

# PROPOSED RULES

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

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

## TITLE 16. ECONOMIC REGULATION

### PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

#### CHAPTER 24. SUBSTANTIVE RULES APPLICABLE TO WATER AND SEWER SERVICE PROVIDERS

##### SUBCHAPTER D. RATE-MAKING APPEALS

###### 16 TAC §24.101

The Public Utility Commission of Texas (commission) proposes amendments to §24.101, relating to Appeal of Rate-making Decision, Pursuant to the Texas Water Code (TWC) §13.043. This proposed rule will implement TWC Chapter §13.043 as revised by Senate Bill 387 and House Bill 3689 during the Texas 87th Regular Legislative Session. The amended rule expands the commission's appellate authority by allowing ratepayers to appeal water and sewer rates set by a municipally owned utility for ratepayers previously served by another retail public utility, in certain situations. The amendments also clarify that in an appeal under this section, the commission will ensure that every appealed rate is just and reasonable.

###### Growth Impact Statement

The agency provides the following governmental growth impact statement for the proposed rule, as required by Tex. Gov't Code §2001.0221. The agency has determined that for each year of the first five years that the proposed rule is in effect, the following statements will apply:

- (1) the proposed rule will not create a government program and will not eliminate a government program;
- (2) implementation of the proposed rule will not require the creation of new employee positions and will not require the elimination of existing employee positions;
- (3) implementation of the proposed rule will not require an increase and will not require a decrease in future legislative appropriations to the agency;
- (4) the proposed rule will not require an increase and will not require a decrease in fees paid to the agency;
- (5) the proposed rule will not create a new regulation;
- (6) the proposed rule will not expand, limit, or repeal an existing regulation;
- (7) the proposed rule will change the number of individuals subject to the rule's applicability by altering when certain rate decisions can be appealed to the commission; and

(8) the proposed rule will not affect this state's economy.

###### Fiscal Impact on Small and Micro-Businesses and Rural Communities

There is no adverse economic effect anticipated for small businesses, micro-businesses, or rural communities as a result of implementing the proposed rule. Accordingly, no economic impact statement or regulatory flexibility analysis is required under Texas Government Code §2006.002(c).

###### Takings Impact Analysis

The commission has determined that the proposed rule will not be a taking of private property as defined in chapter 2007 of the Texas Government Code.

###### Fiscal Impact on State and Local Government

Tammy Benter, Director, Utility Outreach Division has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for the state or for units of local government under Tex. Gov't Code §2001.024(a)(4) as a result of enforcing or administering the sections.

###### Public Benefits

Ms. Benter has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be that the public will have an avenue to appeal the rates charged by a municipality for retail water or sewer service in certain situations. There will be no probable economic cost to persons required to comply with the rule under Tex. Gov't Code §2001.024(a)(5).

###### Local Employment Impact Statement

For each year of the first five years the proposed section is in effect, there should be no effect on a local economy; therefore, no local employment impact statement is required under Tex. Gov't Code §2001.022.

###### Costs to Regulated Persons

Tex. Gov't Code §2001.0045(b) does not apply to this rulemaking because the commission is expressly excluded under subsection §2001.0045(c)(7).

###### Public Hearing

The commission staff will conduct a public hearing on this rulemaking if requested in accordance with Tex. Gov't Code §2001.029. The request for a public hearing must be received by June 16, 2023. If a request for public hearing is received, commission staff will file in this project a notice of hearing.

###### Public Comments

Interested persons may file comments electronically through the interchange on the commission's website. Comments must be

filed by June 16, 2023. Comments should be organized in a manner consistent with the organization of the proposed rules. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed rule. The commission will consider the costs and benefits in deciding whether to modify the proposed rules on adoption. All comments should refer to Project Number 54932.

Each set of comments should include a standalone executive summary as the last page of the filing. This executive summary must be clearly labeled with the submitting entity's name and should include a bulleted list covering each substantive recommendation made in the comments.

#### Statutory Authority

The amended rule is proposed under TWC §13.041(a), which provides the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by TWC that is necessary and convenient to the exercise of that power and jurisdiction; TWC §13.041(b), which provides the commission with the authority to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction. The amended rule is also proposed under TWC §13.043, which relates to appellate jurisdiction of the Commission.

Cross Reference to Statute: Texas Water Code §§13.041(a), 13.041(b) and 13.043.

*§24.101. Appeal of Rate-making Decision, Pursuant to the Texas Water Code §13.043.*

(a) Any party to a rate proceeding before the governing body of a municipality may appeal the decision of the governing body to the commission. This subsection does not apply to a municipally owned utility, but does include privately owned utilities operating within the corporate limits of a municipality. An appeal under this subsection may be initiated by filing with the commission a petition signed by a responsible official of the party to the rate proceeding or its authorized representative and by serving a copy of the petition on all parties to the original proceeding. The petition should be filed in accordance with Chapter 22 of this title (relating to Procedural Rules). The appeal must be initiated within 90 days after the date of notice of the final decision of the governing body, or within 30 days if the appeal relates to the rates of a Class A utility, by filing a petition for review with the commission and by serving a copy of the petition on all parties to the original rate proceeding.

(b) An appeal under Texas Water Code (TWC) [TWC] §13.043(b) must be initiated within 90 days after the effective date of the rate change or, if appealing under TWC §13.043(b)(2) or (5), within 90 days after the date on which the governing body of the municipality or affected county makes a final decision. An appeal is initiated by filing a petition for review with the commission and by sending a copy of the petition to the entity providing service and with the governing body whose decision is being appealed if it is not the entity providing service. The petition must be signed by the lesser of 10,000 or 10% of the ratepayers whose rates have been changed and who are eligible to appeal under subsection (c) of this section.

(c) Retail ratepayers of the following entities may appeal the decision of the governing body of the entity affecting their water utility, sewer utility, or drainage rates to the commission:

(1) a nonprofit water supply or sewer service corporation created and operating under TWC, Chapter 67;

(2) a utility under the jurisdiction of a municipality inside the corporate limits of the municipality;

(3) a municipally owned utility, if the ratepayers reside outside the corporate limits of the municipality, including a decision of a governing body that results in an increase in rates when the municipally owned utility takes over the provision of service to ratepayers previously served by another retail public utility;

(A) A municipally owned utility must [shall]:

(i) disclose to any person, on request, the number of ratepayer(s) who reside outside the corporate limits of the municipality; and

(ii) subject to subparagraph (B) of this paragraph, provide to any person, on request, a list of the names and addresses of the ratepayers who reside outside the corporate limits of the municipality.

(B) If a ratepayer has requested that a municipally owned utility keep the ratepayer's personal information confidential under Tex. Util. Code [Ann.] §182.052, the municipally owned utility may not disclose the address of the ratepayer under subparagraph (A)(ii) of this paragraph to any person. A municipally owned utility must [shall] inform ratepayers of their right to request that their personal information be kept confidential under Tex. Util. Code [Ann.] §182.052 in any notice provided under the requirement of TWC [Tex. Water Code Ann.] §13.043(i).

(C) In complying with this subsection, the municipally owned utility:

(i) may not charge a fee for disclosing the information under subparagraph (A)(i) of this paragraph;

(ii) will [shall] provide information requested under subparagraph (A)(i) of this paragraph by telephone or in writing as preferred by the person making the request; and

(iii) may charge a reasonable fee for providing information under subparagraph (A)(ii) of this paragraph.

(D) This paragraph does not apply to a municipally owned utility that takes over the provision of service to ratepayers previously served by another retail public utility if the municipally owned utility:

(i) takes over the service at the request of the ratepayer;

(ii) takes over the service in the manner provided by TWC Chapter 13, Subchapter H; or

(iii) is required to take over the service by state law, an order of the Texas Commission on Environmental Quality, or an order of the commission.

(4) a district or authority created under [the Texas Constitution,] Article III, §52, or Article XVI, §59[;] of the Texas Constitution that provides water or sewer service to household users;

(5) a utility owned by an affected county, if the ratepayers' rates are actually or may be adversely affected. For the purposes of this subchapter, ratepayers who reside outside the boundaries of the district or authority will [shall] be considered a separate class from ratepayers who reside inside those boundaries; and

(6) in an appeal under this subsection, the retail public utility must [shall] provide written notice of hearing to all affected customers in a form prescribed by the commission.

(d) In an appeal under TWC §13.043(b), each person receiving a separate bill is considered a ratepayer, but one person may not be considered more than one ratepayer regardless of the number of bills the person receives. The petition for review is considered properly signed if signed by a person, or the spouse of the person, in whose name utility service is carried.

(e) The commission will [~~shall~~] hear an appeal under this section de novo and fix in its final order the rates the governing body should have fixed in the action from which the appeal was taken. The commission may:

- (1) in an appeal under [~~the~~] TWC §13.043(a), include reasonable expenses incurred in the appeal proceedings;
- (2) in an appeal under [~~the~~] TWC §13.043(b), included reasonable expenses incurred by the retail public utility in the appeal proceedings;
- (3) establish the effective date;
- (4) order refunds or allow surcharges to recover lost revenues;
- (5) consider only the information that was available to the governing body at the time the governing body made its decision and evidence of reasonable expenses incurred in the appeal proceedings; or
- (6) establish interim rates to be in effect until a final decision is made.

(f) A retail public utility that receives water or sewer service from another retail public utility or political subdivision of the state, including an affected county, may appeal to the commission, a decision of the provider of water or sewer service affecting the amount paid for water or sewer service. An appeal under this subsection must be initiated within 90 days after notice of the decision is received from the provider of the service by filing a petition by the retail public utility.

(g) An applicant requesting service from an affected county or a water supply or sewer service corporation may appeal to the commission a decision of the county or water supply or sewer service corporation affecting the amount to be paid to obtain service other than the regular membership or tap fees. An appeal under TWC §13.043(g) must be initiated within 90 days after written notice of the amount to be paid to obtain service is provided to the service applicant or member of the decision of an affected county or water supply or sewer service corporation affecting the amount to be paid to obtain service as requested in the applicant's initial request for that service.

(1) If the commission finds the amount charged to be clearly unreasonable, it will [~~shall~~] establish the fee to be paid and will [~~shall~~] establish conditions for the applicant to pay any amount(s) due to the affected county or water supply or sewer service corporation. Unless otherwise ordered, any portion of the charges paid by the applicant that exceed the amount(s) determined in the commission's order must [~~shall~~] be refunded to the applicant within 30 days of the date the commission issues the order, at an interest rate determined by the commission.

(2) In an appeal brought under this subsection, the commission will [~~shall~~] affirm the decision of the water supply or sewer service corporation if the amount paid by the applicant or demanded by the water supply or sewer service corporation is consistent with the tariff of the water supply or sewer service corporation and is reasonably related to the cost of installing on-site and off-site facilities to provide service to that applicant, in addition to the factors specified under subsection (i) of this section.

(3) A determination made by the commission on an appeal from an applicant for service from a water supply or sewer service corporation under this subsection is binding on all similarly situated applicants for service, and the commission may not consider other appeals on the same issue until the applicable provisions of the tariff of the water supply or sewer service corporation are amended.

(h) The commission may, on a motion by the commission staff or by the appellant under subsection (a), (b), or (f) of this section, establish interim rates to be in effect until a final decision is made.

(i) In an appeal under this section, the commission will [~~shall~~] ensure that every appealed rate [~~made, demanded, or received by any retail public utility or by any two or more retail public utilities jointly~~] is just and reasonable. Rates must not be unreasonably preferential, prejudicial, or discriminatory but must be sufficient, equitable, and consistent in application to each class of customers. The commission will [~~shall~~] use a methodology that preserves the financial integrity of the retail public utility. To the extent of a conflict between this subsection and TWC §49.2122, TWC §49.2122 prevails.

(j) A customer of a water supply corporation may appeal to the commission a water conservation penalty. The customer must [~~shall~~] initiate an appeal under TWC §67.011(b) within 90 days after the customer receives written notice of the water conservation penalty amount from the water supply corporation per its tariff. The commission will [~~shall~~] approve the water supply corporation's water conservation penalty if:

- (1) the penalty is clearly stated in the tariff;
- (2) the penalty is reasonable and does not exceed six times the minimum monthly bill in the water supply corporation's current tariff; and
- (3) the water supply corporation has deposited the penalty in a separate account dedicated to enhancing water supply for the benefit of all of the water supply corporation's customers.

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

Filed with the Office of the Secretary of State on May 11, 2023.

TRD-202301723

Adriana Gonzales

Rules Coordinator

Public Utility Commission of Texas

Earliest possible date of adoption: June 25, 2023

For further information, please call: (512) 936-7322



## TITLE 22. EXAMINING BOARDS

### PART 14. TEXAS OPTOMETRY BOARD

#### CHAPTER 271. EXAMINATIONS

##### 22 TAC §§271.2, 271.3, 271.5, 271.6

The Texas Optometry Board proposes amendments to 22 TAC Chapter 271, Examinations, §§271.2, 271.3, 271.5 and 271.6.

The rules in the Chapter 271 were reviewed by the Board's Administration and Licensing Committee in January 2023 to ensure the licensing and renewal process was efficient and effective. At the January 19, 2023, committee meeting, members voted to move forward with changes to update and modernize

the process and to refer the proposal to the Rules Committee. At the April 27, 2023, Rules Committee meeting, the members concurred with the recommendations of the Administration and Licensing Committee and proposed the following amendments to the licensing and renewal process.

During the April 28, 2023, meeting the Board determined that there continues to be a need for the rules in Chapter 271. The Board has also determined that changes to certain rules as currently in effect are necessary. The specific rules being amended include: §271.2 Applications; §271.3 Jurisprudence Examination Administration; §271.5 Licensure without Examination; and §271.6 National Board Examination.

The amendments outlined in this proposal include non-substantive changes to all references from "board" to "Board" and from "executive director" to "Executive Director."

In §271.2 Applications, the Board proposes to amend the title of the rule to read "Applications for Licensure as Therapeutic Optometrist"; to update the documents required for licensure; to update the statutory reference to Texas Occupations Code Chapter 53 as it relates to convictions that must be reported upon application; to state that applications must be approved within one year of application submission or applicants will have to reapply; to set out requirements for applicants who are licensed in other states; and to remove arcane language related to scheduling the jurisprudence exam as the Board will allow an applicant to take the exam at any point.

In §271.3 Jurisprudence Examination Administration, the Board proposes to amend the title of the rule to read "Jurisprudence Examination"; to clarify the jurisprudence exam is an "open book" exam; to remove arcane language related to scheduling the jurisprudence exam as the Board will allow an applicant to take the exam at any point; to state that jurisprudence exam scores are only valid for one year and if an applicant fails to get licensed in that year, applicants will have to retake the exam; and to remove language related to the administration of the exam as the Board has outsourced the exam administration to another entity.

In §271.5 Licensure without Examination, the Board proposes to clarify that the rule only applies to those applicants who have not taken Part III of the National Board of Examiners in Optometry and to make other non-substantive grammatical changes and references to statute.

In §271.6 National Board Examination, the Board proposes to remove language regarding the jurisprudence exam as it is referenced in a separate rule; and to make other non-substantive grammatical changes and references to statute.

Janice McCoy, Executive Director, has determined that for the first five-year period the amended rules are in effect, there will not be fiscal implications for state and local governments as a result of amending these existing rules.

Janice McCoy, Executive Director, has determined that for each of the first five years the amendments are in effect, the public benefit is a more effective and efficient licensing and renewal system for both licensees and Board staff.

Legal counsel for the Board has reviewed the amended rules and has found them to be within the Board's authority to propose.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS ON SMALL BUSINESSES AND RURAL COMMUNITIES:** There will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a

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

**ENVIRONMENT AND TAKINGS IMPACT ASSESSMENT:** The agency has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code §2001.0225. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. The agency has determined that the proposed amendments do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action, and therefore does not constitute a taking under Texas Government Code §2007.043.

**GOVERNMENT GROWTH IMPACT STATEMENT:** During the first five years that the amended rules will be in effect, it is anticipated that the amendments will not create or eliminate a government program as no program changes are proposed. Further, implementation of the amended rule will not require the creation of a new employee position or the elimination of an existing employee position; will not increase or decrease future legislative appropriations to the agency; will not increase or decrease fees paid to the agency; does not impact the number of individuals subject to the rule's applicability; does not positively or adversely impact the state's economy. The amendment does not create a new regulation nor does it expand, limit, or repeal an existing regulation.

**PUBLIC COMMENTS:** Comments on the amended rules may be submitted electronically to: [janice.mccoy@tob.texas.gov](mailto:janice.mccoy@tob.texas.gov) or in writing to Janice McCoy, Executive Director, Texas Optometry Board, 1801 N. Congress, Suite 9.300, Austin, Texas 78701. The deadline for furnishing comments is thirty days after publication in the *Texas Register*.

Amendments to §271.2 Applications; §271.3 Jurisprudence Examination Administration; §271.5 Licensure without Examination; and §271.6 National Board Examination are being proposed under the Texas Optometry Act, Texas Occupations Code, §351.151 and Texas Occupations Code Chapter 351, Subchapter F - License Requirements.

No other sections are affected by the amendments.

*§271.2. Applications for Licensure as Therapeutic Optometrist.*

(a) The applicant shall make application furnishing to the Executive Director [~~executive director~~], on forms to be furnished by the Board [~~board~~], satisfactory evidence that the applicant [~~has attained the age of 21 years, and has a preliminary education equivalent to permit matriculation in the University of Texas, and that the applicant~~] has attended and graduated from a reputable university or college of optometry which meets with the requirements of the Board [~~board~~], or in the alternative, submit a written statement from the dean of a reputable college of optometry that the applicant is enrolled in good standing in the college and is in the final semester before graduation,] and such other information as the Board [~~board~~] may deem necessary for the enforcement of the Act.

(b) The applicant shall report all felony and misdemeanor criminal convictions as outlined under Texas Occupations Code Chapter 53 [~~; including deferred adjudication or court ordered community or mandatory supervision, with or without an adjudication of guilt or revocation of parole, probation or court ordered supervision on the application~~]. Failure of an applicant to report every criminal conviction

is deceit, dishonesty and misrepresentation in seeking admission to practice and authorizes the Board [board] to take disciplinary action under §351.501 of the Act. An applicant is not required to report a Class C Misdemeanor traffic violation. The applicant shall furnish any document relating to the criminal conviction as requested by the Board. The applicant shall also provide a complete criminal history by submitting fingerprints to the authority authorized by the Department of Public Safety to take the fingerprints in the form required by that authority.

(c) In such application, the applicant shall state that the applicant will abide by the laws of this state regulating the practice of optometry and that all facts, statements and answers contained in the application are true and correct. Such application shall be signed (manually or digitally) and dated.

(d) [Applicants shall submit proof that the applicant is legally entitled to the issuance of a license under federal law.] Applicants shall submit a report of out-of-state disciplinary action prepared by an approved national databank.

(e) Any person furnishing false information in such application shall be denied the issuance of a license [right to take the examination], or if the applicant has been licensed before it is made known to the Board [board] of the falseness of such information, such license shall be subject to suspension, revocation, or cancellation in accordance with [the Act,] §351.501 of the Act.

(f) Applications [submitted by graduates of an approved college of optometry] must contain a certified [copy of the] optometry school transcript, which shall show the total number of hours of attendance, the subjects studied, the grades or marks given, and the date of graduation of the applicant. Applicants must also submit a copy of the transcript from any undergraduate school attended which [- A license will not be issued until the applicant has submitted certified copies of the transcript of record from preoptometry and optometry colleges attended by the applicant, which certified transcript of record] shall show the total number of hours of attendance, the subjects studied, the grades or marks given, and the date of graduation of the applicant.

(g) The Board may require other documentation not specified by this section be submitted with the application. All required documents [; including transcripts, license verifications, birth certificates, and criminal histories] must be received [by the executive director prior to the date which is] within one year of application [after successful passage of the board's jurisprudence examination]; otherwise, the applicant must reapply and pay the application fee [and take and pass the board's jurisprudence examination]. A person may apply for licensure prior to graduation from a reputable university or college of optometry.

[(g) The completed application and examination fee must be filed with the executive director by the first day of the month prior to the exam. ]

(h) The application must be accompanied by a fee set by the Board.

[(h) The fee for taking the examination shall be \$150. The fee is non-refundable and non-transferable.]

(i) If applicable, the application must furnish a certificate of good standing from any jurisdiction where licensed or previously licensed. The certificate must establish that:

(1) the applicant's license has never been suspended or revoked;

(2) there are no pending disciplinary actions against the applicant; and

(3) the applicant is presently authorized to practice therapeutic optometry without restrictions.

[(i) Any applicant who is refused a license because of failure to pass the examination shall be permitted to take a second examination without resubmitting an application, provided:]

[(1) the applicant submits a payment of \$150;]

[(2) the second examination is taken within a period of one year from the date the examination was first taken; and ]

[(3) a written request to take the second examination and the required fee is received by the executive director at least 30 days prior to the date of the examination requested.]

(j) If the certificate of good standing does not establish the items in subsection (i) of this section, the applicant will be required to submit additional information for further Board review.

[(j) If an applicant is refused a license because of failure to pass the second examination, the applicant must reapply and take and pass the board's jurisprudence examination.]

[(k) No application fee for examination will be returned to any applicant after the application has been accepted by the board, because of the decision of the applicant not to stand for the scheduled examination or failure for any reason to take the examination.]

### §271.3. Jurisprudence Examination Administration.

(a) Every applicant [Examination] for a license to practice therapeutic optometry in this state must take and pass a jurisprudence exam covering the laws and rules of the Board. The laws and rules of the Board may be referenced while taking the exam (that is, the exam shall be considered "open book").

(b) The jurisprudence exam shall be conducted in the English language in writing and by such other means as the Board [board] shall determine adequate to ascertain the qualifications of the applicant. [Each applicant shall be given due notice of the date and place of examination. The board shall administer the jurisprudence examination at least on a quarterly schedule.]

[(b) Prior to an examination, the executive director or a member of the board designated by the chair shall prepare a tentative schedule showing the time allotted to each examination.]

(c) [The examination shall be a written jurisprudence examination.] The passing grade on the jurisprudence written test shall be 70. [In addition, passing scores from the National Board of Examiners in Optometry (NBEO) Examination will be required for licensure under §271.6 of this title (relating to National Board Examinations).]

(d) [Applicants shall not communicate any words or signs, in person, in writing, or electronically, with another applicant while the applicant's examination is in progress.] Applicants shall not collaborate in any manner with any other person [; including another applicant, a licensee, or a staff member of the board,] on examination matters while the applicant's examination is in progress. Violations of this rule shall subject the offender to disciplinary action.

(e) If an applicant fails to be licensed within one-year of taking and passing the jurisprudence exam, the applicant must retake and pass the exam in order to be licensed.

[(e) Examination materials are the property of the board and shall not be returned to the applicant. An unsuccessful candidate may request an analysis of such person's performance, which request must be made in writing within 30 days after final grading.]

[(f) The board will provide reasonable examination accommodations to an examinee diagnosed as having dyslexia for all examina-

tions administered by the board. Applications requesting reasonable examination accommodations shall be submitted to the board at least 30 days before the start date of the examination. Applications for accommodations shall include a diagnosis of dyslexia by a health professional licensed to diagnose the condition, documentation establishing that accommodations are necessary, and the specific accommodation requested.}

§271.5. *Licensure without Examination.*

(a) Upon payment of a fee in an amount set by the Board, the Board [board] may license applicants who have not taken Part III of the National Board of Examiners in Optometry (NBE0) and [without examination] who:

- (1) have no pending disciplinary actions in the state, district, or territory in which the applicant is licensed;
- (2) have never had their license suspended or revoked;
- (3) meet all requirements of the Act;
- (4) are currently licensed as a therapeutic optometrist in good standing in another state, the District of Columbia, or territory of the United States;
- (5) have passed an examination that is equivalent or superior to the examination required by §351.253 [and §351.256] of the Act; and
- (6) have, for at least five of the seven years preceding the application date, been: [been:]

(A) actively engaged in the practice of therapeutic optometry; or

(B) engaged in full-time teaching at an accredited college of optometry or medicine.

(b) The applicant must furnish a certificate of good standing from the jurisdictions where licensed. The certificate must establish that:

- (1) the applicant's license has never been suspended or revoked;
- (2) there are no pending disciplinary actions against the applicant; and
- (3) the applicant is presently authorized to practice therapeutic optometry without restrictions.

(c) An examination is deemed equivalent or superior to the examination required by §351.253 [and §351.256] of the Act if at the time the applicant took the examination, the examination met the requirements of [§351.253 and] §351.256 of the Act.

(d) The applicant shall take and pass the jurisprudence examination administered by the Board [board].

(e) The applicant must have complied with §271.2 of this chapter [title] (relating to Applications for Licensure as Therapeutic Optometrist). The completed application with all supporting documents must be received by the Board [board] not later than 30 days before the date of the Board [board] meeting at which the application is to be considered.

§271.6. *National Board Examination.*

(a) The Board [board] determines that the written examination by the National Board of Examiners in Optometry (NBE0) known as Part I and Part II complies in all material respects with the [written] examination requirements of [the Act, §351.255 and] §351.256 of the Act. The passing score on each Part of the National Board written examination is determined by the criterion-referenced standard setting

approach, in which the passing score is set at the scaled score of 300. The [Texas Optometry] Board will accept scores from an NBE0 written examination if Part I or II was satisfactorily completed on or after January 1, 1984.

(b) The Board [board] determines that the practical examination known as Part III by the National Board of Examiners in Optometry (NBE0) complies in all material respects with the practical examination requirements of [the Act, §351.255 and] §351.256 of the Act. The passing scores on Part III shall be determined by the NBE0. The Board [board] will accept scores from an NBE0 Part III examination if Part III was satisfactorily completed on or after June of 1994.

(c) All applicants must comply with the application process and qualification criteria of [the Act,] §351.254 of the Act, as well as all applicable Board [board] rules.

[(d) All applicants must pay an examination fee of \$150 to the Texas Optometry Board. No fee for examination will be returned to any applicant after the application has been approved by the board.]

[(e) In addition to the NBE0 examinations referenced in subsections (a) and (b) of this section, all applicants shall take and pass a written jurisprudence examination given by the Texas Optometry Board in order to be eligible for licensure. The board shall administer the jurisprudence written examination at least on a quarterly schedule. The jurisprudence examination can be administered in conjunction with Part III of the NBE0, provided the applicant has graduated from an approved college of optometry and has completed application with the board. However, an applicant who meets the other requirements of this section and §351.254 of the Act may take the examination without having graduated, if the dean of a college of optometry that meets the requirements of the board notifies the board in writing that the applicant is enrolled in good standing in the college and is in the final semester before graduation.]

(d) [(f)] Each applicant shall submit a true and correct copy of the applicant's score report [to the executive director,] and such other evidence of having achieved a passing grade on each part of the NBE0 examination as outlined in subsections (a) and (b) of this section [as the executive director may determine. Such satisfactory evidence of passage of the NBE0 examination must be submitted to the executive director within 12 months of successful passage of the board's jurisprudence examination; otherwise, the applicant must reapply and take and pass the board's jurisprudence examination]. No license will be issued to an applicant until evidence of passage of the NBE0 examination is received.

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

Filed with the Office of the Secretary of State on May 15, 2023.

TRD-202301776

Janice McCoy

Executive Director

Texas Optometry Board

Earliest possible date of adoption: June 25, 2023

For further information, please call: (512) 305-8500

◆ ◆ ◆  
CHAPTER 279. INTERPRETATIONS

22 TAC §279.1

The Texas Optometry Board proposes amendments to 22 TAC Chapter 279, §279.1 - Contact Lens Examination.

The rules in the Chapter 279 were reviewed as a result of the Board's general rule review under Texas Government Code §2001.039. Notice of the review was published in the June 10, 2022, issue of the *Texas Register* (47 TexReg 3487). No comments were received regarding the Board's notice of review.

The Board has determined that there continues to be a need for the rules in Chapter 279. The Board has also determined that changes to §279.1 as currently in effect are necessary.

The Board initially proposed amendments in the November 25, 2022, issue of the *Texas Register* (47 TexReg 7843), but officially withdrew those rules on April 28, 2023 (published in the May 12, 2023, issue of the *Texas Register*). At the April 28, 2023, Board meeting the Board adopted a new proposal as follows.

The amendment requires the optometrist or therapeutic optometrist to "examine in-person" instead of "personally make" certain findings during an initial visit. It states that the findings must be made unless prohibited by the patient's unique condition instead of "if possible." It requires the optometrist or therapeutic optometrist to personally notate why it is not possible to record the required findings.

It clarifies that for discipline purposes, the charges must state the specific instances in which it is alleged that the optometrist or therapeutic optometrist did not comply with the rule.

Finally, the amendment makes non-substantive capitalization changes to ensure consistency across the Board's rules.

Janice McCoy, Executive Director, has determined that for the first five-year period the amended rule is in effect, there will not be fiscal implications for state and local governments as a result of amending this existing rule.

Janice McCoy, Executive Director, has determined that for each of the first five years the amendment is in effect, the public benefit is patient protection to ensure the examination is done accurately and completely.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS ON SMALL BUSINESSES AND RURAL COMMUNITIES:** The agency does not find that there will be an adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the amendment. Since the agency has determined that the amendment to the rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, are not required.

**ENVIRONMENT AND TAKINGS IMPACT ASSESSMENT:** The agency has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code §2001.0225. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. The agency has determined that the proposed amendment does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action, and therefore does not constitute a taking under Texas Government Code §2007.043.

**GOVERNMENT GROWTH IMPACT STATEMENT:** During the first five years that the amended rule will be in effect, it is anticipated that the amendment will not create or eliminate a government program as no program changes are proposed. Further, implementation of the amended rule will not require the creation

of a new employee position or the elimination of an existing employee position; will not increase or decrease future legislative appropriations to the agency; will not increase or decrease fees paid to the agency; does not impact the number of individuals subject to the rule's applicability; does not positively or adversely impact the state's economy. The amendment does not create a new regulation nor does it expand, limit, or repeal an existing regulation.

**PUBLIC COMMENTS:** Comments on the amended rule may be submitted electronically to: [janice.mccoy@tob.texas.gov](mailto:janice.mccoy@tob.texas.gov) or in writing to Janice McCoy, Executive Director, Texas Optometry Board, 1801 N. Congress, Suite 9.300, Austin, Texas 78701. The deadline for furnishing comments is thirty days after publication in the *Texas Register*.

Amendments to §279.1 - Contact Lens Examination are being proposed under the Texas Optometry Act, Texas Occupations Code, §351.151 and §351.353.

No other sections are affected by the amendments.

*§279.1. Contact Lens Examination.*

(a) The optometrist or therapeutic optometrist shall, in the initial examination of the patient for whom contact lenses are prescribed:

(1) Examine in-person [~~Personally make~~] and record, unless prohibited by the patient's unique condition [if possible], the following findings of the conditions of the patient as required by §351.353 of the Act:

(A) biomicroscopy examination (lids, cornea, sclera, etc.), using a binocular microscope;

(B) internal ophthalmoscopic examination (media, fundus, etc.), using an ophthalmoscope or biomicroscope with fundus condensing lenses; videos and photographs may be used only for documentation and consultation purposes but do not fulfill the internal ophthalmoscopic examination requirement; and

(C) subjective findings: [ ] far point and near point;

(2) Either personally make and record or authorize an assistant present in the same office with the optometrist or therapeutic optometrist to make and record the following findings required by §351.353 of the Act. The authorization for assistants to make and record the following findings does not relieve the optometrist or therapeutic optometrist of professional responsibility for the proper examination and recording of each finding required by §351.353 of the Act:

(A) case history (ocular, physical, occupational, and other pertinent information);

(B) visual acuity;

(C) static retinoscopy O.D., O.S., or autorefractor;

(D) assessment of binocular function;

(E) amplitude or range of accommodation;

(F) tonometry; and

(G) angle of vision: [ ] to right and to left; [ ]

(3) The optometrist or therapeutic optometrist shall personally [~~Personally~~] notate in the patient's record the reasons why it is not possible to make and record the findings required in subsection (a) of this section;

(4) When a follow-up visit is medically indicated, schedule the follow-up visit within 30 days of the contact lens fitting, and inform

the patient on the initial visit regarding the necessity for the follow-up care; and

(5) Personally or authorize an assistant to instruct the patient in the proper care of lenses.

(b) The optometrist or therapeutic optometrist and assistants shall observe proper hygiene in the handling and dispensing of the contact lenses and in the conduct of the examination. Proper hygiene includes sanitary office conditions, running water in the office where contact lenses are dispensed, and proper sterilization of diagnostic lenses and instruments.

(c) The fitting of contact lenses may be performed only by a licensed physician, optometrist, or therapeutic optometrist. Ophthalmic dispensers may make mechanical adjustments to contact lenses and dispense contact lenses only after receipt of a fully written contact lens prescription from a licensed optometrist, therapeutic optometrist, or a licensed physician. An ophthalmic dispenser shall make no measurement of the eye or the cornea or evaluate the physical fit of the contact lenses, by any means whatever, subject solely and only to the exception contained in the §351.005 of the Act.

(d) The willful or repeated failure or refusal of an optometrist or therapeutic optometrist to comply with any of the requirements in the Act, §351.353 and §351.359, shall be considered by the Board [board] to constitute prima facie evidence that the licensee is unfit or incompetent by reason of negligence within the meaning of the Act, §351.501(a)(2), and shall be sufficient ground for the filing of charges to cancel, revoke, or suspend the license. The charges shall state the specific instances in which it is alleged that the optometrist or therapeutic optometrist did not comply with the rule [was not complied with]. After the Board [board] has produced evidence of the omission of a finding required by §351.353, the burden shifts to the licensee to establish that the making and recording of the findings was not possible.

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

Filed with the Office of the Secretary of State on May 15, 2023.

TRD-202301778

Janice McCoy

Executive Director

Texas Optometry Board

Earliest possible date of adoption: June 25, 2023

For further information, please call: (512) 305-8500



## 22 TAC §279.3

The Texas Optometry Board proposes amendments to 22 TAC Chapter 279, §279.3 - Spectacle Examination.

The rules in Chapter 279 were reviewed as a result of the Board's general rule review under Texas Government Code §2001.039. Notice of the review was published in the June 10, 2022, issue of the *Texas Register* (47 TexReg 3487). No comments were received regarding the Board's notice of review.

The Board has determined that there continues to be a need for the rules in Chapter 279. The Board has also determined that changes to §279.3 as currently in effect are necessary.

The Board initially proposed amendments in the November 25, 2022, issue of the *Texas Register* (47 TexReg 7847), but officially withdrew those rules on April 28, 2023 (published in the May 12,

2023, issue of the *Texas Register*). At the April 28, 2023, Board meeting the Board adopted a new proposal as follows.

The amendment requires the optometrist or therapeutic optometrist to "Examine In-Person" instead of personally make certain findings during an initial visit. It states that the findings must be made unless prohibited by the patient's unique condition instead of "if possible." It requires the optometrist or therapeutic optometrist to personally notate why it is not possible to record the required findings.

It clarifies that for discipline purposes, the charges must state the specific instances in which it is alleged that the optometrist or therapeutic optometrist did not comply with the rule.

Finally, the amendment makes non-substantive capitalization changes to ensure consistency across the Board's rules.

Janice McCoy, Executive Director, has determined that for the first five-year period the amended rule is in effect, there will not be fiscal implications for state and local governments as a result of amending this existing rule.

Janice McCoy, Executive Director, has determined that for each of the first five years the amendment is in effect, the public benefit is patient protection to ensure the examination is done accurately and completely.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS ON SMALL BUSINESSES AND RURAL COMMUNITIES:** The agency does not find that there will be an adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the amendment. Since the agency has determined that the amendment to the rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, are not required.

**ENVIRONMENT AND TAKINGS IMPACT ASSESSMENT:** The agency has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code §2001.0225. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. The agency has determined that the proposed amendment does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action, and therefore does not constitute a taking under Texas Government Code §2007.043.

**GOVERNMENT GROWTH IMPACT STATEMENT:** During the first five years that the amended rule will be in effect, it is anticipated that the amendment will not create or eliminate a government program as no program changes are proposed. Further, implementation of the amended rule will not require the creation of a new employee position or the elimination of an existing employee position; will not increase or decrease future legislative appropriations to the agency; will not increase or decrease fees paid to the agency; does not impact the number of individuals subject to the rule's applicability; does not positively or adversely impact the state's economy. The amendment does not create a new regulation nor does it expand, limit, or repeal an existing regulation.

**PUBLIC COMMENTS:** Comments on the amended rule may be submitted electronically to: [janice.mccoy@tob.texas.gov](mailto:janice.mccoy@tob.texas.gov) or in writing to Janice McCoy, Executive Director, Texas Optometry Board, 1801 N. Congress, Suite 9.300, Austin, Texas 78701.



The deadline for furnishing comments is thirty days after publication in the *Texas Register*.

Amendments to §279.3 - Spectacle Examination are being proposed under the Texas Optometry Act, Texas Occupations Code, §351.151 and §351.353.

No other sections are affected by the amendments.

§279.3. *Spectacle Examination.*

(a) The optometrist or therapeutic optometrist shall, in the initial examination of the patient for whom ophthalmic lenses are prescribed:

(1) Examine in-person [Personally make] and record, unless prohibited by the patient's unique condition [if possible], the following findings of the conditions of the patient as required by §351.353 of the Act:

(A) biomicroscopy examination (lids, cornea, sclera, etc.), using a binocular microscope;

(B) internal ophthalmoscopic examination (media, fundus, etc.), using an ophthalmoscope or biomicroscope with fundus condensing lenses; videos and photographs may be used only for documentation and consultation purposes but do not fulfill the internal ophthalmoscopic examination requirement; and

(C) subjective findings:[-] far point and near point:[-]

(2) Either personally make and record or authorize an assistant present in the same office with the optometrist or therapeutic optometrist to make and record the following findings required by §351.353 of the Act. The authorization for assistants to make and record the following findings does not relieve the optometrist or therapeutic optometrist of professional responsibility for the proper examination and recording of each finding required by §351.353 of the Act:

(A) case history (ocular, physical, occupational, and other pertinent information);

(B) visual acuity;

(C) static retinoscopy O.D., O.S., or autorefractor;

(D) assessment of binocular function;

(E) amplitude or range of accommodation;

(F) tonometry; and

(G) angle of vision:[-] to right and to left; and[-]

(3) Personally notate in the patient's record the reasons why it is not possible to make and record the findings required in this section.

(b) The willful or repeated failure or refusal of an optometrist or therapeutic optometrist to comply with any of the requirements in the Act, §351.353 and §351.359, shall be considered by the Board [board] to constitute prima facie evidence that the licensee is unfit or incompetent by reason of negligence within the meaning of the Act, §351.501(a)(2), and shall be sufficient ground for the filing of charges to cancel, revoke, or suspend the license. The charges shall state the specific instances in which it is alleged that optometrist or therapeutic optometrist did not comply with the rule [was not complied with]. After the Board [board] has produced evidence of the omission of a finding required by §351.353, the burden shifts to the licensee to establish that the making and recording of the findings was not possible.

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

Filed with the Office of the Secretary of State on May 15, 2023.

TRD-202301779

Janice McCoy

Executive Director

Texas Optometry Board

Earliest possible date of adoption: June 25, 2023

For further information, please call: (512) 305-8500



## TITLE 25. HEALTH SERVICES

### PART 1. DEPARTMENT OF STATE HEALTH SERVICES

#### CHAPTER 181. VITAL STATISTICS

##### SUBCHAPTER E. DELAYED REGISTRATION

###### 25 TAC §181.62

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), proposes an amendment to 25 TAC §181.62, concerning Documentary Evidence; Requirements and Acceptability.

#### BACKGROUND AND PURPOSE

The purpose of this amendment is to assist people seeking a delayed registration of birth, despite having contradictory documents regarding parentage. Under the current rule, people are unable to obtain a delayed registration of birth if documents presented to the State Registrar contain contradictory information. An inability to obtain a birth certificate may impact a person's ability to obtain state-issued identification documents, passports, or possibly other governmental benefits. This rule change would assist persons unable to have their birth recorded by requiring that documents not be contradictory on name, date and place of birth, and the identity of one parent. If there are contradictory documents regarding the second parent, the proposed amendment would require that the second parent will not be recorded and the field for that parent remain blank on any birth certificate issued.

The amendment also clarifies the number and types of acceptable documents to submit with a request to record a delayed registration of birth.

#### SECTION-BY-SECTION SUMMARY

The amendment to §181.62(a)(1)(A) and (B) states the name of the person and the date and place of birth shall be supported by at least two documents, only one of which may be an affidavit of personal knowledge, if the birth occurred at least four years but less than 15 years before the date of the application; or three documents, only one of which may be an affidavit of personal knowledge, if the birth occurred 15 or more years before the date of the application.

The amendment to §181.62(b)(5) states that documents shall not contain contradictory information regarding the person's name, date and place of birth, and the identity of one parent. If documents contain contradictory information regarding a second parent, then no information for the second parent will be recorded or entered on any birth certificate issued.

#### FISCAL NOTE

Donna Sheppard, DSHS Chief Financial Officer, has determined that for each year of the first five years that the rule will be in effect, enforcing or administering the rule does not have foreseeable implications relating to costs or revenues of state or local governments.

#### GOVERNMENT GROWTH IMPACT STATEMENT

DSHS has determined that during the first five years that the rule will be in effect:

- (1) the proposed rule will not create or eliminate a government program;
- (2) implementation of the proposed rule will not affect the number of DSHS employee positions;
- (3) implementation of the proposed rule will result in no assumed change in future legislative appropriations;
- (4) the proposed rule will not affect fees paid to DSHS;
- (5) the proposed rule will not create a new rule;
- (6) the proposed rule will not expand, limit, or repeal existing rules;
- (7) the proposed rule will not change the number of individuals subject to the rule; and
- (8) the proposed rule will not affect the state's economy.

#### SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Donna Sheppard has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The rule does not apply to small or micro-businesses, and rural communities.

#### LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

#### COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule does not impose a cost on regulated persons.

#### PUBLIC BENEFIT AND COSTS

Dr. Manda Hall, Associate Commissioner, has determined that for each year of the first five years the rule is in effect, the public will benefit from having the ability to obtain delayed birth certificates from the State Registrar, without being referred to court, despite having contradictory documents on parentage for one parent.

Donna Sheppard has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because the rule doesn't impose any additional costs on applicants for delayed birth certificates.

#### TAKINGS IMPACT ASSESSMENT

DSHS has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

#### PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247; street address 701 West 51st Street,

Austin, Texas 78751; or emailed to HHSRulesCoordinationOffice@hhs.texas.gov.

To be considered, comments must be submitted no later than 21 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 23R029" in the subject line.

#### STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Health and Safety Code §191.003, which authorizes rules necessary for the effective administration of Vital Statistics Records; Texas Health and Safety Code §192.022, which authorizes rules for filing applications with the State Registrar for delayed birth certificates; and Texas Health and Safety Code §1001.075, which authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

The amendment will implement Texas Government Code Chapter 531 and Texas Health and Safety Code Chapters 191, 192, and 1001.

§181.62. *Documentary Evidence; Requirements and Acceptability.*

(a) To be acceptable for registration:[,]

(1) the name of the person at the time of the birth and the date and place of birth entered on a delayed registration of birth shall be supported by at least:

(A) two documents, only one of which may be an affidavit of personal knowledge, if the birth occurred at least four years but less than 15 years before the date of the application; or

(B) three documents, only one of which may be an affidavit of personal knowledge, if the birth occurred 15 or more years before the date of the application; and

(2) [(+) at least one piece of acceptable documentary evidence shall [that will] establish to the satisfaction of the State Registrar the name of at least one parent. [the parent(s);]

[(2) three pieces of acceptable documentary evidence that will establish to the satisfaction of the State Registrar the facts and date of birth as alleged in the application; and]

[(3) facts of parentage shall be supported by at least one document.]

(b) The State Registrar shall determine the acceptability of all documentary evidence submitted.

(1) Documents must be from independent sources and shall be in the form of the original record or a duly certified copy thereof or a signed statement from the custodian of the record or document.

(2) Documents may include but are not limited to:

(A) census records;

- (B) hospital records;
- (C) military records;
- (D) Social Security records;
- (E) school records; or
- (F) other documents as designated by the State Registrar.

(3) For persons 15 years of age or older, all documents submitted in evidence, other than an affidavit of personal knowledge, must be at least five [5] years old.

(4) At least one [1] document submitted in evidence should have been created within the first 10 years of life.

(5) Documents shall not contain [be] contradictory information regarding the person's name, date of birth, and place of birth. The identity of at least one parent must be established by information that does not contradict any other information available to the State Registrar. If documents contain contradictory information regarding a second parent, and the delayed certificate of birth is accepted for registration, then no information for the second parent will be recorded on the certificate.

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

Filed with the Office of the Secretary of State on May 10, 2023.

TRD-202301709

Cynthia Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: June 25, 2023

For further information, please call: (512) 776-7646



## TITLE 26. HEALTH AND HUMAN SERVICES

### PART 1. HEALTH AND HUMAN SERVICES COMMISSION

#### CHAPTER 284. COMPETITIVE AND INTEGRATED EMPLOYMENT INITIATIVE FOR CERTAIN MEDICAID RECIPIENTS

##### 26 TAC §§284.101, 284.103, 284.105, 284.107, 284.109, 284.111

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes new §284.101, concerning Purpose; §284.103, concerning Applicability; §284.105, concerning Uniform Process; §284.107, concerning Strategies to Increase Number of Individuals Receiving Employment Services; §284.109, concerning Referrals to the Texas Workforce Commission; and §284.111 concerning Increasing the Number of Individuals Receiving Employment Services.

##### BACKGROUND AND PURPOSE

The Community Living Assistance and Support Services (CLASS), Deaf Blind with Multiple Disabilities (DBMD), Home and Community-based Services (HCS), Texas Home Living (TxHmL), and STAR+PLUS Home and Community-based

Services (STAR+PLUS HCBS) programs each provide employment services. Employment assistance assists an individual in locating competitive employment in the community. Supported employment assists an individual in sustaining competitive employment.

The purpose of the proposed rules is to implement Texas Government Code §531.02448, regarding the employment first initiative, added by Senate Bill (S.B.) 50, 87th Legislature, Regular Session, 2021.

To implement S.B. 50, HHSC developed an HHSC Employment First Uniform Assessment Form to use in the CLASS, DBMD, HCS, TxHmL, and STAR+PLUS HCBS programs to determine an individual's employment goals and the employment opportunities and employment services available to the individual in the individual's program. The proposed rules require the entity responsible for developing an individual's person-centered plan to determine an individual's desire to work. The individual's response will need to be documented in the individual's person-centered service plan. When the individual indicates a desire to work, the responsible entity will complete the HHSC Employment First Uniform Assessment Form at the time the plan is developed, annual renewals, or revisions.

After completing the HHSC Employment First Uniform Assessment Form, if an individual's person-centered service plan does not include employment services through the program in which the individual is enrolled, the proposed rules require an individual's case manager, service coordinator, or managed care organization (MCO) to refer the individual to the Texas Workforce Commission (TWC) for employment services available through the TWC.

##### SECTION-BY-SECTION SUMMARY

Proposed new §284.101 describes the purpose of new Chapter 284. The proposed rule establishes that the rules in Chapter 284 must be read in conjunction with the rules and policies related to the Medicaid waiver program listed in proposed §284.103 in which an individual is enrolled.

Proposed new §284.103 lists the HHSC §1915(c) and §1115 Medicaid programs to which new Chapter 284 applies.

Proposed new §284.105 covers the steps a case manager, service coordinator, or MCO must follow if an individual's service planning team records the individual's desire to work, during completion of the Employment First Uniform Assessment Form. The proposed rule identifies reasons to use the HHSC Employment First Uniform Assessment Form and instances under which an individual's service planning team must utilize the individual's employment goals and the employment services to develop an individual's person-centered service plan during enrollment, annual renewals, and revisions.

Proposed new §284.107 describes the strategies HHSC will utilize to increase the number of individuals receiving employment services from the TWC or through the program in which an individual is enrolled.

Proposed new §284.109 describes the terms under which an individual's case manager, service coordinator, or MCO must refer the individual to the TWC for employment services available through the TWC.

Proposed new §284.111 specifies HHSC's determination that the number of individuals receiving employments on December 31, 2023, from the TWC or through the program in which the indi-

viduals are enrolled will be at least five percent greater than the number of individuals receiving employment services on December 31, 2022.

#### FISCAL NOTE

Trey Wood, HHSC Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, there will not be a fiscal impact to state government.

Trey Wood has also determined that for each year of the first five years that the rules will be in effect, the proposed rules may result in an increase in cost to local intellectual and developmental disability authorities (LIDDAs) who are local governments. The increased cost could result from the requirement for LIDDA service coordinators, during a service planning meeting, to complete the Employment First Uniform Assessment Form. Completing the form may require additional time spent by the service coordinators during a service planning team meeting for each individual that expresses a desire to work. However, HHSC is unable to estimate any additional costs LIDDAs may incur.

#### GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rules will be in effect:

- (1) the proposed rules will not create or eliminate a government program;
- (2) implementation of the proposed rules will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;
- (4) the proposed rules will not affect fees paid to HHSC;
- (5) the proposed rules will create new rules;
- (6) the proposed rules will expand existing rules;
- (7) the proposed rules will not change the number of individuals subject to the rules; and
- (8) the proposed rules will not affect the state's economy.

#### SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Trey Wood has also determined that the proposed rules could have an adverse economic effect on waiver program providers who are small businesses or micro-businesses in that there will be a cost to comply. However, HHSC does not have the data to estimate how many of the approximately 804 waiver program providers are small businesses or micro businesses. No rural communities contract with HHSC to provide services in these waiver programs, and MCOs are not considered small business or micro-businesses.

HHSC determined alternative methods to achieve the purpose of the proposed rules for small businesses and micro-businesses would not be consistent with ensuring the health and safety of individuals receiving services in the CLASS, DBMD, HCS, TxHmL, and STAR+PLUS HCBS waiver programs.

#### LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

#### COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to protect the health,

safety, and welfare of the residents of Texas and are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

#### PUBLIC BENEFIT AND COSTS

Stephanie Stephens, State Medicaid Director, has determined that for each year of the first five years the rules are in effect, the public benefit will be a standardized and uniform assessment questionnaire designed to improve access to employment services within the home and community-based waiver programs as well as a projected increase in the number of individuals who elect to participate in the workforce.

Trey Wood has also determined that for the first five years the rules are in effect, the proposed rules could result in an increase in costs to LIDDAs; CLASS, DBMD, HCS, and TxHmL program providers; and MCOs for the STAR+PLUS HCBS Program due to the additional time it will take to complete the Employment First Uniform Assessment Form during a service planning team meeting after an individual expresses a desire to work. After completing the Employment First Uniform Assessment Form, additional time will be required to develop, revise, or renew an individual's person-centered service plan or to refer the individual to TWC for employment services if the individual requests to receive or is receiving employment services. However, HHSC is unable to estimate any additional costs they may incur.

#### TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

#### PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 701 W. 51st Street, Austin, Texas 78751; or emailed to [HHRulesCoordinationOffice@hhs.texas.gov](mailto:HHRulesCoordinationOffice@hhs.texas.gov).

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 22R102" in the subject line.

#### STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules as necessary to carry out the commission's duties; and Texas Human Resources Code §32.021(c) and Texas Government Code §531.021(a), which authorize HHSC to administer the federal medical assistance (Medicaid) program.

The new sections are specifically authorized by and affect Texas Government Code §531.02448.

§284.101. Purpose.

(a) The purpose of this chapter is to implement Texas Government Code §531.02448.

(b) The rules in this chapter must be read in conjunction with the rules and policies related to the Medicaid programs listed in §284.103 of this chapter (relating to Applicability) in which an individual is enrolled.

§284.103. Applicability.

This chapter applies to an individual receiving services under the following Medicaid programs authorized by Section 1915(c) or Section 1115 of the Social Security Act:

- (1) the Home and Community-based Services (HCS) Program;
- (2) the Texas Home Living (TxHmL) Program;
- (3) the Deaf Blind with Multiple Disabilities (DBMD) Program;
- (4) the Community Living Assistance and Support Services (CLASS) Program; and
- (5) the STAR+PLUS Home and Community-Based Services program.

§284.105. Uniform Process.

(a) An individual's service planning team must determine during the person-centered planning process whether an individual desires to work and if so, the individual's program provider's case manager, local intellectual and developmental disability authority service coordinator, or managed care organization (MCO) must:

- (1) document the individual's desire to work on the individual's person-centered service plan; and
- (2) complete the HHSC Employment First Uniform Assessment Form available on the HHSC website to determine:
  - (A) the individual's employment goals; and
  - (B) the employment opportunities and employment services available to the individual through the program in which the individual is enrolled.

(b) An individual's service planning team must use the individual's employment goals, employment opportunities, and the employment services chosen by the individual to develop the individual's person-centered service plan.

(c) An individual's program provider's case manager, local intellectual and developmental disability authority service coordinator, or MCO must ensure that the requirements in subsections (a) and (b) of this section are followed when the individual's service planning team meets to:

- (1) develop the individual's person-centered service plan upon:
  - (A) initial enrollment; and
  - (B) for annual renewals; and
- (2) revise the individual's person-centered service plan if the individual expresses a desire to work and the individual's person-centered service plan does not include an employment service.

§284.107. Strategies to Increase Number of Individuals Receiving Employment Services.

The Texas Health and Human Services Commission (HHSC) utilizes the following strategies to increase the number of individuals receiving

employment services from the Texas Workforce Commission (TWC) or through the waiver program in which an individual is enrolled:

- (1) use of the HHSC Employment First Uniform Assessment Form identified in §284.105(a)(2) of this chapter (relating to Uniform Process);
- (2) maintain a memorandum of understanding between HHSC and TWC to enable data sharing between those agencies in order to measure the number of individuals utilizing employment services;
- (3) implement an employment-first policy jointly adopted by HHSC, the Texas Education Agency (TEA), and the TWC in accordance with Texas Government Code §531.02447(b); and
- (4) implement additional strategies as outlined in the Promoting Independence Plan, which is HHSC's plan for implementing its obligation to provide people with disabilities opportunities to live, work, and be served in integrated settings.

§284.109. Referrals to the Texas Workforce Commission.

After completing the HHSC Employment First Uniform Assessment Form, as described in §284.105(a)(2) of this chapter (relating to Uniform Process), if an individual's person-centered service plan does not include employment services through the waiver program in which the individual is enrolled, the individual's program provider's case manager, local intellectual and developmental disability authority service coordinator, or managed care organization must refer the individual to the Texas Workforce Commission (TWC) for employment services available through the TWC.

§284.111. Increasing the Number of Individuals Receiving Employment Services.

The Texas Health and Human Services Commission will ensure that the number of individuals receiving employment services from the Texas Workforce Commission or through the programs in which the individuals are enrolled on December 31, 2023, is at least 5% greater than the number of individuals receiving employment services on December 31, 2022.

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

Filed with the Office of the Secretary of State on May 8, 2023.

TRD-202301663

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: June 25, 2023

For further information, please call: (512) 438-4224



## CHAPTER 745. LICENSING

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes new §§745.8301, 745.8303, 745.8305, 745.8307, 745.8309, 745.8311, 745.8313, 745.8315, 745.8317, 745.8319, and 745.8321; and repeals of §§745.8301, 745.8303, 745.8305, 745.8307, 745.8309, 745.8311, 745.8313, 745.8315, 745.8317, and 745.8319 in Title 26, Texas Administrative Code (TAC), Chapter 745, Subchapter J, Waivers and Variances for Minimum Standards.

### BACKGROUND AND PURPOSE

The proposal is necessary to align 26 TAC Chapter 745, Subchapter J, with 42 United States Code §671(a)(10) so that HHSC Child Care Regulation (CCR) may only approve a waiver request for a kinship foster home.

The proposal is also necessary to align 26 TAC Chapter 745, Subchapter J, with current practices and update the subchapter as needed for clarity.

#### SECTION-BY-SECTION SUMMARY

Proposed new §745.8301 provides terms and definitions needed to understand the subchapter. The proposed rule has the content from repealed §745.8303. Additional content includes the terms "Foster family home," "Foster parent," and "Kinship foster home" and their definitions.

Proposed new §745.8303 clarifies that a minimum standard is ineligible for a waiver or variance if the standard is required by state or federal law. The proposed rule incorporates relevant content from repealed §745.8307.

Proposed new §745.8305 covers how an operation must request a waiver or variance. The proposed rule (1) incorporates the content from repealed §745.8305 and clarifies what an operation must submit in writing to request a waiver or variance; (2) clarifies that a waiver or variance request may only be for one operation and one minimum standard number or subsection; and (3) clarifies that if a child-placing agency is requesting a waiver or variance for a minimum standard related to foster care, the request can be for only one foster home.

Proposed new §745.8307 indicates how long CCR has to process a request for a waiver or variance. The proposed rule (1) incorporates the content from repealed §745.8309; and (2) clarifies CCR's procedures for processing a waiver or variance and how long the processing takes, including when CCR will notify the requestor of the final decision.

Proposed new §745.8309 describes when a waiver or variance expires and what must happen before it expires. The proposed rule (1) incorporates the content from repealed §745.8311; (2) adds timeframes for requesting a new waiver or variance prior to the expiration date of the current one; and (3) clarifies that an operation must comply with the minimum standard at the time a waiver or variance expires, even if a new request relating to that standard is pending CCR's review.

Proposed new §745.8311 clarifies what conditions CCR may place on an approved waiver or variance. The proposed rule (1) incorporates the content from repealed §745.8313; (2) provides that CCR may place any condition on an approved waiver or variance; and (3) clarifies that the operation must comply with each condition while the waiver or variance is in place.

Proposed new §745.8313 lists the factors that CCR considers when deciding whether to grant a waiver or variance. The proposed rule (1) incorporates relevant content from repealed §745.8307; (2) adds whether the minimum standard is ineligible for a waiver or variance described in proposed new §745.8303 as a factor; (3) clarifies that the factor for compliance history includes past and present enforcement actions; (4) adds the operation's permit status as a factor; (4) adds whether the operation is on heightened monitoring as a factor; and (5) adds a reference to the additional considerations for foster homes in proposed new §745.8315 as a factor.

Proposed new §745.8315 describes factors, in addition to those in §745.8313, that CCR considers when deciding whether to

grant a waiver or variance for a foster home. The proposed rule adds the compliance history of the foster home as a factor when the request is associated with a foster home. The proposed rule also adds any limitations in state or federal law as a factor, including (1) only granting a waiver for a kinship foster home; and (2) considering certain limitations to increasing the maximum number of foster children cared for by a foster home.

Proposed new §745.8317 provides the factors that CCR considers when determining the expiration date and conditions are the same as the factors in proposed new §745.8313.

Proposed new §745.8319 (1) describes when CCR can amend or revoke a waiver or variance; and (2) provides a cross-reference to proposed new §745.8321. The proposed rule incorporates content from repealed §745.8301 that explains a waiver or variance is not an entitlement and most of the content from repealed §745.8317.

Proposed new §745.8321 describes what an operation may do if it disagrees with CCR's decision related to a waiver or variance. Specifically, the rule provides procedures on how the operation may dispute the decision, and what the operation must do to be in compliance while disputing the decision. The proposed rule incorporates some of the content from repealed §745.8315 and §745.8319.

The proposed repeal of §§745.8301, 745.8303, 745.8305, 745.8307, 745.8309, 745.8311, 745.8313, 745.8315, 745.8317, and 745.8319 accommodates the new rules being proposed and removes content no longer needed because the new rules incorporate most of the repealed content.

#### FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for the first year of the first five years that the rules will be in effect, there will be an estimated additional cost to state government as a result of enforcing or administering the rules as proposed. Enforcing or administering the rules does not have foreseeable implications relating to costs or revenues of local governments.

The effect on state government for each year of the first five years the proposed rules are in effect is an estimated cost of \$24,468 in fiscal year (FY) 2024, \$0 in FY 2025, \$0 in FY 2026, \$0 in FY 2027, and \$0 in FY 2028.

#### GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rules will be in effect:

- (1) the proposed rules will not create or eliminate a government program;
- (2) implementation of the proposed rules will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;
- (4) the proposed rules will not affect fees paid to HHSC;
- (5) the proposed rules will create new rules;
- (6) the proposed rules will repeal existing rules;
- (7) the proposed rules will not change the number of individuals subject to the rules; and
- (8) the proposed rules will not affect the state's economy.

## SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The rules do not impose any additional costs on small businesses, micro-businesses, or rural communities required to comply with the rules.

## LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

## COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules (1) are necessary to protect the health, safety, and welfare of the residents of Texas; (2) do not impose a cost on regulated persons; and (3) are necessary to comply with federal law.

## PUBLIC BENEFIT AND COSTS

Rachel Ashworth-Mazerolle, Associate Commissioner for Child Care Regulation, has determined that for each year of the first five years the rule is in effect the public benefit will be (1) increased compliance with statutory requirements; and (2) more clarity for stakeholders regarding the requirements and procedures for waivers and variances.

Trey Wood has also determined that for the first five years the rules are in effect, persons who are required to comply with the proposed rules will not incur economic costs.

## TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

## PUBLIC COMMENT

Questions about the content of this proposal may be directed to Ryan Malsbary by email at [Ryan.Malsbary@hhs.texas.gov](mailto:Ryan.Malsbary@hhs.texas.gov).

Written comments on the proposal may be submitted to Ryan Malsbary, Rules Writer, Child Care Regulation, Health and Human Services Commission, E-550, P.O. Box 149030, Austin, Texas 78714-9030; or by email to [CCRRules@hhs.texas.gov](mailto:CCRRules@hhs.texas.gov).

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 22R113" in the subject line.

## SUBCHAPTER J. WAIVERS AND VARIANCES FOR MINIMUM STANDARDS

**26 TAC §§745.8301, 745.8303, 745.8305, 745.8307, 745.8309, 745.8311, 745.8313, 745.8315, 745.8317, 745.8319**

## STATUTORY AUTHORITY

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

The repealed rules affect Texas Government Code §531.0055 and Texas Human Resources Code §42.042 and §42.048.

§745.8301. *What if I cannot comply with a specific minimum standard?*

§745.8303. *What is the difference between a waiver and a variance?*

§745.8305. *How do I request a waiver or variance?*

§745.8307. *How does Licensing make the decision to grant or deny my waiver or variance request?*

§745.8309. *Who makes the decision to grant or deny my waiver or variance request?*

§745.8311. *Does a waiver or variance expire?*

§745.8313. *Is a waiver or variance unconditional?*

§745.8315. *What if I disagree with the time limit or conditions that Licensing places on my waiver or variance?*

§745.8317. *Can Licensing amend or revoke a waiver or variance, including its conditions?*

§745.8319. *What can I do if Licensing denies or revokes my waiver or variance?*

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

Filed with the Office of the Secretary of State on May 11, 2023.

TRD-202301726

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: June 25, 2023

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



**26 TAC §§745.8301, 745.8303, 745.8305, 745.8307, 745.8309, 745.8311, 745.8313, 745.8315, 745.8317, 745.8319, 745.8321**

## STATUTORY AUTHORITY

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

The repealed rules affect Texas Government Code §531.0055 and Texas Human Resources Code §42.042 and §42.048.

§745.8301. What words must I know to understand this subchapter?

These words have the following meanings in this subchapter:

(1) Foster family home--A home that is the primary residence of the foster parent or parents and provides care to six or fewer children or young adults, under the regulation of a child-placing agency. Also referred to as "foster home."

(2) Foster parent--A person verified to provide child care services in the foster home.

(3) Kinship foster home--A foster family home with a foster parent or parents who:

(A) Is related to a foster child by consanguinity or affinity; or

(B) Has a longstanding and significant relationship with the foster child before the child is placed with the foster parent.

(4) Waiver--A decision by Licensing that waives an operation's compliance with a minimum standard if the economic impact of compliance with that standard is great enough to make compliance impractical.

(5) Variance--A decision by Licensing that there is good and just cause for an operation to meet the purpose of a minimum standard in a different way.

§745.8303. What minimum standards are ineligible for a waiver or variance?

A minimum standard is ineligible for a waiver or variance if the minimum standard is required by state or federal law.

§745.8305. How do I request a waiver or variance?

(a) You must request a waiver or variance in writing by submitting a completed:

(1) Waiver/Variance Request through your online account and separately providing any supporting documentation to your Licensing representative; or

(2) Form 2937 Child Care Regulation Waiver/Variance Request, or the information required by the form and any supporting documentation, to your Licensing representative.

(b) A waiver or variance request may only be for:

(1) One operation; and

(2) One minimum standard number or subsection.

(c) If a child-placing agency is requesting a waiver or variance for a minimum standard related to foster care, the waiver or variance request can be for only one foster home.

§745.8307. How long does Licensing have to process a request for a waiver or variance?

(a) Within 15 days after Licensing receives a request, the Licensing representative:

(1) Reviews the request and any supporting documentation; and

(2) Makes a recommendation to the supervisor or the supervisor's designee whether to grant the request for a waiver or variance.

(b) Within 15 days after receiving the Licensing representative's recommendation, the supervisor or designee makes the final decision whether to grant the waiver or variance.

(c) Within five days after the supervisor makes the final decision, Licensing staff notifies the requester of the final decision.

§745.8309. When does a waiver or variance expire, and what must I do before it expires?

(a) We grant a waiver or variance for a specific amount of time. The waiver or variance will include its expiration date.

(b) We may issue a waiver or variance for up to three years. If you need a waiver or variance for a time period that exceeds three years, you will have to submit a new request as explained in subsection (c) of this section.

(c) If you will still need a waiver or variance after the waiver or variance expires, you must submit a new request to us according to §745.8305 of this subchapter (relating to How do I request a waiver or variance?):

(1) At least 35 days prior to the expiration; or

(2) As soon as possible, if the expiration date of the waiver or variance is less than 35 days from the date we granted it.

(d) When your waiver or variance expires, you must comply with the minimum standard, even if a new request related to that standard is pending our review.

§745.8311. What conditions may Licensing place on an approved waiver or variance?

(a) We may place any condition on a waiver or variance we determine is necessary to protect the health and safety of children in your care.

(b) You must comply with each condition while the waiver or variance is in effect.

§745.8313. What factors do we consider when deciding whether to grant a waiver or variance?

When deciding whether to grant a waiver or variance, we consider:

(1) Whether the minimum standard is ineligible for a waiver or variance as outlined in §745.8303 of this subchapter (relating to What minimum standards are ineligible for a waiver or variance?);

(2) The risk to children if your operation or foster home does not meet the standard;

(3) The compliance history of your operation, including past and current enforcement actions;

(4) Any waivers or variances currently in effect;

(5) Your permit status, including if you are an applicant or have an initial license;

(6) Whether your operation is on heightened monitoring;

(7) Any economic factors or other constraints affecting your ability to comply;

(8) If the request is for a foster home, the additional factors for a foster home as required by §745.8315 of this subchapter (relating to What additional factors does Licensing consider when deciding whether to grant a waiver or variance for a foster home?); and

(9) Any other factor relevant to your request or operation that we identify.

§745.8315. What additional factors does Licensing consider when deciding whether to grant a waiver or variance for a foster home?

(a) If the request is associated with a foster home, we will consider the compliance history of the foster home.

(b) When processing a request for a waiver or variance related to a foster home, we will consider any limitations in state or federal law, including only granting:



(1) A waiver for a kinship foster home; and

(2) A variance if the request is to increase the maximum number of foster children a foster home may care for under §749.2551 of this title (relating to What is the maximum number of children a foster family home may care for?), and:

(A) The foster home does not meet the exception criteria under §749.2551(b) of this title; or

(B) Granting the variance would not result in the home's:

(i) Foster care capacity exceeding six foster children, unless the foster home meets one of the requirements in paragraph §749.2551(b)(1) of this title; or

(ii) Total capacity exceeding eight children.

*§745.8317. What factors do we consider when determining the expiration date and conditions for a waiver or variance?*

If we grant you a waiver or variance, we will also use the factors listed in §745.8313 of this subchapter (relating to What factors do we consider when deciding whether to grant a waiver or variance?) when determining the expiration date and what conditions to put on the waiver or variance.

*§745.8319. Can Licensing amend or revoke a waiver or variance?*

(a) A waiver or variance is not an entitlement. Accordingly, we may amend or revoke your waiver or variance if we determine that:

(1) Your waiver or variance does not address a risk to children that currently exists;

(2) The circumstances that supported the decision to grant the waiver or variance have changed;

(3) You fail to meet a condition; or

(4) Your waiver or variance requires an additional or alternative condition.

(b) If you disagree with an amendment to your waiver or variance, see §745.8321 of this subchapter (relating to What can I do if I disagree with Licensing's decision related to a waiver or variance?).

*§745.8321. What can I do if I disagree with Licensing's decision related to a waiver or variance?*

(a) When you disagree with the original expiration date or original conditions associated with a waiver or variance that Licensing granted:

Figure: 26 TAC §745.8321(a)

(b) When we deny, revoke, or amend a waiver or variance:

Figure: 26 TAC §745.8321(b)

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

Filed with the Office of the Secretary of State on May 11, 2023.

TRD-202301727

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: June 25, 2023

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



## CHAPTER 745. LICENSING

## SUBCHAPTER N. ADMINISTRATOR'S LICENSING

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §§745.8901, 745.8903, 745.8909, 745.8915, 745.8917, 745.8919, 745.8933, 745.8935, 745.9031, and 745.9037; new §§745.8906, 745.8908, 745.8923, 745.8925, 745.8927, 745.8929, 745.8930, 745.8973, 745.8975, 745.8976, 745.8977, 745.8979, 745.8981, 745.8982, 745.8983, 745.8985, 745.8986, 745.8987, and 745.8989; and repeal of §§745.8991, 745.8994, 745.8999, 745.9007, 745.9019, 745.9021, and 745.9023 in Title 26, Texas Administrative Code, Chapter 745, Licensing, Subchapter N, Administrator's Licensing.

### BACKGROUND AND PURPOSE

The rule changes implement Senate Bill (S.B.) 1896, 87th Legislature, Regular Session, 2021, as it relates to SECTION 25 of the bill.

SECTION 25 amended Texas Human Resources Code (HRC) §43.0081(a) to add (a)(2)(A) and (B) to allow HHSC Child Care Regulation (CCR) to issue a provisional child-care administrator's license when an applicant does not meet the one-year supervisory experience requirement provided in HRC §43.004(a)(4), but otherwise qualifies for a license so long as the applicant complies with any additional requirements established in rule. SECTION 25 also amended HRC §43.0081 by adding subsection (e), to allow the executive commissioner to establish in rule any additional requirements that apply when a provisional child-care administrator's license is issued under HRC §43.0081(a)(2)(A).

In addition to implementing SECTION 25 of S.B. 1896, CCR is proposing other changes to Chapter 745, Licensing, Subchapter N, Administrator's Licensing. These changes add administrator conduct expectations, update rules to reflect current business practice, update wording in rule to improve understanding and readability, add a new division, renumber subsection divisions, and reorganize divisions to improve the overall organization of Subchapter N.

### SECTION-BY-SECTION SUMMARY

The proposed amendment to §745.8901 (1) updates the wording for improved readability and understanding; (2) adds a citation; and (3) clarifies that a child-care administrator may hold a full child-care administrator's license or a provisional child-care administrator's license.

The proposed amendment to §745.8903 (1) updates the wording for improved readability; and (2) clarifies that a child-placing agency (CPA) administrator must hold a full child-placing agency administrator's license.

Proposed new §745.8906 outlines the types of administrator's licenses that CCR may issue and the requirements the applicant must meet for each license type. The license types include (1) a full child-care administrator's license if an applicant meets requirements in §745.8915; (2) a provisional child-care administrator's license if an applicant meets requirements in proposed new §745.8925 or §745.8913; and (3) a full child-placing agency administrator's license if the applicant meets the requirements in amended §745.8917.

Proposed new §745.8908 explains that a child-care administrator may only serve as an administrator at a general residential

operation with a provisional child-care administrator's license as provided in proposed new §748.532.

The proposed amendment to §745.8909 (1) updates the rule title and content to clarify that a child-placing agency administrator's license must be a full administrator's license; and (2) removes references to operation types that no longer exist.

The proposed amendment to §745.8915 (1) updates the rule title and content to clarify that the rule applies to the qualifications needed for a full child-care administrator's license; (2) updates wording for improved readability; (3) updates the title of a rule reference; and (4) requires a transcript or letter of verification from the appropriate educational institution to be submitted as part of an application so that CCR may determine whether the applicant meets the educational requirements. CCR will evaluate the transcript or letter of verification to determine whether an applicant meets the required course of study. In addition, to determine the authenticity of the transcript or educational institution, CCR may (A) contact the educational institution and (B) conduct other research to assist with our determination.

The proposed amendment to §745.8917 (1) updates the rule title and content to clarify that the rule applies to the qualifications needed for a full child-placing agency administrator's license; (2) updates wording to improve readability; (3) updates the title of a rule reference; and (4) requires a transcript or letter of verification from the appropriate educational institution be submitted as part of an application so that CCR may determine whether the applicant meets the educational requirements. CCR will evaluate the transcript or letter of verification to determine whether an applicant meets the required course of study. In addition, to determine the authenticity of the transcript or educational institution, CCR may (A) contact the educational institution and (B) conduct other research to assist with our determination.

The proposed amendment to §745.8919 (1) updates the rule title and content to clarify that the one year of management or supervisory experience described applies to the qualifications needed for full child-care administrator's license or a full child-placing agency administrator's license; and (2) deletes subsection (d), which allows the Associate Commissioner to grant an exception to the required management or supervisory experience required in this rule, because proposed new §745.8923 will now address this issue.

Proposed new §745.8923 outlines what CCR may do if the applicant does not meet the one year of management or supervisory experience required for a full administrator's license. The rule allows CCR to issue (1) a provisional child-care administrator's license if the applicant meets the management or supervisory experience required in proposed new §745.8925; and (2) a full child-placing agency administrator's license if the Associate Commissioner of CCR determines that the applicant has provided compelling justification that the applicant's experience qualifies the applicant to serve as a licensed administrator of a CPA.

Proposed new §745.8925 outlines the qualifications an applicant must meet for CCR to issue a provisional child-care administrator's license if the applicant does not meet the one year of management or supervisory experience required for a full child-care administrator's license: (1) pass the administrator's examination; (2) pass the required background checks; (3) have either a master's degree in social work or closely related field, or bachelor's degree and two years' experience in a child-care setting; (4) have documented six months of management or supervisory ex-

perience required in proposed new §745.8927; and (5) have not been denied a full child-care administrator's license.

Proposed new §745.8927 outlines the type of management or supervisory experience that is needed to qualify for a provisional child-care administrator's license if the applicant does not meet the experience requirement for a full child-care administrator's license. The rule requires an applicant to submit an employer reference that substantiates the (1) applicant has six months of management or supervisory experience within the last ten years; (2) management or supervisory experience was in a setting working primarily with children; and (3) applicant supervised at least one employee, and supervision responsibilities included assigning duties, hiring, disciplining, approving leave requests, and conducting formal evaluations.

Proposed new §745.8929 sets forth conduct expectations for licensed administrators or applicants when interacting with HHSC. The rule (1) prohibits a licensed administrator or applicant from attempting to interfere with HHSC's ability to conduct agency business; (2) outlines the type of conduct that constitutes interface with agency business, which would include (A) interfering with, coercing, threatening, intimidating, retaliating against, or harassing an HHSC staff member in connection with the person's exercise of HHSC's regulatory duties, or (B) engaging in conduct or directing language at HHSC staff that a reasonable person would find to be harassing, intimidating, or threatening to HHSC staff; and (3) states that HHSC may determine an administrator or applicant has attempted to interfere with HHSC's ability to conduct agency business even if the person's conduct (A) does not occur during in the presence of HHSC staff, or (B) during any regulatory activity.

Proposed new §745.8930 sets forth the responsibilities that a licensed administrator must meet while serving as a licensed administrator at an operation. The rule (1) requires a child-care administrator to carry out responsibilities as outlined in §748.535 while serving as a licensed administrator at a GRO and (2) requires a child-placing agency administrator to carry out responsibilities as outlined in §749.635 while serving as a licensed administrator at a CPA.

The proposed amendment to §745.8933 (1) updates wording to improve understanding; (2) updates a citation and the title of a rule reference; (3) adds a requirement for an applicant to submit an employer reference documenting six months of management or supervisory experience as part of a complete application if an applicant is applying for a provisional child-care administrator's license because the applicant does not meet the one year of management or supervisory experience required for a full child-care administrator's license; and (4) updates numbering of subsections accordingly.

The proposed amendment to §745.8935 updates (1) the rule title to clarify that the rule applies to the requirements to apply for both full child-care administrator's license and a full child-placing agency administrator's license; (2) a citation; (3) wording to improve understanding and readability; and (4) the title of a rule reference.

The proposed new Division 4, Maintaining Your Administrator's License, contains proposed new rules relating to the maintenance of an administrator's license.

Proposed new §745.8973 (1) incorporates into this rule the proposed repealed §745.9021, relating to the required notifications that a licensed administrator must report to CCR and how CCR may use the information reported; and (2) updates wording for

understanding and to more accurately reflect how CCR may use information reported to CCR.

Proposed new §745.8975 (1) incorporates into this rule the proposed repealed §745.8991, relating to how long a full child-care administrator's or child-placing agency administrator's license is valid; and (2) updates language to clarify that the rule applies to full administrator licenses.

Proposed new §745.8976 establishes the maximum time that a provisional child-care administrator's license can remain valid. The proposed new rule states a provisional child-care administrator's license (1) issued under proposed new §745.8925 (A) may remain valid for up to two years from the date of issuance and (B) is not eligible for renewal; and (2) issued under §745.8913(b) (A) may be valid for up to 180 days from the date the permit is issued, and (B) may be extended one time for an additional 180 days.

Proposed new §745.8977 outlines the process for requesting to change the status of a provisional child-care administrator's license to a full child-care administrator's license. This rule (1) allows an individual with a provisional child-care administrator's license to request to change the status to a full child-care administrator's license as soon as the individual meets the minimum management or supervisory experience required for a full license, as long as the request is made before the provisional child-care administrator's license expires; (2) requires to be submitted as part of the request to change the status (A) a completed Renewal of Change of Status form, (B) evidence that the individual has completed the minimum number of continuing education training hours, and (C) an employer reference documenting the one year of management or supervisory experience needed for a full child-care administrator's license; (3) clarifies that CCR will not change the status if there is reason to deny the full administrator's license; and (4) clarifies that if a request to change the status of a provisional child-care administrator's license is received after the date listed on the permit (A) the provisional child-care administrator's license will expire and (B) the individual must reapply for another administrator's license.

Proposed new §745.8979 outlines that a provisional child-care administrator's license will expire if the permit holder is not able to meet the required one year of management or supervisory experience before the expiration date listed on the provisional license.

Proposed new §745.8981 outlines the requirements associated with an expired provisional child-care administrator's license. The rule (1) requires an individual with an expired child-care administrator's license to (A) stop acting and representing him or herself as a licensed child-care administrator and (B) return the provisional child-care administrator's license certificate to CCR; (2) requires the individual to submit a new application if the individual wishes to receive another provisional child-care administrator's license; and (3) clarifies that CCR will not accept a new application if the individual has not returned the expired provisional license certificate.

Proposed new §745.8982 outlines that, when an individual with a provisional child-care administrator's license whose license expires while CCR is processing a request to change the status to a full license, the individual may continue to serve as a child-care administrator if the individual (1) requests to change the status under proposed new §745.8777; (2) submits the request before the expiration date of the provisional license; and (3) is serving

as a child-care administrator for an operation at the time the request is submitted.

Proposed new §745.8983 outlines the number of hours of continuing education training needed to maintain an administrator's license. The rule (1) requires the administrator to complete 15 clock hours of continuing education each year to maintain a full administrator's license, which is consistent with the requirement in §745.8993; and (2) outlines the number of training hours a person with a provisional child-care administrator's license must complete when the person is requesting the license status be changed to a full child-care administrator's license, based on how long the provisional license has been in effect.

Proposed new §745.8985 (1) incorporates the requirements in repealed §745.8994, relating to the criteria training must meet to qualify as continuing education hours required to maintain an administrator's license; and (2) adds that the criteria apply to training required to maintain a provisional child-care administrator's license in addition to a full administrator's license.

Proposed new §745.8986 (1) incorporates the requirements in repealed §745.8999, relating to requirements associated with placing a full administrator's license on inactive status; and (2) clarifies that a provisional child-care administrator's license does not qualify for inactive status.

Proposed new §745.8987 (1) incorporates the requirements in repealed §745.9007, relating to the requirements needed to change the status of an administrator's license from inactive to active; and (2) clarifies that these requirements only apply to full administrator licenses.

Proposed new §745.8989 (1) incorporates the requirements in repealed §745.9019, relating to the process for obtaining an additional copy of an administrator's license; and (2) clarifies that an administrator may only request an additional copy if the original copy is lost or destroyed.

Current Division 4, *Renewing Your Administrator License*, is renumbered to Division 5 to accommodate proposed new Division 4, *Maintaining Your Administrator's License*.

The proposed repeal of §745.8991 deletes the rule as no longer necessary because the contents of the rule have been proposed in new §745.8975 with amendments.

The proposed repeal of §745.8994 deletes the rule as no longer necessary because the contents of the rule have been proposed in new §745.8985 with amendments.

The proposed repeal of §745.8999 deletes the rule as no longer necessary because the contents of the rule have been proposed in new §745.8986 with amendments.

The proposed repeal of §745.9007 deletes the rule as no longer necessary because the contents of the rule have been proposed in new §745.8987 with amendments.

The proposed repeal of §745.9019 deletes the rule as no longer necessary because the contents of the rule have been proposed in new §745.8989 with amendments.

The proposed repeal of §745.9021 deletes the rule as no longer necessary because the contents of the rule have been proposed in new §745.8973 with amendments.

The proposed repeal of §745.9023 deletes the rule as no longer necessary because the authority to take actions described in this rule are already covered in Texas Human Resources Code Chapter 43 and in §745.9037 (relating to Under what circum-

stances may Licensing take remedial action against my administrator's license or administrator's license application?).

Current Division 5, Military Members, Military Spouses, and Military Veterans is renumbered to Division 6 to accommodate proposed new Division 4, Maintaining Your Administrator's License.

Current Division 6, Remedial Actions, is renumbered to Division 7 to accommodate proposed new Division 4, Maintaining Your Administrator's License.

The proposed amendment to §745.9031 (1) clarifies the remedial actions in subsection (a) are those that CCR may take against a full administrator's license; and (2) adds subsection (b) to outline that CCR may take remedial action against a provisional child-care administrator's license by denying the administrator a full administrator's license without separately revoking the provisional child-care administrator's license.

The proposed amendment to §745.9037 (1) adds new subsection (b) to clarify that, when CCR denies a full administrator's license for an issue identified in §745.9037(a) for an individual with a provisional child-care administrator's license, (A) the permit is no longer valid and (B) the individual is prohibited from continuing to serve or represent the individual as a licensed administrator pending the outcome of due process; (2) updates renumbering of the remaining subsections accordingly; (3) adds denial of a full child-care administrator's license after issuing a provisional license to the list of circumstances in which an individual must return an administrator's license certificate to CCR; (4) clarifies that CCR may take an action in relation to a rule adopted under Chapter 43, HRC; and (5) updates the language for readability and understanding.

#### FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, enforcing or administering the rules does not have foreseeable implications relating to costs or revenues of state or local governments.

#### GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rules will be in effect:

- (1) the proposed rules will not create or eliminate a government program;
- (2) implementation of the proposed rules will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;
- (4) the proposed rules will not affect fees paid to HHSC;
- (5) the proposed rules will create new rules;
- (6) the proposed rules will expand existing rules;
- (7) the proposed rules will increase the number of individuals subject to the rules; and
- (8) the proposed rules will not affect the state's economy.

#### SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because there is no change to business practices.

#### LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

#### COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules (1) are necessary to protect the health, safety, and welfare of the residents of Texas; (2) do not impose cost on regulated persons; and (3) are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

#### PUBLIC BENEFIT AND COSTS

Rachel Ashworth-Mazerolle, Associate Commissioner for Child Care Regulation, has determined that for each year of the first five years the rules are in effect, the public benefit will be (1) improved oversight of general residential operations, including residential treatment centers, because there will be an increase in the number of licensed child-care administrators available for hire; (2) rules that comply with state law; and (3) rules that reflect current business practice.

Trey Wood has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because application and examination fee to apply for a provisional child-care administrator's license are the same as one would incur when applying for a full child-care administrator's license.

#### TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

#### PUBLIC COMMENT

Questions about the content of this proposal may be directed by email to Jennifer.Ritter@hhs.texas.gov.

Written comments on the proposal may be submitted to Jennifer Ritter, Rules Writer, Child Care Regulation, Texas Health and Human Services Commission, E-550, P.O. Box 149030, Austin, Texas 78714-9030, or by email to CRRRules@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 22R114" in the subject line.

#### DIVISION 1. OVERVIEW OF ADMINISTRATOR'S LICENSING

**26 TAC §§745.8901, 745.8903, 745.8906, 745.8908, 745.8909, 745.8915, 745.8917, 745.8919, 745.8923, 745.8925, 745.8927, 745.8929, 745.8930**

#### STATUTORY AUTHORITY

The amendments and new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies,

and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §43.005 requires HHSC to adopt rules to carry out requirements of HRC Chapter 43.

The amendments and new sections affect Texas Government Code §531.0055 and HRC §43.0081(a)(2) and (e).

§745.8901. *What is a child-care administrator?*

(a) A child-care administrator is a person who:

(1) Supervises and exercises direct control over a general residential ~~[child-care]~~ operation, including ~~[or]~~ a residential treatment center as defined in §745.37(3) of this chapter (relating to What specific types of operations does Licensing regulate?); and

(2) Is responsible for the operation's program ~~[program(s)]~~ and personnel, regardless of whether the person has an ownership interest in the operation or shares duties with anyone.

(b) A child-care administrator may hold a full child-care administrator's license (CCAL) or a provisional CCAL.

§745.8903. *What is a child-placing agency administrator?*

(a) A child-placing agency administrator is a person who:

(1) Supervises and exercises direct control over a child-placing agency, as defined in §745.37(3) ~~[§745.37(3)(D)]~~ of this title (relating to What specific types of operations does Licensing regulate?); and

(2) Is responsible for the agency's program ~~[program(s)]~~ and personnel, regardless of whether the person has an ownership interest in the agency or shares duties with anyone.

(b) A child-placing agency administrator must hold a full CPAAL as required by §745.8909 of this division (relating to When must I have a full Child Placing Agency Administrator's License (CPAAL)?).

§745.8906. *What type of administrator's license may Licensing issue to an applicant?*

We may issue an administrator's license to an applicant as described in the following chart:

Figure: 26 TAC §745.8906

§745.8908. *Where may a person serve as a child-care administrator with a provisional Child-Care Administrator's License (CCAL)?*

A child-care administrator with a provisional CCAL issued under §745.8925 of this division (relating to How do I qualify for a provisional Child-Care Administrator's License (CCAL) if I do not meet the minimum management or supervisory experience required for a full CCAL?) may serve as the administrator at a general residential operation as provided in §748.532 of this title (relating to When can a child-care administrator with a provisional license serve as the administrator for a general residential operation?).

§745.8909. *When must I have a full Child-Placing Agency Administrator's License (CPAAL)?*

You must have a full CPAAL to serve as a child-placing agency administrator. ~~[You do not need this license to serve as the administrator for an independent foster family or group home.]~~

§745.8915. *How do ~~[Do]~~ I qualify for a full Child-Care Administrator's License (CCAL) ~~[CCAL]~~?*

(a) To ~~[You]~~ qualify for a full CCAL<sub>2</sub>, ~~[if]~~ you must:

(1) Pass an examination, which is offered by Licensing, that demonstrates competence in the field of child-care administration;

(2) Be in compliance with Subchapter F of this chapter (relating to Background Checks), including not having a criminal history or child abuse or neglect finding that would prohibit you from working in a residential child-care operation;

(3) Have one year of full-time experience in management or supervision of personnel and programs as specified in §745.8919 of this division (relating to What qualifies as one year of experience in management or supervision of personnel and programs required to qualify for a full Child-Care Administrator's (CCAL) or a full Child-Placing Agency Administrator's License (CPAAL)?); and

(4) Have one of the following qualifications:

(A) A master's or doctor of philosophy degree in social work or other area of study; or

(B) A bachelor's degree and two years' full-time experience in residential child care or a closely related field.

(b) In order to determine whether you meet the educational requirements in subsection (a) of this rule, your application must include a transcript or letter of verification from the appropriate educational institution. Our determination will include whether you completed the required course of study. In order to determine the authenticity of the transcript or the educational institution listed on the transcript or letter of verification, we may:

(1) Contact the educational institution; and

(2) Conduct other research to assist our determination.

§745.8917. *How do ~~[Do]~~ I qualify for a full Child-Placing Agency Administrator's License (CPAAL) ~~[CPAAL]~~?*

(a) To ~~[You]~~ qualify for a full CPAAL<sub>2</sub>, ~~[if]~~ you must:

(1) Pass an examination, which is offered by Licensing, that demonstrates competence in the field of child-placing administration;

(2) Be in compliance with Subchapter F of this chapter (relating to Background Checks), including not having a criminal history or child abuse or neglect finding that would prohibit you from working in a residential child-care operation;

(3) Have one year of full-time experience in management or supervision of personnel and programs as specified in §745.8919 of this division (relating to What qualifies as one year of experience in management or supervision of personnel and programs required to qualify for a full Child-Care Administrator's (CCAL) or a full Child-Placing Agency Administrator's License (CPAAL)?); and

(4) Have one of the following qualifications:

(A) A master's or doctor of philosophy degree in social work or other area of study; or

(B) A bachelor's degree and two years' full-time experience in residential child care or a closely related field.

(b) In order to determine whether you meet the educational requirements in subsection (a) of this section, your application must include a transcript or letter of verification from the appropriate educational institution. Our determination will include whether you completed the required course of study. In order to determine the authenticity of the transcript or the educational institution listed on the transcript or letter of verification, we may:

(1) Contact the educational institution; and

(2) Conduct other research to assist our determination.

§745.8919. What qualifies as one year of experience in management or supervision of personnel and programs required to qualify for a full Child-Care Administrator's License (CCAL) or a full Child-Placing Agency Administrator's License (CPAAL)?

(a) To qualify for a full CCAL, you must substantiate through an employer reference that:

(1) You have completed the one year of full-time experience in management or supervision of residential child-care personnel and programs within the past 10 years;

(2) Your experience was at a general residential operation, residential treatment center, or in a comparable residential operation in which you worked primarily with children;

(3) If you were not solely responsible for implementing the operation's child-care program, that you shared in that responsibility; and

(4) You supervised at least one member of the child-care personnel and your supervision responsibilities included assigning duties, hiring, disciplining, rewarding, approving leave requests, and conducting formal employee evaluations.

(b) To qualify for a full CPAAL, you must substantiate through an employer reference that:

(1) You have completed the one year of full-time experience in management or supervision of child-placing personnel and programs within the past 10 years;

(2) Your experience was at a child-placing agency;

(3) If you were not solely responsible for implementing the agency's child-placing program, that you shared in that responsibility; and

(4) You supervised at least one member of the child-placing agency personnel and your supervision responsibilities included assigning duties, hiring, disciplining, rewarding, approving leave requests, and conducting formal employee evaluations.

(c) Experience as a foster parent, adoptive parent, or any other type of caregiver or staff person in an agency home does not meet the requirements of subsection [subsections] (a) or (b) of this section.

{(d) The Assistant Commissioner for Child-Care Licensing, or his designee, may grant exceptions to this rule on a case-by-case basis, if an applicant is able to provide compelling justification that his experience qualifies him to act as a licensed administrator.}

§745.8923. What if I do not meet the one year of management or supervisory experience required to qualify for a full Child-Care Administrator's License (CCAL) or a full Child-Placing Agency Administrator's License (CPAAL)?

If you do not meet the minimum management or supervisory experience required to qualify for a full CCAL or a full CPAAL in §745.8919 of this division (relating to What qualifies as one year of experience in management or supervision of personnel and programs required for a full Child-Care Administrator's License (CCAL) or full Child-Placing Agency Administrator's License (CPAAL)?), we may take the actions described in the following chart:

Figure: 26 TAC §745.8923

§745.8925. How do I qualify for a provisional Child-Care Administrator's License (CCAL) if I do not meet the minimum management or supervisory experience required for a full CCAL?

If you do not meet the minimum management or supervisory experience in §745.8919(a) of this division (relating to What qualifies as one

year of experience in management or supervision of personnel and programs required for a full Child-Care Administrator's License (CCAL) or full Child-Placing Agency Administrator's License (CPAAL)?), you will qualify for a provisional CCAL if:

(1) You meet the requirements in §745.8915(1), (2), and (4) of this division (relating to How do I qualify for a full Child-Care Administrator's License (CCAL)?);

(2) You have six months of full-time experience in management or supervision of personnel as specified in §745.8927 of this division (relating to What qualifies as six months of experience in management or supervision of personnel required for a provisional Child-Care Administrator's License (CCAL)?); and

(3) We have not denied you a full CCAL for an issue identified in §745.9037(a) of this subchapter (relating to Under what circumstances may Licensing take remedial action against my administrator's license or administrator's license application?) while you had a provisional CCAL.

§745.8927. What qualifies as six months of experience in management or supervision of personnel required for a provisional Child-Care Administrator's License (CCAL)?

To qualify for a provisional CCAL under §745.8925 of this division (relating to How do I qualify for a provisional Child-Care Administrator's License (CCAL) if I do not meet the minimum management or supervisory experience required for a full CCAL?), you must substantiate through an employer reference that:

(1) You have completed six months of full-time experience in management or supervision of personnel within the last 10 years;

(2) Your experience was in a setting where you worked primarily with children; and

(3) You supervised at least one employee and your supervision responsibilities included assigning duties, hiring, disciplining, rewarding, approving leave requests, and conducting formal employee evaluations.

§745.8929. What conduct requirements must a licensed administrator or a person applying to become a licensed administrator follow in relation to the Texas Health and Human Services Commission (HHSC)?

(a) A licensed administrator or applicant for an administrator's license may not attempt to interfere with HHSC's ability to conduct agency business.

(b) Conduct that constitutes an attempt to interfere with HHSC's ability to conduct agency business includes:

(1) Interfering with, coercing, threatening, intimidating, retaliating against, or harassing an HHSC staff member in connection with the person's exercise of HHSC's regulatory duties; or

(2) Engaging in conduct or directing language at HHSC staff that a reasonable person would find to be harassing, intimidating, or threatening to HHSC staff.

§745.8930. What responsibilities does a licensed administrator have when employed as the administrator for an operation?

(a) While serving as the child-care administrator for a general residential operation, a licensed administrator must carry out the responsibilities outlined in §748.535 of this title (relating to What responsibilities must the child-care administrator have?); or

(b) While serving as the child-placing agency administrator for a child-placing agency, a licensed administrator must carry out the responsibilities outlined in §749.635 of this title (relating to What responsibilities must the child-placing agency administrator have?).

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

Filed with the Office of the Secretary of State on May 10, 2023.

TRD-202301711

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: June 25, 2023

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



## DIVISION 2. SUBMITTING YOUR APPLICATION MATERIALS

### 26 TAC §745.8933, §745.8935

#### STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §43.005 requires HHSC to adopt rules to carry out requirements of HRC Chapter 43.

The amendments affect Texas Government Code §531.0055 and HRC §43.0081(a)(2) and (e).

§745.8933. *What must a complete application to become a licensed administrator include?*

(a) A complete application to become a licensed administrator must include:

- (1) A completed application form;
- (2) A transcript or letter of verification from the appropriate educational institutions [institution(s)] to substantiate your educational qualifications;
- (3) Two professional references that verify your professional skills, character, and if applicable, two years of full-time work experience;
- (4) An employer reference that documents your one year of management or [of] supervisory experience as described in §745.8919 of this subchapter (relating to What qualifies as one year of experience in management or supervision of personnel and programs required to qualify for a full Child-Care Administrator's License (CCAL) or a full Child-Placing Agency Administrator's License (CPAAL)?);
- (5) An application fee of \$100;
- (6) A notarized affidavit documenting background information on a form provided by Licensing [DFPS]; and
- (7) A completed background check request form and background check fee.

(b) If you are applying for a full CCAL and do not meet the one year of management or supervisory experience required in §745.8915(3) of this subchapter (relating to How do I qualify for a full Child-Care Administrator's License (CCAL)?), you may qualify for a provisional CCAL. To apply for a provisional CCAL, your application must include an employer reference that describes your six months of

management or supervisory experience as required in §745.8927 of this subchapter (relating to What qualifies as six months of experience in management or supervision of personnel required for a provisional Child Care Administrator's License (CCAL)?).

(c) [(b)] A complete application submitted by any applicant who applies for an administrator's license under §745.8913(a) of this subchapter (relating to Can my licensure in another state qualify me for an administrator's license?) must also include, as applicable:

(1) Documentation related to each administrator's license currently held outside of Texas; and

(2) A copy of the regulations pertaining to the current out-of-state administrator's license.

(d) [(e)] A military spouse with a license in another state seeking to act as an administrator must complete the application as required by §745.9030 of this subchapter (relating to When may a military spouse with a license in another state act as an administrator without a license under this subchapter?).

(e) [(d)] Your application is incomplete if you fail to complete any requirement of this section, as applicable, including inadequate documentation of your qualifications.

§745.8935. *How do I apply for both a full Child-Care Administrator's License (CCAL) and a full Child-Placing Agency Administrator's License (CPAAL)?*

(a) To apply for both licenses simultaneously, you must submit:

- (1) An application fee for each license; and
- (2) All application materials required by §745.8933 of this division [title] (relating to What does a complete application to become a licensed administrator include?), except that you must have two employee references, one verifying your supervisory experience in a general residential operation or a residential treatment center, and the other verifying your supervisory experience in a child-placing agency.

(b) To apply for one of the license types after you already have the other type of license, you must submit an:

- (1) Application fee;
- (2) Updated complete application form; and
- (3) Employee reference verifying your required supervisory experience related to the license for which you are applying, as required by [(see) §745.8919 of this subchapter [title] (relating to What qualifies as one year of experience in management or supervision of personnel and programs required for a full Child-Care Administrator's License (CCAL) or a full Child-Placing Agency Administrator's License (CPAAL)?).

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

Filed with the Office of the Secretary of State on May 10, 2023.

TRD-202301712

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: June 25, 2023

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



**DIVISION 4. MAINTAINING YOUR ADMINISTRATOR'S LICENSE [RENEWING YOUR ADMINISTRATOR LICENSE]**

**26 TAC §§745.8973, 745.8975 - 745.8977, 745.8979, 745.8981 - 745.8983, 745.8985 - 745.8987, 745.8989**

**STATUTORY AUTHORITY**

The new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §43.005 requires HHSC to adopt rules to carry out requirements of HRC Chapter 43.

The new sections affect Texas Government Code §531.0055 and HRC §43.0081(a)(2) and (e).

*§745.8973. What information must I report to Licensing?*

(a) You must notify us in writing within 30 days after:

- (1) A change of your mailing address, place of employment, or business or home phone number;
- (2) A change in your legal name;
- (3) The filing of a criminal case against you;
- (4) A criminal conviction against you, other than a Class C misdemeanor traffic offense;
- (5) The filing of a civil lawsuit against you that relates to your role as a licensed administrator;
- (6) The settlement of or judgment rendered in a civil lawsuit filed against you that relates to your role as a licensed administrator; or
- (7) A complaint against, an investigation involving, or an enforcement or legal action against you that you are aware of related to abuse or neglect or another licensing or certification body regarding health, mental health, or child-care services.

(b) We may use information received under this section when determining whether you performed your duties as an administrator in a negligent manner.

*§745.8975. How long is a full Child-Care Administrator's License (CCAL) or a full Child-Placing Agency Administrator's License (CPAAL) valid?*

A full CCAL or full CPAAL is valid for two years. For your full license to continue to be valid, you must renew it every two years before the expiration date.

*§745.8976. How long is a provisional Child-Care Administrator's License (CCAL) valid?*

A provisional CCAL is valid for the timeframe listed in the following chart:

Figure: 26 TAC §745.8976

*§745.8977. If I have a provisional Child-Care Administrator's License (CCAL), when and how do I request to change the status of my administrator's license from a provisional CCAL to a full CCAL?*

(a) If you have a provisional CCAL issued under §745.8925 of this subchapter (relating to How do I qualify for a provisional Child-Care Administrator's License (CCAL) if I do not meet the minimum management or supervisory experience required for a full CCAL?), you

may request to change the status of your administrator's license from a provisional CCAL to a full CCAL when you meet the one year of management or supervisory experience required in §745.8915(3) of this subchapter (relating to How do I qualify for a full Child-Care Administrator's License (CCAL)?) before your provisional CCAL expires.

(b) To change the status of your child-care administrator's license from provisional CCAL to full CCAL, you must submit to us before the date your provisional CCAL expires:

(1) A completed Form 3014, Administrator License - Renewal or Status Change request;

(2) Evidence that you have completed any required continuing education hours as required in §745.8983(b) of this division (relating to How many hours of continuing education must I complete to maintain my administrator's license?); and

(3) An employer reference that substantiates you meet the one year of management or supervisory experience required for a full CCAL in §745.8919(a) of this subchapter (relating to What qualifies as one year of experience in management or supervision or personnel required for a full Child-Care Administrator's License (CCAL) or Child-Placing Agency Administrator's License (CPAAL)?).

(c) We will not change your status to a full CCAL if we have a reason to deny you a full CCAL for an issue identified in §745.9037(a) of this subchapter (relating to Under what circumstances may Licensing take remedial action against my administrator's license or administrator's license application?).

(d) If you do not submit a request to change the status of your provisional CCAL to a full CCAL before the expiration date listed on your permit:

(1) Your provisional CCAL will expire; and

(2) You must reapply for another administrator's license.

*§745.8979. What if I am unable to meet the minimum management or supervisory requirements before my provisional Child-Care Administrator's License (CCAL) expires?*

Your provisional CCAL will expire if you are not able to meet the one year of management or supervisory experience required in §745.8915(3) of this subchapter (relating to How do I qualify for a full Child-Care Administrator's License (CCAL)?) to qualify for a full CCAL before the expiration date on your provisional CCAL.

*§745.8981. What happens if my provisional Child-Care Administrator's License (CCAL) expires?*

(a) If your provisional CCAL expires, you must:

(1) Cease acting as and representing yourself as a licensed child-care administrator; and

(2) Return your provisional CCAL certificate to us.

(b) To be eligible to receive another provisional CCAL, you must submit a new application for a full CCAL and meet the requirements for a complete application in §745.8933 of this subchapter (relating to What must a complete application to become a licensed administrator include?).

(c) We will not accept a new application for a full CCAL from you if you have not returned the expired provisional CCAL certificate to us.

*§745.8982. May I continue to serve as a child-care administrator if my provisional Child-Care Administrator's License (CCAL) expires while Licensing processes my request to change the status to a full CCAL?*



You may continue to serve as a child-care administrator if your provisional CCAL expires while we process your request to change the status to a full CCAL if you:

(1) Request the change of status under §745.8977 of this division (relating to If I have a provisional Child-Care Administrator's License (CCAL), when and how do I request to change the status of my administrator's license from a provisional CCAL to a full CCAL?);

(2) Submit your request at least 15 days before the expiration date listed on your permit; and

(3) Are serving as a child-care administrator for an operation when you submit your request.

§745.8983. How many hours of continuing education must I complete to maintain my administrator's license?

(a) To maintain your full administrator's license, you must complete 15 clock hours of continuing education each year.

(b) If you have a provisional Child-Care Administrator's License (CCAL) issued under §745.8925 of this subchapter (relating to how do I qualify for a provisional Child-Care Administrator's License (CCAL) if I do not meet the management or supervisory experience required for a full CCAL?), you must complete mandatory continuing education hours by the time you request to change the status of your provisional CCAL to a full CCAL. The number of clock hours of mandatory continuing education varies depending on how long the provisional CCAL has been in effect at the time you request to change the status of your provisional CCAL. The number of clock hours of continuing education required is described in the following chart:

Figure: 26 TAC §745.8983(b)

§745.8985. What training qualifies as continuing education I need to maintain my administrator's license?

(a) To meet the continuing education requirements for your provisional Child-Care Administrator's License or to renew your full administrator's license, you may only count training that:

(1) Is directly relevant to the type of administrator's license that you have; and

(2) You completed as an attendee. You may not count training where you were the presenter.

(b) If you have taken a training more than once during the two-year period since your license was issued or last renewed, you may only count the training one time.

§745.8986. When may I request Licensing to place my full administrator's license on inactive status?

(a) You may request us to put your full administrator's license on inactive status if you are not working as an administrator.

(b) While your full administrator's license is on inactive status:

(1) You may not serve as a licensed administrator;

(2) You are not required to obtain continuing education;

(3) You must renew your administrator's license when the renewal is due; and

(4) We may still take remedial action against your administrator's license as described in §745.9037 of this subchapter (relating to Under what circumstances may Licensing take remedial action against my administrator's license or administrator's license application?).

(c) We may not make a provisional Child-Care Administrator's License inactive.

§745.8987. How do I change my full administrator's license status from inactive to active?

(a) To change the status of your inactive full administrator's license to active when renewing your license, you must submit to us:

(1) A completed Form 3014, Administrator License - Renewal or Status Change request;

(2) A \$50 renewal fee;

(3) If your administrator's license was active at any point during the renewal period, documentation of continuing education training completed; and

(4) A completed background check form and fee.

(b) To change the status of your inactive full administrator's license to active in the middle of a renewal period, you must submit to us a:

(1) Completed Form 3014, Administrator License - Renewal or Status Change request;

(2) \$25 change of status fee; and

(3) Completed background check form and fee.

§745.8989. How do I get a replacement copy of my current administrator's license if the original is lost or destroyed?

(a) You must send us your request in writing along with a \$5 fee for the replacement copy of your current administrator's license. Your request must include:

(1) A statement detailing the loss or destruction of your original license; or

(2) Be accompanied by your damaged license.

(b) Fraud or deceit related to a request for an additional copy of your license may result in remedial action as described in §745.9037 of this subchapter (relating to Under what circumstances may Licensing take remedial action against my administrator's license or administrator's license application?).

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

Filed with the Office of the Secretary of State on May 10, 2023.

TRD-202301713

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: June 25, 2023

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



## DIVISION 4. RENEWING YOUR ADMINISTRATOR LICENSE

**26 TAC §§745.8991, 745.8994, 745.8999, 745.9007, 745.9019, 745.9021, 745.9023**

### STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective

Services to HHSC. In addition, HRC §43.005 requires HHSC to adopt rules to carry out requirements of HRC Chapter 43.

The repeals affect Texas Government Code §531.0055 and HRC §43.0081(a)(2) and (e).

§745.8991. *Can my administrator's license remain valid for an indefinite period of time?*

§745.8994. *What training qualifies as continuing education for renewal of my administrator's license?*

§745.8999. *If I want to maintain my administrator's license even though I am not working as an administrator, must I satisfy the continuing education requirements?*

§745.9007. *How do I change my administrator's license status from inactive to active?*

§745.9019. *How do I get an additional copy of my current administrator's license?*

§745.9021. *What information must I report to DFPS?*

§745.9023. *What will happen if I do not make a report as required by §745.9021 of this title (relating to What information must I report to DFPS?)?*

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

Filed with the Office of the Secretary of State on May 10, 2023.

TRD-202301714

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: June 25, 2023

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



## DIVISION 7. REMEDIAL ACTIONS

### 26 TAC §745.9031, §745.9037

#### STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §43.005 requires HHSC to adopt rules to carry out requirements of HRC Chapter 43.

The amendments affect Texas Government Code §531.0055 and HRC §43.0081(a)(2) and (e).

§745.9031. *What remedial actions can Licensing take against my administrator's license?*

(a) We may take the following actions against your full administrator's license:

Figure: 26 TAC §745.9031(a)

~~[Figure: 40 TAC §745.9031]~~

(b) If you have a provisional Child-Care Administrator's License (CCAL) we may deny you a full CCAL. We do not have to separately revoke your provisional CCAL.

§745.9037. *Under what circumstances may Licensing take remedial action against my administrator's license or administrator's license application?*

(a) We may take remedial action against your administrator's license or administrator's license application if you:

(1) Violate Chapter 43 of the Human Resources Code (HRC) or a [~~Licensing~~] rule adopted under that chapter [~~or minimum standard~~];

(2) Circumvent or attempt to circumvent the requirements of Chapter 43 of the HRC or a [~~Licensing~~] rule adopted under that chapter;

(3) Engage in fraud or deceit related to the requirements of Chapter 43 of the HRC or a [~~Licensing~~] rule adopted under that chapter;

(4) Provide false or misleading information to us during the application or renewal process for your own or someone else's application or license;

(5) Make a statement about a material fact during the license application or renewal process that you know or should know is false;

(6) Do not comply with Subchapter F of this chapter (relating to Background Checks);

(7) Use or abuse drugs or alcohol in a manner that jeopardizes your ability to function as an administrator;

(8) Perform your duties as an administrator in a negligent manner; or

(9) Engage in conduct that makes you ineligible to:

(A) Receive a permit under HRC §42.072; or

(B) Be employed as a controlling person or serve in that capacity in a facility or family home under HRC §42.062.

(b) If we deny you a full Child-Care Administrator's License (CCAL) for an issue identified in subsection (a) of this section while you have a provisional CCAL, your provisional CCAL is no longer valid. You may not continue serving or representing yourself as a licensed child-care administrator pending the outcome of due process.

(c) [~~(b)~~] If we revoke your administrator's license, you are not eligible to apply for another administrator's license for five years after the date the license was revoked.

(d) [~~(c)~~] If you have both a Child Care Administrator's License and a Child-Placing Agency Administrator's License, remedial action may be taken against both licenses. If we take remedial action against both of your licenses, you will be notified that the action applies to both licenses. In such a case, any administrative review or due process hearing for both licenses may be combined at our discretion.

(e) [~~(d)~~] If we revoke your full administrator's license, deny you a full CCAL after issuing you a provisional CCAL, refuse to renew [~~or do not renew~~] your full administrator's license, or you do not meet the renewal requirements, you must return your license certificate to us.

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

Filed with the Office of the Secretary of State on May 10, 2023.

TRD-202301715



## CHAPTER 748. MINIMUM STANDARDS FOR GENERAL RESIDENTIAL OPERATIONS

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §748.153 and §748.533; and new §748.154 and §748.532, in Title 26, Texas Administrative Code, Chapter 748, Minimum Standards for General Residential Operations.

### BACKGROUND AND PURPOSE

The proposed rule changes implement Senate Bill (S.B.) 1896, 87th Legislature, Regular Session, 2021, as it relates to SECTIONS 22 and 25 of the bill.

SECTION 22 added Texas Human Resources Code (HRC) §42.080 to prohibit HHSC Child Care Regulation (CCR) from issuing a citation or taking any other disciplinary action against a general residential operation for failing to employ a licensed administrator as long the operation or agency has been without a licensed administrator for fewer than 60 days and makes substantial efforts to hire a qualified administrator.

SECTION 25 amended HRC §43.0081(a) to add (a)(2)(A) and (B) to allow CCR to issue a provisional child-care administrator's license when an applicant does not meet the one-year supervisory experience requirement provided in HRC §43.004(a)(4), but otherwise qualifies for a license so long as the applicant complies with any additional requirements established in rule. SECTION 25 also amended HRC §43.0081 by adding subsection (e), to allow the executive commissioner to establish in rule any additional requirements that apply when a provisional child-care administrator's license is issued under HRC §43.0081(a)(2)(A).

### SECTION-BY-SECTION SUMMARY

The proposed amendment to §748.153 adds a requirement for a general residential operation to notify CCR as soon as possible, but no later than two days, after a licensed child-care administrator position becomes vacant.

Proposed new §748.154 allows a general residential operation 60 days from the date that a licensed child-care administrator position becomes vacant to obtain a new child-care administrator before CCR will cite for not having an administrator.

Proposed new §748.532 allows a general residential operation to hire an administrator with a provisional child-care administrator's license, as long as the operation is not (1) on a voluntary plan of action; (2) on heightened monitoring; (3) on corrective action; (4) subject to an adverse action; or (5) pending due process for a corrective or an adverse action.

The proposed amendment to §748.533 (1) clarifies that a child-care administrator may serve as an administrator at two residential child-care operations when the second operation is a child-placing agency as long as the administrator holds a full child-placing agency administrator's license; (2) adds subsection (c) to prohibit a child-care administrator with a provisional child-care administrator's license from serving as a licensed administrator at more than one residential child-care operation; and

(3) updates the rule to remove the reference to residential treatment centers (RTCs) since RTCs are a type of general residential operation and are referenced in the rule.

### FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, enforcing or administering the rules does not have foreseeable implications relating to costs or revenues of state or local governments.

### GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rules will be in effect:

- (1) the proposed rules will not create or eliminate a government program;
- (2) implementation of the proposed rules will not affect the number of HHSC; employee positions;
- (3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;
- (4) the proposed rules will not affect fees paid to HHSC;
- (5) the proposed rules will create new rules;
- (6) the proposed rules will expand existing rules;
- (7) the proposed rules will not change the number of individuals subject to the rules; and
- (8) the proposed rules will not affect the state's economy.

### SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because there is no change to business practices.

### LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

### COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules (1) are necessary to protect the health, safety, and welfare of the residents of Texas; (2) do not impose a cost on regulated persons; and (3) are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

### PUBLIC BENEFIT AND COSTS

Rachel Ashworth-Mazerolle, Associate Commissioner for Child Care Regulation, has determined that for each year of the first five years the rules are in effect, the public benefit will be rules that comply with state law.

Trey Wood has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed because there is no cost to comply.

### TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

### PUBLIC COMMENT

Questions about the content of this proposal may be directed by email to Jennifer.Ritter@hhs.texas.gov.

Written comments on the proposal may be submitted to Jennifer Ritter, Rules Writer, Child Care Regulation, Texas Health and Human Services Commission, E-550, P.O. Box 149030, Austin, Texas 78714-9030, or by email to CCRRules@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When faxing or emailing comments, please indicate "Comments on Proposed Rule 22R114" in the subject line.

## SUBCHAPTER C. ORGANIZATION AND ADMINISTRATION

### DIVISION 2. OPERATIONAL RESPONSIBILITIES AND NOTIFICATIONS

#### 26 TAC §748.153, §748.154

##### STATUTORY AUTHORITY

The amendment and new section are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC 42, and HRC §43.005 requires HHSC to adopt rules to carry out requirements of HRC Chapter 43.

The amendment and new section affect Texas Government Code §531.0055 and HRC §42.080 and §43.0081(e).

*§748.153. What changes must I notify Licensing about regarding my operation?*

You must provide written notification to your Licensing Representative:

(1) As soon as possible, but at least 30 days before you:

(A) Change the legal structure of your operation or your governing body, if applicable;

(B) Move your operation to another location as required in §745.435 of this title (relating to What must I do if I relocate my operation after I receive my license or certification?); or

(C) Change your operating hours;

(2) As soon as possible, but at least 15 days before:

(A) You make changes to the policies and procedures required in §748.103(b) of this subchapter [title] (relating to What policies and procedures must I submit for Licensing's approval as part of the application process?);

(B) Changes are made to the operation's floor plan showing the dimensions and the purpose of all rooms and specifying where children and caregivers, if applicable, will sleep; and

(C) Construction begins on adding a swimming pool or other permanent body of water;

(3) As soon as possible, but no later than two days after:

(A) You change your child-care administrator, or your child-care administrator position becomes vacant;

(B) A new individual becomes a controlling person at your operation;

(C) An individual ceases to be a controlling person at your operation; or

(D) There is a significant change in the information we maintain about a controlling person, such as a name change or mailing address change; and

(4) Within 24 hours of the child's placement, if you provide emergency care services and exceed capacity according to §748.155(b) of this division [title] (relating to May I exceed my operation's capacity?).

*§748.154. What is my timeframe for filling my child-care administrator position if it becomes vacant while I do not have a back-up administrator to carry out the administrator duties?*

If you do not have a back-up child-care administrator when your administrator position becomes vacant, as required in §748.535 of this chapter (relating to What responsibilities must the child-care administrator have?), you have 60 days from the date the position becomes vacant to obtain a licensed child-care administrator before we can cite you for not having an administrator.

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

Filed with the Office of the Secretary of State on May 10, 2023.

TRD-202301716

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: June 25, 2023

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



## SUBCHAPTER E. PERSONNEL

### DIVISION 2. CHILD-CARE ADMINISTRATOR

#### 26 TAC §748.532, §748.533

##### STATUTORY AUTHORITY

The amendment and new section are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC 42, and HRC §43.005 requires HHSC to adopt rules to carry out requirements of HRC Chapter 43.

The amendment and new section affect Texas Government Code §531.0055 and HRC §42.080 and §43.0081(e).

*§748.532. When can a child-care administrator with a provisional license serve as the administrator for a general residential operation?*

A child-care administrator with a provisional license may serve as the child-care administrator at a general residential operation if, at the time the administrator is hired, the operation is not:

- (1) On a voluntary plan of action;
- (2) On heightened monitoring;
- (3) On corrective action;
- (4) Subject to an adverse action; or
- (5) Pending due process for a corrective or an adverse action.

§748.533. *Can a child-care administrator be an administrator for two residential child-care operations?*

(a) Except as provided in subsections (b) and (c) [subsection (b)] of this section, a child-care administrator can be an administrator for two residential child-care operations, including a child-placing agency, if:

- (1) Both operations are in good standing with Licensing;
- (2) The size and scope of the operations are manageable by one person, which is clarified in the written professional staffing plans;
- (3) The child-placing agency, if applicable, is not managing more than 25 foster homes;
- (4) The person also holds a valid full Child-Placing Agency Administrator License, if the second operation is a child-placing agency [applicable]; and

(5) The general residential operations [and/or RTCs] are contiguous. A child-placing agency does not have to be contiguous.

(b) An operation that provides emergency care services must designate an employee in the staffing plan that is solely responsible for administering those services. This employee must have the experience and background to be able to perform the child-care administrator responsibilities. See §748.535 of this title (relating to What responsibilities must the child-care administrator have?). A designated employee, other than the child-care administrator for the operation, is not required if the emergency care services program has a capacity of not more than 30 children.

(c) A child-care administrator with a provisional child-care administrator's license may only serve as a licensed administrator at one residential child-care operation.

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

Filed with the Office of the Secretary of State on May 10, 2023.

TRD-202301717

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: June 25, 2023

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



## CHAPTER 749. MINIMUM STANDARDS FOR CHILD-PLACING AGENCIES

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to

§749.153 and §749.633; and new §749.154, in Title 26, Texas Administrative Code, Chapter 749, Minimum Standards for Child-Placing Agencies.

### BACKGROUND AND PURPOSE

The proposed rule changes implement Senate Bill (S.B.) 1896, 87th Legislature, Regular Session, 2021, as it relates to SECTIONS 22 and 25 of the bill.

SECTION 22 added Texas Human Resources Code (HRC) §42.080 to prohibit HHSC Child Care Regulation (CCR) from issuing a citation or taking any other disciplinary action against a child-placing agency for failing to employ a licensed administrator as long the operation or agency has been without a licensed administrator for fewer than 60 days and makes substantial efforts to hire a qualified administrator.

SECTION 25 amended HRC §43.0081(a) to add (a)(2)(A) and (B) to allow CCR to issue a provisional child-care administrator's license when an applicant does not meet the one-year supervisory experience requirement provided in HRC §43.004(a)(4), but otherwise qualifies for a license so long as the applicant complies with any additional requirements established in rule. SECTION 25 also amended HRC §43.0081 by adding subsection (e), to allow the executive commissioner to establish in rule any additional requirements that apply when a provisional child-care administrator's license is issued under HRC §43.0081(a)(2)(A).

### SECTION-BY-SECTION SUMMARY

The proposed amendment to §749.153 requires a child-placing agency to notify CCR as soon as possible, but no later than two days, after a child-placing administrator position becomes vacant.

Proposed new §749.154 allows a child-placing agency 60 days from the date that a licensed administrator position becomes vacant to obtain a new child-placing agency administrator before CCR will cite for not having an administrator.

The proposed amendment to §749.633 clarifies that a child-placing agency administrator may serve as an administrator at two residential child-care operations when the second operation is a general residential operation as long as the administrator also holds a full child-care administrator's license.

### FISCAL NOTE

Trey Wood, Chief Financial officer, has determined that for each year of the first five years that the rules will be in effect, enforcing or administering the rules does not have foreseeable implications relating to costs or revenues of state or local governments.

### GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rules will be in effect:

- (1) the proposed rules will not create or eliminate a government program;
- (2) implementation of the proposed rules will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;
- (4) the proposed rules will not affect fees paid to HHSC;
- (5) the proposed rules will create a new rule;
- (6) the proposed rules will expand existing rules;

(7) the proposed rules will not change the number of individuals subject to the rules; and

(8) the proposed rules will not affect the state's economy.

#### SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because there is no change to business practices.

#### LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

#### COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules (1) are necessary to protect the health, safety, and welfare of the residents of Texas; (2) do not impose a cost on regulated persons; and (3) are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

#### PUBLIC BENEFIT AND COSTS

Rachel Ashworth-Mazerolle, Associate Commissioner for Child Care Regulation, has determined that for each year of the first five years the rules are in effect the public benefit will be rules that comply with state law.

Trey Wood has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because there is no cost to comply.

#### TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

#### PUBLIC COMMENT

Questions about the content of this proposal may be directed by email to Jennifer.Ritter@hhs.texas.gov.

Written comments on the proposal may be submitted to Jennifer Ritter, Rules Writer, Child Care Regulation, Texas Health and Human Services Commission, E-550, P.O. Box 149030, Austin, Texas 78714-9030, or by email to CRRRules@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When faxing or emailing comments, please indicate "Comments on Proposed Rule 22R114" in the subject line.

## SUBCHAPTER C. ORGANIZATION AND ADMINISTRATION

### DIVISION 2. OPERATIONAL RESPONSIBILITIES AND NOTIFICATIONS

## 26 TAC §749.153, §749.154

### STATUTORY AUTHORITY

The amendment and new section are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42, and HRC §43.005 requires HHSC to adopt rules to carry out requirements of HRC Chapter 43.

The amendment and new section affect Texas Government Code §531.0055 and HRC §42.080 and §43.0081(e).

*§749.153. What changes must I notify Licensing about regarding my child-placing agency?*

(a) You must provide written notification to your Licensing Representative:

(1) As soon as possible, but at least 30 days before you:

(A) Change the legal structure of your agency or your governing body, if applicable;

(B) Move your agency to another location as required in §745.435 of this title (relating to What must I do if I relocate my operation after I receive my license or certification?);

(C) Open a branch office; or

(D) Change your agency's or a branch office's hours of operation;

(2) As soon as possible, but at least 15 days before you:

(A) Make changes to the plans required in §749.101(3) and (4) of this subchapter [~~chapter~~] (relating to What plans must I submit for Licensing's approval as part of the application process?); or

(B) Make changes to the policies and procedures required in §749.103(b) of this subchapter [~~chapter~~] (relating to What policies and procedures must I submit for Licensing's approval as part of the application process?);

(3) As soon as possible, but no later than two days after:

(A) You change your child-placing agency administrator, or your child-placing agency administrator position becomes vacant;

(B) A new individual becomes a controlling person at your child-placing agency;

(C) An individual ceases to be a controlling person at your child-placing agency; or

(D) There is a significant change in the information we maintain about a controlling person, such as a name change or mailing address change; and

(4) About a foster home's verification status as described in §749.2489 of this chapter (relating to What information must I submit to Licensing about a foster home's verification status?).

(b) You must report to the Texas Abuse and Neglect Hotline as soon as you become aware of any foster or adoptive placements that appear to have been made by someone other than the child's parents or a child-placing agency.

§749.154. What is my timeframe for filling my child-placing agency administrator position if it becomes vacant while I do not have a back-up administrator to carry out the administrator duties?

If you do not have a back-up child-placing agency administrator when your administrator position becomes vacant, to carry out the duties in §749.635 of this chapter (relating to What responsibilities must the child-placing agency administrator have?), you have 60 days from the date the position becomes vacant to obtain a licensed child-care administrator before we can cite you for not having an administrator.

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

Filed with the Office of the Secretary of State on May 10, 2023.

TRD-202301718

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: June 25, 2023

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



## SUBCHAPTER E. AGENCY STAFF AND CAREGIVERS

### DIVISION 2. CHILD-PLACING AGENCY ADMINISTRATOR

#### 26 TAC §749.633

##### STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42, and HRC §43.005 requires HHSC to adopt rules to carry out requirements of HRC Chapter 43.

The amendment affects Texas Government Code §531.0055 and HRC §42.080 and §43.0081(e).

*§749.633. Can a child-placing agency administrator be an administrator for two residential child-care operations?*

A child-placing agency administrator can be an administrator for two residential child-care operations, including a general residential operation or residential treatment center, if:

- (1) Both operations are in good standing with Licensing;
- (2) The size and scope of the operations are manageable by one person, which is clarified in the written professional staffing plans;
- (3) The person also holds a valid full Child-Care Administrator License, if the second operation is a general residential operation [applicable]; and
- (4) At least one child-placing agency is managing 25 or fewer foster homes.

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

Filed with the Office of the Secretary of State on May 10, 2023.

TRD-202301719

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: June 25, 2023

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



## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### PART 13. TEXAS COMMISSION ON FIRE PROTECTION

#### CHAPTER 463. ADVISORY COMMITTEES, PRACTICE AND PROCEDURES

##### 37 TAC §§463.1, 463.3, 463.5, 463.7, 463.9, 463.11, 463.13, 463.15, 463.17

The Texas Commission on Fire Protection (the commission) proposes new Chapter 463, Advisory Committees, concerning, Practice and Procedures, §463.1 Objectives, §463.3, General, §463.5, Eligibility, §463.7, Terms, §463.9, Meetings, §463.11, Limitation of Powers, §463.13, Testimony, §463.15, Expulsion, §463.17, Abolishment Date.

##### BACKGROUND AND PURPOSE

The purpose of the proposed new chapter is to establish rules governing the Commission's advisory committees under Texas Government Code §419.908(f). This new chapter and rules implement a Sunset Commission's recommendation and Senate Bill 709 as passed by the 87th legislature.

##### FISCAL NOTE IMPACT ON STATE AND LOCAL GOVERNMENT

Michael Wisko, Agency Chief, has determined that for each year of the first five-year period, the proposed rules are in effect, there will be no significant fiscal impact to state government or local governments as a result of enforcing or administering these rules as proposed under Texas Government Code §2001.024(a)(4).

##### PUBLIC BENEFIT AND COST NOTE

Mr. Wisko has also determined under Texas Government Code §2001.024(a)(5) that for each year of the first five years the rules are in effect the public benefit will be accurate, clear, and concise rules.

##### LOCAL ECONOMY IMPACT STATEMENT

There is no anticipated effect on the local economy for the first five years that the proposed rules are in effect; therefore, no local employment impact statement is required under Texas Government Code §2001.022 and 2001.024(a)(6).

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

Mr. Wisko has determined there will be no impact on rural communities, small businesses, or micro-businesses as a result of implementing these rules. Therefore, no economic impact statement or regulatory flexibility analysis, as provided by Texas Government Code §2006.002, is required.

## GOVERNMENT GROWTH IMPACT STATEMENT

The agency has determined under Texas Government Code §2006.0221 that during the first five years the rules are in effect:

- (1) the rules will not create or eliminate a government program;
- (2) the rules will not create or eliminate any existing employee positions;
- (3) the rules will not require an increase or decrease in future legislative appropriation;
- (4) the rules will not result in a decrease in fees paid to the agency;
- (5) the rules will not create a new regulation;
- (6) the rules will not expand a regulation;
- (7) the rules will not increase the number of individuals subject to the rule; and
- (8) the rules are not anticipated to have an adverse impact on the state's economy.

## TAKINGS IMPACT ASSESSMENT

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

## COSTS TO REGULATED PERSONS

The proposed rules do not impose a cost on regulated persons, including another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code §2001.0045.

## ENVIRONMENTAL IMPACT STATEMENT

The commission has determined that the proposed rules do not require an environmental impact analysis because the rules are not major environmental rules under Texas Government Code §2001.0225.

## REQUEST FOR PUBLIC COMMENT

Comments regarding the proposed rules may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register*, to Michael Wisko, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768 or e-mailed to amanda.khan@tcfp.texas.gov.

## STATUTORY AUTHORITY

The new chapter is proposed under Texas Government Code §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties, and may appoint advisory committees to assist the commission in the performance of its duties.

## CROSS-REFERENCE TO STATUTE

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

### §463.1. Objective.

(a) The Texas Commission on Fire Protection (TCFP) is organized to aid in the protection of the lives and property of Texas citizens through the development and enforcement of recognized professional standards for individuals and the fire service. To achieve the

goals of TCFP, each committee will evaluate, make recommendations, and issue reports to the Commission on any issue in the committee's purview. Committees shall represent TCFP in advocacy for or opposition to projects and issues upon the specific authority of the Commission or such authority as may be clearly granted upon general powers delegated by the Commission to that committee.

(b) The Commission has established a Firefighter Advisory Committee, Curriculum and Testing Committee, and Health and Wellness Committee in compliance with Texas Government Code §2110.008 Duration of Advisory Committees. These committees will continue for four years from the date of creation and may be continued following a vote of the commission, to extend each of the established committees. The commission may create short-term Ad Hoc working groups for specific purposes in accordance with this rule. The committee's purpose, eligibility, terms, and meeting procedures are identified in this rule.

### §463.3. General.

(a) The Commission may convene committees that are deemed to be in the best interest of the TCFP and its mission.

(b) All committees shall be subject to and governed by these bylaws.

(c) The approved committee shall elect a member of their committee as the chairperson who may remain in this position for two (2) years before reappointment or until such time as a new person is appointed as the Chairperson.

(d) Committees should be composed of a reasonable odd number of members, with a minimum of nine and a maximum of 15 members.

(e) The committees shall meet at least twice each calendar year at the call of either the committee chairperson or the Commission.

(f) All committees shall be reviewed for relevance by the Commission every odd year and will either be renewed or discontinued.

(g) Committee Chairperson may form ad hoc working groups when in the judgment of the Chair, it will enhance or provide guidance for a specific purpose and time limit/period. The Committee Chairperson may determine working group selection, but membership is limited only to the ad hoc and will disband once the purpose has been met.

(h) Annually each Committee Chairperson will present to the Commission an end-of-year status report.

(i) Meetings to deliberate a test item or information related to a test item do not require an open meeting per Texas Government Code §551.088.

### §463.5. Eligibility.

(a) Any person, association, corporation, partnership, or other entity having an interest in the above-recited objectives shall be eligible for membership.

(b) Committee composition should have representatives from each fire protection stakeholder group, with consideration of department size, region, and mission.

(c) Vacant positions will be announced. Interested, qualified candidates may apply for committee appointments. A candidate selection committee may be formed to assist in the application process and may make recommendations for appointments. The list of candidates will then be presented to the Commission during their next meeting for consideration. The Commission will appoint committee members and select alternates at the same time in the event committee members cannot fulfill their tenure and/or replacement members are needed. Terms



shall begin immediately following Commission approval. Interim appointments may be made to complete vacated, unexpired terms.

§463.7. Terms.

Committee members shall be appointed to serve six-year terms of office, with the intent to stagger and ensure continuity of membership from year to year. Committee members serve six-year terms and may serve consecutively; however, after a second six-year term, the member will not be eligible for another term until after a lapse of two years.

§463.9. Meetings.

(a) Committee Chairperson or a designated Committee member when the Chairperson is unavailable, shall conduct all committee meetings.

(b) Committee meetings should be held in Austin, Texas. Committee meetings cannot be held outside of the state of Texas.

(c) Committees shall post meeting times, locations, and agendas with the Secretary of State in accordance with the Open Meetings Act, Texas Government Code Chapter 551. Committees shall keep minutes in accordance with the Open Meetings Act. When feasible, committees may allow members of the public to participate in a meeting from a remote location by videoconference call pursuant to Texas Government Code §551.127(k) to encourage access and participation throughout the state.

(d) Committee Chairpersons may limit discussion times if, in the opinion of the Chairperson, it is warranted. Participants who fail to follow the above rules may be subject to removal from the meeting.

(e) Committees may meet by videoconference calls, but only if they follow requirements of Texas Government Code §551.127. The committee must still have a physical location for the public to attend. The member presiding over the meeting must attend in person, while other members and staff may attend remotely.

§463.11. Limitation of Powers.

No action by any Committee Chairperson or its members shall be binding upon, or constitute an expression of, the policy of TCFP until it has been approved or ratified by the Commission. It shall be the function of the committees to evaluate, make recommendations, and report only to the Commission. Committees shall represent TCFP in advocacy for or opposition to projects and issues upon the specific authority of the Commission or such authority as may be clearly granted upon general powers delegated by the Commission to that committee.

§463.13. Testimony.

Once committee action has been approved by the Commission, testimony and/or presentations may be given and made before stakeholders, governmental agencies, or any other entity as deemed appropriate by the Chairperson of the Commission.

§463.15. Expulsion.

After written notice and a hearing before the Commission, any Committee member may be expelled from a committee for conduct that is unbecoming or prejudicial to the aims or repute of TCFP or expelled for lack of attendance, unless excused, to more than half of the scheduled committee meetings in a calendar year.

§463.17. Abolishment Date.

Any Advisory committee created by the Commission will be abolished after four years from the date of creation unless reestablished by the Commission prior to the abolishment date.

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

Filed with the Office of the Secretary of State on May 11, 2023.

TRD-202301722

Mike Wisko

Agency Chief

Texas Commission on Fire Protection

Earliest possible date of adoption: June 25, 2023

For further information, please call: (512) 936-3841



## PART 15. TEXAS FORENSIC SCIENCE COMMISSION

### CHAPTER 651. DNA, CODIS, FORENSIC ANALYSIS, AND CRIME LABORATORIES

The Texas Forensic Science Commission ("Commission") proposes amendments to 37 Texas Administrative Code §§ 651.5 and 651.203 to change a reference from "SNP" (single-nucleotide polymorphisms) to "massively parallel sequencing" in the categories of analysis for forensic biology/DNA to harmonize the reference with terminology used by the Commission's recognized accrediting bodies. The changes reflect the vote by the Commission at its April 14, 2023 quarterly meeting to change any references to the term "SNP" to "massively parallel sequencing".

Fiscal Note. Leigh M. Tomlin, Associate General Counsel of the Commission, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no fiscal impact to state or local governments as a result of the enforcement or administration of the amendments. The proposed amendment changes a reference from "SNP" (single-nucleotide polymorphisms) to "massively parallel sequencing" in the categories of analysis for forensic biology/DNA to harmonize the reference with terminology used by the Commission's recognized accrediting bodies. The amendments do not impose any costs to state or local governments.

Rural Impact Statement. The Commission expects no adverse economic effect on rural communities as the proposed amendments do not impose any direct costs or fees on municipalities in rural communities. The proposed amendment changes a reference from "SNP" (single-nucleotide polymorphisms) to "massively parallel sequencing" in the categories of analysis for forensic biology/DNA to harmonize the reference with terminology used by the Commission's recognized accrediting bodies.

Public Benefit/Cost Note. Ms. Tomlin has also determined that for each year of the first five years the proposed amendments are in effect, the anticipated public benefit includes providing clarity to crime laboratories and other criminal justice stakeholders in the terms used to references the categories of testing covered by a crime laboratory's scope of testing activities.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. As required by the Government Code § 2006.002(c) and (f), Ms. Tomlin has determined that the proposed amendments, which substitute terminology, will not have an adverse economic effect on any small or micro business because the rule does not impose any economic costs to these businesses.

Takings Impact Assessment. Ms. Tomlin has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right

to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

Government Growth Impact Statement. Ms. Tomlin has determined that for the first five-year period, implementation of the proposed amendments will have no government growth impact as described in Title 34, Part 1, Texas Administrative Code §11.1. Pursuant to the analysis required by Government Code § 2001.221(b): 1) the proposed amendments do not create or eliminate a government program; 2) implementation of the proposed amendments do not require the creation of new employee positions or the elimination of existing employee positions; 3) implementation of the proposed amendments do not increase or decrease future legislative appropriations to the agency; 4) the proposed amendments do not require a fee; 5) the proposed amendments do not create a new regulation; 6) the proposed amendments do not increase the number of individuals subject to regulation; and 7) the proposed amendments have no effect on the state's economy. The amendments do not expand any accreditation or licensing requirement under the Commission's current programs.

Requirement for Rule Increasing Costs to Regulated Persons. Ms. Tomlin has determined that there are no anticipated increased costs to regulated persons as the proposed amendments do not impose any fees or costs.

Request for Public Comment. The Commission invites comments on the proposal from any member of the public. Please submit comments to Leigh M. Tomlin, 1700 North Congress Avenue, Suite 445, Austin, Texas 78701 or leigh@fsc.texas.gov. Comments must be received by June 26, 2023 to be considered by the Commission.

## SUBCHAPTER A. ACCREDITATION

### 37 TAC §651.5

Statutory Authority. The amendments are proposed in accordance with the Commission crime laboratory accreditation authority under (1) Code of Criminal Procedure Article 38.01 § 4-d which directs the Commission to establish an accreditation process for crime laboratories; (2) the Commission's forensic analyst licensing authority under Code of Criminal Procedure Article 38.01 § 4-a, which directs the Commission to establish the qualifications for a forensic analyst license' and (3) the Commission's general rulemaking authority under Article 38.01 § 3-a, which generally directs the Commission to adopt rules necessary to implement Code of Criminal Procedure, Article 38.01.

Cross reference to statute. The proposal affects Tex. Code Crim. Proc. art. 38.01 §§ 4-a and 4-d.

§651.5. *Forensic Disciplines Subject to Commission Accreditation.*

(a) Forensic analysis/recognized accreditation. This section describes a forensic discipline or category of analysis that involves forensic analysis for use in a criminal proceeding and for which accreditation is available from a recognized accrediting body.

(b) By discipline. A crime laboratory may apply for Commission accreditation for one or more of the following disciplines:

(1) Seized Drugs. Categories of analysis may include one or more of the following: qualitative determination, quantitative measurement, weight measurement, and volume measurement;

(2) Toxicology. Categories of analysis may include one or more of the following: qualitative determination and quantitative measurement;

(3) Forensic Biology. Categories of analysis may include one or more of the following: DNA-STR, DNA-YSTR, DNA-Mitochondrial, DNA-massively parallel sequencing [SNP], body fluid identification, relationship testing, microbiology, individual characteristic database, and nucleic acids other than human DNA;

(4) Firearms/Toolmarks. Categories of analysis may include one or more of the following: physical comparison, determination of functionality, length measurement, trigger pull force measurement, qualitative chemical determination, distance determination, ejection pattern determination, product (make/model) determination;

(5) Materials (Trace). Categories of analysis may include one or more of the following: physical determination, chemical determination, physical/chemical comparison, product (make/model) determination, gunshot residue analysis, footwear and tire tread analysis, and fire debris and explosives analysis (qualitative determination); or

(6) Other discipline and its related categories of analysis if accredited by a recognized accrediting body and approved by the Commission.

(c) Cross-disciplines and categories of analysis. A laboratory may choose to assign a particular discipline or category of analysis to a different administrative section or unit in the laboratory than the designation set forth in this subchapter.

(d) If an accreditation for a category of analysis is accompanied by the term 'only' or a similar notation, the Commission will deem the accreditation to exclude other categories of analysis in that discipline.

(e) Accreditation of a confirmation test procedure does not carry automatic accreditation of an associated field, spot, screening, or other presumptive test.

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

Filed with the Office of the Secretary of State on May 10, 2023.

TRD-202301707

Leigh Marie Tomlin

Associate General Counsel

Texas Forensic Science Commission

Earliest possible date of adoption: June 25, 2023

For further information, please call: (512) 936-0661



## SUBCHAPTER C. FORENSIC ANALYST LICENSING PROGRAM

### 37 TAC §651.203

Statutory Authority. The amendments are proposed in accordance with the Commission crime laboratory accreditation authority under (1) Code of Criminal Procedure Article 38.01 § 4-d which directs the Commission to establish an accreditation process for crime laboratories; (2) the Commission's forensic analyst licensing authority under Code of Criminal Procedure Article 38.01 § 4-a, which directs the Commission to establish the qualifications for a forensic analyst license' and (3) the Commission's general rulemaking authority under Article 38.01

§ 3-a, which generally directs the Commission to adopt rules necessary to implement Code of Criminal Procedure, Article 38.01.

Cross reference to statute. The proposal affects Tex. Code Crim. Proc. art. 38.01 §§ 4-a and 4-d.

§651.203. *Forensic Subject to Commission Licensing; Categories of Licensure*

(a) Forensic analysis/recognized accreditation. This section describes the forensic disciplines for which accreditation by an accrediting body recognized by the Commission is required by Article 38.01, Code of Criminal Procedure and for which licensing is therefore also required.

(b) By discipline. An individual may apply to the Commission for a Forensic Analyst License for one or more of the disciplines set forth in this section. The specific requirements for obtaining a license in any of the following disciplines may differ depending upon the categories of analysis within the discipline for which the individual is qualified to perform independent casework as set forth in §651.207 of this subchapter (relating to Forensic Analyst Licensing Requirements Including License Term, Fee and Procedure for Denial of Application and Reconsideration). An individual's license shall designate the category or categories of licensure for which the individual has been approved for independent casework and for which the individual has met the requirements set forth in §651.207 of this subchapter as follows:

(1) Seized Drugs. Categories of analysis may include one or more of the following: qualitative determination, quantitative measurement, weight measurement, and volume measurement; Categories of Licensure: Seized Drugs Analyst; Seized Drugs Technician;

(2) Toxicology. Categories of analysis may include one or more of the following: qualitative determination and quantitative measurement; Categories of Licensure: Toxicology Analyst Alcohol only (Non-interpretive); Toxicology Analyst (General, Non-interpretive); Toxicologist (Interpretive); Toxicology Technician;

(3) Forensic Biology. Categories of analysis may include one or more of the following: DNA-STR, DNA-YSTR, DNA-Mitochondrial, DNA-massively parallel sequencing [SNP], body fluid identification, relationship testing, microbiology, individual characteristic database, and nucleic acids other than human DNA; Categories of Licensure: DNA Analyst; Forensic Biology Screening Analyst; Analyst of Nucleic Acids other than Human DNA; Forensic Biology Technician;

(4) Firearms/Toolmarks. Categories of analysis may include one or more of the following: physical comparison, determination of functionality, length measurement, trigger pull force measurement, qualitative chemical determination, distance determination, ejection pattern determination, product (make/model) determination; Categories of Licensure: Firearms/Toolmarks Analyst; Firearms/Toolmarks Technician;

(5) Materials (Trace). Categories of analysis may include one or more of the following: physical determination, chemical determination, chemical comparison, product (make/model) determination, gunshot residue analysis, footwear and tire tread analysis, and fire debris and explosives analysis (qualitative determination); Categories of Licensure: Materials (Trace) Analyst; Materials (Trace) Technician.

(c) Cross-disciplines. A laboratory may choose to assign a particular discipline or category of analysis to a different administrative section or unit in the laboratory than the designation set forth in this subchapter. Though an individual may perform a category of analysis under a different administrative section or unit in the laboratory,

the individual still shall comply with the requirements for the discipline or category of analysis as outlined in this subchapter.

(d) Analysts and Technicians Performing Forensic Analysis on Behalf of the United States Government. Any forensic analyst or technician who performs forensic analysis on behalf of a publicly funded laboratory or law enforcement entity operating under the authority of the United States Government is deemed licensed to perform forensic analysis in Texas for purposes of this subchapter.

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

Filed with the Office of the Secretary of State on May 10, 2023.

TRD-202301708

Leigh Marie Tomlin

Associate General Counsel

Texas Forensic Science Commission

Earliest possible date of adoption: June 25, 2023

For further information, please call: (512) 936-0661



## CHAPTER 651. DNA, CODIS, FORENSIC ANALYSIS, AND CRIME LABORATORIES SUBCHAPTER C. FORENSIC ANALYST LICENSING PROGRAM

### 37 TAC §651.207, §651.211

The Texas Forensic Science Commission ("Commission") proposes amendments to 37 Texas Administrative Code §§ 651.207 and 651.211 to eliminate the fee for a temporary forensic analyst license. The change reflects a vote taken by the Commission at its April 14, 2023, quarterly meeting to remove the fee for a temporary forensic analyst license. The Commission determined this change is necessary in response to issues raised by law enforcement agencies in criminal cases that cross state boundaries, particularly where the evidence is collected and analyzed in one state and subsequently admitted in a Texas criminal case. In some of these cases, payment of the temporary forensic analyst license fee is impractical for the out-of-state accredited crime laboratory due to delays inherent in government procurement and may present a barrier to facilitating the efficient resolution of the criminal action in Texas.

Fiscal Note. Leigh M. Tomlin, Associate General Counsel of the Commission, has determined that for each year of the first five years the proposed amendments will be in effect, there will be negligible to no fiscal impact to state or local governments as a result of the enforcement or administration of the amendments. The Commission has only issued two temporary licenses at \$100.00 each since the inception of the forensic analyst licensing program in 2019, and the amendments do not impose any costs to state or local governments.

Rural Impact Statement. The Commission expects no adverse economic effect on rural communities as the proposed amendments do not impose any direct costs or fees on municipalities in rural communities. The proposed amendments remove the fee charged for a temporary forensic analyst license.

Public Benefit/Cost Note. Ms. Tomlin has determined that for each year of the first five years the proposed amendments are in effect, the anticipated public benefit is better efficiency in the

resolution of certain state criminal cases by eliminating a temporary forensic analyst license fee that may create a financial barrier in the resolution of certain state criminal cases where the forensic evidence and other factors cross state boundaries and jurisdictions.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. As required by the Government Code § 2006.002(c) and (f), Ms. Tomlin has determined that the proposed amendments will not have an adverse economic effect on any small or micro business because the rule does not impose any economic costs to these businesses. The proposed amendments remove the fee charged for a temporary forensic analyst license.

Takings Impact Assessment. Ms. Tomlin Associate has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043. The proposed amendments remove the fee charged for a temporary forensic analyst license.

Government Growth Impact Statement. Ms. Tomlin has determined that for the first five-year period, implementation of the proposed amendments will have no government growth impact as described in Title 34, Part 1, Texas Administrative Code §11.1. Pursuant to the analysis required by Government Code § 2001.221(b): 1) the proposed amendments do not create or eliminate a government program; 2) implementation of the proposed amendments do not require the creation of new employee positions or the elimination of existing employee positions; 3) implementation of the proposed amendments do not increase or decrease future legislative appropriations to the agency; 4) the proposed amendments do not require a fee; 5) the proposed amendments do not create a new regulation; 6) the proposed amendments do not increase the number of individual's subject to regulation; and 7) the proposed amendments have a negligible effect on the state's economy. The proposed amendments remove the fee charged for a temporary forensic analyst license.

Requirement for Rule Increasing Costs to Regulated Persons. Ms. Tomlin has determined that there are no anticipated increased costs to regulated persons as the proposed amendments do not impose any fees or costs.

The Texas Forensic Science Commission invites comments on the proposal from any member of the public. Please submit comments to Leigh M. Tomlin, 1700 North Congress Avenue, Suite 445, Austin, Texas 78701 or leigh@fsc.texas.gov. Comments must be received by June 26, 2023 to be considered by the Commission.

Statutory Authority. The amendments are made in accordance with the Commission's forensic analyst licensing authority under Code of Criminal Procedure, Art. 38.01 § 4-a(d)(2), which directs the Commission to establish fees for the issuance of a license, and the Commission's general rulemaking authority under Art. 38.01 § 3-a, which directs the Commission to adopt rules necessary to implement Code of Criminal Procedure, Art. 38.01.

Cross-reference to statute. The proposal affects Tex. Code Crim. Proc. Art. 38.01 § 4-a(d)(2).

*§651.207. Forensic Analyst Licensing Requirements, Including License Term, Fee and Procedure for Denial of Application and Reconsideration.*

(a) Issuance. The Commission may issue an individual's Forensic Analyst License under this section.

(b) Application. Before being issued a Forensic Analyst License, an applicant shall:

(1) demonstrate that he or she meets the definition of Forensic Analyst set forth in this subchapter;

(2) complete and submit to the Commission a current Forensic Analyst License Application form;

(3) pay the required fee(s) as applicable:

(A) Initial Application fee of \$220 for Analysts and \$150 for Technicians/Screeners;

(B) Biennial renewal fee of \$200 for Analysts and \$130 for Technicians/Screeners;

~~(C) Temporary License fee of \$100;~~

~~(C) [(D)] Provisional License fee of \$110 for Analysts and \$75 for Technicians/Screeners;~~

~~(D) [(E)] License Reinstatement fee of \$220;~~

~~(E) [(F)] De Minimis License fee of \$200 per ten (10) licenses;~~

~~(F) [(G)] Uncommon Forensic Analysis License fee of \$200 per ten (10) licenses; and/or~~

~~(G) [(H)] Special Exam Fee of \$50 for General Forensic Analyst Licensing Exam, required only if testing beyond the three initial attempts or voluntarily taking the exam under the Unaccredited Forensic Discipline Exception described in subsection (g)(5)(C) of this section;~~

(4) provide accurate and current address and employment information to the Commission and update the Commission within five (5) business days of any change in address or change of employment. Licensees are required to provide a home address, email address, and employer name and address on an application for a license; and

(5) provide documentation that he or she has satisfied all applicable requirements set forth under this section.

(c) Minimum Education Requirements.

(1) Seized Drugs Analyst. An applicant for a Forensic Analyst License in seized drugs must have a baccalaureate or advanced degree in chemical, physical, biological science, chemical engineering or forensic science from an accredited university.

(2) Seized Drugs Technician. An applicant for a Forensic Analyst License limited to the seized drug technician category must have a minimum of an associate's degree or equivalent.

(3) Toxicology (Toxicology Analyst (Alcohol Only, Non-interpretive), Toxicology Analyst (General, Non-interpretive), Toxicologist (Interpretive)). An applicant for a Forensic Analyst License in toxicology must have a baccalaureate or advanced degree in a chemical, physical, biological science, chemical engineering or forensic science from an accredited university.

(4) Toxicology Technician. An applicant for a Forensic Analyst License limited to the toxicology technician category must have a minimum of an associate's degree or equivalent.

(5) Forensic Biology (DNA Analyst, Forensic Biology Screener, Nucleic Acids other than Human DNA Analyst, Forensic Biology Technician). An applicant for any category of forensic biology license must have a baccalaureate or advanced degree in a chemical, physical, biological science or forensic science from an accredited university.

(6) Firearm/Toolmark Analyst. An applicant for a Forensic Analyst License in firearm/toolmark analysis must have a baccalaureate or advanced degree in a chemical, physical, biological science, engineering or forensic science from an accredited university.

(7) Firearm/Toolmark Technician. An applicant for a Forensic Analyst License limited to firearm/toolmark technician must have a minimum of a high school diploma or equivalent degree.

(8) Materials (Trace) Analyst. An applicant for a Forensic Analyst License in materials (trace) must have a baccalaureate or advanced degree in a chemical, physical, biological science, chemical engineering or forensic science from an accredited university. A Materials (Trace) Analyst performing only impression evidence analyses must have a minimum of a high school diploma or equivalent degree.

(9) Materials (Trace) Technician. An applicant for a Forensic Analyst License limited to materials (trace) technician must have a minimum of a high school diploma or equivalent degree.

(10) Foreign/Non-U.S. degrees. The Commission shall recognize equivalent foreign, non-U.S. baccalaureate or advanced degrees. The Commission reserves the right to charge licensees a reasonable fee for credential evaluation services to assess how a particular foreign degree compares to a similar degree in the United States. The Commission may accept a previously obtained credential evaluation report from an applicant or licensee in fulfillment of the degree comparison assessment.

(11) If an applicant does not meet the minimum education qualifications outlined in this section, the procedure in subsection (f) or (j) of this section applies.

(d) Specific Coursework Requirements.

(1) Seized Drugs Analyst. An applicant for a Forensic Analyst License in seized drugs must have a minimum of sixteen-semester credit hours (or equivalent) in college-level chemistry coursework above general coursework from an accredited university. In addition to the chemistry coursework, an applicant must also have a three-semester credit hour (or equivalent) college-level statistics course from an accredited university or a program approved by the Commission.

(2) Toxicology. An applicant for a Forensic Analyst License in toxicology must fulfill required courses as appropriate to the analyst's role and training program as described in the categories below:

(A) Toxicology Analyst (Alcohol Only, Non-interpretive). A toxicology analyst who conducts, directs or reviews the alcohol analysis of forensic toxicology samples, evaluates data, reaches conclusions and may sign a report for court or investigative purposes, but does not provide interpretive opinions regarding human performance must complete a minimum of sixteen-semester credit hours (or equivalent) in college-level chemistry coursework above general coursework from an accredited university.

(B) Toxicology Analyst (General, Non-interpretive). A toxicology analyst who conducts, directs or reviews the analysis of forensic toxicology samples, evaluates data, reaches conclusions and may sign a report for court or investigative purposes, but does not provide interpretive opinions regarding human performance must

complete a minimum of sixteen-semester credit hours (or equivalent) in college-level chemistry coursework above general coursework that includes organic chemistry and two three-semester credit hour (or equivalent) college-level courses in analytical chemistry and/or interpretive science courses that may include Analytical Chemistry, Chemical Informatics, Instrumental Analysis, Mass Spectrometry, Quantitative Analysis, Separation Science, Spectroscopic Analysis, Biochemistry, Drug Metabolism, Forensic Toxicology, Medicinal Chemistry, Pharmacology, Physiology, or Toxicology.

(C) Toxicologist (Interpretive). A toxicologist who provides interpretive opinions regarding human performance related to the results of toxicological tests (alcohol and general) for court or investigative purposes must complete a minimum of sixteen-semester credit hours (or equivalent) in college-level chemistry coursework above general coursework that includes organic chemistry, one three-semester credit hour (or equivalent) course in college-level analytical chemistry (Analytical Chemistry, Chemical Informatics, Instrumental Analysis, Mass Spectrometry, Quantitative Analysis, Separation Science or Spectroscopic Analysis) and one three-semester credit hour (or equivalent) college-level courses in interpretive science (Biochemistry, Drug Metabolism, Forensic Toxicology, Medicinal Chemistry, Pharmacology, Physiology, or Toxicology).

(D) An applicant for a toxicology license for any of the categories outlined in subparagraphs (A) - (C) of this paragraph must have a three-semester credit hour (or equivalent) college-level statistics course from an accredited university or a program approved by the Commission.

(3) DNA Analyst. An applicant for a Forensic Analyst License in DNA analysis must demonstrate he/she has fulfilled the specific requirements of the Federal Bureau of Investigation's Quality Assurance Standards for Forensic DNA Testing effective September 1, 2011. An applicant must also have a three-semester credit hour (or equivalent) college-level statistics course from an accredited university or a program approved by the Commission.

(4) Firearm/Toolmark Analyst. An applicant must have a three-semester credit hour (or equivalent) college-level statistics course from an accredited university or a program approved by the Commission. No other specific college-level coursework is required.

(5) Materials (Trace) Analyst. An applicant for a Forensic Analyst License in materials (trace) for one or more of the chemical analysis categories of analysis (chemical determination, physical/chemical comparison, gunshot residue analysis, and fire debris and explosives analysis) must have a minimum of sixteen-semester credit hours (or equivalent) in college-level chemistry coursework above general coursework from an accredited university. In addition to chemistry coursework for the chemical analysis categories, all materials (trace) license applicants must also have a three-semester credit hour (or equivalent) college-level statistics course from an accredited university or a program approved by the Commission. An applicant for a Forensic Analyst License in materials (trace) limited to impression evidence is not required to fulfill any specific college-level coursework requirements other than the statistics requirement.

(6) Exemptions from specific coursework requirements. The following categories of licenses are exempted from coursework requirements:

(A) An applicant for the technician license category of any forensic discipline set forth in this subchapter is not required to fulfill any specific college-level coursework requirements.

(B) An applicant for a Forensic Analyst License limited to forensic biology screening, nucleic acids other than human DNA

and/or Forensic Biology Technician is not required to fulfill the Federal Bureau of Investigation's Quality Assurance Standards for Forensic DNA Testing or any other specific college-level coursework requirements.

(e) Requirements Specific to Forensic Science Degree Programs. For a forensic science degree to meet the Minimum Education Requirements set forth in this section, the forensic science degree program must be either accredited by the Forensic Science Education Programs Accreditation Commission (FEPAC) or if not accredited by FEPAC, it must meet the minimum curriculum requirements pertaining to natural science core courses and specialized science courses set forth in the FEPAC Accreditation Standards.

(f) Waiver of Specific Coursework Requirements and/or Minimum Education Requirements for Lateral Hires, Promoting Analysts and Current Employees. Specific coursework requirements and minimum education requirements are considered an integral part of the licensing process; all applicants are expected to meet the requirements of the forensic discipline(s) for which they are applying or to offer sufficient evidence of their qualifications as described below in the absence of specific coursework requirements or minimum education requirements. The Commission Director or Designee may waive one or more of the specific coursework requirements or minimum education requirements outlined in this section for an applicant who:

(1) has five or more years of credible experience in an accredited laboratory in the forensic discipline for which he or she seeks licensure; or

(2) is certified by one or more of the following nationally recognized certification bodies in the forensic discipline for which he or she seeks licensure;

- (A) The American Board of Forensic Toxicology;
- (B) The American Board of Clinical Chemistry;
- (C) The American Board of Criminalistics;
- (D) The International Association for Identification; or
- (E) The Association of Firearm and Toolmark Examiners; and

(3) provides written documentation of laboratory-sponsored training in the subject matter areas addressed by the specific coursework requirements.

(4) An applicant must request a waiver of specific coursework requirements and/or minimum education requirements at the time the application is filed.

(5) An applicant requesting a waiver from specific coursework requirements and/or minimum education requirements shall file any additional information needed to substantiate the eligibility for the waiver with the application. The Commission Director or Designee shall review all elements of the application to evaluate waiver request(s) and shall grant a waiver(s) to qualified applicants.

(g) General Forensic Analyst Licensing Exam Requirement.

(1) Exam Requirement. An applicant for a Forensic Analyst License must pass the General Forensic Analyst Licensing Exam administered by the Commission.

(A) An applicant is required to take and pass the General Forensic Analyst Licensing Exam one time.

(B) An applicant may take the General Forensic Analyst Licensing Exam no more than three times. If an applicant fails the General Forensic Analyst Licensing Exam or the Modified Gen-

eral Forensic Analyst Licensing Exam three times, the applicant has thirty (30) days from the date the applicant receives notice of the failure to request special dispensation from the Commission as described in subparagraph (C) of this paragraph. Where special dispensation is granted, the applicant has 90 days from the date he or she receives notice the request for exam is granted to successfully complete the exam requirement. However, for good cause shown, the Commission or its Designee at its discretion may waive this limitation.

(C) Requests for Exam. If an applicant fails the General Forensic Analyst Licensing Exam or Modified General Forensic Analyst Licensing Exam three times, the applicant must request in writing special dispensation from the Commission to take the exam more than three times. Applicants may submit a letter of support from their laboratory director or licensing representative and any other supporting documentation supplemental to the written request.

(D) If an applicant sits for the General Forensic Analyst Licensing Exam or the Modified General Forensic Analyst Licensing Exam more than three times, the applicant must pay a \$50 exam fee each additional time the applicant sits for the exam beyond the three initial attempts.

(E) Expiration of Provisional License if Special Dispensation Exam Unsuccessful. If the 90-day period during which special dispensation is granted expires before the applicant successfully completes the exam requirement, the applicant's provisional license expires.

(2) Modified General Forensic Analyst Licensing Exam. Technicians in any discipline set forth in this subchapter may fulfill the General Forensic Analyst Licensing Exam requirement by taking a modified exam administered by the Commission.

(3) Examination Requirements for Promoting Technicians. If a technician passes the modified General Forensic Analyst Licensing Exam and later seeks a full Forensic Analyst License, the applicant must complete the portions of the General Forensic Analyst Exam that were not tested on the modified exam.

(4) Credit for Pilot Exam. If an individual passes the Pilot General Forensic Analyst Licensing Exam, regardless of his or her eligibility status for a Forensic Analyst License at the time the exam is taken, the candidate has fulfilled the General Forensic Analyst Licensing Exam Requirement of this section should he or she later become subject to the licensing requirements and eligible for a Forensic Analyst License.

(5) Eligibility for General Forensic Analyst Licensing Exam and Modified General Forensic Analyst Licensing Exam.

(A) Candidates for the General Forensic Analyst Licensing Exam and Modified General Forensic Analyst Licensing Exam must be employees of a crime laboratory accredited under Texas law to be eligible to take the exam.

(B) Student Examinee Exception. A student is eligible for the General Forensic Analyst Licensing Exam one time if the student:

(i) is currently enrolled in an accredited university as defined in §651.202 of this subchapter (relating to Definitions);

(ii) has completed sufficient coursework to be within 24 semester hours of completing the requirements for graduation at the accredited university at which the student is enrolled; and

(iii) designates an official university representative who will proctor and administer the exam at the university for the student.

(C) Crime Laboratory Management and Unaccredited Forensic Discipline Exception. An Employee of a crime laboratory accredited under Texas law who is either part of the crime laboratory's administration or management team or authorized for independent case-work in a forensic discipline listed below is eligible for the General Forensic Analyst Licensing Exam and Modified General Forensic Analyst Licensing Exam:

- (i) forensic anthropology;
  - (ii) the location, identification, collection or preservation of physical evidence at a crime scene;
  - (iii) crime scene reconstruction;
  - (iv) latent print processing or examination;
  - (v) digital evidence (including computer forensics, audio, or imaging);
  - (vi) breath specimen testing under Transportation Code, Chapter 724, limited to analysts who perform breath alcohol calibrations; and
  - (vii) document examination, including document authentication, physical comparison, and product determination.
- (h) Proficiency Monitoring Requirement.

(1) An applicant must demonstrate participation in the employing laboratory's process for intra-laboratory comparison, inter-laboratory comparison, proficiency testing, or observation-based performance monitoring requirements in compliance with and on the timeline set forth by the laboratory's accrediting body's proficiency monitoring requirements as applicable to the Forensic Analyst or Forensic Technician's specific forensic discipline and job duties.

(2) A signed certification by the laboratory's authorized representative that the applicant has satisfied the applicable proficiency monitoring requirements, including any intra-laboratory comparison, inter-laboratory comparison, proficiency testing, or observation-based performance monitoring requirements of the laboratory's accrediting body as of the date of the analyst's application, must be provided on the Proficiency Monitoring Certification form provided by the Commission. The licensee's authorized representative must designate the specific forensic discipline in which the Forensic Analyst or Forensic Technician actively performs forensic casework or is currently authorized to perform supervised or independent casework by the laboratory or employing entity.

(i) License Term and Fee.

(1) A Forensic Analyst License shall expire two years from the date the applicant is granted a license.

(2) Application Fee. An applicant or licensee shall pay the following fee(s) as applicable:

(A) Initial Application fee of \$220 for Analysts and \$150 for Technicians/Screeners;

(B) Biennial renewal fee of \$200 for Analysts and \$130 for Technicians/Screeners;

~~[(C) Temporary License fee of \$100;]~~

(C) ~~[(D)]~~ Provisional License fee of \$110 for Analysts and \$75 for Technicians/Screeners;

(D) ~~[(E)]~~ License Reinstatement fee of \$220;

(E) ~~[(F)]~~ De Minimis License fee of \$200 per ten (10) licenses; or

~~[(G)]~~ Uncommon Forensic Analysis License fee of \$200 per ten (10) licenses.

(3) An applicant who is granted a provisional license and has paid the required fee will not be required to pay an additional initial application fee if the provisional status is removed within one year of the date the provisional license is granted.

(j) Procedure for Denial of Application and Reconsideration.

(1) Application Review. The Commission Director or Designee must review each completed application and determine whether the applicant meets the qualifications and requirements set forth in this subchapter.

(2) Denial of Application. The Commission, through its Director or Designee, may deny an application if the applicant fails to meet any of the qualifications or requirements set forth in this subchapter.

(3) Notice of Denial. The Commission, through its Director or Designee, shall provide the applicant a written statement of the reason(s) for denial of the application.

(4) Request for Reconsideration. Within twenty (20) days of the date of the notice that the Commission has denied the application, the applicant may request that the Commission reconsider the denial. The request must be in writing, identify each point or matter about which reconsideration is requested, and set forth the grounds for the request for reconsideration.

(5) Reconsideration Procedure. The Commission must consider a request for reconsideration at its next meeting where the applicant may appear and present testimony.

(6) Commission Action on Request. After reconsidering its decision, the Commission may either affirm or reverse its original decision.

(7) Final Decision. The Commission, through its Director or Designee, must notify the applicant in writing of its decision on reconsideration within fifteen (15) business days of the date of its meeting where the final decision was rendered.

*§651.211. Temporary Forensic Analyst License.*

(a) Issuance. The Commission may issue a temporary Forensic Analyst License.

(b) Eligibility. An individual who performs forensic analysis primarily for non-Texas cases may apply to the Commission for a temporary Forensic Analyst License for forensic analysis related to a criminal action as that term is defined in Article 38.35 of the Texas Code of Criminal Procedure.

(c) Applications for Temporary License for More than One Criminal Action. An applicant may apply for a temporary Forensic Analyst License for each criminal action for which he or she is retained to perform forensic analysis.

(d) Multiple Defendants for Same Criminal Action. An applicant for a temporary Forensic Analyst License is not required to apply for more than one temporary license for the forensic analysis performed in criminal actions for which multiple defendants may be charged for a criminal offense or offenses related to the same event.

(e) Application. An applicant for a temporary Forensic Analyst License shall complete and submit to the Commission a current temporary Forensic Analyst License Application form, [pay the required fee,] and submit a signed statement on a form to be provided by the Commission stating the individual is employed by a crime laboratory that is accredited by a national accrediting body recognized by

the Commission and regularly performs proficiency testing in accordance with the employing laboratory's accreditation requirements.

(f) Description of Forensic Analysis for Which the Temporary Forensic Analyst License is Requested. An applicant for a temporary Forensic Analyst License shall describe the circumstances of the criminal action for which the temporary Forensic Analyst License is being requested.

(g) Description of Temporary Nature of Analysis. An applicant for a Temporary Forensic Analyst License shall state the reasons why the applicant's forensic analysis in Texas cases is a de minimis component of the applicant's overall forensic casework.

(h) Affidavit of Good Standing from Laboratory. An applicant for a Temporary Forensic Analyst License must submit an affidavit of good standing from the laboratory where the analyst is currently employed.

(i) Temporary License Term. A temporary Forensic Analyst License is granted for a period of three years from the date of issuance.

(j) Temporary License Extension. If the criminal action for which the temporary Forensic Analyst License was originally granted has not yet been resolved upon the expiration of three years from the date the license was granted, the temporary licensee may apply to the Commission to extend the license for a supplemental one-year term or terms.

(k) Temporary License Limitations. A temporary Forensic Analyst License does not apply to any criminal action other than those offenses related to the criminal action for which the temporary license was granted.

(l) Scope of Temporary License. A temporarily licensed forensic analyst may technically review or perform forensic analysis or draw conclusions from or interpret a forensic analysis for a court or crime laboratory to the extent a fully licensed forensic analyst may perform these duties.

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

Filed with the Office of the Secretary of State on May 10, 2023.

TRD-202301706

Leigh Tomlin

Associate General Counsel

Texas Forensic Science Commission

Earliest possible date of adoption: June 25, 2023

For further information, please call: (512) 936-0661



## **TITLE 40. SOCIAL SERVICES AND ASSISTANCE**

### **PART 15. TEXAS VETERANS COMMISSION**

#### **CHAPTER 450. VETERANS COUNTY SERVICE OFFICERS CERTIFICATE OF TRAINING**

##### **40 TAC §450.1, §450.3**

The Texas Veterans Commission (commission) proposes an amendment to Chapter 450, §450.1 and §450.3, Veterans County Service Officers Certificate of Training.

#### **PART I. PURPOSE AND BACKGROUND**

The proposed amendment is made to change definitions in existing language to reflect the language in Title 38 of the Code of Federal Regulations (CFR) and to correct grammatical errors.

#### **PART II. EXPLANATION OF SECTIONS**

##### **Section 450.1 Definitions.**

Defines the term of "Accreditation" as recognition by the United States Department of Veterans Affairs, cites statutory reference for a "Certificate of training" issued by the Texas Veterans Commission Claims Department.

##### **Section 450.3 General Provisions.**

Corrects grammatical errors.

#### **PART III. IMPACT STATEMENTS**

##### **FISCAL NOTE**

Coretta Briscoe, Chief Financial Officer of the Texas Veterans Commission, has determined for each year of the first five years the proposed rule amendment will be in effect, there will not be an increase in expenditures or revenue for state and local government as a result of administering the proposed rule.

##### **COSTS TO REGULATED PERSONS**

Ms. Briscoe, Chief Financial Officer, has also determined there will not be anticipated economic costs to persons required to comply with the proposed rule.

##### **LOCAL EMPLOYMENT IMPACT**

Anna Baker, Director, Veterans Employment Services of the Texas Veterans Commission, has determined that there will not be a significant impact upon employment conditions in the state as a result of the proposed rule.

##### **SMALL BUSINESS, MICRO BUSINESS AND RURAL COMMUNITIES IMPACT**

Megan Tamez, Director of the Veterans Entrepreneur Program of the Texas Veterans Commission, has determined that the proposed rule will not have an adverse economic effect on small businesses, micro businesses or rural communities as defined in Texas Government Code §2006.001. As a result, an Economic Impact Statement and Regulatory Flexibility Analysis is not required.

##### **PUBLIC BENEFIT**

Shawn Deabay, Deputy Executive Director of the Texas Veterans Commission, has determined that for each year of the first five years the proposed rule are in effect, the public benefit anticipated as a result of administering the amended rule will reduce the need for formal disputes and settle disputes at the lowest level possible.

##### **GOVERNMENT GROWTH IMPACT STATEMENT**

Mr. Deabay has also determined that for each year of the first five years that the proposed rule amendments are in effect, the following statements will apply:

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



- (2) Implementation of the proposed rule amendments will not require creation of new employee positions or elimination of existing employee positions.
- (3) Implementation of the proposed rule amendments will not require an increase or decrease in future legislative appropriations to the agency.
- (4) No fees will be created by the proposed rule amendments.
- (5) The proposed rule amendments will not require new regulations.
- (6) The proposed rule amendments have no effect on existing regulations.
- (7) The proposed rule amendments have no effect on the number of individuals subject to the rule's applicability.
- (8) The proposed rule amendments have no effect on this state's economy.

**PART IV. COMMENTS**

Comments on the proposed amended rule may be submitted to Texas Veterans Commission, Attention: General Counsel, P.O. Box 12277, Austin, Texas 78711; faxed to (512) 475-2395; or emailed to rulemaking@tvc.texas.gov. For comments submitted electronically, please include "Chapter 450 Rules" in the subject line. The commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register*.

**PART V. 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 these rules.

*§450.1. Definitions.*

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

- (1) Accreditation--Recognition by the United States Department of Veterans Affairs (VA) of representatives, attorneys, and agents to represent claimants.
- (2) ~~(4)~~ Certificate of training--Certificate or transcript provided pursuant to Tex. Gov't Code §434.038 to officers who complete all initial training requirements or who earn a minimum number of credit hours each fiscal year for completing training provided by the commission or completing other commission approved training.
- (3) ~~(2)~~ Commission--The Texas Veterans Commission.
- (4) ~~(3)~~ Credit hour--Unit of measuring credit earned for attending classroom or virtual training courses provided by the commission or other commission approved training.
- (5) ~~(4)~~ Initial training--Introductory training provided to newly appointed officers.
- (6) ~~(5)~~ Officer--Veterans county service officer or assistant veterans county service officer appointed by a county commissioners court.
- (7) ~~(6)~~ Third party training--Any commission approved training or course of instruction provided by public or private entities.
- (8) ~~(7)~~ Training event--Training or testing conducted by the commission.

*§450.3. General Provisions.*

(a) - (b) (No change.)

(c) Each officer shall be required to earn 12 credit hours each fiscal year to maintain the certificate of training certification. Credit hours may be accumulated in one year by completing training provided or approved by the commission. Credit hours may not be accumulated for the same subjects within the same fiscal year.

(d) - (f) (No change.)

(g) Acceptance of credit hours earned through third party training:

(1) If training is provided by a VA Recognized Veterans Service Organization, whose accreditation training has been approved by the VA, the commission shall accept the training credit hours.

(2) For all other third party training, the organization shall provide the commission with the following information to allow for the awarding of credit hours to officers:

- (A) name ~~Name~~ of organization providing the training;
- (B) documentation ~~Documentation~~ from the VA;
- (C) course ~~Course~~ title and description;
- (D) course ~~Course~~ outline; and
- (E) all ~~All~~ course materials.

(3) Third party training and testing must be evaluated by the commission Claims Department Director or designee in accordance with subsection (f) of this section. The number of credit hours to be awarded for third party training is determined by review of the third party training curriculum by the commission Claims ~~Claim~~ Department Director. Review and awarding of credit hours will be conducted using the curriculum review matrix.

(4) To receive credit hours for third party training, the training must be approved by the commission in accordance with paragraph (1) of this subsection prior to the officer's attendance. Officers must submit a request to the commission containing the following information:

- (A) name ~~Name~~ of the training provider;
- (B) title ~~Title~~ of the course;
- (C) certificate ~~Certificate~~ or verification of completion;
- (D) date ~~Date~~ of completion.

and

(h) - (i) (No change.)

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

Filed with the Office of the Secretary of State on May 12, 2023.

TRD-202301733

Cory Scanlon

General Counsel

Texas Veterans Commission

Earliest possible date of adoption: June 25, 2023

For further information, please call: (737) 320-4167



**CHAPTER 451. VETERANS COUNTY SERVICE OFFICERS ACCREDITATION**

## 40 TAC §451.1, §451.3

The Texas Veterans Commission (commission) proposes an amendment to Chapter 451, §451.1 and §451.3, Veterans County Service Officers Accreditation. Simultaneous with this proposed amendment, the commission separately posts notice that, pursuant to Texas Government Code §2001.039, the commission will review Title 40, Part 15, Chapter 451, Veterans County Service Officers Accreditation.

### PART I. PURPOSE AND BACKGROUND

The proposed amendment is made to change existing language to be consistent with the terms found in Title 38 of the Code of Federal Regulations (CFR)

### PART II. EXPLANATION OF SECTIONS

#### Section 451.1 Definitions.

Replaces "certified" with "Certificate of training" and changes accreditation language to be consistent with the terms found in Title 38 United States Code of Federal Regulations (38CFR)

Introduces the term "recommendation" as consistent with the United States Department of Veterans Affairs regulations governing the accreditation process.

#### Section 451.3

Corrects Grammatical errors and provides further clarifying language consistent with the United States Department of Veterans Affairs regulations governing the accreditation process.

### PART III. IMPACT STATEMENTS

#### FISCAL NOTE

Coretta Briscoe, Chief Financial Officer of the Texas Veterans Commission, has determined for each year of the first five years the proposed rule amendment will be in effect, there will not be an increase in expenditures or revenue for state and local government as a result of administering the proposed rule.

#### COSTS TO REGULATED PERSONS

Ms. Briscoe, Chief Financial Officer, has also determined there will not be anticipated economic costs to persons required to comply with the proposed rule.

#### LOCAL EMPLOYMENT IMPACT

Anna Baker, Director, Veterans Employment Services of the Texas Veterans Commission, has determined that there will not be a significant impact upon employment conditions in the state as a result of the proposed rule.

#### SMALL BUSINESS, MICRO BUSINESS AND RURAL COMMUNITIES IMPACT

Megan Tamez, Director of the Veterans Entrepreneur Program of the Texas Veterans Commission, has determined that the proposed rule will not have an adverse economic effect on small businesses, micro businesses or rural communities as defined in Texas Government Code §2006.001. As a result, an Economic Impact Statement and Regulatory Flexibility Analysis is not required.

#### PUBLIC BENEFIT

Shawn Deabay, Deputy Executive Director of the Texas Veterans Commission, has determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated as a result of administering the amended rule will reduce

the need for formal disputes and settle disputes at the lowest level possible.

### GOVERNMENT GROWTH IMPACT STATEMENT

Mr. Deabay has also determined that for each year of the first five years that the proposed rule amendments are in effect, the following statements will apply:

- (1) The proposed rule amendments will not create or eliminate a government program.
- (2) Implementation of the proposed rule amendments will not require creation of new employee positions, or elimination of existing employee positions.
- (3) Implementation of the proposed rule amendments will not require an increase or decrease in future legislative appropriations to the agency.
- (4) No fees will be created by the proposed rule amendments.
- (5) The proposed rule amendments will not require new regulations.
- (6) The proposed rule amendments have no effect on existing regulations.
- (7) The proposed rule amendments have no effect on the number of individuals subject to the rule's applicability.
- (8) The proposed rule amendments have no effect on this state's economy.

### PART IV. COMMENTS

Comments on the proposed amended rule may be submitted to Texas Veterans Commission, Attention: General Counsel, P.O. Box 12277, Austin, Texas 78711; faxed to (512) 475-2395; or emailed to [rulemaking@tvc.texas.gov](mailto:rulemaking@tvc.texas.gov). For comments submitted electronically, please include "Chapter 451 Rules" in the subject line. The commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register*.

### PART V. 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 these rules.

#### §451.1. Definitions.

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

- (1) - (2) (No change.)
- (3) Certificate of training [Certified]--Documentation that an officer has met [Having met] the requirements of §450.3 of this title (relating to General Provisions) for "certification".
- (4) - (7) (No change.)
- (8) Recognized Veterans Service Organization--An organization accredited [eertified] by the United States Department of Veterans Affairs to represent claimants.
- (9) Recommendation--the procedure by which the commission indicates to the secretary that it desires an officer to become an accredited representative of the Texas Veterans Commission and certifies that the officer meets the requirements of 38 C.F.R. § 14.629(a).

(10) [(9)] Representative--Person who has been recommended by a Recognized Veterans Service Organization and accredited by the United States Department of Veterans Affairs.

(11) [(10)] Secretary--The secretary of the United States Department of Veterans Affairs.

(12) [(11)] Training event--Training or testing conducted by the commission.

§451.3. *General Provisions.*

(a) The commission shall provide all [AH] officers [shall be provided a copy of] information concerning accreditation [by the commission] when the commission receives notice that [information is received indicating] an officer has been appointed [appointment has been made] by a county commissioners court.

(b) Officers must meet the following minimum standards as set forth in 38 Code of Federal Regulations §14.629 for recommendation: [consideration to be accredited representative of the commission:]

(1) is a paid employee of the county working for it not less than 1,000 hours annually;

(2) has successfully completed a course of training and an examination which have been approved by the appropriate VA district counsel within the state; and

(3) will receive annual training to ensure [assure] continued qualification as a representative in the claims' process.

(c) To receive recommendation [be an accredited representative of the Texas Veterans Commission], the officer must hold a current certificate of training from the commission [be currently certified by the commission] under the provisions of §450.3 of this title (relating to General Provisions), have attained at least 24 credit hours after completion of initial training requirements, and pass a proficiency exam.

(d) All officers [Officers] must submit a formal written application [request] for recommendation [accreditation] to the commission, which shall review the application for eligibility and approval.

(e) - (f) (No change.)

(g) Examinations for initial recommendation [accreditation] and examinations to maintain recommendation [accreditation] will be administered by the commission at a location and time designated by the commission.

(h) - (i) (No change.)

(j) To maintain the recommendation of the commission [accreditation], an officer must successfully pass, at least annually, a proficiency exam and hold a current certificate of training [be certified] under the provisions of §450.3 of this title.

(k) Inquiries concerning accreditation shall be directed to and answered by the commission Claims Department Director. Disputes shall be reviewed and a decision rendered by the commission Claims Department Director or designee. Disputes which remain unresolved shall be referred to the executive director of the commission or the executive director's designee. The decision of the executive director or the executive director's designee shall be final.

(l) The executive director of the commission or the executive director's designee will request that the secretary:

(1) revoke [Revoke] the accreditation of the officer upon termination of the officer;

(2) suspend [Suspend] or revoke the accreditation of an officer for the officer's failure to:

(A) maintain commission annual training requirements;

(B) maintain the commission annual testing requirements;

(C) maintain the VA's annual training requirements; or

(D) maintain active use of the VA's database systems; and[.]

(3) suspend [Suspend] or revoke the accreditation of the officer for any situation in which the action is deemed appropriate.

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

Filed with the Office of the Secretary of State on May 12, 2023.

TRD-202301734

Cory Scanlon

General Counsel

Texas Veterans Commission

Earliest possible date of adoption: June 25, 2023

For further information, please call: (737) 320-4167

