not address the expiration of the YMHFA certificates for which the Texas Council of Community Centers seeks clarification. Unless training frequency is specified by the authorizing statute, the Annual Development of Professional Development Policy required under TEC, §21.4515, requires that a local school district annually review and be guided by the recommendations of the State Board for Educator Certification's clearinghouse established under TEC, §21.431, and then for the school district board of trustees or governing body to develop its local professional development policy.

Comment: The Texas Classroom Teachers Association (TCTA) requested changes to subsection (d)(1) to clarify when a school district may not require an employee to complete training requirements and requested the provision be a separate subdivision under proposed subsection (d) for additional clarity.

Response: The agency agrees and has moved language from subsection (d)(1) to new subsection (d)(2) at adoption and added clarification about when an employee is not required to complete the required training.

Comment: An individual commented that proposed subsection (d)(3)(D) and proposed subsection (d)(3)(G) are duplicative.

Response: The agency agrees and has deleted proposed subsection (d)(3)(D) at adoption.

Comment: An individual requested a change to proposed subsection (d)(3)(L) to clarify strategies and support plans promoting mental health and wellness for additional personnel, not just educators, who regularly interact with students.

Response: The agency agrees and has revised the language, re-lettered as new subsection (d)(4)(K), at adoption to add that the strategies and support plans promoting mental health and wellness include all school staff.

Comment: An individual requested an amendment to proposed subsection (d)(7) to clarify criteria for training frequency.

Response: The agency disagrees. The frequency of mental health training is not specified in statute, and TEC, §21.4515(c)(1), prohibits the commissioner from adopting training frequency in rule unless statute explicitly provides for it.

Comment: An individual requested greater flexibility in the proposed training requirements, including clarification on the minimum number of hours required for training, clarification on whether training will be required annually, clarification on whether the training can be combined with the other required trainings already in the school district's online platform, and consideration for incorporating the mental health training into other required trainings in an effort to maximize time spent fulfilling all staff training requirements.

Response: The agency agrees in part and disagrees in part. Based on public comments, the following changes have been made at adoption: new subsection (b)(2)(D) was added to clarify that the training is a one-time training requirement for employees who regularly interact with students; new subsection (b)(2)(E) was added to specify that the training is to be completed in compliance with the school district's professional development policy; subsection (d)(3) was modified to clarify that the training course materials must provide evidence-based information, practices and strategies, sufficient instructional time, and rigorous methods to address and assess competencies, rather than requiring a minimum number of training hours, which is outside the scope of rulemaking; and subsection (d)(7) was modified to clarify that school districts can designate qualified trainers, to include, but not be limited to, licensed mental health professionals.

The agency disagrees that further clarification is needed in delivering training as subsection (d)(7) provides school districts with flexibility on the methods for how the training course is delivered to meet the requirements for the course. Subsection (d)(6) and (7) state how training on multiple topics can be combined and coordinated in alignment with Texas statutes for bundling training on those required topics for local consideration.

Comment: Three individuals requested clarification on the number of hours required for the training and if the training will be an annual requirement.

Response: The agency provides the following clarification. The rule does not require a minimum or maximum number of training hours; however, there may be a specific number of hours required if the school district elects to provide a training course that requires a minimum number of hours, such as YMHFA. Based on public comment, text has been added at adoption in subsection (d)(3) to clarify that the training materials must be delivered with sufficient instructional time and with rigorous methods to address and assess the evidence-based competencies in subsection (d)(3)(A)-(J) in a quality manner, to meet the intent of the authorizing statute for instruction in the mental health training program. The agency clarifies further by adding at adoption new subsection (b)(2)(D) to state that employees are required to participate and complete a mental health course under this section only one time.

Comment: Three individuals commented requesting that the rule be modified to clarify who would need to complete the training.

Response: The agency disagrees that a change to the rule is needed, as subsection (c)(2) already identifies the employees who are required to complete the training.

Comment: The Texas Council of Community Centers requested a change to subsection (c)(2)(B) to clarify required training participation by all school resource officers, whether employed by the school district or as contracted personnel.

Response: The agency agrees in part and, based on public comments, has added school resource officers (SROs) to the list of employees required to be trained in subsection (c)(2), which applies only to SROs who are school district employees. The agency disagrees in part as statute does not provide the agency authority to require that a school district's contract personnel be trained under this section. The school district has local flexibility to require any of its contract personnel to participate in the training as stated in subsection (c)(2)(B).

Comment: The Texas Council of Community Centers requested a change to subsection (g) to establish a timeline and criteria for continuing education requirements related to mental health training.

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

Comment: An individual requested a change to subsection (g)(4) to clarify training requirements for new staff hired during the year.

Response: The agency disagrees as the rule language refers to all employees who are employed by the school district as of September 1 of any given school year.

Comment: An individual requested changes to subsection (h)(1) and (5) to clarify allotment criteria regarding a mental health training reimbursement.

Response: The agency disagrees as the rule language is aligned with statute.

Comment: An individual commented that proposed subsection (d)(3)(I) should be revised to remove HHSC, add local behavioral health authorities (LBHAs), and change "out of school time programs" to "afterschool programs."

Response: The agency agrees in part and disagrees in part. The agency agrees with adding LBHAs and has modified subsection (d)(4)(H) at adoption to include LBHAs. The agency disagrees with removing HHSC, as HHSC provides statewide resources related to systems of care for families. The agency also disagrees with changing "out of school time programs" to "afterschool programs" since "out of school time programs" include afterschool programs.

Comment: An individual requested clarification in subsection (h)(1) and (5) regarding an allotment if funds are appropriated to assist school districts.

Response: The agency disagrees because the rule language is aligned with the statutory language in TEC, §22.904.

STATUTORY AUTHORITY. The new section is adopted under Texas Education Code (TEC), §22.904, as added by House Bill 3, 88th Texas Legislature, Regular Session, 2023, which requires each school district employee who regularly interacts with students enrolled in the district to complete an evidence-based mental health training program designed to provide instruction to participants regarding the recognition and support of children and youth who experience a mental health or substance use issue that may pose a threat to school safety. TEC, §22.904(e) requires the commissioner of education to adopt rules to implement the section, including rules specifying the training fees and travel expenses subject to reimbursement.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §22.904, as added by House Bill 3, 88th Texas Legislature, Regular Session, 2023.

§153.1015. Mental Health Training.

(a) Definition. Evidence-based mental health training program means a program designed to provide instruction on mental health practices and procedures using current, practical, and applicable research that includes information and strategies shown to have effective, positive outcomes.

(b) Evidence-based mental health training program requirements.

(1) This section implements Texas Education Code (TEC), §22.904 (Mental Health Training). School districts may be eligible for reimbursement as specified in subsection (h) of this section.

(2) To complete the evidence-based mental health training program under this section, personnel who regularly interact with students as determined under subsection (c) of this section shall:

(A) participate and complete the required content in subsection (d) of this section;

(B) participate and complete the required content in subsection (e) of this section;

(C) submit and maintain supporting documentation of completion as described in subsection (f) of this section;

(D) participate and complete the mental health training program one time as required by TEC, §22.904, and this section; and

(E) participate and complete the mental health training program in accordance with the school district's professional development policy described in subsection (d)(8) of this section.

(c) Personnel required to complete the evidence-based mental health training program.

(1) A school district shall require each district employee who regularly interacts with students enrolled at the district to complete an evidenced-based mental health training program that is designed to provide instruction regarding the recognition and support of children and youth who experience mental health or substance use issues that may pose a threat to school safety.

(2) School district employees who regularly interact with students are employees working on a school campus, including, but not limited to, teachers, coaches, librarians, instructional coaches, counselors, nurses, administration, administrative support personnel, student support personnel, school resource officers, paraprofessionals, substitutes, custodians, cafeteria staff, bus drivers, crossing guards, and district special programs liaisons. Special programs liaisons may include, but are not limited to, individuals who provide support for students who are homeless or in substitute care, military connected students, and emergent bilingual students; individuals involved in the prevention of child maltreatment and human trafficking; individuals who support special education services; and members of a Safe and Supportive Schools Program Team.

(A) A school district will determine the number of employees who regularly interact with students for purposes of compliance with this section using the requirements in this subsection and ensure that training is provided for the number and percentage of personnel in accordance with the timeline in subsection (g) of this section.

(B) A school district may, at its discretion, require contracted personnel who regularly interact with students to participate in the training.

(C) A school district may, at its discretion, require supervisors of personnel who regularly interact with students to participate in the training.

(d) General training program required content.

(1) A school district may select an evidence-based mental health training course that is on the recommended lists provided by the Texas Education Agency (TEA), the Texas Health and Human Services Commission (HHSC), or an education service center (ESC) that is designated specifically on the list as a mental health training course that is compliant under this section.

(2) A school district may not require a district employee to complete the training required by this section if the employee has previously completed the Youth Mental Health First Aid (YMHFA) or Mental Health First Aid (MHFA) course provided by a local mental health authority (LMHA), a local behavioral health authority (LBHA), an ESC, or a YMHFA or MHFA trainer certified to teach those courses by the National Council on Mental Wellbeing if the employee provides the certificate of completion to the school district in accordance with the timeline established in subsection (g) of this section.

(3) If a school district selects an evidence-based mental health training course that is not designated as compliant for this purpose on the recommended lists provided by TEA, HHSC, or an ESC, the school district may review and select the course to satisfy the training requirement only if the course delivers instruction in the competencies under subparagraphs (A)-(J) of this paragraph with training materials that provide evidence-based information, practices and strategies, sufficient instructional time, and rigorous methods to appropriately address and assess the competencies for the participants who are expected to complete the mental health training course under this section, and only if the course provides employees with the following evidence-based information, practices, and strategies:

(A) awareness and understanding of mental health and substance use prevalence data;

(B) knowledge, skills, and abilities for implementing mental health prevention and substance use prevention in a school to protect the health and safety of students and staff, including strategies to prevent harm or violence to self or others that may pose a threat to school safety;

(C) awareness and introductory understanding of typical child development, adverse childhood experiences, grief and trauma, risk factors, the benefits of early identification and early intervention for children who may have potential mental health challenges and substance use concerns, and evidence-supported treatment and self-help strategies;

(D) awareness and understanding of mental health promotive and protective factors and strategies to deploy them for students in the school environment;

(E) experiential activities designed to:

(i) increase the participant's understanding of the impact of mental illness on individuals and families, skills for listening respectfully, and strategies for supporting the individual and family in a mental health crisis;

(ii) encourage help-seeking to obtain appropriate professional care; and

(iii) identify professional care, other supports, and self-help strategies for mental health and substance use challenges;

(F) knowledge, skills, and abilities to recognize risk factors and warning signs for early identification of students who may

potentially have mental health challenges or substance use concerns in alignment with TEC, §38.351, and evidence-based information;

(G) knowledge, skills and abilities to support a student when potential mental health concerns or early warning signs are identified, including effective strategies for teachers to support student mental health in the classroom, including students with intellectual or developmental disabilities who may have co-occurring mental health challenges;

(H) knowledge, skills, and abilities to respectfully notify and engage with a child's parent or guardian regarding potential early warning signs of mental health or substance use concerns and make recommendations so a parent or guardian can seek help for their child;

(I) knowledge of school-based and community-based resources and referrals to connect families to services and support for student mental health, including early intervention in a crisis situation that may involve risk of harm to self or others; and

(J) knowledge of strategies to promote mental health and wellness for school staff.

(4) In addition to the basic mental health training course under paragraph (2) or (3) of this subsection, school districts may provide more specialized mental health training opportunities for personnel with specific school mental health and safety related roles and responsibilities to strengthen their capacity to:

(A) plan for and monitor a continuum of evidence-based school mental and behavioral health related services and supports;

(B) deliver practical, evidence-based practices and research-based programs that may include resources recommended by TEA, HHSC, or ESCs to strengthen training, procedures, and protocols designed to promote student mental health and wellness, to prevent harm or violence to self or others, and to prevent threats to school safety;

(C) intervene effectively to engage parents or guardians and caregivers with practical evidence-based practices and programs, including in mental and behavioral health related crisis situations;

(D) facilitate referral pathways that connect parents, guardians, and caregivers to school-based or community-based mental health assessment, counseling, treatment, and related support services for students and families with effective coordination of efforts across systems;

(E) support students with intellectual or developmental disabilities who may have co-occurring mental health and behavioral health challenges and their families;

(F) facilitate mental health safety planning at schools, including suicide prevention and intervention;

(G) coordinate back-to-school transition plans from mental health or substance use treatment or from a discipline alternative education program when a mental health or substance use challenge has been identified;

(H) collaborate within a community system of care to support students and their families, including assistance offered through organizations such as LMHAs, LBHAs, HHSC, hospitals, school-based and community-based clinics, out of school time programs, non-profit mental health and faith-based groups, family partner services, the juvenile justice system, the child welfare system, the Texas Child Mental Health Care Consortium, and community resource coordination groups;

(I) establish partnerships and referral pathways with school-based and community-based mental health service providers and engage resources that may be available to the school, including resources that are identified by TEA, state agencies, or an ESC in the Texas School Mental Health Resources Database in accordance with TEC, Chapter 38, and which may include services that are delivered by telehealth or telemedicine;

(J) support classroom educators with job-embedded training, coaching, and consultation on supporting student mental health and wellness and preventing youth violence; and

(K) establish strategies and support plans to promote mental health and wellness for all school staff.

(5) The training in this section may be combined or coordinated with suicide prevention, intervention, and postvention training, but it does not replace that required training.

(6) The training in this section may be combined or coordinated with grief and trauma informed care practices training, but it does not replace the required trauma informed training under TEC, §38.036. The training may be combined to include up to three required mental health training topics under TEC, §38.351, and as cited in TEC, §21.451(d-1)(2), at the discretion of the local school district.

(7) The training may be delivered by an instructor who is qualified to instruct participants using the training materials with sufficient instructional time and rigorous methods to address and assess the competencies for completing the training course approved by a school district under paragraphs (3)(A)-(J) or (4)(A)-(K) of this subsection, including, but not limited to, a licensed mental health professional, and through various modalities, such as face-to-face delivery, synchronous online learning, or hybrid or blended formats, and it may include job-embedded learning and coaching strategies for evidence-based implementation support.

(8) For alignment, a school district must consider the recommendations from the State Board for Educator Certification Clearinghouse on providing mental health training per TEC, §21.451; develop a local policy on what training will be provided; and determine the training frequency for personnel required to be trained.

(e) Training program required content related to local school district practices and procedures.

(1) For applicability of the course content in subsection (d) of this section to local school district context, the personnel who regularly interact with students must be informed of the local district practices and procedures for mental health promotion required by TEC, §38.351(i), concerning each of the following areas listed in TEC, §38.351(c), including where multiple areas are listed together, in accordance with TEC, §38.351(j):

(A) early mental health prevention and intervention;

(B) building skills related to managing emotions, establishing and maintaining positive relationships, and responsible decision-making;

(C) substance abuse prevention and intervention;

(D) suicide prevention, intervention, and postvention;

(E) grief-informed and trauma-informed practices;

(F) positive school climates;

(G) positive behavior interventions and supports;

(H) positive youth development; and

(I) safe, supportive, and positive school climate.

(2) If the school district also develops practices and procedures for providing educational material to all parents and families in the district that contain information on identifying risk factors, accessing resources for treatment or support provided on and off campus, and accessing available student accommodations provided on campus in accordance with TEC, §38.351(i-1), personnel who regularly interact with students must also be informed of those practices and procedures.

(f) Documentation.

(1) School districts shall require each district employee to provide the certificate of completion of the training content in subsection (d) of this section to the school district.

(2) Documentation of the training content described in subsection (e) of this section may be satisfied when the employee submits to the district an acknowledgement form signed by the employee who received the current training and a copy of local procedures and practices that are published in the district handbook and/or district improvement plan.

(3) Documentation of training for the mental health training program, including the name of the training course, along with supporting documentation confirming that the training course abides by the requirements outlined in subsection (d)(3)(A)-(J) and (4)(A)-(K) of this section and documentation under this subsection, must be kept by the school district and made available to TEA upon request, which may include a reporting process, for the duration of the employee's employment with the district.

(g) Timeline.

(1) At least 25% of the applicable district employees shall be trained before the start of the 2025-2026 school year.

(2) At least 50% of the applicable school district employees shall be trained before the start of the 2026-2027 school year.

(3) At least 75% of the applicable school district employees shall be trained before the start of the 2027-2028 school year.

(4) 100% of the applicable district employees shall be trained before the start of the 2028-2029 school year.

(A) When calculating the percentage of staff to be trained, the denominator is the number of school district employees who regularly interact with students who are required under subsection (c) of this section to receive mental health training.

(B) The percentages in this subsection shall be calculated using the number of school district employees who regularly interact with students and are employed by the district as of September 1 in any given school year.

(C) The number and percentage of employees and the procedure for making the determination under this subsection and subsection (c) of this section must be made available upon request by TEA.

(h) Mental health training reimbursement.

(1) If funds are appropriated, an allotment shall be provided to assist local school districts in complying with this section.

(2) The amount of the allotment provided to school districts under this subsection may not exceed the allowable costs incurred by the district for completing the required training.

(3) The funding shall be used to assist the school district in complying with the section and should include only the costs incurred by the district from employees' travel, training fees, and compensation for time spent completing the required training. Substitute pay, travel costs such as mileage and lodging, and cost of materials are eligible for this reimbursement.

(4) School districts may use the funding for training fees, travel expenses, and material costs for employees to attend trainer of trainer courses that allow staff to facilitate trainings for their district that meet the requirements set out in this section.

(5) TEA may proportionally reduce each school district's allotment if the amount appropriated is insufficient to pay for all costs incurred by districts under this subsection.

(6) School districts shall maintain an accounting of funding and documentation on expenses for the allocated funds and make the accounting of expenses available as requested by TEA.

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

Filed with the Office of the Secretary of State on November 12, 2024.

TRD-202405483
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: December 2, 2024
Proposal publication date: July 17, 2024
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 102. FEES

22 TAC §102.1

The State Board of Dental Examiners (Board) adopts this amendment to 22 TAC §102.1, concerning Fees, without changes to the proposal as published in the October 4, 2024, issue of the *Texas Register* (49 TexReg 8014) and will not be republished.

The adopted amendment fixes a clerical error made by staff to the total fee amounts for the dentist renewal fee, dentist renewal late - 1 to 90 days fee, and dentist renewal late - 91 to 364 days fee. An extra $15 charge was mistakenly imposed, and therefore the adopted amendment updates the fees to remove the extra charge.

In addition, the adopted amendment includes late fees for the dentist and dental hygienist temporary license by credentials renewal application. The late fees are imposed in accordance with Section 257.002(c)-(c-1) of the Texas Occupations Code by requiring licensees whose license is expired for 90 days or less to pay a renewal fee that is equal to 1 ½ times the normally required renewal fee, and whose license is expired for more than 90 days but less than one year to pay a renewal fee that is equal to two times the normally required renewal fee.

No comments were received regarding adoption of this rule.

This rule is adopted under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules

necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety, and Texas Occupations Code §254.004, which directs the Board to establish reasonable and necessary fees sufficient to cover the cost of administering the Board's duties.

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 November 8, 2024.

TRD-202405467
Lauren Studdard
General Counsel
State Board of Dental Examiners
Effective date: November 28, 2024
Proposal publication date: October 4, 2024
For further information, please call: (512) 305-8910

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PART 11. TEXAS BOARD OF NURSING

CHAPTER 211. GENERAL PROVISIONS

22 TAC §211.7

Introduction. The Texas Board of Nursing (Board) adopts amendments to 22 Texas Administrative Code §211.7, relating to Executive Director, without changes to the proposed text published in the September 20, 2024, issue of the *Texas Register* (49 TexReg 7570). The rule will not be republished.

Reasoned Justification. The Board has established an agreed order to inactivate a nurse's license if it is found that their education is not substantially equivalent to a Texas approved nursing program's requirements. Traditionally, such orders have been ratified during a regular Board Meeting or a meeting of the Board's Eligibility and Disciplinary Committee. However, certain agreed orders are currently accepted on behalf of the Board by the Executive Director. The adopted amendments aim to include inactivation orders, based on educational deficiencies, among those that the Executive Director can accept. This delegation of authority is intended to reduce the time between a nurse's agreement to inactivate their license and their removal from practice. The Executive Director will provide summaries of these actions at regular Board meetings. Additionally, the amendments clarify the Executive Director's authority to accept orders for nurses facing temporary suspension under the Occupations Code §§301.455 & 301.4551. These changes aim to improve regulatory efficiency by processing monitoring or suspension orders signed by Respondents without waiting for a temporary suspension hearing or other Board meeting.

Section by Section Overview. The adopted amendments include the addition of §211.7(f)(4) to the categories of orders the Executive Director is authorized to accept on the Board's behalf. The Executive Director must report summaries of these orders to the Board during its regular meetings. Additionally, the amendments eliminate language from §211.7(i) that previously stated the Executive Director could only enter an order for a nurse following a temporary suspension hearing. The revised language broadens this authority, allowing the Executive Director to enter an order when a licensee is subject to temporary suspension or after the licensee has already been temporarily suspended.

Public Comment. The Board received no comments on the adoption of these amendments.

Statutory Authority. These amendments are adopted under the authority of Texas Occupations Code §§301.151 & 301.101. Texas Occupations Code § 301.151 addresses the general rulemaking authority of the Board to adopt and enforce rules consistent with Chapter 301 to perform its duties and conduct proceedings before the Board, regulate the practice of professional nursing and vocational nursing, establish standards of professional conduct for license holders under Chapter 301, and determine whether an act constitutes the act of professional nursing or vocational nursing. Texas Occupations Code §301.101 authorizes the Board to designate duties of the Executive Director.

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 November 13, 2024.

TRD-202405510
James W. Johnston
General Counsel
Texas Board of Nursing
Effective date: December 3, 2024
Proposal publication date: September 20, 2024
For further information, please call: (512) 305-6879

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CHAPTER 213. PRACTICE AND PROCEDURE

22 TAC §213.33

Introduction. The Texas Board of Nursing (Board) adopts amendments to 1§213.33, relating to Factors Considered for Imposition of Penalties/Sanctions, without changes to the proposed text as published in the September 20, 2024, issue of the *Texas Register* (49 TexReg 7571). The rule will not be republished.

Reasoned Justification. On January 25, 2023, the U.S. Department of Health and Human Services Office of Inspector General (HHS-OIG) and law enforcement partners executed a coordinated, multi-state operation to apprehend individuals involved in selling fraudulent nursing degree diplomas and transcripts. The scheme allegedly involved the sale of fake nursing diplomas and transcripts from accredited Florida-based nursing schools to Registered Nurse (RN) and Licensed Practical/Vocational Nurse (LPN/VN) candidates. Those who obtained these fraudulent credentials used them to qualify for the national nursing board exam. Upon passing the exam, these individuals were eligible to obtain licensure in various states, including Texas, to practice as RNs or LVNs.

The Board has begun disciplinary actions to revoke or deny the renewal of licenses and to deny initial licenses to individuals implicated in the scheme. Additionally, the Board has begun to deny licensure or take action against other individuals who obtained legally insufficient education. According to Tex. Occ. Code §301.451, it is illegal to practice nursing with a diploma, license, or record obtained unlawfully or fraudulently. Tex. Occ.

Code §301.452(b)(1) authorizes the Board to act on violations of Chapter 301 or any related rule, regulation, or order. The adopted amendments bridge the gap between a violation of Tex. Occ. Code §301.451 and the concurrent violation of Tex. Occ. Code §301.452(b)(1).

The adopted amendments aim to clarify the Board's stance on these violations, informing licensees and the public about the likely sanctions for such violations based on the Disciplinary Matrix's Tier and Sanction Level analysis. The amendments also specify disciplinary actions for applicants who falsely certify that they meet Texas's licensure qualifications. A number of applicants for renewal and licensure have inaccurately claimed to meet educational requirements, leading to the licensure of nurses who have not completed the necessary clinical or didactic education, posing a significant public health risk. The amendments seek to ensure applicants understand the Board's position on this behavior and to maintain consistency in applying the Board's disciplinary matrix.

Additionally, the adopted amendments distinguish between technical and substantive requirements of a Board order. Current language misclassifies remedial education, typically required in Board disciplinary orders, as technical, non-remedial requirements. The amendments remove this language to align with the Board's current view of these violations.

Section by Section Overview. The adopted amendments introduce several changes to the Board's Disciplinary Matrix, found in §213.33(b), particularly concerning §301.452(b)(1). The amendments clarify the Board's stance on non-compliance with remedial education requirements in disciplinary orders, removing language that previously classified these requirements as technical and non-remedial. The Board now views non-compliance with remedial education requirements as substantive violations.

The adopted amendments in the Third Tier of §301.452(b)(1) articulate two violations that the Board views as Third Tier offenses. The first offense involves practicing nursing with unlawfully or fraudulently obtained credentials, or credentials issued under false representation. The second offense pertains to inaccurately certifying on initial or renewal licensure applications that an applicant meets Texas's legal and regulatory qualifications. Adopted changes to Sanction Level I in the Third Tier include the denial of initial licensure or licensure renewal, aligning with Board precedent in similar cases. These adopted additional sanctions support the Board's authority under §301.453, which includes the denial of applications for licensure, renewal, or temporary permits. Additionally, a new aggravating factor related to evidence of fraud, misrepresentation, or falsity will guide the Board in determining the appropriate sanction level that will apply when undertaking a matrix analysis for the above stated violations.

Public Comment. The Board received no comments on the adoption of these amendments.

Statutory Authority. These amendments are adopted under the authority of Texas Occupations Code §301.151. Texas Occupations Code §301.151 addresses the general rulemaking authority of the Board to adopt and enforce rules consistent with Chapter 301 to perform its duties and conduct proceedings before the Board, regulate the practice of professional nursing and vocational nursing, establish standards of professional conduct for license holders under Chapter 301, and determine whether an act constitutes the act of professional nursing or vocational nursing.

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 November 13, 2024.

TRD-202405511
James W. Johnston
General Counsel
Texas Board of Nursing
Effective date: December 3, 2024
Proposal publication date: September 20, 2024
For further information, please call: (512) 305-6879

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TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 564. CHEMICAL DEPENDENCY TREATMENT FACILITIES

SUBCHAPTER C. OPERATIONAL REQUIREMENTS

26 TAC §564.39

The Texas Health and Human Services Commission (HHSC) adopts new §564.39, concerning Dangers of Substance Misuse Educational Program Requirements.

New §564.39 is adopted with changes to the proposed text as published in the August 2, 2024, issue of the *Texas Register* (49 TexReg 5743). This rule will be republished.

BACKGROUND AND JUSTIFICATION

The new section is necessary to comply with and implement House Bill (H.B.) 5183, 88th Legislature, Regular Session, 2023.

H.B. 5183 amended Texas Transportation Code Chapter 521 and, in part, requires HHSC to approve a substance misuse educational program that a residential chemical dependency treatment facility licensed under Texas Health and Safety Code Chapter 464 may provide to an individual whose driver's license was suspended under Transportation Code §521.372. This program must be equivalent to an educational program approved by the Texas Department of Licensing and Regulation under Texas Government Code Chapter 171.

The new section is required to establish the standards for an equivalent educational program as required by Texas Transportation Code §521.374(a-1).

COMMENTS

The 31-day comment period ended September 3, 2024.

During this period, HHSC did not receive any comments regarding the proposed rule.

HHSC made a minor editorial change to §564.39(i) to replace "insure" with "ensure."

In accordance with Texas Transportation Code §521.375, HHSC jointly adopts this proposed rule with the Texas Department of

Public Safety (DPS). In consultation with DPS, HHSC revised the certificate of completion requirement in §564.39(l)(2)(B)(i)(III) to include an identification card number.

HHSC also made a minor editorial change to §564.39(l)(2)(B)(i)(III) to ensure consistency with the statutory language in Texas Transportation Code §521.001(a)(6).

STATUTORY AUTHORITY

The new section is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Transportation Code Chapter 521, which authorizes the executive commissioner of the Health and Human Services Commission and the Department of Public Safety to jointly adopt rules.

§564.39. Dangers of Substance Misuse Educational Program Requirements.

(a) The purpose of this section is to establish the requirements for an educational program on the dangers of substance misuse pursuant to Texas Transportation Code Chapter 521, Subchapter P.

(b) Pursuant to Texas Transportation Code §521.374(a)(2), a residential chemical dependency treatment facility (CDTF) may provide an educational program to a resident of that facility whose driver's license is suspended under Texas Transportation Code §521.372. The facility must meet all requirements in this section for the CDTF's educational program to be considered equivalent under Texas Transportation Code §521.374(a)(2) to an educational program approved by the Texas Department of Licensing and Regulation under Texas Government Code Chapter 171.

(c) A CDTF that provides an educational program under this section may provide the educational program in person or online.

(d) The curriculum for an educational program provided under this section shall include at least the following key elements:

(1) Texas drug laws, including laws and penalties relating to controlled substances and the difference between state and federal statutes;

(2) history of substance misuse, including trends in the history of substance misuse and how substances impact individuals and society;

(3) stages of change, including how individuals integrate new behaviors and goals through five stages of change;

(4) substance misuse and the impact on physical health;

(5) physical health, human immunodeficiency virus (HIV), and sexually transmitted infections;

(6) community resources, including referrals to counseling, services that support the person's recovery, and testing;

(7) brain and the central nervous system;

(8) disease model of substance use disorder (mild, moderate, and severe);

(9) society and substance misuse, including how advertising, movies, and television influence substance misuse trends;

(10) Maslow's hierarchy of needs, including understanding basic human needs and how substance misuse impacts a person's ability to meet personal needs;

(11) substance misuse and its impact on personal and work relationships;

(12) personal values, attitude, and behavior;

(13) recovery, including treatment and community-based support programs or services;

(14) return to use prevention; and

(15) recovery plan.

(e) A CDTF that provides an online version of an educational program under this section shall comply with §564.911 of this chapter (relating to Treatment Services Provided by Electronic Means).

(f) A CDTF that provides an in-person version of an educational program under this section shall conduct the educational program's course at the CDTF's physical location.

(g) The CDTF shall make provisions for residents unable to read or speak English. The facility shall provide separate courses in English and in a second language(s) appropriate to the population(s) served at the CDTF.

(h) To serve as an instructor of an educational program under this section, an individual must be an employee of the CDTF and must have a minimum of two years of relevant and documented experience providing direct client services to persons with substance misuse problems and serve as one of the following:

(1) licensed chemical dependency counselor;

(2) registered counselor intern;

(3) licensed social worker;

(4) licensed professional counselor;

(5) licensed professional counselor intern;

(6) certified teacher;

(7) licensed psychologist;

(8) licensed physician or psychiatrist;

(9) probation or parole officer;

(10) adult or child protective services worker;

(11) licensed vocational nurse; or

(12) licensed registered nurse.

(i) A single instructor shall teach the entire course. The instructor shall document all information related to the resident participating and completing the course. The CDTF shall ensure all course documentation is placed in the resident's client record.

(j) The instructor shall:

(1) require participants to complete all the class modules within the course in the proper sequence;

(2) administer and evaluate pre-course and post-course program test instruments for each participant;

(3) administer a participant course evaluation at the end of each course; and

(4) conduct an exit interview with each participant.

(k) Each educational program shall include at least:

(1) 15 hours of class instruction per course; and

(2) five class modules of instruction per course.

(l) In order for the Texas Department of Public Safety (DPS) and Texas Health and Human Services Commission (HHSC) to accept a certificate as valid, the CDTF shall use the standardized certificate format described in this subsection.

(1) The CDTF shall create and issue a certificate of completion to a resident on the resident's participation in and successful completion of the educational program. The CDTF shall maintain an ascending numerical accounting record of all issued certificates.

(2) The certificate issued by the CDTF for completion of the education program under this section shall use the following format and, at minimum, consist of the following:

(A) The CDTF shall create a certificate that:

(i) is 8.5 inches wide and 3.5 inches long;

(ii) consists of a blue background color; and

(iii) aside from the required handwritten signature, consists only of a typed 12-point font that is legible and easy to read.

(B) The CDTF shall include on the left side of the certificate:

(i) the resident's:

(I) full name;

(II) date of birth;

(III) driver's license or identification card number;

(IV) address; and

(V) offense cause number;

(ii) the name of the county that convicted the resident; and

(iii) the date the resident successfully completed the educational program under this section.

(C) The CDTF shall include on the right side of the certificate:

(i) the CDTF's:

(I) full name as it appears on the facility's license, including any headquarters or Assumed Name or Doing Business As names;

(II) address;

(III) phone number; and

(IV) residential facility license number;

(ii) the instructor's printed full name and signature; and

(iii) the date of the instructor's signature.

(D) The CDTF shall include a serial number unique to each certificate issued in the top right corner of the certificate. When creating certificate serial numbers, the CDTF shall use consecutive serial numbers and issue certificates to residents in consecutive order.

(3) The CDTF shall maintain a copy of each issued certificate of program completion for at least three years from the date of course completion.

(m) An HHSC representative may determine compliance with this section during an inspection or investigation of a CDTF that offers an educational program under this section.

(n) In accordance with Transportation Code §521.375(a-1), HHSC and DPS are responsible for jointly adopting rules for qualification and approval of an educational program a CDTF provides under this section. For any proposed changes to the rules outlined in this section, HHSC solicits input from DPS during the rulemaking process.

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 November 8, 2024.

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For further information, please call: (512) 834-4591

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TITLE 28. INSURANCE

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

CHAPTER 134. BENEFITS--GUIDELINES FOR MEDICAL SERVICES, CHARGES, AND PAYMENTS

The Texas Department of Insurance, Division of Workers' Compensation (DWC) adopts the following changes to 28 TAC Chapter 134, Subchapter F, concerning pharmaceutical benefits: repeal 28 TAC §§134.506 and 134.510, and amend 28 TAC §§134.500, 134.501, 134.502, 134.503, 134.504, 134.520, 134.530, 134.540, and 134.550. Subchapter F implements Texas Labor Code §§408.028 and 413.011, and Texas Insurance Code Chapter 1305. The DWC medical advisor recommended the amendments to the commissioner of workers' compensation under Labor Code §413.0511(b).

The amendments to §§134.500, 134.501, 134.502, 134.503, and 134.520 and the repeals of 134.506 and 134.510 are adopted without changes to the proposed text published in the August 23, 2024, issue of the *Texas Register* (49 TexReg 6397). These sections will not be republished.

The amendments to §§134.504, 134.530, 134.540, and 134.550 are adopted with changes to the proposed text published in the August 23, 2024, issue of the *Texas Register* (49 TexReg 6397). DWC reverted to existing text in parts of §§134.504, 134.530, 134.540, and 134.550 in response to comments to avoid unintended consequences. Sections 134.504, 134.530, 134.540, and 134.550 will be republished.

REASONED JUSTIFICATION. The changes update and reorganize Subchapter F. Repealing §§134.506 and 134.510, and amending §§134.500, 134.501, 134.502, 134.503, 134.504, 134.520, 134.530, 134.540, and 134.550 is necessary to remove obsolete provisions and to update references and language to be consistent with other rules. Labor Code §408.028 requires the commissioner by rule to adopt a closed formulary under

§413.011, as well as a fee schedule, and provides requirements for prescribing prescription drugs, generic pharmaceutical medications, and over-the-counter alternatives. Insurance Code Chapter 1305 authorizes the establishment of workers' compensation health care networks for providing workers' compensation medical benefits and provides standards for the certification, administration, evaluation, and enforcement of their delivery of health care services to injured employees. The changes also include nonsubstantive editorial and formatting changes that make updates for plain language and agency style to improve the rule's clarity.

Section 134.500. The changes delete the definition of "open formulary." The Texas workers' compensation system now uses a closed formulary, so the reference to an open formulary is unnecessary. The changes correct a reference to the injured employee's Social Security number to specify only the last four digits of the number. The changes also renumber the paragraphs where needed and make editorial and formatting updates for plain language and agency style. Amending §134.500 is necessary to enhance the rule's clarity and accuracy.

Section 134.501. The changes correct obsolete references and make editorial and formatting updates for plain language and agency style. Amending §134.501 is necessary to enhance the rule's clarity and accuracy.

Section 134.502. The changes make editorial and formatting updates for plain language and agency style. Amending §134.502 is necessary to enhance the rule's clarity.

Section 134.503. The changes make editorial and formatting updates for plain language and agency style. Amending §134.503 is necessary to enhance the rule's clarity.

Section 134.504. The changes correct obsolete references and make editorial and formatting updates for plain language and agency style. In response to a comment, DWC removed a proposed change that would have required only the last four digits of the claimant's Social Security number, and retained the existing requirement for the full number. Amending §134.504 is necessary to enhance the rule's clarity and accuracy.

Section 134.506. Section 134.506 is repealed because it is an obsolete transitional provision. Repealing §134.506 is necessary to ensure that the published rules are current.

Section 134.510. Section 134.510 is repealed because it is an obsolete transitional provision. Repealing §134.510 is necessary to ensure that the published rules are current.

Section 134.520. The changes update the section title to remove an unnecessary reference to the 2011 transition to a closed formulary, add the sentence, "The closed formulary applies to all drugs that are prescribed and dispensed for outpatient use," to be consistent with §§134.530 and 134.540, and make editorial and formatting updates for plain language and agency style. Amending §134.520 is necessary to enhance the rule's clarity and accuracy.

Section 134.530. The changes remove unnecessary references, correct obsolete references, and make editorial and formatting updates for plain language and agency style. Amending §134.530 is necessary to enhance the rule's clarity and accuracy. In response to a comment, DWC removed a proposed change that would have specified the prescribing doctor or pharmacy as the requester for a medical interlocutory order.

Section 134.540. The changes remove unnecessary references, correct obsolete references, and make editorial and formatting updates for plain language and agency style. Amending §134.540 is necessary to enhance the rule's clarity and accuracy. In response to a comment, DWC removed a proposed change that would have specified the prescribing doctor or pharmacy as the requester for a medical interlocutory order.

Section 134.550. The changes correct obsolete references, update DWC's website address, clarify text, and make editorial and formatting updates for plain language and agency style. Amending §134.550 is necessary to enhance the rule's clarity and accuracy. DWC removed a proposed change that would have specified the prescribing doctor or pharmacy as the requester for a medical interlocutory order. In response to a comment, DWC also removed proposed changes to §134.550(h) to avoid unintentional conflicts in the timeframes for reconsideration of a preauthorization denial, and reverted to the existing text of that subsection with minor nonsubstantive edits.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Commenters: DWC received two written comments and no oral comments. The Office of Injured Employee Counsel commented in support of the proposal. Texas Mutual Insurance Company (Texas Mutual) commented in support of the proposal with changes. There were no commenters against the proposal.

Comment on Subchapter F. The Office of Injured Employee Counsel stated that they supported DWC's proposed changes to remove obsolete provisions and to update references and language to be consistent with other rules.

Agency Response to Comment on Subchapter F. DWC appreciates the comment.

Comment on §134.501. Texas Mutual suggested that DWC consider revising §134.501(a)(4) to recognize that reimbursement may be made based on DWC pharmacy fee guidelines or at a contract rate authorized by Labor Code §408.0281.

Agency Response to Comment on §134.501. DWC appreciates the comment but declines to make the change. The lack of medical fee disputes involving that fee guideline indicates that the existing language in §134.501(a)(4) is sufficient, and DWC did not propose substantive changes to it. In addition, §134.503(f) already allows the insurance carrier to reimburse prescription medications or services at a contract rate that is inconsistent with the fee guideline as long as the contract complies with the provisions of Labor Code §408.0281 and applicable DWC rules.

Comment on §134.504. Texas Mutual recommended that DWC not adopt the proposed change to §134.504(a)(1)(A) that reduced the Social Security number reporting requirement to only the last four digits because the change would create difficulties for insurance carriers in complying with their medical EDI data reporting requirements under 28 TAC Chapter 134, Subchapter I, which requires the full Social Security number.

Agency Response to Comment on §134.504. DWC appreciates the comment and has removed the proposed change. The existing requirement for the full Social Security number remains.

Comment on §134.510. Texas Mutual stated that they supported the repeal of §134.510 but suggested that DWC consider whether repealing the provisions allowing agreements under subsections (c) and (d) could be problematic if any claims remain with an evergreen pharmacy agreement in place.

Agency Response to Comment on §134.510. DWC appreciates the comment but has proceeded with the repeal. The repeal is not retroactive, so existing agreements for long-ago claims should not be affected. Removing the obsolete provisions is necessary to ensure that the rules are current and accurate.

Comment on §§134.530 and 134.540. Texas Mutual recommended that DWC keep the existing language in §§134.530(e)(4) and 134.540(e)(4) intact to ensure that there are no unintended consequences limiting the request of medical interlocutory orders under §§133.306 or 134.550.

Agency Response to Comment on §§134.530 and 134.540. DWC appreciates the comment and has removed the proposed change. The existing requirements, which do not mention the prescribing doctor or pharmacy, remain.

Comment on §134.550. Texas Mutual recommended that DWC keep the language in current §134.550(h) intact to avoid unintentional conflicts in the timeframes for reconsideration of a preauthorization denial in §§134.600(o) and 19.2011(a)(1) and (9). Texas Mutual also recommended that DWC continue to use the acronym "MIO" to distinguish pharmacy medical interlocutory orders to address potential emergency situations from other types of medical interlocutory orders.

Agency Response to Comment on §134.550. DWC appreciates the comment and has removed the proposed change to §134.550(h), reverting to the existing text in that subsection. DWC declines to revert to the "MIO" acronym in the rule text, as "MIO" stands for "medical interlocutory order," and is clearer to read. There should be no confusion and no substantive change in simply spelling out an acronym to make the rule more accessible to readers. Differentiating types of medical interlocutory orders should be simple, as the requests and orders include their type. For example, a request for a medical interlocutory order under §134.550 states that it is being made under that section.

SUBCHAPTER F. PHARMACEUTICAL BENEFITS

28 TAC §§134.500 - 134.504, 134.520, 134.530, 134.540, 134.550

STATUTORY AUTHORITY. The commissioner of workers' compensation adopts amendments to §§134.500, 134.501, 134.502, 134.503, 134.504, 134.520, 134.530, 134.540, and 134.550 under Labor Code §§408.028, 408.0281, 413.011, 413.0141, 413.0511, 402.00111, 402.00116, and 402.061, and Insurance Code Chapter 1305, including §§1305.003, 1305.101, and 1305.153.

Labor Code §408.028 governs pharmaceutical services. It requires the commissioner by rule to adopt a closed formulary under §413.011, and provides requirements for prescribing prescription drugs, generic pharmaceutical medications, and over-the-counter alternatives. It requires the commissioner by rule to allow an employee to buy over-the-counter alternatives to prescribed or ordered medications, and to get reimbursement from the insurance carrier for those medications. It also requires the commissioner by rule to allow an employee to buy a brand-name drug instead of a generic pharmaceutical medication or over-the-counter alternative to a prescription medication if a health care provider prescribes a generic pharmaceutical medication or an over-the-counter alternative to a prescription medication. Section 408.028(f) requires the commissioner by rule to adopt a fee schedule for pharmacy and pharmaceutical services that will: (1) provide reimbursement rates that are fair and reasonable; (2) assure adequate access to medications and services for injured workers; (3) minimize costs to employees and insurance carriers; and (4) take into consideration the increased security of payment that Labor Code Title 5, Subtitle A, affords.

Labor Code §408.0281 provides requirements for the reimbursement of pharmaceutical services.

Labor Code §413.011 requires the commissioner to adopt health care reimbursement policies and guidelines that reflect the standardized reimbursement structures found in other health care delivery systems with minimal modifications to those reimbursement methodologies as necessary to meet occupational injury requirements. To achieve standardization, it requires the commissioner to adopt the most current reimbursement methodologies, models, and values or weights used by the federal Centers for Medicare and Medicaid Services, including applicable payment policies relating to coding, billing, and reporting. It also requires the commissioner to develop one or more conversion factors or other payment adjustment factors, taking into account economic indicators and the requirements of §413.011(d), which requires that fee guidelines be fair and reasonable, and designed to ensure the quality of medical care and to achieve effective medical cost control. It requires the commissioner to consider the increased security of payment that Labor Code, Title 5, Subtitle A, provides in establishing the fee guidelines.

Labor Code §413.0141 allows the commissioner by rule to require an insurance carrier to pay for specified pharmaceutical services sufficient for the first seven days following the date of injury if the health care provider requests and receives verification of insurance coverage and a verbal confirmation of an injury from the employer or from the insurance carrier as provided by §413.014. The rules must provide that an insurance carrier is eligible for reimbursement for pharmaceuticals paid under §413.0141 from the subsequent injury fund if the injury is determined not to be compensable.

Labor Code §413.0511 requires DWC to employ or contract with a medical advisor. The medical advisor must be a doctor, as defined in §401.011. The medical advisor's duties include making recommendations about the adoption of rules and policies to: develop, maintain, and review guidelines as provided by §413.011, including rules about impairment ratings; reviewing compliance with those guidelines; regulating or performing other acts related to medical benefits as required by the commissioner; and determining minimal modifications to the reimbursement methodology and model used by the Medicare system as needed to meet occupational injury requirements.

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

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

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

Insurance Code Chapter 1305 authorizes the establishment of workers' compensation health care networks for providing workers' compensation medical benefits and provides standards for

the certification, administration, evaluation, and enforcement of their delivery of health care services to injured employees.

Insurance Code §1305.003(b) provides that Chapter 1305 controls if there is a conflict between Title 5, Labor Code, and Chapter 1305 as to the provision of medical benefits for inured employees, the establishment and regulation of fees for medical treatments and services, the time frames for payment of medical bills, the operation and regulation of workers' compensation health care networks, the regulation of health care providers who contract with those networks, or the resolution of disputes regarding medical benefits provided through those networks.

Insurance Code §1305.101(c) requires in part that prescription medication and services be reimbursed as provided by Labor Code §408.0281, other provisions of Title 5, Labor Code, and applicable rules of the commissioner of workers' compensation.

Insurance Code §1305.153 governs provider reimbursement. Subsection (a) states that the amount of reimbursement for services provided by a network provider is determined by the contract between the network and the provider or group of providers. Subsection (c) requires that out-of-network providers who provide care as described by §1305.006 be reimbursed as provided by Title 5, Labor Code, and applicable rules of the commissioner of workers' compensation. Subsection (d) subjects billing by, and reimbursement to, contracted and out-of-network providers to Title 5, Labor Code, and applicable rules of the commissioner of workers' compensation, as consistent with Chapter 1305. But applying those rules may not negate reimbursement amounts negotiated by the network.

§134.504. Pharmaceutical Expenses Incurred by the Injured Employee.

(a) If an injured employee needs to purchase prescription drugs or over-the-counter alternatives to prescription drugs prescribed or ordered by the treating doctor or referral health care provider, the injured employee may request reimbursement from the insurance carrier as follows:

(1) The injured employee must submit to the insurance carrier a letter requesting reimbursement along with a receipt indicating the amount paid and documentation concerning the prescription.

(A) The letter should include information to clearly identify the claimant such as the claimant's name, address, date of injury, and Social Security number.

(B) Documentation for prescription drugs submitted with the letter from the employee must include the prescribing health care provider's name, the date the prescription was filled, the name of the drug, employee's name, and dollar amount paid by the employee. As examples, this information may be on an information sheet provided by the pharmacy, or the employee can ask the pharmacist for a printout of work-related prescriptions for a particular time period. Cash register receipts alone are not acceptable.

(2) The insurance carrier must pay the injured employee under §134.503 of this title (Pharmacy Fee Guideline), or notify the injured employee of a reduction or denial of the payment within 45 days of receiving the request for reimbursement from the injured employee.

(A) If the insurance carrier does not reimburse the full amount requested or denies payment, the insurance carrier must include a full and complete explanation of the reasons the insurance carrier reduced or denied the payment and must inform the injured employee of his or her right to request medical dispute resolution under §133.305 of this title (MDR--General).

(B) The statement must include sufficient claim-specific substantive information to enable the employee to understand the insurance carrier's position or action on the claim. A general statement that simply states the insurance carrier's position with a phrase such as, "not entitled to reimbursement" or a similar phrase with no further description of the factual basis does not satisfy the requirements of this section.

(b) An injured employee may choose to receive a brand-name drug rather than a generic drug or over-the-counter alternative to a prescription medication that is prescribed by a health care provider. In such instances, the injured employee must pay the difference in cost between the generic drug and the brand-name drug. The transaction between the employee and the pharmacist is considered final and is not subject to medical dispute resolution by the division. In addition, the employee is not entitled to reimbursement from the insurance carrier for the difference in cost between generic and brand-name drugs.

(1) The injured employee must notify the pharmacist of their choice to pay the cost difference between the generic and brand-name drugs. An employee's payment of the cost difference is an acceptance of the responsibility for the cost difference and an agreement not to seek reimbursement from the insurance carrier for the cost difference.

(2) The pharmacist must:

(A) determine the costs of both the brand-name and generic drugs under §134.503 of this title, and notify the injured employee of the cost difference amount;

(B) collect the cost difference amount from the injured employee in a form and manner that is acceptable to both parties;

(C) submit a bill to the insurance carrier for the generic drug that was prescribed by the doctor; and

(D) not bill the injured employee for the cost of the generic drug if the insurance carrier reduces or denies the bill.

(3) The insurance carrier must review and process the bill from the pharmacist under Chapters 133 and 134 (General Medical Provisions and Benefits--Guidelines for Medical Services, Charges, and Payments, respectively).

§134.530. Closed Formulary for Claims Not Subject to Certified Networks.

(a) Applicability. The closed formulary applies to all drugs that are prescribed and dispensed for outpatient use for claims not subject to a certified network.

(b) Preauthorization for claims subject to the division's closed formulary.

(1) Preauthorization is only required for:

(A) drugs identified with a status of "N" in the current edition of the ODG Treatment in Workers' Comp (ODG) / Appendix A, ODG Workers' Compensation Drug Formulary, and any updates;

(B) any prescription drug created through compounding; and

(C) any investigational or experimental drug for which there is early, developing scientific or clinical evidence demonstrating the potential efficacy of the treatment, but that is not yet broadly accepted as the prevailing standard of care as defined in Labor Code §413.014(a).

(2) When §134.600(p)(12) of this title (Preauthorization, Concurrent Utilization Review, and Voluntary Certification of Health Care) conflicts with this section, this section prevails.

(c) Preauthorization of intrathecal drug delivery systems.

(1) An intrathecal drug delivery system requires preauthorization under §134.600 of this title, and the preauthorization request must include the prescribing doctor's drug regimen plan of care and the anticipated dosage or range of dosages for the administration of pain medication.

(2) Refills of an intrathecal drug delivery system with drugs excluded from the closed formulary, which are billed using Healthcare Common Procedure Coding System (HCPCS) Level II J codes, and submitted on a CMS-1500 or UB-04 billing form, require preauthorization on an annual basis. Preauthorization for these refills is also required whenever:

(A) the medications, dosage or range of dosages, or the drug regimen proposed by the prescribing doctor differs from the medications, dosage or range of dosages, or drug regimen previously preauthorized by that prescribing doctor; or

(B) there is a change in prescribing doctor.

(d) Treatment guidelines. Except as provided by this subsection, the prescribing of drugs must be in accordance with §137.100 of this title (Treatment Guidelines), the division's adopted treatment guidelines.

(1) Prescription and nonprescription drugs included in the division's closed formulary and recommended by the division's adopted treatment guidelines may be prescribed and dispensed without preauthorization.

(2) Prescription and nonprescription drugs included in the division's closed formulary that exceed or are not addressed by the division's adopted treatment guidelines may be prescribed and dispensed without preauthorization.

(3) Drugs included in the closed formulary that are prescribed and dispensed without preauthorization are subject to retrospective review of medical necessity and reasonableness of health care by the insurance carrier under subsection (g) of this section.

(e) Appeals process for drugs excluded from the closed formulary.

(1) When the prescribing doctor determines and documents that a drug excluded from the closed formulary is necessary to treat an injured employee's compensable injury and has prescribed the drug, the prescribing doctor, other requester, or injured employee must request approval of the drug by requesting preauthorization, including reconsideration, under §134.600 of this title and applicable provisions of Chapter 19 of this title (Licensing and Regulation of Insurance Professionals).

(2) If an injured employee or a requester other than the prescribing doctor requests preauthorization and a statement of medical necessity, the prescribing doctor must provide a statement of medical necessity to facilitate the preauthorization submission under §134.502 of this title (Pharmaceutical Services).

(3) If preauthorization for a drug excluded from the closed formulary is denied, the requester may submit a request for medical dispute resolution under §133.308 of this title (MDR of Medical Necessity Disputes).

(4) In the event of an unreasonable risk of a medical emergency, an interlocutory order may be obtained in accordance with §133.306 of this title (Interlocutory Orders for Medical Benefits) or §134.550 of this title (Medical Interlocutory Order).

(f) Initial pharmaceutical coverage.

(1) Drugs included in the closed formulary that are prescribed for initial pharmaceutical coverage under Labor Code §413.0141 may be dispensed without preauthorization and are not subject to retrospective review of medical necessity.

(2) Drugs excluded from the closed formulary that are prescribed for initial pharmaceutical coverage under Labor Code §413.0141 may be dispensed without preauthorization and are subject to retrospective review of medical necessity.

(g) Retrospective review. Except as provided in subsection (f)(1) of this section, drugs that do not require preauthorization are subject to retrospective review for medical necessity under §133.230 of this title (Insurance Carrier Audit of a Medical Bill) and §133.240 of this title (Medical Payments and Denials), and applicable provisions of Chapter 19 of this title.

(1) Health care, including a prescription for a drug, provided under §137.100 of this title is presumed reasonable as Labor Code §413.017 specifies, and is also presumed to be health care reasonably required as defined by Labor Code §401.011(22-a).

(2) For an insurance carrier to deny payment subject to a retrospective review for pharmaceutical services that are recommended by the division's adopted treatment guidelines in §137.100 of this title, the denial must be supported by documentation of evidence-based medicine that outweighs the presumption of reasonableness established under Labor Code §413.017.

(3) A prescribing doctor who prescribes pharmaceutical services that exceed, are not recommended, or are not addressed by §137.100 of this title must provide documentation on request under §134.500(13) of this title (Definitions) and §134.502(e) and (f) of this title.

§134.540. Closed Formulary for Claims Subject to Certified Networks.

(a) Applicability. The closed formulary applies to all drugs that are prescribed and dispensed for outpatient use for claims subject to a certified network.

(b) Preauthorization for claims subject to the division's closed formulary. Preauthorization is only required for:

(1) drugs identified with a status of "N" in the current edition of the ODG Treatment in Workers' Comp (ODG) / Appendix A, ODG Workers' Compensation Drug Formulary, and any updates;

(2) any prescription drug created through compounding; and

(3) any investigational or experimental drug for which there is early, developing scientific or clinical evidence demonstrating the potential efficacy of the treatment, but that is not yet broadly accepted as the prevailing standard of care as defined in Labor Code §413.014(a).

(c) Preauthorization of intrathecal drug delivery systems.

(1) An intrathecal drug delivery system requires preauthorization under the certified network's treatment guidelines and preauthorization requirements in Insurance Code Chapter 1305 and Chapter 10 of this title (Workers' Compensation Health Care Networks).

(2) Refills of an intrathecal drug delivery system with drugs excluded from the closed formulary, which are billed using Healthcare Common Procedure Coding System (HCPCS) Level II J codes, and submitted on a CMS-1500 or UB-04 billing form, require preauthorization on an annual basis. Preauthorization for these refills is also required whenever:

(A) the medications, dosage or range of dosages, or the drug regimen proposed by the prescribing doctor differs from the medications, dosage or range of dosages, or drug regimen previously preauthorized by that prescribing doctor; or

(B) there is a change in prescribing doctor.

(d) Treatment guidelines. The prescribing of drugs must be under the certified network's treatment guidelines and preauthorization requirements in Insurance Code Chapter 1305 and Chapter 10 of this title. Drugs included in the closed formulary that are prescribed and dispensed without preauthorization are subject to retrospective review of medical necessity and reasonableness of health care by the insurance carrier under subsection (g) of this section.

(e) Appeals process for drugs excluded from the closed formulary.

(1) When the prescribing doctor determines and documents that a drug excluded from the closed formulary is necessary to treat an injured employee's compensable injury and has prescribed the drug, the prescribing doctor, other requester, or injured employee must request approval of the drug in a specific instance by requesting preauthorization under the certified network's preauthorization process established in Chapter 10, Subchapter F of this title (Utilization Review and Retrospective Review) and applicable provisions of Chapter 19 of this title (Licensing and Regulation of Insurance Professionals).

(2) If an injured employee or a requester other than the prescribing doctor requests preauthorization and a statement of medical necessity, the prescribing doctor must provide a statement of medical necessity to facilitate the preauthorization submission under §134.502 of this title (Pharmaceutical Services).

(3) If preauthorization for a drug excluded from the closed formulary is denied, the requester may submit a request for medical dispute resolution under §133.308 of this title (MDR of Medical Necessity Disputes).

(4) In the event of an unreasonable risk of a medical emergency, an interlocutory order may be obtained in accordance with §133.306 of this title (Interlocutory Orders for Medical Benefits) or §134.550 of this title (Medical Interlocutory Order).

(f) Initial pharmaceutical coverage.

(1) Drugs included in the closed formulary that are prescribed for initial pharmaceutical coverage under Labor Code §413.0141 may be dispensed without preauthorization and are not subject to retrospective review of medical necessity.

(2) Drugs excluded from the closed formulary that are prescribed for initial pharmaceutical coverage under Labor Code §413.0141 may be dispensed without preauthorization and are subject to retrospective review of medical necessity.

(g) Retrospective review. Except as provided in subsection (f)(1) of this section, drugs that do not require preauthorization are subject to retrospective review for medical necessity under §133.230 of this title (Insurance Carrier Audit of a Medical Bill), §133.240 of this title (Medical Payments and Denials), Insurance Code Chapter 1305, and applicable provisions of Chapters 10 and 19 of this title.

(1) For an insurance carrier to deny payment subject to a retrospective review for pharmaceutical services that fall within the treatment parameters of the certified network's treatment guidelines, the denial must be supported by documentation of evidence-based medicine that outweighs the evidence-basis of the certified network's treatment guidelines.

(2) A prescribing doctor who prescribes pharmaceutical services that exceed, are not recommended, or are not addressed by the certified network's treatment guidelines is required to provide documentation on request under §134.500(13) of this title (Definitions) and §134.502(e) and (f) of this title.

§134.550. Medical Interlocutory Order.

(a) The purpose of this section is to provide a prescribing doctor or pharmacy an ability to obtain a medical interlocutory order when preauthorization denials of previously prescribed and dispensed drugs excluded from the closed formulary pose an unreasonable risk of a medical emergency as defined in §134.500(7) of this title (Definitions) and Insurance Code §1305.004(a)(13).

(b) A request for an interlocutory order that does not meet the criteria described by this section may still be submitted under §133.306 of this title (Interlocutory Orders for Medical Benefits).

(c) A request for a medical interlocutory order must contain the following information:

(1) injured employee name;

(2) date of birth of injured employee;

(3) prescribing doctor's name;

(4) name of drug and dosage;

(5) requester's name (pharmacy or prescribing doctor);

(6) requester's contact information;

(7) a statement that a preauthorization request for a previously prescribed and dispensed drug, which is excluded from the closed formulary, has been denied by the insurance carrier;

(8) a statement that an independent review request has already been submitted to the insurance carrier or the insurance carrier's utilization review agent under §133.308 of this title (MDR of Medical Necessity Disputes);

(9) a statement that the preauthorization denial poses an unreasonable risk of a medical emergency as defined in §134.500(7) of this title;

(10) a statement that the potential medical emergency has been documented in the preauthorization process;

(11) a statement that the insurance carrier has been notified that a request for a medical interlocutory order is being submitted to the division; and

(12) a signature and the following certification by the medical interlocutory order requester for paragraphs (7) - (12) of this subsection, "I hereby certify under penalty of law that the previously listed conditions have been met."

(d) The division will process and approve a complete request for a medical interlocutory order under this section. At its discretion, the division may consider an incomplete request for a medical interlocutory order.

(e) The request for a medical interlocutory order must be in writing and must contain the information in subsection (c) of this section. A convenient form that contains the required information is on the division's website at https://www.tdi.texas.gov/forms/form20numeric.html.

(f) The requester must provide a copy of the request to the insurance carrier, prescribing doctor, injured employee, and dispensing pharmacy, if known, on the date the requester submits the request to the division.

(g) An approved medical interlocutory order is effective retroactively to the date the division received the complete request for the medical interlocutory order.

(h) Notwithstanding §133.308 of this title:

(1) A request for reconsideration of a preauthorization denial is not required prior to a request for independent review when pursuing a medical interlocutory order under this section. If a request for reconsideration or a medical interlocutory order request is not initiated within 15 days from the initial preauthorization denial, then the opportunity to request a medical interlocutory order under this section does not apply.

(2) If pursuing a medical interlocutory order after denial of a reconsideration request, a complete medical interlocutory order must be submitted within five working days of the reconsideration denial.

(i) An appeal of the independent review organization (IRO) decision relating to the medical necessity and reasonableness of the drugs contained in the medical interlocutory order must be submitted under §133.308(t) of this title.

(j) The medical interlocutory order continues in effect until the later of:

(1) final adjudication of a medical dispute about the medical necessity and reasonableness of the drug contained in the medical interlocutory order;

(2) expiration of the period for a timely appeal; or

(3) agreement of the parties.

(k) If a requester withdraws a request for medical necessity dispute resolution, the requester accepts the preauthorization denial.

(l) A party must comply with a medical interlocutory order entered under this section, and the insurance carrier must reimburse the pharmacy for prescriptions dispensed under a medical interlocutory order.

(m) The insurance carrier must notify the prescribing doctor, injured employee, and the dispensing pharmacy once reimbursement is no longer required under subsection (j) of this section.

(n) Payments made by insurance carriers under this section may be eligible for reimbursement from the subsequent injury fund under Labor Code §§410.209 and 413.055 and applicable rules.

(o) A decision issued by an IRO is not an agency or commissioner decision.

(p) A party may seek to reverse or modify a medical interlocutory order issued under this section if:

(1) a final determination of medical necessity has been rendered; and

(2) the party requests a benefit contested case hearing (CCH) from the division's chief clerk no later than 20 days after the date the IRO decision is sent to the party. A benefit review conference is not a prerequisite to a division CCH under this subsection. Except as provided by this subsection, a division CCH must be conducted under Chapters 140 and 142 of this title (Dispute Resolution--General Provisions and Dispute Resolution--Benefit Contested Case Hearing).

(q) The insurance carrier may dispute an interlocutory order entered under this title by filing a written request for a hearing under Labor Code §413.055 and §148.3 of this title (Requesting a Hearing).

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

Filed with the Office of the Secretary of State on November 8, 2024.

TRD-202405475
Kara Mace
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Effective date: November 28, 2024
Proposal publication date: August 23, 2024
For further information, please call: (512) 804-4703

28 TAC §134.506, §134.510

STATUTORY AUTHORITY. The commissioner of workers' compensation adopts the repeal of §134.506 and §134.510 under Labor Code §§408.028, 413.0511, 402.00111, 402.00116, and 402.061, and Insurance Code Chapter 1305.

Labor Code §408.028 governs pharmaceutical services. It requires the commissioner by rule to adopt a closed formulary under §413.011, and provides requirements for prescribing prescription drugs, generic pharmaceutical medications, and over-the-counter alternatives. It requires the commissioner by rule to allow an employee to buy over-the-counter alternatives to prescribed or ordered medications, and to get reimbursement from the insurance carrier for those medications. It also requires the commissioner by rule to allow an employee to buy a brand-name drug instead of a generic pharmaceutical medication or over-the-counter alternative to a prescription medication if a health care provider prescribes a generic pharmaceutical medication or an over-the-counter alternative to a prescription medication. Section 408.028(f) requires the commissioner by rule to adopt a fee schedule for pharmacy and pharmaceutical services that will: (1) provide reimbursement rates that are fair and reasonable; (2) assure adequate access to medications and services for injured workers; (3) minimize costs to employees and insurance carriers; and (4) take into consideration the increased security of payment that Labor Code Title 5, Subtitle A, affords.

Labor Code §413.0511 requires DWC to employ or contract with a medical advisor. The medical advisor must be a doctor, as defined in §401.011. The medical advisor's duties include making recommendations about the adoption of rules and policies to: develop, maintain, and review guidelines as provided by §413.011, including rules about impairment ratings; reviewing compliance with those guidelines; regulating or performing other acts related to medical benefits as required by the commissioner; and determining minimal modifications to the reimbursement methodology and model used by the Medicare system as needed to meet occupational injury requirements.

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

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

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

Insurance Code Chapter 1305 authorizes the establishment of workers' compensation health care networks for providing workers' compensation medical benefits and provides standards for the certification, administration, evaluation, and enforcement of their delivery of health care services to injured employees.

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 November 8, 2024.

TRD-202405476
Kara Mace
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Effective date: November 28, 2024
Proposal publication date: August 23, 2024
For further information, please call: (512) 804-4703

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 61. DESIGN AND CONSTRUCTION
SUBCHAPTER A. CONTRACTS FOR PUBLIC WORKS

31 TAC §61.21

The Texas Parks and Wildlife Commission in a duly noticed meeting on November 7, 2024, adopted an amendment to 31 TAC §61.21, concerning Contracts for Public Works, without changes to the proposed text as published in the October 4, 2024, issue of the *Texas Register* (49 TexReg 8067). The rule will not be republished.

The amendment delegates authority to the executive director of the department to award "job order contract" jobs, tasks, and purchase orders in excess of $1,000,000 or greater under the provisions of Government Code, Chapter 2269, to qualifying projects. The amendment also delegates authority to the department's Infrastructure Division director and deputy director for awards in excess of $500,000 but not more than $1,000,000.

Under Parks and Wildlife Code, §11.0171, the commission is required to adopt policies and procedures by rule consistent with applicable state procurement practices for soliciting and awarding contracts for project management, design, bid, and construction administration consistent with the provisions of Subchapter A, Chapter 2254, Government Code.

Under Government Code, §2269.401, "job order contracting" is a procurement method used for maintenance, repair, alteration, renovation, remediation, or minor construction of a facility when the work is of a recurring nature but the delivery times, type, and quantities of work required are indefinite. Government Code, §2269.403, requires the governing body of a governmental entity to approve each job, task, or purchase order under a blanket job order contract that exceeds $500,000 in value. The legislature established the statutory threshold of $500,000 many years ago. Since then, the planning, procurement, and construction costs for maintenance activities have increased to the extent that projects in excess of $500,000 in value are now numerous and commonplace. Government Code, §2269.053, provides that a governing body of a governmental entity may delegate its authority under Chapter 2269 regarding an action authorized or required by that chapter to a designated representative, committee, or other person. To reduce the amount of time for project delivery, the department believes it is both helpful and prudent to create an alternative to the cumbersome and time-consuming process of presenting every minor construction/repair project to the commission for funding approval.

Accordingly, new §61.21(c) delegates authority to the executive director of the department to award job order contract jobs, tasks, and purchase orders of $1,000,000 or greater under the provisions of Government Code, Chapter 2269, to qualifying projects.

New 61.21(d) delegates authority to the director and deputy director of the Infrastructure Division to award job order contract jobs, tasks, and purchase orders in excess of $500,000 but no more than $1,000,000 under the provision of Government Code, Chapter 2269, Subchapter I to qualifying projects.

The department received one comment opposing adoption of the rule as proposed. The commenter stated that "given the history of general government abuses with awarding contracts," additional independent audit oversight should be required. The department disagrees with the comment and responds that the rule as adopted does not alter or limit the department's existing authority to contract, it serves only to expedite processes already in place. The department also notes that it is confident that existing systems and processes are adequate to both deter and detect abuse. No changes were made as a result of the comment.

The department received four comments supporting adoption of the rules as proposed.

The amendment is adopted under the authority of Parks and Wildlife Code, §11.0171, which requires the commission to adopt by rule policies and procedures consistent with applicable state procurement practices for soliciting and awarding contracts, and Government Code §2269.053, which authorizes the governing body of a governmental entity to delegate by rule its authority to approve job order contract jobs, tasks, or purchase orders that exceed $500,000.

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 November 14, 2024.

TRD-202405517
James Murphy
General Counsel
Texas Parks and Wildlife Department
Effective date: December 4, 2024
Proposal publication date: October 4, 2024
For further information, please call: (512) 389-4775

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 9. PROPERTY TAX ADMINISTRATION

SUBCHAPTER I. VALUATION PROCEDURES

34 TAC §9.4001

The Comptroller of Public Accounts adopts amendments to §9.4001, concerning valuation of open-space and agricultural lands, with changes to the proposed text as published in the August 16, 2024, issue of the *Texas Register* (49 TexReg 6193). The rule will be republished.

These amendments are to reflect updates and revisions to the manual for the appraisal of agricultural land.

The amendments update and revise the February 2022 manual for the appraisal of agricultural land. The manual sets forth the methods to apply and the procedures to use in qualifying and appraising land used for agriculture and open-space land under Tax Code, Chapter 23, Subchapters C and D.

Generally, the substantive changes to the manual reflect statutory changes and changes dictated by case law. The manual is updated throughout, as well as adding a subsection for 1-d-1, to address that ownership of land is not considered to have changed if ownership of the land is transferred from the former owner to the surviving spouse of the former owner, based on changes made in House Bill 2354, 88th Legislature, R.S., 2023. In addition, the updated manual removes the requirement that agricultural advisory board members be residents of the district in response to House Bill 3207, 88th Legislature, R.S., 2023.

The manual adds a subsection for 1-d-1 to address the requirement that a chief appraiser shall take into consideration the effect (if any) that the presence of any applicable disease or pest or the designation of the area may have on the net income, based on changes made in House Bill 260, 88th Legislature, R.S., 2023. In addition, in response to SB 1191, 88th Legislature, R.S., 2023, the manual adds a paragraph to explain situations where the chief appraiser shall accept and approve or deny an application for appraisal after the deadline for filing the applications. The footnotes, years, values and figures were updated to be more recent.

Pursuant to Tax Code, §23.52(d), these rules have been approved by the comptroller with the review and counsel of the Department of Agriculture.

The comptroller received comments regarding adoption of the amendment from Faun Cullens, Chief Appraiser of Bastrop Central Appraisal District, Leana Mann, Chief Appraiser of Travis Central Appraisal District, and Chuck Lyon, Chief Appraiser of Palo Pinto Appraisal District.

Ms. Cullens and Ms. Mann commented that the manual should not be dated January 2024 because it will not be adopted until over nine months later, and it affects the standard to which appraisal districts are held and their performance in the Methods and Assistance Program Study.

The comptroller thanks Ms. Cullens and Ms. Mann for their comments, and in response, the comptroller is changing the effective date in the rule and on the manual's cover from January 2024 to October 2024.

Ms. Mann suggests additional clarification is needed on land that is used for horse training, as opposed to grazing and raising. The comptroller thanks Ms. Mann for submitting this comment but declines to make this change. The manual already advises the chief appraiser on land used for the training of horses on pages 8 and 9. Training of horses is also addressed in Question 19 on page 51 of Appendix A.

Ms. Mann also suggests the "manual authorize appraisal districts to set minimum acreage sizes based on generally accepted agricultural practices and categories of land." The comptroller thanks Ms. Mann for this comment but declines to make this change because the manual already advises the chief appraiser on pages 9 and 10 on degree of intensity and question 2 on pages 47 and 48 of Appendix B addresses minimum acreage requirements. Any expansion beyond the degree of intensity generally accepted in the area would have to be provided by the legislature.

Mr. Lyon voices concerns that the manual and comptroller's form 50-129 are providing two separate deadlines for late applications. He points out on page 40 under "Late Application" it says "{a} property owner may submit a late application for special appraisal after April 30 if it is filed before the ARB approves records for that year (usually in July)" while form 50-129 states "{a} late application may be filed up to midnight the day before the appraisal review board approves appraisal records for the year, which usually occurs in July."

The comptroller thanks Mr. Lyon for his comment but declines to make this change in the manual. The comptroller will instead update the form to match the language in the manual.

The comptroller is also correcting a typographical error on page 45 by changing the year 2020 to 2024 in the sentence "{t}he property sells on Nov. 1, 2020 2024, but there is no change of use."

These amendments are adopted under Tax Code, §§5.05 (Appraisal Manuals and Other Materials); 23.41 (Appraisal); and 23.52 (Appraisal of Qualified Agricultural Land), which provide the comptroller with the authority to prepare and issue publications relating to the appraisal of property and to promulgate rules specifying the methods to apply and the procedures to use in appraising qualified agricultural and open-space land for ad valorem tax purposes.

These amendments implement Tax Code, Chapter 23, Subchapters C and D.

§9.4001. Valuation of Open-Space and Agricultural Lands.

Adoption of the "Manual for the Appraisal of Agricultural Land." This manual specifies the methods to apply and the procedures to use in qualifying and appraising land used for agriculture and open-space land under Tax Code, Chapter 23, Subchapters C and D. Appraisal districts are required to use this manual in qualifying and appraising open-space land. The Comptroller of Public Accounts adopts by reference the Manual for the Appraisal of Agricultural Land dated October 2024. The manual is accessible on the Property Tax Assistance Division website. Copies of the manual can be obtained from the Comptroller of Public Accounts, Property Tax Assistance Division, P.O. Box 13528, Austin, Texas 78711-3528. Copies also may be requested by calling our toll-free number 1-800-252-9121. In Austin, call (512) 305-9999.

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 November 12, 2024.

TRD-202405480
Victoria North
General Counsel for Fiscal and Agency Affairs
Comptroller of Public Accounts
Effective date: December 2, 2024
Proposal publication date: August 16, 2024
For further information, please call: (512) 475-2220

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34 TAC §9.4011

The Comptroller of Public Accounts adopts amendments to §9.4011, concerning valuation of timberland, with changes to the proposed text as published in the August 16, 2024, issue of the *Texas Register* (49 TexReg 6194). The rule will be republished.

These amendments are to reflect updates and revisions to the manual for the appraisal of timberland.

The amendments update and revise the March 2022 manual for the appraisal of timberland. The manual sets forth the methods to apply and the procedures to use in qualifying and appraising timberland and restricted-use timberland under Tax Code, Chapter 23, Subchapters E and H.

Generally, the substantive changes to the manual reflect statutory changes. The manual is updated to reflect the changes to the qualification criteria of the agricultural advisory board members in response to House Bill 3207, 88th Legislature, R.S., 2023 by eliminating the requirement that a member must have been a resident of the district for at least five years. Changes are made to reference more current prices, expenses and values throughout the manual.

Pursuant to Tax Code, §23.73(b), these rules have been approved by the comptroller with the review and counsel of the Texas A&M Forest Service.

The comptroller received one comment regarding adoption of the amendment from Leana Mann, Chief Appraiser of Travis Central Appraisal District.

Leana Mann, the Chief Appraiser of Travis Central Appraisal District, commented that the manual should not be dated January 2024 because it will not be adopted until over nine months later, and it affects the standard to which appraisal districts are held and their performance in the Methods and Assistance Program Study.

The comptroller thanks Ms. Mann for her comment, and in response, the comptroller is changing the effective date in the rule and on the manual's cover from January 2024 to October 2024.

These amendments are adopted under Tax Code, §§5.05 (Appraisal Manuals and Other Materials); 23.73 (Appraisal of Qualified Timber Land); and 23.9803 (Appraisal of Qualified Restricted-Use Timber Land), which authorize the comptroller to prepare and issue publications relating to the appraisal of property and to promulgate rules specifying the methods to apply and the procedures to use in appraising timberland and restricted-use timberland for ad valorem tax purposes.

These amendments implement Tax Code, Chapter 23, Subchapters E and H.

§9.4011. Appraisal of Timberlands.

Adoption of the Manual for the Appraisal of Timberland. This manual sets out both the eligibility requirements for timberland to qualify for productivity appraisal and the methodology for appraising qualified timberland and restricted use timberland. Appraisal districts are required by law to follow the procedures and methodology set out in this manual. The Comptroller of Public Accounts adopts by reference the Manual for the Appraisal of Timberland dated October 2024. Copies of this manual can be obtained from the Comptroller of Public Accounts, Property Tax Assistance Division, P.O. Box 13528, Austin, Texas 78711-3528 or from the Property Tax Assistance Division website. Copies may also be requested by calling our toll-free number 1-800-252-9121. In Austin, call (512) 305-9999. From a Telecommunications Device for the Deaf (TDD), call 1-800-248-4099, toll free. In Austin, the local TDD number is (512) 463-4621. This manual and those that have been superseded are available from the Comptroller's office as well as the State Archives.

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 November 12, 2024.

TRD-202405481
Victoria North
General Counsel for Fiscal and Agency Affairs
Comptroller of Public Accounts
Effective date: December 2, 2024
Proposal publication date: August 16, 2024
For further information, please call: (512) 475-2220

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 5. TEXAS VETERANS LAND BOARD

CHAPTER 178. TEXAS STATE VETERANS CEMETERIES

40 TAC §178.5

The Texas Veterans Land Board (VLB) adopts amendments to 40 Texas Administrative Code §178.5, concerning Burial Eligibility Criteria. The amendments are adopted without changes to the proposed text as published in the July 19, 2024, issue of the *Texas Register* (49 TexReg 5339). The amendments will not be republished.

The amendments extend burial eligibility in Texas State Veterans Cemeteries to Texas Military Forces members killed on state active duty or during state training and other duty, as defined in Chapter 437 of the Texas Government Code.

COMMENTS BY THE PUBLIC

The VLB did not receive any comments on the amendments.

STATUTORY AUTHORITY

The amendments are adopted pursuant to Section 164.005 of the Texas Natural Resources Code, which allows the VLB to adopt rules concerning the construction, acquisition, ownership, operation, maintenance, enlargement, improvement, furnishing, and equipping Texas State Veterans Cemeteries.

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 November 15, 2024.

TRD-202405564
Jennifer Jones
Chief Clerk, Deputy Land Commissioner
Texas Veterans Land Board
Effective date: December 5, 2024
Proposal publication date: July 19, 2024
For further information, please call: (512) 475-1859

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PART 15. TEXAS VETERANS COMMISSION

CHAPTER 461. VETERANS EDUCATION

The Texas Veterans Commission adopts amendments to Chapter 461, Subchapter A, §461.20, Definitions and Subchapter B, §461.200, Authority and Purpose without changes to the proposed text as published in the August 30, 2024, issue of the *Texas Register* (49 TexReg 6725) and will not be republished.

The proposed amendments are adopted to update the rule to add "Space Force" to Title 40, TAC, Chapter 461, Subchapter A, Exemption Program for Veterans and Their Dependents (The Hazlewood Act), Definitions, §461.20(15), Initial Entry Training, and to correct the statutory authority for the Veteran Education Excellence Recognition Award (VEERA) Network in Chapter 461, Subchapter B, Veteran Education Excellence Recognition Award (VEERA) Network.

The Commission did not receive comments regarding the proposed rule amendments.

SUBCHAPTER A. EXEMPTION PROGRAM FOR VETERANS AND THEIR DEPENDENTS (THE HAZLEWOOD ACT)

40 TAC §461.20

STATUTORY AUTHORITY

The amended rules are adopted under Texas Government Code §434.010, granting the Commission the authority to establish rules it considers necessary for its administration.

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

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 November 15, 2024.

TRD-202405527
Kathleen Cordova
General Counsel
Texas Veterans Commission
Effective date: December 5, 2024
Proposal publication date: August 30, 2024
For further information, please call: (737) 320-4167

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SUBCHAPTER B. VETERAN EDUCATION EXCELLENCE RECOGNITION AWARD (VEERA) NETWORK

40 TAC §461.200

STATUTORY AUTHORITY

The rule amendment is proposed under Texas Government Code §434.010 which authorizes the commission to establish rules it considers necessary for its administration.

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

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 November 15, 2024.

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Kathleen Cordova
General Counsel
Texas Veterans Commission
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Proposal publication date: August 30, 2024
For further information, please call: (737) 320-4167

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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 15. FINANCING AND CONSTRUCTION OF TRANSPORTATION PROJECTS

SUBCHAPTER O. COUNTY TRANSPORTATION INFRASTRUCTURE FUND GRANT PROGRAM

43 TAC §15.188

The Texas Department of Transportation (department) adopts the amendments to §15.188 concerning Application Procedure. The amendments to §15.188 are adopted without changes to the proposed text as published in the September 6, 2024, issue of the *Texas Register* (49 TexReg 6983) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

S.B. No. 160, 87th Legislature, Regular Session, 2021, amended Transportation Code, Chapter 256, to remove the requirement that a county must submit the county road condition

report as part of the application process for consideration of being awarded a County Transportation Infrastructure Fund Grant.

Amendments to §15.188, Application Procedure, delete subsection (c), which provides the requirement that a county must submit a county road condition report as part of the application process for consideration of being awarded a County Transportation Infrastructure Fund Grant, and redesignates existing subsection (d) as subsection (c).

COMMENTS

No comments on the proposed amendments were received.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §256.103, which authorizes the commission to adopt rules to administer the County Transportation Infrastructure Fund Grant Program.

The authority for the adopted amendments was provided by S.B. 160, 87th Regular Session, 2021. The primary author and the primary sponsor of that bill are Senator Charles Perry and Representative Drew Darby, respectively.

CROSS REFERENCE TO STATUTES IMPLEMENTED BY THIS RULEMAKING

Transportation Code, Chapter 256.

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 November 14, 2024.

TRD-202405520
Becky Blewett
Deputy General Counsel
Texas Department of Transportation
Effective date: December 4, 2024
Proposal publication date: September 6, 2024
For further information, please call: (512) 463-8630