

# 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 1. ADMINISTRATION

### PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

#### CHAPTER 355. REIMBURSEMENT RATES

##### SUBCHAPTER J. PURCHASED HEALTH SERVICES

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §355.8061, concerning Outpatient Hospital Reimbursement, §355.8121, concerning Reimbursement, §355.8610, concerning Reimbursement for Clinical Laboratory Services, and §355.8660, concerning Renal Dialysis Reimbursement.

##### BACKGROUND AND PURPOSE

The purpose of the proposal is to implement the outpatient prospective payment system (OPPS) reimbursement as required by Texas Government Code §536.005, (enacted in the 82nd Texas Legislature, 1st Called Session, 2011) which requires that HHSC "convert outpatient hospital reimbursement systems to an appropriate prospective payment system." In addition, the 2014-15 General Appropriations Act, 83rd Legislature, Regular Session, 2013 (Article II, HHSC, Rider 38) stated that "in order to ensure that access to emergency and outpatient services remain in rural parts of Texas, it is the intent of the Legislature that when HHSC changes its outpatient reimbursement methodology to a 3M™ Enhanced Ambulatory Patient Groups or similar methodology, HHSC shall promulgate a separate or modified payment level for the above defined providers." HHSC has been unable to implement EAPGs in the current Medicaid Management Information System (MMIS) without significant technology costs. Now that the agency is moving to a modernized MMIS, EAPGs are being implemented on the same timeframe. The contracts related to the modernized MMIS anticipated the new system would become operational on September 1, 2023. However, the date may be amended to a later date if necessary for system readiness.

The OPPS that HHSC is proposing to implement is the EAPG grouper methodology. EAPGs are a visit-based classification system intended to reflect the type of resources utilized in outpatient encounters for patients with similar clinical characteristics. EAPGs are used in outpatient prospective payment systems for a variety of outpatient settings, including hospital emergency rooms, outpatient clinics and same day surgery. EAPGs are proprietary to 3M Health Information Systems and 3M initially developed Ambulatory Patient Groups prior to 2000. In 2007, 3M made significant changes to its earlier variant of the grouper to reflect current clinical practice including coding and billing prac-

tics and to describe a broader, non-Medicare population which resulted in what we now call EAPGs. EAPGs group procedures and medical visits that share similar clinical characteristics, resource utilization patterns and cost so that payment is based on the relative intensity of the entire visit. The EAPG grouping system is designed to recognize clinical and resource variations in severity, which results in higher payments for higher intensity services and lower payments for less intensive services. While each claim may receive multiple EAPGs, each procedure is assigned to only one EAPG.

HHSC is working through the evaluation of the potential impacts in payments to hospitals and other impacted providers and expects to share those impacts in May as the evaluation is completed. The rule amendments update the reimbursement methodology in each of the four rules to clarify the transition to EAPGs.

##### SECTION-BY-SECTION SUMMARY

The proposed amendment to §355.8061(a) adds new paragraph (1) to define how outpatient hospitals will be reimbursed based on OPPS beginning on the date that the modernized MMIS becomes operational. It specifies that the OPPS used for payments will be EAPGs. New paragraph (2) is added to specify certain services that are excluded from the OPPS reimbursement as described in subsection (a)(1). Language from subsection (a) is used to create new paragraph (3) to specify that the paragraph applies to services provided prior to the date that the modernized MMIS becomes operational.

The proposed amendment to §355.8061(b) deletes two references for formatting purposes and deletes paragraph (1)(C) as it describes outdated legislation that was previously approved. Section 355.8061(b)(1)(D) is changed to (C) and the subparagraph is amended to provide clarification on exemption of emergency department (ED) services from OPPS reimbursement described in subsection (a) of this section. It also corrects references to paragraphs within the rule.

The proposed amendment to §355.8061(d) adds paragraph (1) to define how outpatient hospital imaging will be reimbursed based on OPPS beginning on the date that the modernized MMIS becomes operational. It specifies that the OPPS used for payments will be EAPGs. The paragraphs are renumbered and subsection (d)(2) is updated to specify that it applies to services provided prior to the date that the modernized MMIS becomes operational. Subsection (d)(3) is updated to specify that it applies to services provided prior to the date that the modernized MMIS becomes operational.

The proposed amendment to §355.8121 revises the name of the section from "Reimbursement" to "Reimbursement to Ambulatory Surgical Centers" and adds (a)(1) and (a)(2) to define how ambulatory surgical centers will be reimbursed based on OPPS

beginning on the date that the modernized MMIS becomes operational. It specifies that the OPPS used for payments will be EAPGs. The subsections are relabeled and new subsection (b) is updated to specify that it applies to services provided prior to the date that the modernized MMIS becomes operational.

The proposed amendment to §355.8610(a) removes the reference to services provided "by a hospital laboratory for its outpatients" and the language regarding HHSC or its designee reviewing maximum fees at least every two years from subsection (a). A slight modification is made to the name of the section by making "services" singular. Subsection (a) is reorganized for clarification and to align it with the subsequent subsection. New subsection (b)(1) defines how clinical diagnostic laboratory services will be reimbursed based on OPPS beginning on the date that the modernized MMIS becomes operational. It specifies that the OPPS used for payments will be EAPGs. New subsection (b)(2) specifies that it applies to services provided prior to the date that the modernized MMIS becomes operational, and fees for services during that time were established at a percentage of the Medicaid fee schedule.

The proposed amendment to §355.8660 adds new paragraph (a) to define how outpatient renal dialysis centers will be reimbursed based on OPPS beginning on the date that the modernized MMIS becomes operational. It specifies that the OPPS used for payments will be EAPGs.

#### 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 not create a new rule;
- (6) the proposed rules will expand an existing rule;
- (7) the proposed rules will not change the number of individuals subject to the rule; 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 that are required to comply with the rules.

#### LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

#### COSTS TO REGULATED PERSONS

The rule is necessary to implement legislation that does not specifically state that Texas Government Code Section 2001.0045, pertaining to requirements for rules increasing the costs to regulated persons, applies to the rule.

#### PUBLIC BENEFIT AND COSTS

Victoria Grady, Director of Provider Finance, has determined that for each year of the first five years the rules are in effect, the public will benefit from the adoption of the rules due to the avoidance of recoupments that might otherwise occur, improved alignment of payments with their intended purpose, and increased transparency with the new details included in the rules.

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 the rules do not impose any additional fees or costs on those who are required 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 HEARING

A public hearing to receive comments on the proposal will be held by HHSC through a webinar. The meeting date and time will be posted on the HHSC Communications and Events Website at <https://hhs.texas.gov/about-hhs/communications-events> and the HHSC Provider Finance Hospitals website at <https://pfd.hhs.texas.gov/hospitals-clinic/hospital-services/disproportionate-share-hospitals>.

Please contact the Provider Finance Department Hospital Finance section at [pfd\\_hospitals@hhsc.state.tx.us](mailto:pfd_hospitals@hhsc.state.tx.us) if you have questions.

#### PUBLIC COMMENT

Questions about the content of this proposal may be directed to Christina Nip in the HHSC Provider Finance for Hospitals department at [pfd\\_hospitals@hhsc.state.tx.us](mailto:pfd_hospitals@hhsc.state.tx.us).

Written comments on the proposal may be submitted to the HHSC Provider Finance Department, Mail Code H-400, P.O. Box 149030, Austin Texas 78714-9030, or by email to [pfd\\_hospitals@hhsc.state.tx.us](mailto:pfd_hospitals@hhsc.state.tx.us).

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 23R026" in the subject line.

## DIVISION 4. MEDICAID HOSPITAL SERVICES

### 1 TAC §355.8061

#### STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out HHSC's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Texas Human Resources Code Chapter 32.

The amendment affects Texas Government Code §531.0055, Chapter 531, and Texas Human Resources Code Chapter 32.

*§355.8061. Outpatient Hospital Reimbursement.*

(a) Introduction. The Texas Health and Human Services Commission (HHSC), or its designee reimburses outpatient hospital services under the reimbursement methodology described in this section.

(1) For services provided on and after the date that the modernized Medicaid Management Information System (MMIS) becomes operational, HHSC, or its designee, will reimburse all hospital providers based on an outpatient prospective payment system (OPPS). This includes all hospitals as defined in §355.8052 of this division (relating to Inpatient Hospital Reimbursement), including rural, urban, and Children's. The OPPS used for reimbursement is the 3M™ Enhanced Ambulatory Patient Groups (EAPG) calculator. EAPGs are a visit-based classification system intended to reflect the type of resources utilized in outpatient encounters for patients with similar clinical characteristics.

(2) The following are exceptions to the OPPS reimbursement methodology.

(A) Reimbursement for Long-Acting Reversible Contraceptive devices.

(B) Human Breast Milk Processing, Storage and Distribution.

(C) Certain Drugs Paid to Managed Care Organizations on a Non-Risk Basis, as determined by HHSC.

(D) Cochlear implant devices and certain high cost nerve stimulators.

(E) Non-Emergent emergency room services as described in subsection (b)(1)(C) of this section.

(F) State owned teaching hospitals outpatient reimbursement is based on cost principals as described in subsection (b) of this section.

(3) For services prior to the date that the modernized MMIS becomes operational, reimbursement is outlined below in subsection (b) of this section except [Except] as described in subsections (c) and (d) of this section, HHSC will reimburse for outpatient hospital services based on a percentage of allowable charges and an outpatient interim rate.

(b) Interim reimbursement.

(1) HHSC will determine a percentage of allowable charges, which are charges for covered Medicaid services determined through claims adjudication.

(A) For high volume providers that received Medicaid outpatient payments equaling at least \$200,000 during calendar year 2004.

(i) For children's hospitals and state-owned hospitals as defined in §355.8052 of this division [~~(relating to Inpatient Hospital Reimbursement)~~], the percentage of allowable charges is 76.03 percent, except as described in subparagraph (C) of this paragraph.

(ii) For rural hospitals as defined in §355.8052 of this division, the percentage of allowable charges is 100 percent.

(iii) For all other providers, the percentage of allowable charges is 72.00 percent.

(B) For all providers not considered high volume providers as determined in paragraph (1)(A) of this subsection.

(i) For children's hospitals and state-owned hospitals as defined in §355.8052 of this division, the percentage of allowable charges is 72.27 percent[; except as described in subparagraph (C) of this paragraph].

(ii) For rural hospitals as defined in §355.8052 of this division, the percentage of allowable charges is 100 percent.

(iii) For all other providers, the percentage of allowable charges is 68.44 percent.

~~[(C) For children's hospitals:]~~

~~[(i) The percentage of allowable charges described in subparagraphs (A)(i) and (B)(i) of this paragraph are subject to the prior written approval of the Legislative Budget Board and the Governor, as required by the 2014-2015 General Appropriations Act (Article II, Health and Human Services Comm., S.B. 1, 83rd Leg., Regular Session, 2013, Rider 83 and Special Provisions Relating to All Health and Human Services Agencies, Section 44, Rate Limitations and Reporting Requirements).]~~

~~[(ii) If the percentages of allowable charges described in subparagraphs (A)(i) and (B)(i) of this paragraph are not approved as described in clause (i) of this subparagraph, the percentages of allowable charges described in subparagraphs (A)(iii) and (B)(iii) of this paragraph apply.]~~

~~(C) [(D)] For outpatient emergency department (ED) services that do not qualify as emergency visits are exempt from the OPPS reimbursement described in subsection (a)(1) of this section. For these services, which are listed in the Texas Medicaid Provider Procedures Manual and other updates on the claims administrator's website, HHSC will reimburse:~~

~~(i) rural hospitals, as defined in §355.8052 of this division, an amount not to exceed 65 percent of allowable charges after application of the methodology in paragraph (1)(A) and (1)(B) [(2)(C)] of this subsection, which will result in a payment that does not exceed 65 percent of allowable cost; and~~

~~(ii) all other hospitals, a flat fee set at a percentage of the Medicaid acute care physician office visit amount for adults.~~

(2) HHSC will determine an outpatient interim rate for each non-rural hospital, which is the ratio of Medicaid allowable outpatient costs to Medicaid allowable outpatient charges derived from the hospital's Medicaid cost report.

(A) For a non-rural hospital with at least one tentative cost report settlement completed prior to September 1, 2013, the interim rate is the rate in effect on August 31, 2013, except the hospital will be assigned the interim rate calculated upon completion of any future cost report settlement if that interim rate is lower.

(B) For a non-rural new hospital that does not have at least one tentative cost report settlement completed prior to September

1, 2013, the default interim rate is 50 percent until the interim rate is adjusted as follows. [F]

(i) If the non-rural hospital files a short-period cost report for its first cost report, the hospital will be assigned the interim rate calculated upon completion of the hospital's first tentative cost report settlement.

(ii) The hospital will be assigned the interim rate calculated upon completion of the hospital's first full-year tentative cost report settlement.

(iii) The hospital will retain the interim rate calculated as described in clause (ii) of this subparagraph, except it will be assigned the interim rate calculated upon completion of any future cost report settlement if that interim rate is lower.

(C) Interim claim reimbursement for non-rural hospitals is determined by multiplying the amount of a hospital's outpatient allowable charges after applying any reductions to allowable charges made under paragraph (1) of this subsection by the outpatient interim rate in effect on the date of service.

(D) [Cost settlement.] Interim claim reimbursement determined in subparagraph (C) of this paragraph will be cost-settled at both tentative and final audit of a non-rural hospital's cost report. The calculation of allowable costs will be determined based on the amount of allowable charges after applying any reductions to allowable charges made under paragraph (1) of this subsection.

(i) Interim payments for claims with a date of service prior to September 1, 2013, will be cost settled.

(ii) Interim payments for claims with a date of service on or after September 1, 2013, will be included in the cost report interim rate calculation, but will not be adjusted due to cost settlement unless the settlement calculation indicates an overpayment.

(iii) HHSC will calculate an interim rate at tentative and final cost settlement for the purposes described in subparagraph (B) of this paragraph.

(iv) If a hospital's interim claim reimbursement for all outpatient services, excluding imaging, clinical lab and outpatient emergency department services that do not qualify as emergency visits, for the hospital's fiscal year exceeded the allowable costs for those services, HHSC will recoup the amount paid to the hospital in excess of allowable costs.

(v) If a hospital's interim claim reimbursement for all outpatient services, excluding imaging, clinical lab and outpatient emergency department services that do not qualify as emergency visits, for the hospital's fiscal year was less than the allowable costs for those services, HHSC will not make additional payments through cost settlement to the hospital for service dates on or after September 1, 2013.

(3) HHSC will determine an outpatient interim rate for each rural hospital, which is the ratio of Medicaid allowable outpatient costs to Medicaid allowable outpatient charges derived from the hospital's Medicaid cost report.

(A) For a rural hospital with at least one tentative cost report settlement completed prior to September 1, 2021, the interim rate effective on September 1, 2021, is the rate calculated in the latest initial cost report with an additional percentage increase, not to exceed an interim rate of 100 percent. After September 1, 2021, a rural hospital will be assigned the interim rate calculated upon completion of each initial or amended initial cost report, with an additional percentage increase, not to exceed an interim rate of 100 percent.

(B) For a new rural hospital that does not have at least one initial cost report completed prior to September 1, 2021, the default interim rate is 50 percent until the interim rate is adjusted as follows.

(i) If the rural hospital files a short-period cost report for their first cost report, the hospital will continue to receive the default rate until completion of the first full-year initial cost report.

(ii) The rural hospital will be assigned the interim rate calculated upon completion of a review of the hospital's first full-year initial or amended initial cost report, with an additional percentage increase, not to exceed an interim rate of 100 percent.

(C) Interim claim reimbursement for a rural hospital is determined by multiplying the amount of a hospital's outpatient allowable charges after applying any reductions to allowable charges made under paragraph (1) of this subsection by the outpatient interim rate in effect on the date of service as described in subparagraph (A) of this paragraph.

(D) Interim claim reimbursement determined in subparagraph (C) of this paragraph will not be cost-settled for services rendered on or after September 1, 2021.

(c) Outpatient hospital surgery. Outpatient hospital non-emergency surgery is reimbursed in accordance with the methodology for ambulatory surgical centers as described in §355.8121 of this subchapter (relating to Reimbursement).

(d) Outpatient hospital imaging.

(1) For services provided on and after the date that the modernized MMIS becomes operational, all hospitals will be reimbursed based on an outpatient prospective payment system (OPPS). The OPPS used for reimbursement is the 3M™ Enhanced Ambulatory Patient Groups (EAPG) calculator.

(2) [(+) For services prior to the date that the modernized MMIS becomes operational, for [Før] all hospitals except rural hospitals, as defined in §355.8052 of this division, outpatient hospital imaging services are not reimbursed under the outpatient reimbursement methodology described in subsection (b) of this section. Outpatient hospital imaging services are reimbursed according to an outpatient hospital imaging service fee schedule that is based on a percentage of the Medicare Outpatient Prospective Payment System fee schedule for similar services. If a resulting fee for a service provided to any Medicaid beneficiary is greater than 125 percent of the Medicaid adult acute care fee for a similar service, the fee is reduced to 125 percent of the Medicaid adult acute care fee.

(3) [(2) For services prior to the date that the modernized MMIS becomes operational, for [Før] rural hospitals, outpatient hospital imaging services are reimbursed based on a percentage of the Medicare Outpatient Prospective Payment System fee schedule for similar services.

(e) Minimum Fee Schedule. Effective September 1, 2020, Managed Care Organizations are required to reimburse rural hospitals based on a minimum fee schedule. The minimum fee schedules are the rates specific to rural hospitals, as described in subsections (b) - (d) of this section.

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 June 6, 2023.  
TRD-202302087



## DIVISION 7. AMBULATORY SURGICAL CENTERS

### 1 TAC §355.8121

#### STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out HHSC's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Texas Human Resources Code Chapter 32.

The amendment affects Texas Government Code §531.0055, Chapter 531, and Texas Human Resources Code Chapter 32.

*§355.8121. Reimbursement to Ambulatory Surgical Centers.*

(a) For dates of service on and after the date that the modernized Medicaid Management Information System (MMIS) becomes operational, providers will be reimbursed based on an outpatient prospective payment system (OPPS).

(1) The OPSS utilized is 3M™ Enhanced Ambulatory Patient Groups (EAPG) calculator.

(2) EAPGs are a visit-based classification system intended to reflect the type of resources utilized in outpatient encounters for patients with similar clinical characteristics.

(b) ~~[(a)]~~ For services provided prior to the date that the modernized MMIS becomes operational, subject [Subject] to the specifications, conditions, and limitations established by the Texas Health and Human Services Commission [the department], payment for ambulatory surgical center facility services is made based on Medicare rules and prospectively determined rates, unless otherwise specified by the department.

(c) Payment for services provided in or by an ambulatory surgical center, other than ambulatory surgical center facility services, is made under other provisions of the state plan, as appropriate to the service and the provider performing the service.

(d) ~~[(b)]~~ Physicians must bill the Medicaid Program separately for services they provide in an ambulatory surgical center.

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

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## DIVISION 32. CLINICAL LABORATORY SERVICES

### 1 TAC §355.8610

#### STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out HHSC's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Texas Human Resources Code Chapter 32.

The amendment affects Texas Government Code §531.0055, Chapter 531, and Texas Human Resources Code Chapter 32.

*§355.8610. Reimbursement for Clinical Laboratory Service [Services].*

(a) Clinical diagnostic laboratory tests performed in a practitioner's office or[;] by an independent laboratory, [or by a hospital laboratory for its outpatients] shall be reimbursed as follows.

(1) The [the] lower of the provider's usual customary charge for that service or a maximum fee determined by the Texas Health and Human Services Commission (HHSC), or its designee. [HHSC or its designee will review maximum fees at least every two years, with any adjustments made within available funding.]

(2) Fees for services provided will be established at a percentage of the Medicare fee schedule.

(b) Clinical diagnostic laboratory tests performed by a hospital laboratory for outpatient services shall be reimbursed as follows.

(1) For services provided on and after the date that the modernized Medicaid Management Information System (MMIS) becomes operational, providers will be reimbursed based on an outpatient prospective payment system (OPPS). The OPSS used for reimbursement is the 3M™ Enhanced Ambulatory Patient Groups (EAPG) calculator. EAPGs are a visit-based classification system intended to reflect the type of resources utilized in outpatient encounters for patients with similar clinical characteristics.

(2) For services provided prior to the date that the modernized MMIS becomes operational, the lower of the provider's usual customary charge for that service or a maximum fee determined by HHSC, or its designee. Fees for services provided will be established at a percentage of the Medicare fee schedule.

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

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For further information, please call: (512) 487-3480



## DIVISION 35. RENAL DIALYSIS SERVICES

### 1 TAC §355.8660

#### STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out HHSC's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Texas Human Resources Code Chapter 32.

The amendment affects Texas Government Code §531.0055, Chapter 531, and Texas Human Resources Code Chapter 32.

#### §355.8660. *Renal Dialysis Reimbursement.*

(a) For services provided on or after the date that the modernized Medicaid Management Information System (MMIS) becomes operational, the reimbursement methodology for in-facility renal dialysis treatment services and home renal dialysis treatment services is an outpatient prospective payment system (OPPS). The OPPS used for reimbursement is the 3M™ Enhanced Ambulatory Patient Grouping (EAPG) payment methodology. EAPGs are a visit-based classification system intended to reflect the type of resources utilized in outpatient encounters for patients with similar clinical characteristics.

(b) [(a)] For services prior to the date that the modernized MMIS becomes operational, payment [Payment] for in-facility renal dialysis treatment services and home renal dialysis treatment services is based upon the composite rate reimbursement methodology previously used by Medicare. The composite rates reflect all changes enacted by the Balanced Budget Refinement Act of 1999 (BBRA). Rates are based on available funds[,] and are subject to legislative appropriations.

(c) [(b)] All required items and services included under the composite rate must be made available by the facility, either directly or under arrangements, for each dialysis patient. If the facility fails to make available (either directly or under arrangements) any item or service listed in this subsection, or any part of an item or service listed in this subsection, then the facility cannot be reimbursed any amount for items and services that the facility provides. Required items and services include:

- (1) medically necessary dialysis equipment and dialysis support equipment;
- (2) home dialysis support services including the delivery, installation, maintenance, repair, and testing of home dialysis equipment, and home support equipment;
- (3) purchase and delivery of all necessary dialysis supplies, except blood which is separately reimbursable under this chapter;
- (4) routine end-stage renal dialysis (ESRD) related laboratory tests; and

- (5) all dialysis services furnished by the facility's staff.

(d) [(e)] The following items and services also are included in the composite rate and may not be billed separately when provided by a dialysis facility:

- (1) cardiac monitoring;
- (2) catheter changes;
- (3) crash cart usage for cardiac arrest;
- (4) declotting of shunts by facility staff and any supplies used to declot shunts;
- (5) dialysate used during treatment;
- (6) oxygen and administration of oxygen;
- (7) staff time used to administer blood, inject separately billable drugs, blood collection, and nonroutine peritoneal items;
- (8) suture removal and dressing changes; and
- (9) other items and services related to dialysis treatment, as determined by HHSC.

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 June 6, 2023.

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Karen Ray  
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## TITLE 19. EDUCATION

### PART 2. TEXAS EDUCATION AGENCY

#### CHAPTER 103. HEALTH AND SAFETY SUBCHAPTER CC. COMMISSIONER'S RULES CONCERNING SAFE SCHOOLS

##### 19 TAC §103.1209, §103.1211

The Texas Education Agency (TEA) proposes amendments to §103.1209 and §103.1211, concerning mandatory school drills and active threat exercises. The proposed amendments would reorganize definitions and provide clarifications in §103.1209 and add requirements for certain active threat exercises in §103.1211.

BACKGROUND INFORMATION AND JUSTIFICATION: Section 103.1209 requires that school districts and open-enrollment charter schools conduct emergency safety drills in accordance with Texas Education Code, §37.114.

The proposed amendment to §103.1209(b) would reorganize the definitions to distinguish between general terms, terms defining levels of exercises, and terms defining types of drills. The changes would ensure distinction between events that include persons role playing as active aggressors and circumstances designed to train for, assess, practice, and improve incident mitigation, prevention, preparedness, response, and recovery in

a risk-free environment. Subsections (c)(4) and (5) and (d)(4) would be amended to clarify existing language.

Section 103.1211 defines the requirements a school district must meet if it elects to conduct active threat exercises.

The proposed amendment to §103.1211 would add new subsection (c) to delineate between discussion-based tabletop exercises and operations-based, functional, or full-scale exercises. Additionally, subsection (c)(2) would clarify that the notice requirements currently in rule apply to an operations-based, a functional, or a full-scale exercise.

Section 103.1211(c)(4)(A) would be amended to require that input from law enforcement personnel be solicited in the design of an operations-based, a functional, or a full-scale exercise.

New §103.1211(c)(5) would be added to ensure that operations-based, functional, or full-scale exercises are conducted during non-instructional time when non-participants are not present in a district facility. Further, subsection (c)(5)(A)-(C) would outline requirements for participants. More specifically, although student participation would be discouraged, age requirements would be detailed for students who receive an educational benefit by participating in an exercise, and all participants would be required to opt in rather than opt out of an exercise. In addition, subsection (c)(5)(D) would ensure that any exercise conducted is overseen by first responders or emergency management personnel.

New §103.1211(c)(6) would be added to ensure local education agencies conduct an after-action review of the exercise to determine the extent to which it achieved key planning objectives.

**FISCAL IMPACT:** Brooks Straub, deputy chief of staff for the office of school safety and security, has determined that for the first five-year period the proposal is in effect, there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

**LOCAL EMPLOYMENT IMPACT:** The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

**SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT:** The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

**COST INCREASE TO REGULATED PERSONS:** The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

**TAKINGS IMPACT ASSESSMENT:** The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

**GOVERNMENT GROWTH IMPACT:** TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would expand an existing regulation by adding requirements in §103.1211 for local education agencies to solicit input from law enforcement personnel about the design of an operations-based, a functional, or a full-scale exercise; requiring that exercises be conducted during non-instructional time and providing additional requirements for participants; and adding requirements for an after-action review.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not limit or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

**PUBLIC BENEFIT AND COST TO PERSONS:** Mr. Straub has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be to provide school districts with added clarification related to the level of exercises and drills conducted to enhance the safety and security of the overall campus community and delineate between discussion-based tabletop exercises and operations-based, functional, or full-scale exercises. Additionally, the proposal would provide guidance to conduct an exercise that ensures the physical and psychological safety of participants while simultaneously achieving key planning objectives. There is no anticipated economic cost to persons who are required to comply with the proposal.

**DATA AND REPORTING IMPACT:** The proposal would have no data and reporting impact.

**PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS:** TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

**PUBLIC COMMENTS:** The public comment period on the proposal begins June 23, 2023, and ends July 24, 2023. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on June 23, 2023. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About\\_TEA/Laws\\_and\\_Rules/Commissioner\\_Rules\\_\(TAC\)/Proposed\\_Commissioner\\_of\\_Education\\_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/).

**STATUTORY AUTHORITY.** The amendments are proposed under Texas Education Code (TEC), §37.114, which requires the commissioner of education to provide best practices for conducting emergency drills and exercises and to designate the number and type of mandatory school drills to be conducted each semester of the school year; and TEC, §37.1141, which provides guidelines before a school district may conduct an active threat exercise.

**CROSS REFERENCE TO STATUTE.** The amendments implement Texas Education Code, §37.114 and §37.1141.

*§103.1209. Mandatory School Drills.*

(a) Requirement. Each school district and open-enrollment charter school shall conduct emergency safety drills in accordance with Texas Education Code (TEC), §37.114. Drills do not include persons role playing as active aggressors or other simulated threats.

(b) Definitions and related terms. The following words and terms related to drills and exercises, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise. These definitions do not apply to an active threat exercise, which is defined in TEC, §37.1141, and associated rules, if any.

(1) General terms. [Active aggressor--An individual actively engaged in killing or attempting to kill people in a confined and populated area.]

(A) Active aggressor--An individual actively engaged in killing or attempting to kill people in a confined and populated area.

(B) Drill--A set of procedures that test a single, specific operation or function. Drills do not include persons role playing as active aggressors or other simulated threats. Drill examples include evacuating for a fire or locking down from an internal threat.

(C) Exercise--An instrument to train for, assess, practice, and improve performance in mitigation, prevention, preparedness, response, and recovery in a risk-free environment. While drills and exercises may overlap in some aspects, discussion-based and operation-based exercises are often more in depth and multi-faceted.

(2) Terms defining the level of exercise.

(A) Full-scale exercise--Typically the most complex and resource-intensive type of exercise. It involves multiple agencies, organizations, and jurisdictions and validates many facets of preparedness. This exercise often includes many players operating under cooperative systems such as the Incident Command System (ICS) or Unified Command. Resources and staff are mobilized as needed. All actions are taken as if the emergency is real. A full-scale exercise is the most time-consuming activity in the exercise continuum and is a multi-agency, multi-jurisdictional effort in which all resources are deployed. A full-scale exercise tests collaborations among the agencies and participants, public information systems, communication systems, and equipment. An Emergency Operations Center is established by either law enforcement or fire services, and the ICS is activated. Because of all the logistics and resources needed for a full-scale exercise, it often takes a year to plan and is not held often. Usually, a school district is not the organizer of such an exercise, but the district or school would play a critical role in both function and potential facility use.

(B) Functional exercise--Designed to validate and evaluate capabilities, multiple functions and/or sub-functions, or interdependent groups of functions. A functional exercise is typically focused on exercising plans, policies, procedures, and staff members involved in management, direction, command, and control functions. It allows participants to practice their specific roles or functions in an emergency. This type of exercise is conducted in a realistic, real-time simulated environment and often includes simulators (individuals who assist with the facilitation of the exercise) and follows a master scenario events list that dictates additional information, occurrences, or activities that affect the exercise scenario.

(C) Seminar exercise--A discussion-based exercise designed to orient participants to new or updated plans, policies, or procedures through informal discussions. Seminar exercises are often used to impart new information and formulate new ideas.

(D) Tabletop exercise--A small group discussion that walks through a scenario and the courses of action a school will need to take before, during, and after an emergency to lessen the impact on the school community. Participants problem-solve together through a detailed discussion of roles, responsibilities, and anticipated courses of action. A tabletop exercise leverages a defined scenario to direct discussion and may need an experienced facilitator depending on the complexity and objectives of the exercise.

(E) Workshop exercise--A type of discussion-based exercise focused on increased participant interaction and achieving or building a product (e.g., plans or policies). A workshop exercise is typically used to test new ideas, processes, or procedures; train groups in coordinated activities; and obtain consensus. A workshop exercise

often uses breakout sessions to explore parts of an issue with smaller groups.

[(2) Drill--A set of procedures that test a single, specific operation or function. Drills do not include persons role playing as active aggressors or other simulated threats. Drill examples include evacuating for a fire or locking down from an internal threat.]

(3) Terms defining the type of drill.

(A) Evacuation drill--A response action schools take to quickly move students and staff from one place to another. The primary objective of an evacuation is to ensure that all staff, students, and visitors can quickly move away from the threat. Evacuation examples include a bomb threat or internal gas leak.

(B) Fire evacuation drill--A method of practicing how a building would be vacated in the event of a fire. The purpose of fire drills in buildings is to ensure that everyone knows how to exit safely as quickly as possible.

(C) Lockdown drill--A response action schools take to secure (close, latch, and lock) interior portions of school buildings and grounds during incidents that pose an immediate threat of violence inside the school. The primary objective is to quickly ensure all school students, staff, and visitors are secured away from immediate danger.

(D) Secure drill--A response action schools take to secure (close, latch, and lock) the perimeter of school buildings and grounds during incidents that pose a threat or hazard outside of the school building. This type of drill uses the security of the physical facility to act as protection to deny entry.

(E) Shelter-in-place for hazardous materials (hazmat) drill--A response action schools take to quickly move students, staff, and visitors indoors, perhaps for an extended period of time, because it is safer inside the building than outside. Affected individuals may be required to move to rooms without windows or to rooms that can be sealed. Examples of a shelter-in-place for hazmat drill include train derailment with chemical release or smoke from a nearby fire.

(F) Shelter for severe weather drill--A response action schools take to quickly move students, staff, and visitors indoors, perhaps for an extended period of time, because it is safer inside the building than outside. For severe weather, depending on the type and/or threat level (watch versus warning), affected individuals may be required to move to rooms without windows on the lowest floor possible or to a weather shelter.

[(3) Evacuation drill--A response action schools take to quickly move students and staff from one place to another. The primary objective of an evacuation is to ensure that all staff, students, and visitors can quickly move away from the threat. Evacuation examples include a bomb threat or internal gas leak.]

[(4) Exercise--An instrument to train for, assess, practice, and improve performance in mitigation, prevention, preparedness, response, and recovery in a risk-free environment. While drills and exercises may overlap in some aspects, discussion-based and operation-based exercises are often more in depth and multi-faceted.]

[(5) Fire evacuation drill--A method of practicing how a building would be vacated in the event of a fire. The purpose of fire drills in buildings is to ensure that everyone knows how to exit safely as quickly as possible.]

[(6) Full-scale exercise--Typically the most complex and resource-intensive type of exercise. It involves multiple agencies, organizations, and jurisdictions and validates many facets of preparedness. This exercise often includes many players operating under coop-



erative systems such as the Incident Command System (ICS) or Unified Command. Resources and staff are mobilized as needed. All actions are taken as if the emergency is real. A full-scale exercise is the most time-consuming activity in the exercise continuum and is a multiagency, multijurisdictional effort in which all resources are deployed. A full-scale exercise tests collaborations among the agencies and participants, public information systems, communication systems, and equipment. An Emergency Operations Center is established by either law enforcement or fire services, and the ICS is activated. Because of all the logistics and resources needed for a full-scale exercise, it often takes a year to plan and is not held often. Usually, a school district is not the organizer of such an exercise, but the district or school would play a critical role in both function and potential facility use.}]

[(7) Functional exercise--Designed to validate and evaluate capabilities, multiple functions and/or sub-functions, or interdependent groups of functions. A functional exercise is typically focused on exercising plans, policies, procedures, and staff members involved in management, direction, command, and control functions. It allows participants to practice their specific roles or functions in an emergency. This type of exercise is conducted in a realistic, real-time simulated environment and often includes simulators (individuals who assist with the facilitation of the exercise) and follows a master scenario events list that dictates additional information, occurrences, or activities that affect the exercise scenario.}]

[(8) Lockdown drill--A response action schools take to secure interior portions of school buildings and grounds during incidents that pose an immediate threat of violence inside the school. The primary objective is to quickly ensure all school students, staff, and visitors are secured away from immediate danger.}]

[(9) Secure drill--A response action schools take to secure the perimeter of school buildings and grounds during incidents that pose a threat or hazard outside of the school building. This type of drill uses the security of the physical facility to act as protection to deny entry.}]

[(10) Seminar exercise--A discussion-based exercise designed to orient participants to new or updated plans, policies, or procedures through informal discussions. Seminar exercises are often used to impart new information and formulate new ideas.}]

[(11) Shelter-in-place for hazardous materials (hazmat) drill--A response action schools take to quickly move students, staff, and visitors indoors, perhaps for an extended period of time, because it is safer inside the building than outside. Affected individuals may be required to move to rooms without windows or to rooms that can be sealed. Examples of a shelter-in-place for hazmat drill include train derailment with chemical release or smoke from a nearby fire.}]

[(12) Shelter for severe weather drill--A response action schools take to quickly move students, staff, and visitors indoors, perhaps for an extended period of time, because it is safer inside the building than outside. For severe weather, depending on the type and/or threat level (watch versus warning), affected individuals may be required to move to rooms without windows on the lowest floor possible or to a weather shelter.}]

[(13) Tabletop exercise--A small group discussion that walks through a scenario and the courses of action a school will need to take before, during, and after an emergency to lessen the impact on the school community. Participants problem-solve together through a detailed discussion of roles, responsibilities, and anticipated courses of action. A tabletop exercise leverages a defined scenario to direct discussion and may need an experienced facilitator depending on the complexity and objectives of the exercise.}]

[(14) Workshop exercise--A type of discussion-based exercise focused on increased participant interaction and achieving or building a product (e.g., plans or policies). A workshop exercise is typically used to test new ideas, processes, or procedures; train groups in coordinated activities; and obtain consensus. A workshop exercise often uses breakout sessions to explore parts of an issue with smaller groups.}]

(c) Frequency. TEC, §37.114(2), requires the commissioner of education to designate the number of mandatory school drills to be conducted each semester of the school year, not to exceed eight drills each semester and sixteen drills for the entire school year. Neither this rule, nor the law, precludes a school district or an open-enrollment charter school from conducting more drills as deemed necessary and appropriate by the district or charter school. Following is the required minimum frequency of drills by type.

- (1) Secure drill--One per school year.
- (2) Lockdown drill--Two per school year (once per semester).
- (3) Evacuation drill--One per school year.
- (4) Shelter-in-place [for hazmat] drill (for either severe weather or hazmat)--One per school year.

[(5) Shelter for severe weather drill--One per school year.}]

(5) [(6)] Fire evacuation drill--School districts and open-enrollment charter schools should consult with the local authority having jurisdiction (e.g., fire marshal) and comply with its requirements and recommendations [their local fire marshal and comply with their local fire marshal's requirements and recommendations]. If a district does not have a local authority [fire marshal], it shall conduct four per school year (two per semester).

(d) Best practices for conducting drills and exercises. This subsection highlights best practices for conducting drills and exercises. For more information about best practices, refer to Texas School Safety Center guidance.

(1) Drills and exercises should be designed and conducted in accordance with guidance and best practice resources provided by the Texas School Safety Center.

(2) Drill and exercise design should include purpose, goals, and objectives that are stated in plans for each type of drill. Purpose, goals, and objectives should be developed with input from all sectors of the school community. Input in planning should be sought from multiple stakeholder perspectives for each type of drill and exercise, including from:

- (A) the district School Safety and Security Committee;
- (B) first responders;
- (C) mental and behavioral health professionals;
- (D) students and families; and
- (E) staff, including non-traditional teachers, coaches, trade instructors, custodians, and food service workers.

(3) Drill and exercise design elements should include:

- (A) physical and psychological safety for all participants;
- (B) planning in a trauma-informed manner to maximize learning and to minimize potential trauma for students and staff;
- (C) providing advance notification of drills and exercises;

(D) planning for post-drill or after-action reviews of each drill and exercise; and

(E) ensuring drills and exercises are age and developmentally appropriate with the understanding that more complex drills and exercises will require a hierarchy of learning to achieve or obtain more advanced goals or objectives.

(4) Exercises are [tend to be] more complex than drills [and should be conducted in accordance with guidance and resources provided by the Texas School Safety Center. It is imperative that districts conduct exercises that match their experience and capabilities]. It is recommended that school systems [usually best to] start with discussion-based exercises and work up to operation-based exercises [over time]. Discussion-based exercises include seminar exercises, tabletop exercises, and workshop exercises. Operation-based exercises include functional exercises and full-scale exercises. Exercises can be used for:

(A) testing and validating policies, plans, procedures, training, equipment, and interagency agreements;

(B) clarifying and training personnel in roles and responsibilities;

(C) improving interagency coordination and communications;

(D) identifying gaps in resources;

(E) improving individual performance; and

(F) identifying opportunities for improvement.

§103.1211. *Active Threat Exercises.*

(a) An [Each local educational agency (LEA), which includes school districts and open-enrollment charter schools, that elects to conduct an] active threat exercise is [.] defined as any exercise that includes a simulated active aggressor or an active shooter simulation[. shall do so in accordance with Texas Education Code (TEC), §37.1141, and this section].

[(1) LEAs are not required to conduct active threat exercises.]

[(2) LEAs may consider using a tabletop exercise as defined in §103.1209 of this title (relating to Mandatory School Drills) to achieve the purpose, goals, and objectives of the exercise rather than using a functional or full-scale active threat exercise.]

[(3) LEAs may consider conducting an active threat exercise during a non-instructional time when nonparticipants are not present in the facility.]

[(b) Prior to conducting an active threat exercise, an LEA must:]

[(1) provide adequate notice of the exercise directly to individuals participating in the exercise, parents of students participating in the exercise, and all other individuals impacted by the exercise. Adequate notice of the active threat exercise shall also be posted through multiple distribution networks, including, but not limited to, the LEA's website and social media platforms.]

[(A) To be considered adequate notice, notice shall be provided and posted at least two weeks prior to the exercise.]

[(B) The notice shall include the following required elements specified in TEC, §37.1141(a)(1):]

[(i) [the date on which the exercise will occur;]

[(ii) the content, form, and tone of the exercise; and]

[(iii) whether the exercise will include a live simulation that mimics or appears to be an actual shooting incident;]

[(C) The notice shall be provided to parents in the parents' native language to the greatest extent practicable.]

[(2) make an audible announcement over the campus public address system immediately prior to the commencement of the exercise to signal the start of the exercise to the participants, noting that it is only an exercise and not a real emergency. The announcement must contain the elements specified in TEC, §37.1141(a)(2); and]

[(3) ensure that the content of the exercise, which includes planning and execution of the exercise, addresses the following elements:]

[(A) input from multiple stakeholder perspectives in the design of the exercise;]

[(B) the physical and psychological safety of all participants before, during, and after the exercise, including:]

[(i) planning in a trauma-informed manner to minimize potential trauma for students, staff, and other participants;]

[(ii) the development and communication of a predetermined method for participants to withdraw from the exercise before or during the exercise; and]

[(iii) access to mental health supports before, during, and after the exercise; and]

[(C) the developmental appropriateness of the exercise, which includes a comprehensive perspective that supports the cognitive and emotional well-being of each individual and considers the impact that prior trauma, grief, and crisis experiences have had on a participant's development prior to the exercise. Developmental appropriateness considerations include the needs of special populations, including students with disabilities and emergent bilingual students.]

(b) Local education agencies (LEAs), which include school districts and open-enrollment charter schools, are not required to conduct active threat exercises.

(c) An LEA that elects to conduct an active threat exercise shall do so in accordance with Texas Education Code (TEC), §37.1141, and this section. The LEA shall:

(1) consider using a discussion-based tabletop exercise as defined in §103.1209 of this title (relating to Mandatory School Drills) to achieve the purpose, goals, and objectives of the exercise rather than using an operations-based, a functional, or a full-scale active threat exercise;

(2) if conducting an operations-based, a functional, or a full-scale exercise, provide adequate notice of the exercise directly to individuals participating in the exercise, parents of students participating in the exercise, and all other individuals impacted by the exercise. Adequate notice of the active threat exercise shall also be posted through multiple distribution networks, including, but not limited to, the LEA's website and social media platforms.

(A) To be considered adequate notice, notice shall be provided and posted at least two weeks prior to the exercise.

(B) The notice shall include the following required elements specified in TEC, §37.1141(a)(1):

(i) the date on which the exercise will occur;

(ii) the content, form, and tone of the exercise; and

(iii) whether the exercise will include a live simulation that mimics or appears to be an actual shooting incident.

(C) The notice shall be provided to parents in the parents' native language to the greatest extent practicable;

(3) make an audible announcement over the campus public address system immediately prior to the commencement of the exercise to signal the start of the exercise to the participants, noting that it is only an exercise and not a real emergency. The announcement must contain the elements specified in TEC, §37.1141(a)(2);

(4) ensure that the content of the exercise, which includes planning and execution of the exercise, addresses the following elements:

(A) input from multiple stakeholder perspectives in the design of the exercise, including law enforcement personnel;

(B) the physical and psychological safety of all participants before, during, and after the exercise, including:

(i) planning in a trauma-informed manner to minimize potential trauma for students, staff, and other participants;

(ii) the development and communication of a predetermined method for participants to withdraw from the exercise before or during the exercise; and

(iii) access to mental health supports before, during, and after the exercise; and

(C) the developmental appropriateness of the exercise, which includes a comprehensive perspective that supports the cognitive and emotional well-being of each individual and considers the impact that prior trauma, grief, and crisis experiences have had on a participant's development prior to the exercise. Developmental appropriateness considerations include the needs of special populations, including students with disabilities and emergent bilingual students;

(5) conduct the exercise during non-instructional time when non-participants are not present in the facility. Additionally, the LEA must require that:

(A) if a student participates in the exercise, which is discouraged, the student is in Grade 9 or higher and participates only if it provides the student with an educational benefit;

(B) all participants (students and staff) opt in rather than opt out of the exercise. A student participant must have written permission to opt in from the parent or guardian of the student;

(C) exercise participants be permitted to withdraw from the exercise at any time, before or during the exercise, using a predetermined method of withdrawal; and

(D) the exercise is organized, conducted, and overseen by law enforcement, first responders, or emergency management personnel. An LEA or one of its schools shall play a critical role in exercise coordination, overall function, and use of the facility; and

(6) conduct an after-action review of the exercise to determine the extent to which the exercise achieved key planning objectives, to include ensuring:

(A) incident command and control structures work as intended in accordance with the LEA's multihazard emergency operations plan;

(B) two-way communications work as intended with emergency first responders in accordance with the LEA's multihazard emergency operations plan; and

(C) emergency notification systems (e.g., voice calls, text messages, and email notifications) work as intended.

(d) [(e)] In accordance with TEC, §37.1141(c), data regarding the efficacy and impact of an active threat exercise shall be collected and submitted to the Texas School Safety Center (TxSSC) using the methods developed by the TxSSC.

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 June 12, 2023.

TRD-202302128

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: July 23, 2023

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

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## TITLE 22. EXAMINING BOARDS

### PART 1. TEXAS BOARD OF ARCHITECTURAL EXAMINERS

#### CHAPTER 1. ARCHITECTS

#### SUBCHAPTER C. EXAMINATION

#### 22 TAC §1.43, §1.44

The Texas Board of Architectural Examiners (Board) proposes the amendment of 22 Texas Administrative Code §1.43 and §1.44.

These proposed rulemaking actions would implement changes to the Board's rules relating to the time period within which a candidate for registration is required to complete the Architect Registration Examination (ARE). The current rule is based on a now-obsolete policy from the testing provider, the National Council of Architectural Registration Boards (NCARB). This proposed amendment is intended to implement this change in NCARB policy, thereby maintaining national registration standards in Texas and providing a more equitable process for the completion of the ARE.

First, proposed §1.43 would repeal the obsolete NCARB "five-year rolling clock" policy. The rolling clock policy placed a five-year expiration date on passed divisions of the Architect Registration Examination. This decision was based on NCARB's conclusion that the five-year rolling clock was too restrictive. According to NCARB, most current ARE 5.0 exam items were developed under the previous ARE 4.0 and simply restructured for the current exam. Therefore, NCARB has concluded that preserving these scores will not impact exam validity. The Board agrees.

To maintain compliance with national registration standards proposed §1.43 would be amended to replace the adopted five-year rolling clock requirement with a requirement that architect candidates schedule and pass all sections of the examination within the time period required by NCARB. In place of the rolling clock, NCARB has adopted a new score validity policy, which bases the validity of passed ARE sections on exam versions (such as ARE 4.0, ARE 5.0, etc.) rather than a set time frame. Under this

policy, a passed exam section will remain valid throughout the delivery of the exam version under which it was taken, as well as the next exam version. For example, previously-expired ARE 4.0 sections will be reinstated and considered current throughout delivery of the current ARE 5.0 and may be used by candidates to establish credit for ARE 5.0. Likewise, ARE 5.0 sections will remain valid throughout the delivery of ARE 5.0, and future credits based on passed ARE 5.0 sections will remain valid throughout the delivery of ARE 6.0. Since exam versions are expected to be in place for approximately 10 years, the proposed amendment should result in a substantially longer window to complete the exam for all candidates.

Secondly, proposed amendments to §1.43 would retain a procedure for certain individuals to request an extension to the testing period, with amendments. Under the current rule, a candidate who gave birth to or adopted a child, developed a serious medical condition, or commenced active-duty service as a member of the military is eligible to request extended time to complete the examination. Though NCARB has eliminated an internal procedure allowing such requests, the Board proposes to retain it for Texas purposes, with amendments. Under the proposed rule, individuals who experience one of these life events would be eligible to receive an extended period of validity for an expired examination section if the event occurred within the 12 months immediately preceding the date of expiration. Under the amendment, submission of requests for extension would be required within six months of the expiration of the examination section. Additionally, the extension for a serious medical condition would be limited in time to a maximum of six months, and only if the condition reasonably prevented the person from preparing for or taking the examination. The proposed amendments recognize that, although the testing window will be much longer for all candidates, candidates who experience a qualifying life event late in the testing window might nonetheless be deserving of an extension.

Lastly, the Board proposes amendments to §1.44. The amendments would implement a repeal of the five-year rolling clock for the transfer of exam scores between states and replace it with a requirement that the transferred candidate must pass all sections of the examination within the time period required by NCARB.

#### FISCAL NOTE

Lance Brenton, General Counsel, has determined that for the first five-year period the amended rules are in effect, the amendments will have no significant adverse fiscal impact upon state government, local government, or the Texas Board of Architectural Examiners.

#### GOVERNMENT GROWTH IMPACT STATEMENT

During the first five years the proposed rules would be in effect, no government program would be created or eliminated. Rather, the proposed rules would incorporate changes to a preexisting program mandated under Texas Occupations Code §1051.704. The adoption of the proposed rules would not result in the creation or elimination of employee positions. Implementation of the proposed rules is not expected to require an increase or decrease in legislative appropriations to the agency. The proposed rules would not increase fees paid to the Board. The proposed rules would not result in the adoption of new regulations. Rather, the proposed rules would constitute the amendment of existing regulations, in a manner that imposes a decreased burden on examination candidates by allowing a longer window to complete the examination. The proposed rules would not increase the

number of individuals subject to the rule's applicability. The proposed rules are not expected to have any impact on the state's economy.

#### PUBLIC BENEFIT/COST OF COMPLIANCE

Mr. Brenton has determined that, for the first five-year period the amended rule is in effect, the public benefit of the proposed rules would include maintaining national registration standards in Texas. Additionally, candidates for registration would benefit from a longer window to complete the ARE, without any expected impact on the validity of the examination to measure the knowledge necessary to practice as an architect.

Compliance with the proposed amendment is not expected to result in economic costs to persons who are required to comply with the rule. Rather, individuals will be subject to lower costs, as exam sections that would otherwise be considered expired will be valid, thereby saving the candidate the cost of re-taking the section.

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

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

#### TAKINGS IMPACT ASSESSMENT

The agency has determined that no private real property interests are affected by the proposed rules and the proposed rules do 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, the proposed rules do not constitute a taking or require a takings impact assessment under Government Code §2007.043.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

The agency has determined that the proposed rules will not affect any local economy, so the agency is not required to prepare a local employment impact statement under Government Code §2001.022.

#### ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT

As a self-directed semi-independent agency, Government Code §2001.0045 does not apply to rules adopted by the Board.

#### PUBLIC COMMENT

Comments on the proposed rules may be submitted to Lance Brenton, General Counsel, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

#### STATUTORY AUTHORITY

The amendment of §1.43 is proposed under Tex. Occ. Code §1051.202, which authorizes the Board to adopt reasonable rules as necessary to regulate the practice of architecture; and Tex. Occ. Code §1051.704, which requires the Board to examine each applicant for registration on any architectural subject or procedure the Board requires and to issue a certificate of registration to each applicant who passes the examination.

## CROSS REFERENCE TO STATUTE

The proposed amendment does not affect any other statute.

### §1.43. *Reexamination.*

(a) In order to qualify for registration by examination, a [A Candidate's passing grade for any section of the examination is valid for five (5) years. Each] Candidate must schedule and pass all sections of the Architect Registration Examination (ARE) within the time period required by NCARB [examination within five (5) years after the date the Candidate passes a section of the examination. A Candidate who does not pass all sections of the examination within five (5) years after passing a section of the examination will forfeit credit for the section of the examination passed and must pass that section of the examination again].

(b) If a Candidate has successfully passed a section of the examination that has expired under NCARB requirements, the Candidate may request an extended period of validity for that section of the examination if, within one year prior to the date the section expired [The Board may grant extensions to the 5-year period for completion of the examination if the Candidate is unable to pass all sections of the examination within that period for the following reasons]:

(1) The Candidate gave birth to, or adopted a child [within that 5-year period];

(2) The Candidate developed a serious medical condition [within that 5-year period]; or

(3) The Candidate commenced active duty service as a member of the United States military [within that 5-year period].

(c) If a Candidate gave birth to or adopted a child, the Candidate may receive an extended period of validity of up to six months for an expired examination section.

~~[(e) A Candidate may receive an extension of up to 6 months for the birth or adoption of a child by filing a written application with the Board together with any corroborating evidence immediately after the Candidate learns of the impending adoption or birth. A Candidate may receive an extension for the period of the serious medical condition or for the period of active duty military service by filing a written application with the Board together with corroborating evidence immediately after the Candidate learns of the medical condition or the commencement of active duty military service. A Candidate shall immediately notify the Board in writing when the medical condition is resolved or active duty military service ends.]~~

(d) If a Candidate developed a serious medical condition, the Candidate may receive an extended period of validity of up to six months for an expired examination section if the serious medical condition reasonably prevented the Candidate from preparing for or taking the examination.

(e) If a Candidate commenced active duty service as a member of the United States military, the Candidate may receive an extended period of validity for an expired examination section equal to the length of time the Candidate was on active duty.

(f) Any request for an extension under this section must be received within six months of the expiration of the exam section and must be approved by the Board.

### §1.44. *Transfer of Passing Scores.*

(a) A Candidate's examination score may be transferred from one NCARB member board to another. The acceptance of the Candidate's score by the board receiving the score shall terminate the Candidate's application with the board transferring the score so that the Candidate has an application pending in only one (1) jurisdiction at any

given time [all times]. In order to be approved for architectural registration in Texas, a Candidate whose examination score is transferred to Texas must satisfy all requirements for architectural registration in Texas in effect at the time the examination score is transferred.

(b) If a Candidate's examination score is transferred from another member board and accepted by the Board, the Candidate must pass all sections of the examination within the time period required by NCARB, as described by §1.43 of this chapter (relating to Reexamination) [no later than five (5) years from the date the first examination section was passed. If the Candidate does not pass all sections of the examination within five (5) years after passing a section of the examination, the Candidate will forfeit credit for the section of the examination passed and must pass that section of the examination again].

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

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Lance Brenton

General Counsel

Texas Board of Architectural Examiners

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For further information, please call: (512) 305-8519



## CHAPTER 3. LANDSCAPE ARCHITECTS SUBCHAPTER C. EXAMINATION

### 22 TAC §3.43, §3.44

The Texas Board of Architectural Examiners (Board) proposes the amendment of 22 Texas Administrative Code §3.43 and §3.44.

These proposed rulemaking actions would implement changes to the Board's rules relating to the time period within which a candidate for registration is required to complete the Landscape Architect Registration Examination (LARE). The proposed amendment is intended to maintain consistency between the rules for architect and landscape architect registration, align Texas with national registration standards, and provide a more equitable process for the completion of the LARE.

First, proposed §3.43 would repeal a requirement that a candidate for landscape architect registration must pass all sections of the examination within five (5) years from the date the candidate passes a section of the examination, or otherwise lose credit for that section. This rule is based on an identical rule the Board adopted for architect registration candidates. That rule, in turn, was based on a policy by the National Council of Architectural Registration Boards (NCARB). Recently, NCARB repealed this "five-year rolling clock" policy. Given this change in policy, the Board is reexamining its rules and has determined the five-year rolling clock should be repealed for both architect and landscape architect candidates.

The Council of Landscape Architectural Registration Boards (CLARB), which administers the LARE, does not require its examinees to complete the LARE within five years of passing the first section of the examination. Rather, examinees must pass all sections of the LARE during the period in which that version of the LARE is in effect. If an examinee does not complete the LARE before a new version comes into effect,

previously-passed sections of the examination may be used to establish credit under the new version.

Because the Board is proposing the repeal the five-year requirement for architect examinees, and because CLARB does not have a similar requirement, the Board proposes to amend §3.43 to replace the adopted five-year rolling clock requirement for landscape architect candidates with a requirement that candidates schedule and pass all sections of the examination within the time period required by CLARB. Given that the most recent version of the LARE examination has been offered for 11 years, and because CLARB allows examinees to establish credit for new versions of the LARE based on passed sections of the previous version of the LARE, it is expected that the proposed rule will result in a much longer window for registrants to complete the LARE. Additionally, the proposed rule will bring Texas into alignment with national registrations standards as established by CLARB.

Secondly, proposed amendments to §3.43 would retain a procedure for certain individuals to request an extension to the testing period, with amendments. Under the current rule, a candidate who gave birth to or adopted a child, developed a serious medical condition, or commenced active-duty service as a member of the military is eligible to request extended time to complete the examination. Under the proposed rule, individuals who experience one of these life events would be eligible to receive an extended period of validity for an expired examination section if the event occurred within the 12 months immediately preceding the date of expiration. Under the amendment, submission of requests for extension would be required within six months of the expiration of the examination section. Additionally, the extension for a serious medical condition would be limited in time to a maximum of six months, and only if the condition reasonably prevented the person from preparing for or taking the examination. The proposed amendments recognize that, although the testing window will be much longer for all candidates, candidates who experience a qualifying life event late in the testing window might nonetheless be deserving of an extension.

Lastly, the Board proposes amendments to §3.44. The amendments would implement a repeal of the five-year rolling clock for the transfer of exam scores between states and replace it with a requirement that the transferred candidate must pass all sections of the examination within the time period required by CLARB.

#### FISCAL NOTE

Lance Brenton, General Counsel, has determined that for the first five-year period the amended rules are in effect, the amendments will have no significant adverse fiscal impact upon state government, local government, or the Texas Board of Architectural Examiners.

#### GOVERNMENT GROWTH IMPACT STATEMENT

During the first five years the proposed rules would be in effect, no government program would be created or eliminated. Rather, the proposed rules would incorporate changes to a preexisting program mandated under Texas Occupations Code § 1052.153. The adoption of the proposed rules would not result in the creation or elimination of employee positions. Implementation of the proposed rules is not expected to require an increase or decrease in legislative appropriations to the agency. The proposed rules would not increase fees paid to the Board. The proposed rules would not result in the adoption of new regulations. Rather, the proposed rules would constitute the amendment of existing regulations, in a manner that imposes a decreased burden on ex-

amination candidates by allowing a longer window to complete the examination. The proposed rules would not increase the number of individuals subject to the rule's applicability. The proposed rules are not expected to have any impact on the state's economy.

#### PUBLIC BENEFIT/COST OF COMPLIANCE

Mr. Brenton has determined that, for the first five-year period the amended rule is in effect, the public benefit of the proposed rules would include aligning Texas with national registration standards for landscape architects. Additionally, candidates for registration would benefit from a longer window to complete the LARE, without any expected impact on the validity of the examination to measure the knowledge necessary to practice as a landscape architect.

Compliance with the proposed amendment is not expected to result in economic costs to persons who are required to comply with the rule. Rather, individuals will be subject to lower costs, as exam sections that would otherwise be considered expired will be valid, thereby saving the candidate the cost of re-taking the section.

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

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

#### TAKINGS IMPACT ASSESSMENT

The agency has determined that no private real property interests are affected by the proposed rules and the proposed rules do 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, the proposed rules do not constitute a taking or require a takings impact assessment under Government Code § 2007.043.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

The agency has determined that the proposed rules will not affect any local economy, so the agency is not required to prepare a local employment impact statement under Government Code § 2001.022.

#### ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT

As a self-directed semi-independent agency, Government Code § 2001.0045 does not apply to rules adopted by the Board.

#### PUBLIC COMMENT

Comments on the proposed rules may be submitted to Lance Brenton, General Counsel, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

#### STATUTORY AUTHORITY

The amendments are proposed under Tex. Occ. Code § 1051.202, which authorizes the Board to adopt reasonable rules as necessary to regulate the practice of landscape architecture; and Tex. Occ. Code § 1052.153, which requires the Board to approve and proscribe the scope of an examination and

methods of procedure to measure the ability of an applicant for landscape architectural registration, in a manner that ensures the safety of the public welfare and property rights.

#### CROSS REFERENCE TO STATUTE

The proposed amendment does not affect any other statute.

#### §3.43. *Reexamination.*

(a) In order to qualify for registration by examination, a [A Candidate's passing grade for any section of the examination is valid for five (5) years. Each] Candidate must schedule and pass all sections of the Landscape Architect Registration Examination (LARE) within the time period required by CLARB [examination within five (5) years after the date the Candidate passes a section of the examination. A Candidate who does not pass all sections of the examination within five (5) years after passing a section of the examination will forfeit credit for the section of the examination passed and must pass that section of the examination again].

(b) If a Candidate has successfully passed a section of the examination that has expired under CLARB requirements, the Candidate may request an extended period of validity for that section of the examination if, within one year prior to the date the section expired [The Board may grant extensions to the 5-year period for completion of the examination if the Candidate is unable to pass all sections of the examination within that period for the following reasons]:

(1) The Candidate gave birth to, or adopted a child [within that 5-year period];

(2) The Candidate developed a serious medical condition [within that 5-year period]; or

(3) The Candidate commenced active duty service as a member of the United States military [within that 5-year period].

(c) If a Candidate gave birth to or adopted a child, the Candidate may receive an extended period of validity of up to six months for an expired examination section.

~~[(e) Candidate may receive an extension of up to 6 months for the birth or adoption of a child by filing a written application with the Board together with any corroborating evidence immediately after the Candidate learns of the impending adoption or birth. A Candidate may receive an extension for the period of the serious medical condition or for the period of active duty military service by filing a written application with the Board together with corroborating evidence immediately after the Candidate learns of the medical condition or the commencement of active duty military service. A Candidate shall immediately notify the Board in writing when the medical condition is resolved or active duty military service ends.]~~

~~(d) If a Candidate developed a serious medical condition, the Candidate may receive an extended period of validity of up to six months for an expired examination section if the serious medical condition reasonably prevented the Candidate from preparing for or taking the examination.~~

~~(e) If a Candidate commenced active duty service as a member of the United States military, the Candidate may receive an extended period of validity for an expired examination section equal to the length of time the Candidate was on active duty.~~

~~(f) Any request for an extension under this section must be received within six months of the expiration of the exam section and must be approved by the Board.~~

#### §3.44. *Transfer of Passing Scores.*

(a) A Candidate's examination score may be transferred from one CLARB member board to another. The acceptance of the Candi-

date's score by the board receiving the score shall terminate the Candidate's application with the board transferring the score so that the Candidate has an application pending in only one (1) jurisdiction at any given time [all times]. In order to be approved for landscape architectural registration in Texas, a Candidate whose examination score is transferred to Texas must satisfy all requirements for landscape architectural registration in Texas in effect at the time the examination score is transferred.

(b) If a Candidate's examination score is transferred from another member board and accepted by the Board, the Candidate must pass all sections of the examination within the time period required by CLARB, as described by §3.43 of this chapter (relating to Reexamination) [no later than five (5) years from the date the first examination section was passed. If the Candidate does not pass all sections of the examination within five (5) years after passing a section of the examination, the Candidate will forfeit credit for the section of the examination passed and must pass that section of the examination again].

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Lance Brenton

General Counsel

Texas Board of Architectural Examiners

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For further information, please call: (512) 305-8519



## PART 39. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS

### CHAPTER 851. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS LICENSING AND ENFORCEMENT RULES

#### SUBCHAPTER B. P.G. LICENSING, FIRM REGISTRATION, AND GIT CERTIFICATION

#### 22 TAC §851.21

The Texas Board of Professional Geoscientists (TBPG) proposes an amendment concerning the licensure and regulation of Professional Geoscientists in Texas. TBPG proposes amendments to 22 TAC §851.21, regarding Licensing Requirements - Examinations.

#### BACKGROUND, PURPOSE, AND SUMMARY OF CHANGES

The ASBOG examination is now offered by computer-based testing (CBT) and is no longer being offered by paper administration. The proposed amendment updates TBPG's application process and procedures to sit for the examinations. In addition, it clarifies the documentation required to sit for the examinations.

In subchapter B, proposed amendment in 22 TAC §851.21(g)(1)(B)(ii) amends the examination process and procedures to sit for the examinations and removes language that references a form that is no longer required to sit for the examination.

The proposed amendment in 22 TAC §851.21(g)(1)(B)(iii) removes a process to submit a form and fee that is no longer required. Updated numbering.

The proposed amendment in 22 TAC §851.21(g)(2)(ii) removes "in subsection (a) of this section" and adds the correct reference "as specified in 851.20 of the chapter."

The proposed amendment in 22 TAC §851.21(g)(2)(B)(i) provides clarity to the applicant regarding the documentation and a fee required to sit for the examination.

The proposed amendment in 22 TAC §851.21(g)(2)(B)(ii) amends the examination process and procedures to sit for the examinations and removes language that references a form that is no longer required to sit for the examination.

The proposed amendment in 22 TAC §851.21(g)(2)(B)(iii) removes language that references a form that no longer requires submittal to TBPG to sit for the examination.

The proposed amendment in 22 TAC §851.21(g)(3) adds "Certification" as it relates to the GIT program and not PG licensure. Also, it adds TFGE as an exam to pass to obtain GIT certification and not PG licensure.

The proposed amendment in 22 TAC §851.21(g)(3)(A)(i) removes "in subsection (a) of this section" and adds the correct reference "as specified in 851.20 of the chapter."

The proposed amendment in 22 TAC §851.21(g)(3)(A)(ii) adds "examination requirement" and removes reference to passing the TGE to obtain GIT certification. Passing the TGE is for PG licensure.

The proposed amendment in 22 TAC §851.21(g)(3)(B) provides clarity and consistency to the applicant regarding the documentation and a fee required to sit for the examination.

#### FISCAL NOTE - STATE AND LOCAL GOVERNMENT

Rene D. Truan, Executive Director of the Texas Board of Professional Geoscientists, has determined that for each fiscal year of the first five years the rules are in effect these proposals have no foreseeable implications relating to cost or revenues of the state or of local governments caused by enforcing or administering the proposed rules.

#### PUBLIC BENEFIT AND COST

Mr. Truan has also determined that for each year of the first five years the section is in effect, the public will benefit from adoption of the section. The public benefit anticipated from enforcing or administering the sections includes ensuring that TBPG rules are clear and consistent as they relate to geoscience licensure in Texas and as they relate to the examination requirements for licensure in all three disciplines: Geology, Geophysics, and Soil Science. There will be no anticipated economic cost to individuals who are required to comply with the proposed sections.

#### SMALL, MICRO-BUSINESS, LOCAL ECONOMY, AND RURAL COMMUNITIES ECONOMIC IMPACT ANALYSIS

Mr. Truan has determined that the proposed rule will not have an adverse effect on small businesses, micro-businesses, local economy, or rural communities. Consequently, neither an economic impact statement, a local employment impact statement, nor a regulatory flexibility analysis is required.

#### GOVERNMENT GROWTH IMPACT STATEMENT

During the first five years that the rule would be in effect:

(1) the proposed rules do not create or eliminate a government program;

(2) implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions;

(3) implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency;

(4) the proposed rules do not require an increase or decrease in fees paid to the agency;

(5) the proposed rules do not create a new regulation;

(6) the proposed rules do not expand, limit, or repeal an existing regulation;

(7) the proposed rules do not increase or decrease the number of individuals that are subject to the rules' applicability; and

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

#### REGULATORY ANALYSIS OF MAJOR ENVIRONMENTAL RULES

Mr. Truan has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. Although Professional Geoscientists and Registered Geoscience Firms play a key role in environmental protection for the state of Texas, this proposal is not specifically intended to protect the environment nor reduce risks to human health from environmental exposure.

#### TAKINGS IMPACT ASSESSMENT

Mr. Truan 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

Comments on the proposed amendment may be submitted in writing to Rene D. Truan, Executive Director, Texas Board of Professional Geoscientists, 1801 Congress, George HW Bush Building, Suite 7.800, Austin, Texas 78701 or by mail to P.O. Box 13225, Austin, Texas 78711 or by e-mail to rtruan@tbpg.texas.gov. Please indicate "Comments on Proposed Rules" in the subject line of all e-mails submitted. Please submit comments within 30 days following publication of the proposal in the *Texas Register*.

#### STATUTORY AUTHORITY

This section is proposed under the Texas Geoscience Practice Act, Texas Occupations Code §1002.151, which authorizes the Board to adopt and enforce all rules consistent with the Act as necessary for the performance of its duties and §1002.255, which authorizes the Board to establish license eligibility requirements.

This section affects the Texas Geoscience Practice Act, Texas Occupations Code §§1002.151, 1002.254, and 1002.255.

§851.21. *Licensing Requirements - Examinations.*



(a) Qualifying examinations:

(1) An applicant for the Geology discipline must pass both parts of the ASBOG® examination. Applicants taking the ASBOG® examinations must also abide by the rules and regulations of ASBOG®.

(2) An applicant for the Soil Science discipline must pass both parts of the Council of Soil Science Examiners (CSSE) examination. Applicants taking the CSSE examinations must also abide by the rules and regulations of CSSE.

(3) An applicant for the Geophysics discipline must pass the Texas Geophysics Examination (TGE).

(b) An applicant may request an accommodation in accordance with the Americans with Disabilities Act. Proof of disability may be required.

(c) An applicant who does not timely arrive at and complete a scheduled examination will forfeit the examination fee.

(d) Cheating on an examination is grounds for denial, suspension, or revocation of a license and/or an administrative penalty.

(e) An applicant who has passed an examination may not retake that type of examination.

(f) Exam Waiver. Applicants requesting a waiver from any examination(s) shall complete a Waiver Request (Form VI) and shall comply with §851.22 regarding Waivers and Substitutions.

(g) Examination requirements and examination procedure: A qualified individual who has not passed qualifying licensing examination(s) may access and abide by all relevant components of one of the following procedures to sit for a qualifying examination(s) in the appropriate discipline:

(1) Licensure in the discipline of geology (part I)/ASBOG® Fundamentals of Geology examination:

(A) Requirements: Completion of the education qualifications for licensure as specified in Texas Occupations Code §1002.255 and §851.25 of this chapter or currently enrolled in a course of study that meets the education requirements for licensure and within two regular semesters of completion of the qualifying course of study.

(B) Procedure:

(i) The applicant shall complete and submit an Exam Request (Form E) and any required documents to the TBPG, along with the appropriate fee by the deadline posted on the TBPG website for the examination date desired by the applicant.

(ii) The Board staff will review the application and inform the applicant of any deficiencies in the application. Upon determination that the requirements have been met, the Board staff will provide the applicant instructions on how to register, pay the examination fee and schedule to sit for the examination. [mail an ASBOG® Examination Candidate Request Form to the applicant.]

~~(iii) The applicant shall submit the ASBOG® Examination Candidate Request Form and send the form, along with the examination fee to ASBOG®. A courtesy copy of the ASBOG® Candidate Request Form shall be provided to the TBPG.]~~

(iii) [(iv)] The applicant shall follow all examination administration procedures and take the examination.

(iv) [(v)] The Board staff shall notify the applicant of the results of the examination after receiving the results from ASBOG®.

(2) Licensure in the discipline of geology (part II)/ASBOG® Practice of Geology examination:

(A) Requirements:

(i) Under application for licensure as a Professional Geoscientist with the TBPG.

(ii) Meet all other qualifications for licensure as specified in §851.20 of this chapter [in subsection (a) of this section] and be within six months of meeting the qualifying experience requirement.

(B) Procedure:

~~(i) The applicant shall complete and submit the following: [The applicant shall complete and submit both the Application for P.G. Licensure (Form A), in accordance with the application procedures specified in subsection (d) of this section, along with the appropriate fee and an Exam Request (Form E) along with the appropriate fee and any required documents to the TBPG, by the deadline posted on the TBPG website for the examination date desired by the applicant.]~~

~~(I) Application for P.G. Licensure (Form A), in accordance with the application procedures as specified in §851.20 of this chapter, along with the appropriate fee;~~

~~(II) Qualifying Work Experience Record (Form A-1), as specified in §851.23 of this chapter;~~

~~(III) Exam Request (Form E), along with the appropriate fee; and~~

~~(IV) Any required documents to the TBPG, by the deadline posted on the TBPG website for the examination date desired by the applicant.~~

(ii) The Board staff will review the application and inform the applicant of any deficiencies in the application. Upon determination that the requirements have been met, the Board staff will provide the applicant instructions on how to register, pay the examination fees and schedule to sit for the examination. [mail an ASBOG® Examination Candidate Request Form to the applicant.]

~~(iii) The applicant shall submit the ASBOG® Examination Candidate Request Form and send the form, along with the examination fee to ASBOG®. A courtesy copy of the ASBOG® Examination Candidate Request Form shall be provided to the TBPG.]~~

(iii) [(iv)] The applicant shall follow all examination administration procedures and take the examination.

(iv) [(v)] The Board staff shall notify the applicant of the results of the examination after receiving the results from ASBOG®.

(3) Licensure/Certification in the discipline of geophysics/TGE/TFGE:

(A) Requirements:

(i) Under application for licensure as a Professional Geoscientist with the TBPG and meet all qualifications for licensure as specified in §851.20 of this chapter [in subsection (a) of this section], with the exception of the examination requirement; or

(ii) Under application for certification as a Geoscientist-in-Training with the TBPG and meet all qualifications for certification as a Geoscientist-in-Training in §851.41 of this chapter with the exception of the examination requirement [having passed the TGE].

(B) Procedure:

(i) The applicant shall complete and submit the following: [The applicant shall complete and submit an Application for Professional Geoscientist (Form A), in accordance with the application procedures specified in subsection (d) of this section, along with the appropriate fee and Examination Request Form (Form E) along with the appropriate fee and any required documents to the TBPG.]

(I) Application for P.G. Licensure (Form A), in accordance with the application procedures as specified in §851.20 of this chapter, along with the appropriate fee;

(II) Qualifying Work Experience Record (Form A-1), as specified in §851.23 of this chapter;

(III) Exam Request (Form E), along with the appropriate fee; and

(IV) Any required documents to the TBPG, by the deadline posted on the TBPG website for the examination date desired by the applicant.

(ii) The Board staff will review the application and inform the applicant of any deficiencies in the application. Upon determination that the requirements have been met, the Board staff will provide TGE scheduling and examination payment information to the applicant.

(iii) The applicant shall submit the required information, along with the examination fee to the TBPG.

(iv) The applicant shall follow all examination administration procedures and take the examination.

(v) The Board staff shall notify the applicant of the results of the examination.

(4) Licensure in the discipline of soil science/Council of Soil Science Examiners (CSSE) Fundamentals of Soil Science and Practice of Soil Science Examinations: An applicant must meet the examination requirements of the CSSE; apply to take the required examinations directly with the CSSE and submit the required fees; follow all examination procedures of the CSSE; take and pass both parts of the examination; and follow CSSE procedures to ensure that the passing scores are forwarded to the TBPG.

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 June 5, 2023.

TRD-202302066

Rene Truan

Executive Director

Texas Board of Professional Geoscientists

Earliest possible date of adoption: July 23, 2023

For further information, please call: (512) 936-4428



## 22 TAC §851.22

The Texas Board of Professional Geoscientists (TBPG) proposes an amendment concerning the licensure and regulation of Professional Geoscientists in Texas. TBPG proposes amendments to 22 TAC §851.22, regarding Waivers and Substitutions: Policy, Procedures, and Criteria.

### BACKGROUND, PURPOSE, AND SUMMARY OF CHANGES

The Sunset Commission directed the Board to eliminate the requirement for applicants to submit reference letters for the Board

to evaluate the applicant's "good and ethical" character. Upon review of this rule, TBPG determined that language used in the rule regarding "honest and ethical behavior" may be interpreted as the Board evaluating an applicant's character when seeking license as a professional geologist in Texas and proposes an amendment to remove/modify that language.

The proposed amendment in 22 TAC §851.22(f)(2) adds (f)(3)(B)(C) to describe the relevant work experience requirement.

The proposed amendment in 22 TAC §851.22 removes (f)(3)(A)(D)(E) the language describing the applicant's "good and ethical" character.

The proposed amendment in 22 TAC §851.22(f)(3) adds clarity and consistent language relating to continuing education used throughout the policy.

### FISCAL NOTE - STATE AND LOCAL GOVERNMENT

Rene D. Truan, Executive Director of the Texas Board of Professional Geoscientists, has determined that for each fiscal year of the first five years the rules are in effect these proposals have no foreseeable implications relating to cost or revenues of the state or of local governments caused by enforcing or administering the proposed rules.

### PUBLIC BENEFIT AND COST

Mr. Truan has also determined that for each year of the first five years the section is in effect, the public will benefit from adoption of the section. The public benefit anticipated from enforcing or administering the sections includes making it less burdensome for qualified applicants to gain a license in the discipline of geophysics by allowing for a waiver from one of the examination requirements. Other benefits include ensuring that TBPG rules are clear and consistent as they relate to geoscience licensure in Texas and as they relate to the examination waiver requirements for licensure in all three disciplines: Geology, Geophysics, and Soil Science. There will be no anticipated economic cost to individuals who are required to comply with the proposed sections.

### SMALL, MICRO-BUSINESS, LOCAL ECONOMY, AND RURAL COMMUNITIES ECONOMIC IMPACT ANALYSIS

Mr. Truan has determined that the proposed rule will not have an adverse effect on small businesses, micro-businesses, local economy, or rural communities. Consequently, neither an economic impact statement, a local employment impact statement, nor a regulatory flexibility analysis is required.

### GOVERNMENT GROWTH IMPACT STATEMENT

During the first five years that the rule would be in effect:

(1) the proposed rules do not create or eliminate a government program;

(2) implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions;

(3) implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency;

(4) the proposed rules do not require an increase or decrease in fees paid to the agency;

(5) the proposed rules do not create a new regulation;

(6) the proposed rules do not expand, limit, or repeal an existing regulation;

(7) the proposed rules do not increase or decrease the number of individuals that are subject to the rules' applicability; and

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

#### REGULATORY ANALYSIS OF MAJOR ENVIRONMENTAL RULES

Mr. Truan has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. Although Professional Geoscientists and Registered Geoscience Firms play a key role in environmental protection for the state of Texas, this proposal is not specifically intended to protect the environment nor reduce risks to human health from environmental exposure.

#### TAKINGS IMPACT ASSESSMENT

Mr. Truan 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

Comments on the proposed amendment may be submitted in writing to Rene D. Truan, Executive Director, Texas Board of Professional Geoscientists, 1801 Congress, Suite 7.800, Austin, Texas 78701 or by mail to P.O. Box 13225, Austin, Texas 78711 or by e-mail to [rtruan@tbpge.texas.gov](mailto:rtruan@tbpge.texas.gov). Please indicate "Comments on Proposed Rules" in the subject line of all e-mails submitted. Please submit comments within 30 days following publication of the proposal in the *Texas Register*.

#### STATUTORY AUTHORITY

This section is proposed under the Texas Geoscience Practice Act, Texas Occupations Code §1002.151, which authorizes the Board to adopt and enforce all rules consistent with the Act as necessary for the performance of its duties and §1002.259, which authorizes the Board to waive any requirement for licensure except for the payment of required fees.

This section affects the Texas Geoscience Practice Act, Occupations Code §§1002.151, 1002.255, and 1002.259.

§851.22. *Waivers and Substitutions: Policy, Procedures, and Criteria.*

(a) Introduction: The Texas Board of Professional Geoscientists is charged with the responsibility of issuing a license to engage in the public practice of geoscience in the state of Texas only to those individuals who meet the qualifications for licensure, as provided by Texas law. The successful completion of the required examination for the specific discipline is an essential element in the Professional Geoscientist licensure process. The Texas Geoscience Practice Act (TGPA) (Texas Occupations Code, Chapter 1002, §1002.259) provides that "Except for the payment of required fees, the board may waive any of the requirements for licensure by a two-thirds vote of the entire board if the

applicant makes a written request and shows good cause and the board determines that the applicant is otherwise qualified for a license."

(1) An applicant for licensure as a Professional Geoscientist may request a waiver by submitting a copy of Form VI - "Request for Waiver of Licensing Requirement - Board Policy and Procedures," along with supporting documentation. Only an applicant for licensure may request a waiver. An applicant must have submitted a complete application, supporting documentation (such as transcripts and qualifying experience record), and applicable fees for a waiver request to be considered.

(2) Once a request for a waiver and all relevant documents and information supporting the request have been received, subject to scheduling logistics, the request will be placed on the next available meeting of the TBPGE's Application Review and Continuing Education Committee.

(b) Guidance Policy: The following policy was developed by the TBPGE Board and is intended to be guidance for the Application Review and Continuing Education Committee and the Board in consideration of a request for waiver. In accordance with TOC §1002.259, an approval of a waiver request requires a vote of two-thirds of the TBPGE Appointed Board (6 affirmative votes), regardless of the number of Board members in attendance. A request for the substitution of experience for education (provided by TOC §1002.255(b)) requires a simple majority vote of a quorum of the TBPGE Appointed Board to be approved.

(c) TBPGE's Application Review and Continuing Education Committee Review: TBPGE's Application Review and Continuing Education Committee will review the request and supporting documentation and recommend to the full TBPGE Board to grant or not grant the requested waiver. An applicant should provide a written justification, along with supporting documentation. An applicant may also appear before the Committee and the full Board to provide testimony to support the request. All requests the Committee recommends for approval will be scheduled for review by the full Board. Requests the Committee does not recommend for approval will not be submitted to the full Board for review, unless the applicant requests review by the full Board.

(d) TBPGE's Board Initial Review: TBPGE Appointed Board will review requests the Committee recommends for approval and supporting documentation and will determine whether or not to approve the request (grant the requested waiver). An applicant whose request for a waiver or substitution was denied and who believes that there is additional information that was not available to the Board when it reviewed the request, may submit additional information to staff regarding the current application, along with a written request that the Board reconsider the request. If staff determines that new information has been submitted that may be relevant to the Board's review of an application/request, then staff will schedule the application/waiver request for reconsideration. In the review of a request to reconsider its decision on an application/waiver request, because new information has been submitted, the Board will first determine by a simple majority vote whether to reconsider the application/waiver request, based on whether relevant new information has been submitted. If the Board determines by vote that the new information warrants reconsideration of an application/waiver request, the Board will reconsider the waiver request, including all of the new information available at that time. An applicant may appear before the Board and present information related to the request. The Board will reconsider its decision on a waiver request only once.

(e) Examination Waiver Requirements and Criteria.

(1) For TBPG's Appointed Board to waive an examination, an applicant must:

(A) Meet all other qualifications for licensure (qualifying work experience, education, documentation relating to criminal, disciplinary, and civil litigation history);

(B) Meet the criteria in the policy for the specific examination that is the subject of the waiver request; and

(C) Have not failed the examination that is the subject of the waiver request.

(2) Work experience an applicant submits pursuant to the following examination waiver policies must meet the criteria for qualifying work experience under TBPG rule §851.23 regarding qualifying experience record.

(3) ASBOG® Fundamentals of Geology Examination Waiver. An applicant must have acquired one of the following combinations of education and work experience:

(A) B.S. and 15 years qualifying work experience;

(B) M.S. and 13 years qualifying work experience;

(C) Ph.D. and 10 years qualifying work experience.

(4) ASBOG® Practice of Geology Examination Waiver. An applicant must meet minimum criteria in either Generalized Practice Experience or Specialized Practice Experience.

(A) Generalized practice experience (must meet all four criteria):

(i) Completed twenty (20) years of geosciences work experience;

(ii) Completed ten (10) years of supervisory experience (three or more individuals under supervision);

(iii) Completed coursework in six of the eight following ASBOG® task domains:

(I) Field geology;

(II) Mineralogy, petrology, and geochemistry;

(III) Sedimentology, stratigraphy, and paleontology;

(IV) Geomorphology, surficial processes, and quaternary geology;

(V) Structure, tectonics, and seismology;

(VI) Hydrogeology;

(VII) Engineering geology;

(VIII) Economic geology and energy resources.

(iv) Demonstrate the ability to plan and conduct geosciences investigations considering public health, safety, and welfare.

(B) Specialized practice experience: The applicant demonstrates twenty years or more of specialized work history in only one or two of the ASBOG® task domains. One factor TBPG will consider is whether the examination is not relevant to, or largely beyond the scope of, the applicant's specialized experience and the applicant's intended field of practice.

(5) Council of Soil Science Examination (CSSE) - Fundamentals of Soil Science Waiver. An applicant must have acquired one of the following combinations of education and work experience:

(A) B.S. and 15 years qualified work experience;

(B) M.S. and 13 years of qualified work experience; or

(C) Ph.D. and 10 years of qualified work experience.

(6) Council of Soil Science Examination (CSSE) - Professional Practice examination. An applicant must meet minimum criteria in either Generalized practice experience or Specialized practice experience:

(A) Generalized practice experience (must meet all four criteria):

(i) Completed twenty (20) years of soil science work experience;

(ii) Completed ten (10) years of supervisory experience;

(iii) Completed coursework in six of the eight following CSSE Professional Practice Performance Objective (PPPO) domains:

(I) Soil chemistry;

(II) Soil mineralogy;

(III) Soil fertility and nutrient management;

(IV) Soil physics;

(V) Soil genesis and classification;

(VI) Soil morphology;

(VII) Soil biology and soil ecology; and

(VIII) Soil and land use management.

(iv) Demonstrate the ability to plan and conduct soil science investigations considering public health, safety, and welfare.

(B) Specialized practice experience: The applicant demonstrates twenty years or more of specialized work history in only one or two of the CSSE PPPO domains. One factor TBPG will consider is whether the examination is not relevant to, or largely beyond the scope of, the applicant's specialized experience and the applicant's intended field of practice.

(7) Texas Fundamentals of Geophysics Examination (TFGE). No waiver is available.

(8) Texas Geophysics Examination (TGE). An applicant must meet minimum criteria in either Generalized Practice Experience or Specialized Practice Experience.

(A) Generalized practice experience (must meet all four criteria):

(i) Completed twenty (20) years of geophysics work experience;

(ii) Completed ten (10) years of supervisory experience;

(iii) Completed coursework in six of the eight areas:

(I) Fundamentals of Geophysics;

(II) Geophysical Field Methods;

(III) Geophysical Signal Processing;

(IV) Exploration/Applied Geophysics;

(V) Engineering & Environmental Geophysics;

(VI) Hydrogeophysics;

(VII) Seismology; and

(VIII) Near-surface Geophysics: Magnetics, Electromagnetic, Gravity, Electrical Resistivity, Seismic.

(iv) Demonstrate the ability to plan and conduct geophysical surveys considering public health, safety, and welfare.

(B) Specialized practice experience: The applicant demonstrates twenty years or more of specialized work history in only one or two of the tasks domains. One factor TBPG will consider is whether the examination is not relevant to, or largely beyond the scope of, the applicant's specialized experience and the applicant's intended field of practice.

(f) Substitution of Work Experience for Educational Requirements. Before the Appointed Board considers an application for substitution of work experience for an education requirement, the applicant seeking approval of the substitution must meet all of the following minimum criteria:

(1) The applicant must pass, within three (3) attempts, the appropriate qualifying licensing examination (or a substantially similar examination), depending on the discipline in which the applicant seeks to be licensed, as follows:

(A) Geology discipline: both the Fundamentals and Practice of Geology examinations administered by ASBOG®;

(B) Geophysics discipline: the Texas Geophysics Examination (TGE); or

(C) Soil Science discipline: both the Fundamentals and Practice examinations administered by the Council of Soil Science Examiners (CSSE);

(2) The applicant must have at least 15 years of qualifying work experience; including the ability to apply scientific methods and to solve problems;

(3) The applicant must demonstrate an established record of continuing education and workshop participation in geoscience fields; and [the following:]

~~[(A) Ability to work with others;]~~

~~[(B) Ability to apply scientific methods;]~~

~~[(C) Ability to solve problems;]~~

~~[(D) Honest and ethical behavior;]~~

~~[(E) Ability to communicate effectively; and]~~

~~[(F) Relevant continuing education activities that advance knowledge throughout the applicant's professional career.]~~

(4) The applicant is highly encouraged to appear before the Application Review and Continuing Education Committee for presentation of qualifications.

(g) Waiver of Education Requirement - Generally. Before the Appointed Board considers an application for education waiver, the applicant seeking a waiver of the education requirement must demonstrate mastery of a minimum required knowledge base in geoscience by meeting the following criteria:

(1) The applicant must demonstrate both of the following:

(A) A four-year degree in a field of basic or applied science that includes at least 15 hours of courses in geosciences from an accredited institution of higher education or the equivalent of a total of at least 15 hours of courses in geoscience from an accredited institution of higher education and/or other educational sources, as determined by the Appointed Board;

(B) An established record of continuing education and workshop participation in geoscience fields; and

(C) The Appointed Board may also determine that an individual applicant has satisfactorily completed other equivalent educational requirements after reviewing the applicant's educational credentials.

(2) The applicant must have at least eight years of qualifying geoscience work experience;

(3) The applicant must pass the appropriate qualifying examination, depending on the discipline in which the applicant seeks to be licensed, as follows:

(A) Geology discipline: both the Fundamentals and Practice examinations administered by ASBOG®;

(B) Geophysics discipline: the Texas Geophysics Examination (TGE); or

(C) Soil Science discipline: both the Fundamentals and Practice examinations administered by the Council of Soil Science Examiners (CSSE).

(h) Education Waiver for License in Geology Discipline - Fundamentals. An individual who plans to apply for licensure as a Professional Geoscientist in the discipline of geology who does not fully meet the education requirement for licensure may take the ASBOG® Fundamentals of Geology examination as long as the applicant:

(1) Has submitted any other necessary forms, documents, and fees; and

(2) Has acknowledged that the Appointed Board must approve an education waiver request or approve the substitution of experience for education before the applicant may be licensed as a Professional Geoscientist and that the Appointed Board will not consider an education waiver or a request to substitute experience for education until after both the ASBOG® Fundamentals of Geology and Practice of Geology examinations have been passed.

(i) Education Waiver for License in Geology Discipline - Practice. An applicant for licensure as a Professional Geoscientist in the discipline of geology who does not fully meet the education requirement for licensure may take the ASBOG® Practice of Geology examination as long as the applicant:

(1) Meets or is within six months of meeting the qualifying experience requirement for licensure;

(2) Submits the qualifying work experience claimed (or has verified qualifying work experience claimed through an alternate means, as provided by TBPG rules);

(3) Has submitted a request for an education waiver or a substitution of experience for education;

(4) Has submitted any other necessary forms, documents, and fees; and

(5) Has acknowledged that the Appointed Board must approve the education waiver request or a request to substitute experience for education before the applicant may be licensed as a Professional Geoscientist and that the Appointed Board will not consider an education waiver or a request for substitution of experience for education until after both the ASBOG® Fundamentals of Geology and Practice of Geology examinations have been passed.

(j) Education Waiver for License in Geophysics Discipline. An applicant for licensure as a Professional Geoscientist in the discipline of geophysics who does not fully meet the education requirement

for licensure may take the Texas Geophysics Examination as long as the applicant:

- (1) Meets or is within six months of meeting the qualifying experience requirement for licensure;
- (2) Submits the qualifying work experience claimed (or has verified qualifying work experience claimed through an alternate means, as provided by TBPB rules);
- (3) Has submitted a request for an education waiver or a substitution of experience for education;
- (4) Has submitted any other necessary forms, documents, and fees; and
- (5) Has acknowledged that the Appointed Board must approve the education waiver request or a request to substitute experience for education before the applicant may be licensed as a Professional Geoscientist and that the Appointed Board will not consider an education waiver or a request for substitution of experience for education until after the Texas Geophysics Examination has been passed.

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 June 5, 2023.

TRD-202302067

Rene Truan

Executive Director

Texas Board of Professional Geoscientists

Earliest possible date of adoption: July 23, 2023

For further information, please call: (512) 936-4428



## TITLE 28. INSURANCE

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

#### CHAPTER 133. GENERAL MEDICAL PROVISIONS

##### SUBCHAPTER B. HEALTH CARE PROVIDER BILLING PROCEDURES

###### 28 TAC §133.30

**INTRODUCTION.** The Texas Department of Insurance, Division of Workers' Compensation (DWC) proposes to amend 28 TAC §133.30, concerning Telemedicine and Telehealth Services. Section 133.30 implements Texas Labor Code §413.011, which requires DWC to adopt health care reimbursement policies and guidelines that reflect the standardized reimbursement structures found in other health care delivery systems with minimal modifications.

**EXPLANATION.** Amending §133.30 is necessary to conform the section to Texas Occupations Code Chapter 111, which was amended to define "teledentistry dental service" by House Bill (HB) 2056, 87th Legislature, Regular Session (2021). Section 133.30 sets billing requirements when a health care provider provides telemedicine and telehealth services.

Currently, §133.30 has definitions for "telemedicine services" and "telehealth services" but does not define "teledentistry dental service." Section 133.30 requires health care providers to bill for "telemedicine services" and "telehealth services" using the applicable Medicare payment policies and requirements of Chapter 133 of this title. DWC proposes to add a definition for "teledentistry services" and to add Medicaid payment policies to the list of applicable payment policies that health care providers must use to bill for telemedicine, telehealth, and teledentistry services.

**FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Deputy Commissioner for Health & Safety Mary Landrum has determined that during each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the sections, other than that imposed by the statute. This determination was made because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments.

Ms. Landrum does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

**PUBLIC BENEFIT AND COST NOTE.** For each year of the first five years the proposed amendments are in effect, Ms. Landrum expects that administering the proposed amendments will have the public benefits of ensuring that DWC's rules conform to Occupations Code Chapter 111 and are providing expanded access to services and care for injured employees in Texas.

Ms. Landrum expects that the proposed amendments will not increase the cost to comply with Labor Code §413.011 because they do not impose requirements beyond those in the statute. Labor Code §413.011 requires DWC to adopt health care reimbursement policies and guidelines that reflect the standardized reimbursement structures found in other health care delivery systems with minimum modifications. To match these standardizations, §413.011 requires the commissioner to adopt the current reimbursement methodologies, models, and values or weights the federal Centers for Medicare and Medicaid Services uses. This includes applicable payment policies related to coding, billing, and reporting. As a result, the cost associated with adopting those reimbursement methodologies, models, and values or weights does not result from the enforcement or administration of the proposed amendments.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** DWC has determined that the proposed amendments will not have an adverse economic effect or a disproportionate economic impact on small or micro businesses, or on rural communities because health care providers will continue to use the billing forms and reporting processes they currently use. As a result, and in accordance with Government Code §2006.002(c), DWC is not required to prepare a regulatory flexibility analysis.

**EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045.** DWC has determined that this proposal does not impose a possible cost on regulated persons. No additional rule amendments are required under Government Code §2001.0045 because proposed §133.30 is necessary to implement legislation. The proposed rule implements Labor Code §413.011 and conforms to Occupations Code Chapter 111, which was amended to define "teledentistry dental service" by HB 2056, 87th Legislature, Regular Session (2021).

GOVERNMENT GROWTH IMPACT STATEMENT. DWC has determined that for each year of the first five years that the proposed amendments are in effect, the proposed rule:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will not create a new regulation;
- will expand an existing regulation;
- will not increase or decrease the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

DWC made these determinations because the proposed amendments are necessary to implement legislation and conform the amendments to Occupations Code Chapter 111 made by HB 2056, 87th Legislature, Regular Session (2021). The amendments do not impose additional costs beyond those the statutes require.

TAKINGS IMPACT ASSESSMENT. DWC has determined that no private real property interests are affected by this proposal, and this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. DWC will consider any written comments on the proposal that DWC receives no later than 5:00 p.m., Central time, on July 24, 2023. Send your comments to [RuleComments@tdi.texas.gov](mailto:RuleComments@tdi.texas.gov); or to Texas Department of Insurance, Division of Workers' Compensation, Legal Services, MC-LS, P.O. Box 12050, Austin, Texas 78711-2050.

To request a public hearing on the proposal, submit a request before the end of the comment period to [RuleComments@tdi.texas.gov](mailto:RuleComments@tdi.texas.gov); or to Texas Department of Insurance, Division of Workers' Compensation, Legal Services, MC-LS, P.O. Box 12050, Austin, Texas 78711-2050. The request for public hearing must be separate from any comments. If DWC holds a public hearing, it will consider written and oral comments presented at the hearing.

STATUTORY AUTHORITY. DWC proposes §133.30 under Labor Code §§402.00111, 402.00116, 402.061, 408.027, and 413.011; Insurance Code §§1305.003 and 1305.153; and Occupations Code §111.001.

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

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

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

Labor Code §408.027 addresses payment of health care providers. Labor Code §408.027(g) provides that, despite any other provision in Title 5, Subtitle A, Labor Code or Insurance Code Chapter 1305, §408.027 applies to health care provided through a workers' compensation health care network established under Chapter 1305. Subsection (g) also requires the commissioner to adopt rules as necessary to implement §408.027.

Labor Code §413.011 requires the commissioner to adopt health care reimbursement policies and guidelines that reflect the standardized reimbursement structures found in other health care delivery systems with minimal modifications to those reimbursement methodologies as necessary to meet occupational injury requirements. To match these standardizations, §413.011 requires the commissioner to adopt the current reimbursement methodologies, models, and values or weights the federal Centers for Medicare and Medicaid Services uses. This includes applicable payment policies related to coding, billing, and reporting.

Insurance Code §1305.003(b) states that Chapter 1305 prevails if there is a conflict between the Workers' Compensation Act and Chapter 1305 regarding:

- the provision of medical benefits for injured employees;
- the establishment and regulation of fees for medical treatments and services;
- the time frames for payment of medical bills;
- the operation and regulation of workers' compensation health care networks;
- the regulation of providers who contract with those networks; or
- the resolution of disputes about medical benefits provided through those networks.

Insurance Code §1305.153(a) states that the amount of reimbursement for services provided by a network provider is determined by the contract between the network and the provider or group of providers.

Insurance Code §1305.153(d) states that, subject to Insurance Code §1305.153(a), billing by, and reimbursement to, contracted and out-of-network providers are subject to the requirements of the Workers' Compensation Act and DWC's applicable rules, consistent with Chapter 1305. The paragraph further states that this subsection may not be construed to require application of a rule on reimbursement if that application would negate the reimbursement amounts the network negotiated.

Occupations Code §111.001(2-a) defines "teledentistry dental service" as a health care service delivered by a dentist, or a health professional acting under the delegation and supervision of a dentist, acting within the scope of the dentist's or health professional's license or certification to a patient at a different physical location than the dentist or health professional using telecommunications or information technology.

CROSS-REFERENCE TO STATUTE. Section 133.30 implements Labor Code §413.011, enacted by HB 752, 73rd Legislature, Regular Session (1993); amended by HB 2600, 77th Legislature, Regular Session (2001); Senate Bill 1572, 78th Legislature, Regular Session (2003); HB 7, 79th Legislature,

Regular Session (2005); HB 2018, 79th Legislature, Regular Session (2005); HB 473, 80th Legislature, Regular Session (2007).

§133.30. *Telemedicine, [and] Telehealth, and Teledentistry Services.*

(a) This section applies to medical billing and reimbursement for telemedicine, [and] telehealth, and teledentistry services provided on or after September 1, 2021 [2018], to injured employees in the Texas workers' compensation system, including injured employees subject to a workers' compensation health care network established under Insurance Code Chapter 1305.

(b) For the purposes of this section:

(1) "telemedicine services" means telemedicine medical services as defined in Occupations Code §111.001; [and]

(2) "telehealth services" means telehealth services as defined in Occupations Code §111.001; and[-]

(3) "teledentistry services" means teledentistry services as defined in Occupations Code §111.001.

(c) Except as provided in subsection (d) of this section, a health care provider must bill for telemedicine, [and] telehealth, and teledentistry services according to applicable:

(1) Medicare payment policies, as defined in §134.203 of this title (relating to Medical Fee Guideline for Professional Services); [and]

(2) Medicaid payment policies, in accordance with the dental fee guideline in §134.303 of this title (relating to 2005 Dental Fee Guideline); and

(3) [(2)] provisions of Chapter 133 of this title.

(d) A health care provider may bill and be reimbursed for telemedicine, [or] telehealth, or teledentistry services regardless of where the injured employee is located at the time the telemedicine, [or] telehealth, or teledentistry services are provided.

(e) The provisions of this section take precedence over any conflicting provisions adopted or used [utilized] by:

(1) the Centers for Medicare and Medicaid Services in administering the Medicare program; and[-]

(2) the Texas Health and Human Services Commission in administering the Texas Medicaid Program.

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

Filed with the Office of the Secretary of State on June 7, 2023.

TRD-202302122

Kara Mace

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

Earliest possible date of adoption: July 23, 2023

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



**TITLE 37. PUBLIC SAFETY AND CORRECTIONS**

**PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY**

**CHAPTER 15. DRIVER LICENSE RULES**

**SUBCHAPTER C. EXAMINATION**

**REQUIREMENTS**

**37 TAC §15.55**

The Texas Department of Public Safety (the department) proposes amendments to §15.55, concerning Waiver of Knowledge and/or Skills Tests. The proposed rule amendment waives the knowledge and skills exams for an applicant that presents a non-commercial driver license that is valid or not expired over two years from another U.S. state, U.S. territory or province of Canada and reorganizes the rule for better readability.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period this rule is in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the section as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

Ms. Whittenton has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of this rule will be a decrease in the number of return visits to the driver license office to complete knowledge and/or skills tests for applicants with out-of-state licenses expired less than two years.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

The department prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require the creation of new employee positions nor eliminate current employee positions; will not require an increase or decrease in future legislative appropriations to the agency; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create a new regulation. The proposed rulemaking does not expand, limit or repeal an existing regulation. The proposed rule does not increase or decrease the number of individuals subject to the rule's applicability. During the first five years the proposed rule is in effect the proposed rule should not impact positively or negatively the state's economy.

Comments on the proposal may be submitted to Mandy Edwards, Driver License Division, Texas Department of Public Safety, P.O. Box 4087 (MSC 0300), Austin, Texas



78773; by fax to (512) 424-5233; or by email to DLDrulecomments@dps.texas.gov. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §521.005, which authorizes the department to adopt rules necessary to administer Chapter 521 of the Texas Transportation Code; and §521.1426.

Texas Government Code, §411.004(3), and Texas Transportation Code, §521.005, are affected by this proposal.

§15.55. *Waiver of Knowledge and/or Skills Tests.*

(a) The terms in this section, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.  
[Definitions:]

(1) Knowledge exam--Written, computerized, or automated exam.

(2) Skills exam--Driving or road exam.

(3) Unrestricted Class A, B, and C license--A license that allows a person 18 years of age or older to operate a motor vehicle without having a restriction that requires a licensed driver 21 years of age or older in the front seat.

~~[(b) Required completion of the knowledge and/or skills exams.]~~

~~[(1) The skills exam will not be waived for applicants under the age of 18.]~~

~~[(2) Applicants younger than 25 years of age who present driver education completion certificates dated two or more years prior to the date of application will not have any examinations waived. These certificates are acceptable as proof of driver education completion.]~~

~~[(3) If an advance in grade is applied for, the applicant must pass the vision exam and appropriate knowledge and skills exams.]~~

~~[(4) For applicants with an expired out-of-state license or no license, the applicant must pass the vision, knowledge, and skills exams.]~~

~~[(e) Waiver of the knowledge and/or skills exams.]~~

~~[(1) Noncommercial driver license:]~~

~~[(A) Knowledge and skills exams are waived for applicants who hold a valid license from another U.S. state, U.S. territory, or province of Canada when applying for a Texas license of the same or lower type. An applicant with a valid license will be required to pass the vision exam.]~~

(b) Knowledge and skills exams are waived for applicants who hold a noncommercial driver license that is valid or not expired over two years from another U.S. state, U.S. territory, or province of Canada when applying for a Texas license of the same or lower type. An applicant with a noncommercial driver license that is valid or not expired over two years will be required to pass the vision exam.

(c) [(B)] The skills exam for a noncommercial driver license is waived for applicants who hold a valid U.S. military or Armed Forces license.

(d) [(2)] Class M License:

(1) [(A)] The Class M knowledge exam is waived for applicants who have successfully completed a Texas Department of Li-

ensing and Regulation (TDLR) approved motorcycle operator training course.

(2) [(B)] The skills exam is waived for individuals age 18 and older who have a valid, unrestricted Class A, B, or C Texas driver license and have successfully completed a TDLR approved motorcycle operator training course.

(3) [(C)] All other applicants must take and pass a skills exam for a motorcycle license.

(4) [(D)] An applicant must present either item detailed in subparagraph (A) or (B) of this paragraph [clause (i) or clause (ii) of this subparagraph] to confirm successful completion of a TDLR approved motorcycle operator training course:

(A) [(i)] a valid Standardized Motorcycle Operator Training Course completion card (Form MSB-8); or

(B) [(ii)] a valid completion card from a state or military motorcycle safety training program showing that the applicant has completed a course in basic motorcycle safety instruction that meets or exceeds the TDLR approved curriculum standards.

(C) [(iii)] The course completion cards are valid for 24 months from the date of issuance.

(e) Required completion of the knowledge and/or skills exams.

(1) The skills exam will not be waived for applicants under the age of 18.

(2) Applicants younger than 25 years of age who present driver education completion certificates dated two or more years prior to the date of application will not have any examinations waived. These certificates are acceptable as proof of driver education completion.

(3) If an advance in grade is applied for, the applicant must pass the vision exam and appropriate knowledge and skills exams.

(4) For applicants with an out-of-state license expired over two years or no license, the applicant must pass the vision, knowledge, and skills exams.

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

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Texas Department of Public Safety

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For further information, please call: (512) 424-5848



## CHAPTER 23. VEHICLE INSPECTION

### SUBCHAPTER F. VIOLATIONS AND ADMINISTRATIVE PENALTIES

#### 37 TAC §23.62

The Texas Department of Public Safety (the department) proposes amendments to §23.62, concerning Violations and Penalty Schedule. The proposed rule amendments make various changes to the requirements relating to emissions inspections and the related conduct of inspectors and station owners and clarifies the department's authority to immediately

suspend or revoke the certificate of an inspector or inspection station if the action is found to be necessary to prevent or remedy a threat to public health, safety, or welfare.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period this rule is in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the section as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

Ms. Whittenton has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of this rule will be the prevention and remedy of the threats to public health, safety, or welfare through enhanced administrative enforcement against the vehicle inspectors and inspection station owners responsible for fraudulent vehicle emissions inspections.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

The department prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require the creation of new employee positions nor eliminate current employee positions; will not require an increase or decrease in future legislative appropriations to the agency; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create a new regulation. The proposed rulemaking does not expand, limit or repeal an existing regulation. The proposed rule does not increase or decrease the number of individuals subject to the rule's applicability. During the first five years the proposed rule is in effect the proposed rule should not impact positively or negatively the state's economy.

Comments on this proposal may be submitted to Steve Moninger, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0240, Austin, Texas 78773-0246, or by email to [RSD.Rule.Comments@dps.texas.gov](mailto:RSD.Rule.Comments@dps.texas.gov). Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §548.002, which

authorizes the Department of Public Safety to adopt rules to enforce Chapter 548.

Texas Government Code, §411.004(3), and Texas Transportation Code §548.002, are affected by this proposal.

*§23.62. Violations and Penalty Schedule.*

(a) In accordance with this section, the department may deny an application for a certificate, revoke or suspend the certificate of a person, vehicle inspection station, or inspector, place on probation, or reprimand a person who holds a certificate.

(b) The department will administer penalties by the category of the violation. The violations listed in this section are not an exclusive list of violations. The department may assess penalties for any violations of Texas Transportation Code, Chapter 548 (the Act), or rules adopted by the department. The attached graphic summarizes the violation categories and illustrates the method by which penalties are enhanced for multiple violations.

Figure: 37 TAC §23.62(b)

[Figure: 37 TAC §23.62(b)]

(c) Violation categories are as follows:

(1) Category A.

(A) Issuing a vehicle inspection report without inspecting one or more items of inspection.

(B) Issuing a vehicle inspection report without requiring the owner or operator to furnish proof of financial responsibility for the vehicle at the time of inspection.

(C) Issuing the wrong series or type of inspection report for the vehicle presented for inspection.

(D) Refusing to inspect a vehicle without an objective justifiable cause related to safety.

(E) Failure to properly safeguard inspection reports, department issued forms, the electronic station interface device, emissions analyzer access/identification card, and/or any personal identification number (PIN).

(F) Failure to maintain required records.

(G) Failure to have at least one certified inspector on duty during the posted hours of operations for the vehicle inspection station.

(H) Failure to display the official department issued vehicle inspection station sign, certificate of appointment, procedure chart and other notices in a manner prescribed by the department.

(I) Failure to post hours of operation.

(J) Failure to maintain the required facility standards.

(K) Issuing a vehicle inspection report to a vehicle with one failing item of inspection.

(L) Failing to enter information or entering incorrect vehicle information into the electronic station interface device or emissions analyzer resulting in the reporting of erroneous information concerning the vehicle.

(M) Failure to conduct an inspection within the inspection area approved by the department for each vehicle type.

(N) Failure of inspector of record to ensure complete and proper inspection.

(O) Failure to enter an inspection into the approved interface device at the time of the inspection.

(P) Conducting an inspection without the appropriate and operational testing equipment.

(Q) Failure to perform a complete inspection and/or issue a vehicle inspection report.

(R) Requiring repair or adjustment not required by the Act, this chapter, or department regulation.

(2) Category B.

(A) Issuing a passing vehicle inspection report without inspecting the vehicle.

(B) Issuing a passing vehicle inspection report to a vehicle with multiple failing items of inspection.

(C) Refusing to allow owner to have repairs or adjustments made at location of owner's choice.

(D) Allowing an uncertified person to perform, in whole or in part, the inspection or rejection of a required item during the inspection of a vehicle.

(E) Charging more than the statutory fee.

(F) Acting in a manner that could reasonably be expected to cause confusion or misunderstanding on the part of an owner or operator presenting a vehicle regarding the relationship between the statutorily mandated inspection fee and a fee for any other service or product offered by the vehicle inspection station.

(G) Failing to list and charge for any additional services separately from the statutorily mandated inspection fee.

(H) Charging a fee, convenience fee or service charge in affiliation or connection with the inspection, in a manner that is false, misleading, deceptive or unauthorized.

(I) Inspector performing inspection while under the influence of alcohol or drugs.

(J) Inspecting a vehicle at a location other than the department approved inspection area.

(K) Altering a previously issued inspection report.

(L) Issuing a vehicle inspection report, while employed as a fleet or government inspection station inspector, to an unauthorized vehicle. Unauthorized vehicles include those not owned, leased or under service contract to that entity, or personal vehicles of officers and employees of the fleet or government inspection station or the general public.

(M) Preparing or submitting to the department a false, incorrect, incomplete or misleading form or report, or failing to enter required data into the emissions testing analyzer or electronic station interface device and transmitting that data as required by the department.

(N) Issuing a passing vehicle inspection report without inspecting multiple inspection items on the vehicle.

(O) Issuing a passing vehicle inspection report by using the emissions analyzer access/identification card, the electronic station interface device unique identifier, or the associated PIN of another.

(P) Giving, sharing, lending or displaying an emissions analyzer access/identification card, the electronic station interface device unique identifier, or divulging the associated PIN to another.

(Q) Failure of inspector to enter all required data pertaining to the inspection, including, but not limited to data entry into

the emissions testing analyzer, electronic station interface device, vehicle inspection report or any other department required form.

(R) Conducting multiple inspections outside the inspection area approved by the department for each vehicle type.

(S) Issuing a passing vehicle inspection report in violation of Texas Transportation Code, §548.104(d).

(T) Vehicle inspection station owner, operator or manager directing a state certified inspector under his employ or supervision to issue a vehicle inspection report when in violation of this chapter, department regulations, or the Act.

(U) Vehicle inspection station owner, operator, or manager having knowledge of a state certified inspector under the owner's employ or supervision issuing a passing vehicle inspection report in violation of this chapter, department regulations, or the Act.

(V) Issuing a safety only inspection report to a vehicle required to undergo a safety and emissions inspection without requiring a signed and legible affidavit, approved by the department, from the owner or operator of the vehicle, in a non emissions county.

(W) Disclosing or selling information collected in relation to a vehicle inspection about a unique customer or a unique vehicle owner, to a person other than the department or the person who is the subject of the information, including a customer or vehicle owner's name, address, or phone number.

(3) Category C.

(A) Issuing more than one vehicle inspection report without inspecting the vehicles.

(B) Issuing a passing vehicle inspection report to multiple vehicles with multiple failing items of inspection.

(C) Multiple instances of issuing a passing vehicle inspection report to vehicles with multiple defects.

(D) Emissions testing the exhaust or electronic connector of one vehicle, or using an electronic device to simulate or emulate a vehicle, for the purpose of enabling another vehicle to pass the emissions test (clean piping or clean scanning), or allowing a certified inspector or other individual under the person's employment or supervision to emissions test the exhaust or electronic connector of one vehicle, or use an electronic device that simulates or emulates a vehicle, for the purpose of enabling another vehicle to pass the emissions test (clean piping or clean scanning).

(E) Issuing a passing vehicle inspection report to a vehicle with multiple emissions related violations or violations on more than one vehicle.

(F) Allowing a person whose certificate has been suspended or revoked to participate in a vehicle inspection, issue a vehicle inspection report or participate in the regulated operations of the vehicle inspection station.

(G) Charging more than the statutory fee in addition to not inspecting the vehicle.

(H) Misrepresenting a material fact in any application to the department or any other information filed pursuant to the Act or this chapter.

(I) Conducting or participating in the inspection of a vehicle during a period of suspension, revocation, denial, after expiration of suspension but before reinstatement, or after expiration of inspector certification.

(J) Altering or damaging an item of inspection with the intent that the item fail the inspection.

(K) Multiple instances of preparing or submitting to the department false, incorrect, incomplete, or misleading forms or reports.

(L) Multiple instances of failing to enter complete and accurate data into the emissions testing analyzer or electronic station interface device, or failing to transmit complete and accurate data in the manner required by the department.

(M) Violating a prohibition described in §23.57 of this title (relating to Prohibitions) not otherwise provided in this section.

(4) Category D. These violations are grounds for indefinite suspension based on the temporary failure to possess or maintain an item or condition necessary for certification. The suspension of inspection activities is lifted upon receipt by the department of proof the obstacle has been removed or remedied.

(A) Failing to possess a valid driver license.

(B) Failing to possess a required item of inspection equipment.

(5) Category E. These violations apply to inspectors and vehicle inspection stations in which emission testing is required.

(A) Failing to perform applicable emissions test as required.

(B) Issuing a passing emissions inspection report without performing the emissions test on the vehicle as required.

(C) Failing to perform the gas cap test, or the use of unauthorized bypass for gas cap test.

(D) Issuing a passing emissions inspection report when the required emissions adjustments, corrections or repairs have not been made after an inspection disclosed the necessity for such adjustments, corrections or repairs.

(E) Falsely representing to an owner or operator of a vehicle that an emissions related component must be repaired, adjusted or replaced in order to pass emissions inspection.

(F) Requiring an emissions repair or adjustment not required by this chapter, department regulation, or the Act.

(G) Tampering with the emissions system or an emission related component in order to cause vehicle to fail emissions test.

(H) Refusing to allow the owner to have emissions repairs or adjustments made at a location of the owner's choice.

(I) Allowing an uncertified person to conduct an emissions inspection.

(J) Charging more than the authorized emissions inspection fee.

(K) Entering false information into an emission analyzer in order to issue an inspection report.

~~[(L) Violating a prohibition described in §23.57 of the title (relating to Prohibitions).]~~

(d) When assessing administrative penalties, the procedures detailed in this subsection will be observed:

(1) Multiple vehicle inspection station violations may result in action being taken against all station licenses held by the owner.

(2) The department may require multiple suspension periods be served consecutively.

(3) Enhanced penalties assessed will be based on previously adjudicated violations in the same category. Any violation of the same category committed after final adjudication of the prior violation will be treated as a subsequent violation for purposes of penalty enhancement.

(A) Category A violations are subject to a two year period of limitations preceding the date of the current violation.

(B) Under Category B, C, and E, subsequent violations are based on the number of previously adjudicated or otherwise finalized violations in the same category within the five year period preceding the date of the current violation.

(4) The penalty schedule is a guide only and does not limit the department's authority to impose additional penalties, sanctions, or both, should the department determine the scheduled penalty insufficient under the specific circumstances presented. Such circumstances may include a significant number of similar violations in a brief period, a pattern of conduct established by repeated as yet unadjudicated violations, or a violation determined to constitute a threat to public health, safety, or welfare under Texas Transportation Code, §548.407.

(e) Certification for a vehicle inspection station may not be issued if the person's immediate family member's certification as a vehicle inspection station owner at that same location is currently suspended or revoked, or is subject to a pending administrative adverse action, unless the person submits an affidavit stating the certificate holder who is the subject of the suspension, revocation or pending action, has no, nor will have any, further involvement in the business of state inspections. The application will be rejected as incomplete if the applicant fails to submit the required affidavit.

(f) A new certification for a vehicle inspection station may be issued at the same location where the previous certificate holder as an owner or operator is pending or currently serving a suspension or revocation, if the person submits an affidavit stating the certificate holder who is the subject of the suspension or revocation, has no, nor will have any, further involvement in the business of state inspections. The affidavit must contain the statement that the affiant understands and agrees that in the event the department discovers the previous certificate holder is involved in the inspection business at that location, the certificate will be revoked under Texas Transportation Code, §548.405. In addition to the affidavit, when the change of ownership of the vehicle inspection station is by lease of the building or the inspection area, the person seeking certification must provide a copy of the lease agreement included with the application for certification as an official vehicle inspection station. The application will be rejected as incomplete if the applicant fails to submit the required affidavit.

(g) Reinstatement. Expiration of the suspension period does not result in automatic reinstatement of the certificate. Reinstatement must be requested by contacting the department, and this may be initiated prior to expiration of the suspension. In addition, to meet all qualifications for the certificate, the certificate holder must:

(1) attend and complete the vehicle inspection training program and pass the complete written and demonstration test [when required];

(2) submit the certification fee if certification has expired during suspension; and

(3) pay all charges assessed related to the administrative hearing process, if applicable.

(h) The failure to pay an administrative penalty that has become final, whether by the passage of the deadline to appeal or by final court disposition, whichever is later, will result in suspension of the

license with no further notice or right to appeal. The suspension will take effect upon the passage of the deadline to appeal and will remain in effect until the penalty is paid in full.

(i) The director or the director's designee may immediately suspend or revoke a certificate as an inspector or inspection station if the director or the director's designee finds that the action is necessary to prevent or remedy a threat to public health, safety, or welfare as described in Texas Transportation Code, §548.407(d)(1-10). Specifically, this section's emissions-related inspection violations are adopted pursuant to Texas Transportation Code, §548.302, and therefore constitute a threat to public health, safety, or welfare under §548.407(d)(8) of the Act.

(j) For purposes of establishing a violation relating to the entry of false information or the failure to enter accurate information into the electronic database, the entry of an inspector's identifying PIN creates a rebuttable presumption that the inspector whose PIN was used committed the violation. The allegation may be rebutted by the submission of credible evidence establishing by a preponderance of evidence that

another person used the inspector's PIN to commit the violation. The submission of such evidence will constitute an admission of having failed to secure the PIN and, if applicable, allowing an uncertified individual to conduct an inspection.

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

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