

ADOPTED RULES

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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER O. ELECTRONIC VISIT VERIFICATION

The Texas Health and Human Services Commission (HHSC) adopts amendments to §354.4001, concerning Purpose and Authority; and §354.4003, concerning Definitions; the repeal of §354.4005, concerning Applicability; §354.4007, concerning EVV System; §354.4009, concerning Requirements for Claims Submission and Approval; §354.4011, concerning Member Rights and Responsibilities; and §354.4013, concerning Additional Requirements; and new §354.4005, concerning Personal Care Services that Require the Use of EVV; §354.4006, concerning Home Health Care Services that Require the Use of EVV; §354.4007, concerning EVV System; §354.4009, concerning EVV Visit Transaction and EVV Claim; §354.4011, concerning Visit Maintenance; §354.4013, concerning HHSC and MCO Compliance Reviews and Enforcement Actions; §354.4015, concerning EVV Training Requirements; §354.4017, concerning Process to Request Approval of a Proposed EVV Proprietary System and Additional Requirements for a PSO; §354.4019, concerning Access to EVV System and EVV Documentation; §354.4021, concerning Additional Requirements; §354.4023, concerning Sanctions; and §354.4025, concerning Administrative Hearing.

Sections 354.4001, 354.4003, 354.4005, 354.4006, 354.4007, 354.4009, 354.4011, 354.4013, 354.4015, 354.4017, 354.4019, 354.4021, 354.4023, and 354.4025; and the repeals of Sections 354.4005, 354.4007, 354.4009, 354.4011, and 354.4013; are adopted without changes to the proposed text as published in the September 8, 2023, issue of the *Texas Register* (48 TexReg 4950). These rules will not be republished.

BACKGROUND AND JUSTIFICATION

In accordance with Section 1903(l) of the Social Security Act (42 U.S.C. §1396b(l)), HHSC requires that electronic visit verification (EVV) be used to document the provision of certain personal care services provided through Medicaid. One purpose of the adopted rules is to ensure that HHSC complies with the requirement in Section 1903(l) that EVV be used to document the provision of Medicaid home health care services. Although Section 1903(l) requires the use of EVV for Medicaid home health services to have begun January 1, 2023, the Centers for Medicare

& Medicaid Services (CMS) granted HHSC an extension allowing HHSC to implement this requirement by January 1, 2024.

Another purpose of the adopted rules is to codify in rules current policies and procedures related to EVV including training requirements, visit maintenance requirements, compliance reviews, and the process for HHSC to recognize a health care provider's proprietary EVV system as described in Texas Government Code §531.024172(g).

COMMENTS

The 31-day comment period ended October 9, 2023.

During this period, HHSC received a comment regarding the proposed rules from one commenter representing Grace Personal Assistance Services and Vidanta Personal Assistance Services. A summary of the comment relating to the rules and HHSC's response follows.

Comment: The commenter disagrees with the rules and expressed a concern that HHSC is implementing the rules too soon, making it difficult for providers to comply with the rules.

Response: It is not clear why the commenter disagrees with the rules or why providers will not be able to comply with the rules. The only new requirement in the proposed rules is the use of EVV for the home health care services listed in §354.4006 to comply with Section 1903(l) of the Social Security Act. HHSC notified stakeholders of the expansion of EVV to home health care services effective January 1, 2024, through multiple methods prior to the publication of the proposed EVV rules in the *Texas Register*. HHSC announced the expansion of EVV on the EVV website in October 2022 when CMS granted Texas' request to extend the implementation date. HHSC posted the draft rules for informal comment in January 2023 prior to presentation at the Medical Care Advisory Committee and the HHSC Executive Council meetings in June 2023. In addition, HHSC has a recurring workgroup on the home health care services expansion that has included monthly updates on the status of the rules. Other changes in the proposed rules codify or clarify existing policies and procedures. No changes were made in response to this comment.

1 TAC §§354.4001, 354.4003, 354.4005 - 354.4007, 354.4009, 354.4011, 354.4013, 354.4015, 354.4017, 354.4019, 354.4021, 354.4023, 354.4025

STATUTORY AUTHORITY

The amendments and new sections are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient oper-

ation of the Medicaid program; and Texas Government Code, §531.024172, which provides that the Executive Commissioner of HHSC may adopt rules to implement an electronic visit verification system to electronically verify that personal care services or other services identified by HHSC are provided to Medicaid recipients.

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

Filed with the Office of the Secretary of State on November 20, 2023.

TRD-202304334

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Effective date: January 1, 2024

Proposal publication date: September 8, 2023

For further information, please call: (737) 867-7813



1 TAC §§354.4005, 354.4007, 354.4009, 354.4011, 354.4013

STATUTORY AUTHORITY

The repeals are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program; and Texas Government Code, §531.024172, which provides that the Executive Commissioner of HHSC may adopt rules to implement an electronic visit verification system to electronically verify that personal care services or other services identified by HHSC are provided to Medicaid recipients.

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

Filed with the Office of the Secretary of State on November 20, 2023.

TRD-202304335

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

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Proposal publication date: September 8, 2023

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TITLE 28. INSURANCE

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

CHAPTER 122. COMPENSATION PROCEDURE--CLAIMANTS SUBCHAPTER B. CLAIMS PROCEDURE FOR BENEFICIARIES OF INJURED EMPLOYEES

28 TAC §122.100

The Texas Department of Insurance, Division of Workers' Compensation (DWC) adopts amendments to 28 TAC §122.100, Claim for Death Benefits. The amendments are adopted with a change to the proposed text published in the September 29, 2023, issue of the *Texas Register* (48 TexReg 5620). DWC held a public hearing on the proposal on October 24, 2023. The text will be republished.

REASONED JUSTIFICATION. Amending §122.100 is necessary to clarify how legal beneficiaries may file claims, consistent with the statute and other rules about notice to insurance carriers, and outline what happens after filing. House Bill (HB) 2314 amended Labor Code §§408.182 and 409.007 to enable eligible beneficiaries to file claims for death benefits with DWC or an insurance carrier, and it imposed recordkeeping and notice requirements on insurance carriers that receive those claims.

Section 122.100 provides requirements for legal beneficiaries to file claims for death benefits. The amendments clarify that they may file a claim with DWC or an insurance carrier. The amendments also cross-reference the associated rule for insurance carriers that receive notices of death or claims for death benefits (Chapter 124, §124.8 of this title, adopted to implement HB 2314), clarify that beneficiaries may provide additional evidence electronically, and include nonsubstantive editorial and formatting changes to conform the section to the agency's current style and to improve the rule's clarity and readability. The amendments are necessary to ease administrative barriers for legal beneficiaries to claim the benefits to which they are entitled, and to ensure that, regardless of the way the claim was initially filed, DWC receives the documentation necessary to process the claim effectively and efficiently.

In response to a comment, DWC has adjusted §122.100(d) from the proposed text to make the processes for collecting additional evidence from potential beneficiaries the same, regardless of filing method, and to streamline the text for clarity. Under §102.5(h) of this title, electronic transmission includes fax, email, electronic data interchange (EDI), or any other similar method. Before HB 2314, all claims had to be filed with DWC, which enabled DWC to guide potential beneficiaries' paper claim submissions to ensure that they were complete. However, now that electronic filing is more advanced, and potential beneficiaries may file their claims with either DWC or the insurance carrier, a simpler, more efficient process for collecting additional evidence that applies regardless of filing method reduces confusion, cost, and regulatory burdens for everyone involved, including potential beneficiaries and insurance carriers.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Commenters: DWC received three written comments from two commenters on the proposal, and no oral comments. Commenters in support of the proposal were: Texas Mutual Insurance Company. Commenters in support of the proposal with changes were: the Office of Injured Employee Counsel. DWC did not receive comments that were against the proposal.

Comment on §122.100. A commenter stated that they supported the proposed changes in this rule to implement HB 2314.

Agency Response to Comment on §122.100. DWC appreciates the comment and support.

Comment on §122.100(a). A commenter recommended adding a good cause exception to §122.100(a) to allow the filing of claims after the one-year anniversary of the death of the employee for good cause to conform to the requirements of Labor Code §§409.007(b)(2) and 408.108(d-2).

Agency Response to Comment on §122.100(a). DWC appreciates the comment but declines to make the change. An exception to the one-year filing deadline for good cause already exists in §122.100(f)(2), so adding an additional good cause exception to §122.100(a) would be unnecessary and redundant.

Comment on §122.100(d). A commenter recommended changing §122.100(d) to state that a potential beneficiary that files a claim in paper format may file additional evidence at a later time and in paper or electronic format, instead of being required to file additional evidence on paper at the time they file the paper claim.

Agency Response to Comment on §122.100(d). DWC appreciates the comment and has adjusted the rule text to make the processes for collecting additional evidence from potential beneficiaries the same, regardless of filing method, and to streamline the text for clarity.

STATUTORY AUTHORITY. The commissioner of workers' compensation adopts the amendments to 28 TAC §122.100 under Labor Code §§408.182, 409.007, 402.00111, 402.00116, and 402.061.

Labor Code §408.182, as amended by HB 2314, 88th Legislature, Regular Session (2023), provides for the distribution of death benefits to eligible beneficiaries of a deceased employee, when a compensable injury to the employee results in death, and allows an eligible parent to file a claim with DWC or an insurance carrier.

Labor Code §409.007, as amended by HB 2314, 88th Legislature, Regular Session (2023), requires a person to file a claim for death benefits with DWC or an insurance carrier; and provides that, on receiving such a claim, the insurance carrier must, in the form and manner DWC prescribes, create and maintain a record documenting receipt of the claim and provide written notice to DWC that the person filed the claim.

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 the division or the commissioner.

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

§122.100. Claim for Death Benefits.

(a) Filing. For a legal beneficiary, other than the subsequent injury fund, to receive the benefits available because of the death of an employee that results from a compensable injury, a person must file a written claim for death benefits within one year after the date of the employee's death.

(b) An insurance carrier that receives a claim for death benefits under this section must comply with §124.8 of this title (relating to Receipt, Records, and Notice of Death or Claim for Death Benefits).

(c) Form and information requirements. The claim should be submitted to the division or insurance carrier either on paper or via electronic transmission, in the form, format, and manner prescribed by the division, and should include the following:

(1) the potential beneficiary's name, address, telephone number (if any), Social Security number, and relationship to the deceased employee;

(2) the deceased employee's name, last address, Social Security number (if known), and workers' compensation claim number (if any); and

(3) other information, as follows:

(A) a description of the circumstances and nature of the injury (if known);

(B) the name and location of the employer at the time of the injury;

(C) the date of the compensable injury, and date of death; and

(D) other known legal beneficiaries.

(d) Required documents. A potential beneficiary must file with the division or insurance carrier a copy of the deceased employee's death certificate and any additional documentation or other evidence that establishes that the potential beneficiary is a legal beneficiary of the deceased employee. The required documents or additional evidence may be filed separately either on paper or by electronic transmission, as defined in §102.5(h) of this title.

(e) One claim per person. Each person must file a separate claim for death benefits, unless the claim expressly includes or is made on behalf of another person.

(f) Deadline. Failure to file a claim for death benefits within one year after the date of the employee's death bars the claim of a legal beneficiary, other than the subsequent injury fund, unless:

(1) that legal beneficiary is a minor or otherwise legally incompetent;

(2) except as provided by paragraph (3) of this subsection, good cause exists for failure to file the claim on time; or

(3) for a legal beneficiary who is an eligible parent as defined by §132.6(e) of this title (relating to Eligibility of Other Surviving Dependents and Eligible Parents To Receive Death Benefits), the parent submits proof satisfactory to the commissioner of a compelling reason for the delay in filing the claim for death benefits.

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

Filed with the Office of the Secretary of State on November 21, 2023.

TRD-202304347



CHAPTER 124. INSURANCE CARRIERS:
NOTICES, PAYMENTS, AND REPORTING
SUBCHAPTER A. INSURANCE CARRIERS:
REQUIRED NOTICES AND MODES OF
PAYMENT

28 TAC §124.8

INTRODUCTION. The Texas Department of Insurance, Division of Workers' Compensation (DWC) adopts new 28 TAC §124.8, Receipt, Records, and Notice of Death or Claim for Death Benefits. The new section is adopted with a change to subsection (c)(1) of the proposed text published in the September 29, 2023, issue of the *Texas Register* (48 TexReg 5622) to eliminate a potential conflict in the timing of the notice. DWC held a public hearing on the proposal on October 24, 2023. The text will be republished.

REASONED JUSTIFICATION. New §124.8 is necessary to implement House Bill (HB) 2314, 88th Legislature, Regular Session (2023). HB 2314 amended Labor Code §§408.182 and 409.007 to enable eligible beneficiaries to file claims for death benefits with DWC or an insurance carrier, and it imposed recordkeeping and notice requirements on insurance carriers that receive those claims.

Section 124.8 cross-references the associated rule for beneficiaries filing claims for death benefits (Chapter 122, §122.100 of this title, with amendments to implement HB 2314) for consistency and ease of use, and clarifies an insurance carrier's obligations, consistent with associated rules for electronic data transactions and other existing rules. It requires an insurance carrier that sends a plain-language notice of potential entitlement to workers' compensation death benefits to a potential beneficiary under existing rules to also send a copy of that notice to DWC.

New §124.8 is necessary to ensure that, if an insurance carrier receives a notice of death or a claim for death benefits, the insurance carrier knows what the requirements for recordkeeping and notice to DWC are. It is also necessary to ensure that procedures for receiving information from claimants, maintaining records, and transmitting information to DWC are as consistent as possible with procedures for other similar situations and with other rules to enhance compliance and reduce confusion. Finally, new §124.8 is necessary to ensure that DWC has the information needed to identify potential claims for death benefits and potential beneficiaries. Having that information is necessary for DWC to ensure that the potential beneficiaries have access to DWC's outreach services, and that insurance carriers have the information they need to process the claims efficiently.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Commenters: DWC received two written comments on the proposal, and no oral comments. Commenters in support of the pro-

posal with changes were: the Office of Injured Employee Counsel and Texas Mutual Insurance Company. DWC did not receive comments that were against the proposal.

Comments on §124.8. Two commenters requested that DWC clarify when an insurance carrier must send DWC a copy of the plain-language notice that it sends to potential beneficiaries.

Agency Response to Comment on §124.8. DWC appreciates the comments and has clarified the text by deleting the reference that tied sending the plain-language notice to receiving the claim. Section 132.17(d) requires the insurance carrier to send the plain-language notice to the potential beneficiary within seven days of the date the insurance carrier identified or was otherwise made aware of the identity and means of contacting the potential beneficiary. The insurance carrier's obligation is to send DWC a copy of the notice when it sends the notice to the potential beneficiary, so the same seven-day time frame applies.

STATUTORY AUTHORITY. The commissioner of workers' compensation adopts new 28 TAC §124.8 under Labor Code §§408.182, 409.007, 402.00111, 402.00116, and 402.061.

Labor Code §408.182, as amended by HB 2314, 88th Legislature, Regular Session (2023), provides for the distribution of death benefits to eligible beneficiaries of a deceased employee, when a compensable injury to the employee results in death, and allows an eligible parent to file a claim with DWC or an insurance carrier.

Labor Code §409.007, as amended by HB 2314, 88th Legislature, Regular Session (2023), requires a person to file a claim for death benefits with DWC or an insurance carrier; and provides that, on receiving such a claim, the insurance carrier must, in the form and manner DWC prescribes, create and maintain a record documenting receipt of the claim and provide written notice to DWC that the person filed the claim.

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

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

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

§124.8. Receipt, Records, and Notice of Death or Claim for Death Benefits.

(a) Definition. In this section, "claim for death benefits" means a claim that is filed under Chapter 122, Subchapter B, §122.100 of this title.

(b) General requirements. An insurance carrier that receives a notice of death in accordance with §132.17 of this title, or a claim for death benefits must comply with all of the requirements in this chapter.

(c) Recordkeeping and notice. An insurance carrier in subsection (b) of this section must:

(1) send the division a copy of the plain-language notice that the insurance carrier must provide to the potential beneficiary under §132.17 of this title.

(2) on receiving a claim for death benefits, create and maintain a record documenting receipt of the claim for death benefits. The

record must include all of the information in the claim for death benefits. The insurance carrier must maintain the record in accordance with Chapter 102, §102.4 of this title.

(3) send the division a copy of a claim for death benefits the insurance carrier receives from the potential beneficiary not later than the seventh day after receiving it and include any other documents and information the insurance carrier received.

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

Filed with the Office of the Secretary of State on November 21, 2023.

TRD-202304348

Kara Mace

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

Effective date: December 11, 2023

Proposal publication date: September 29, 2023

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



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 463. ADVISORY COMMITTEES, PRACTICE AND PROCEDURES

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

The Texas Commission on Fire Protection (the Commission) adopts a new chapter, 37 Texas Administrative Code Chapter 463, Advisory Committees, Practice and Procedures, concerning §463.1 Objective, §463.3 General, §463.5 Eligibility, §463.7 Terms, §463.9 Meetings, §463.11 Limitation of Powers, §463.13 Testimony, §463.15 Expulsion, and §463.17 Abolishment Date. The new chapter is adopted without changes to the text as published in the October 20, 2023, issue of the *Texas Register* (48 TexReg 6196). These rules will not be republished.

The new chapter aims to establish rules governing the Commission's advisory committees under Texas Government Code §419.908(f). This new chapter and rules implement a Sunset Commission's recommendation and Senate Bill 709 as passed by the 87th legislature. The chapter enhances transparency by setting out the objectives of the committees, and eligibility for membership, creates staggered terms and term limits, open meeting requirements, limits committees to recommendations only, and addresses public testimony, expulsion, and abolishment. The new chapter ensures each committee continues to achieve the objectives set out by law and rule, and requires the Commission to evaluate the need for the committee and continuation of each committee every four years. The new chapter also implements requirements of Texas Government Code §2110.005, and §2110.008, by setting out by rule the purpose of the committee, the manner the committee will report to the Com-

mission, and the duration of the committees. No other statutes, articles, or codes are affected by these amendments.

No comments were received from the public regarding the adoption of the new rule.

The rule is adopted under Texas Government Code §419.008, which authorizes the commission to adopt or amend rules to perform the duties assigned to the commission. The rule is also adopted under Texas Government Code §419.032, which authorizes the commission to adopt rules establishing the requirements for certification; and §419.0325, which authorizes the commission to obtain the criminal history record information for the individual seeking certification by the commission.

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

Filed with the Office of the Secretary of State on November 20, 2023.

TRD-202304326

Mike Wisko

Agency Chief

Texas Commission on Fire Protection

Effective date: December 10, 2023

Proposal publication date: October 20, 2023

For further information, please call: (512) 936-3841



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 810. LONE STAR WORKFORCE OF THE FUTURE FUND

The Texas Workforce Commission (TWC) adopts new Chapter 810, relating to the Lone Star Workforce of the Future Fund, comprising the following subchapters:

Subchapter A. General Provisions Regarding the Lone Star Workforce of the Future Fund, §§810.1 - 810.4

Subchapter B. Advisory Board Composition, Meeting Guidelines, §§810.11 - 810.13

Subchapter C. Program Administration, §§810.21 - 810.28

New §§810.1, 801.3, 810.4, 810.11 - 810.13, and 810.21, and 810.23 - 810.28 are adopted without changes to the proposal, as published in the September 29, 2023, issue of the *Texas Register* (48 TexReg 5645), and, therefore, the adopted rule text will not be published.

New §810.2 and §810.22 are adopted with changes to the proposal, as published in the September 29, 2023, issue of the *Texas Register* (48 TexReg 5645), and, therefore, the adopted rule text will be published.

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of implementing new Chapter 810 rules is to establish the Lone Star Workforce of the Future Fund and set forth TWC's procedures for administering the new grant program.

The 88th Texas Legislature, Regular Session (2023), passed House Bill (HB) 1755, which amended Texas Education Code, Title 3, Subtitle G, by adding Chapter 134A relating to the creation of the Lone Star Workforce of the Future Fund. HB 1755 tasks TWC with the establishment and administration of the Lone Star Workforce of the Future Fund as a dedicated account in the general revenue fund. Furthermore, HB 1755 requires TWC to adopt rules as necessary to administer this chapter.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

SUBCHAPTER A. GENERAL PROVISIONS REGARDING THE LONE STAR WORKFORCE OF THE FUTURE FUND

TWC adopts new Subchapter A, General Provisions Regarding the Lone Star Workforce of the Future Fund, as follows:

§810.1. Purpose and Goal

New §810.1(a) states the Lone Star Workforce of the Future Fund's purpose.

New §810.1(b) states the Lone Star Workforce of the Future Fund's goal.

§810.2. Definitions

New §810.2 sets forth the definitions for the Lone Star Workforce of the Future Fund rules.

New §810.2(4) has been changed from the proposal to give "eligible applicant" the same meaning as identified under Texas Education Code §134A.007.

Certain paragraphs in §810.2 have been rearranged in alphabetical order and renumbered accordingly.

§810.3. Uses of the Fund

New §810.3 details what a grant recipient shall use the money for.

§810.4. Waivers

New §810.31 sets forth the Executive's waiver authority.

SUBCHAPTER B. ADVISORY BOARD COMPOSITION, MEETING GUIDELINES

TWC adopts new Subchapter B, Advisory Board Composition, Meeting Guidelines, as follows:

§810.11. Advisory Board Purpose and Composition

New §810.11 provides the purpose of the advisory board and the appointing entities.

§810.12. Meeting Requirements

New §810.12 states the advisory board meeting requirements.

§810.13. Advisory Board Responsibilities

New §810.13 outlines the advisory board responsibilities.

SUBCHAPTER C. PROGRAM ADMINISTRATION

TWC adopts new Subchapter C, Program Administration, as follows:

§810.21. Statement of Purpose

New §810.21 explains the Lone Star Workforce of the Future Fund's purpose.

§810.22. Procedure for Requesting Funding

New §810.22 outlines the procedure in which grant applicants may request funding.

New §810.22 has been changed from the proposal to add that "eligible applicant" has the same meaning as identified under Texas Education Code §134A.007.

§810.23. Procedure for Proposal Evaluation

New §810.23 outlines the evaluation procedure for proposed workforce training projects.

§810.24. Grant Agreement Administration

New §810.24 outlines the administration of the agreement between the grant recipient and TWC.

§810.25. Limitation on Awards

New §810.25 outlines limitations the Commission may impose on awards.

§810.26. Program Objectives

New §810.26 details the Lone Star Workforce of the Future Fund's program objectives.

§810.27. Performance Benchmarks

New §810.27 details performance benchmarks that must be met by grant recipients.

§810.28. Reporting Requirements

New §810.28 details reporting requirements for grant recipients.

TWC hereby certifies that the rules have been reviewed by legal counsel and found to be within TWC's legal authority to adopt.

PART III. PUBLIC COMMENTS

The public comment period closed on October 30, 2023.

TWC received comments from Year Up Austin.

COMMENT: Year Up Austin requested that TWC amend §810.1 to add language stating that public junior colleges, public technical institutes, and nonprofit organizations that administer workforce training programs demonstrate a history of and evidence of strong outcomes.

RESPONSE: The Commission appreciates the comment. However, Texas Education Code §134A.007 establishes grant eligibility. TWC has revised the proposed definition of "eligible applicant" to reflect the statutory requirements. TWC will review each grant application on a case-by-case basis and will ensure that applicants are adequately qualified to meet grant requirements.

COMMENT: Year Up Austin asked if §810.2 needs to include a definition of "nonprofit organization."

RESPONSE: The Commission appreciates the comment; however, the Commission intends on developing and utilizing a definition of a "nonprofit organization" as part of each grant cycle. No changes were made in response to this comment.

COMMENT: Year Up Austin recommended that TWC amend §810.4 so that waivers should be reviewed by the advisory board for input but leave the final decision with the Executive Director.

RESPONSE: As stated in §810.13, the advisory board shall provide advice and recommendations to the Commission on awarding grants under this chapter. The advisory board will not review individual applications. No changes were made in response to this comment.

COMMENT: Year Up Austin asked how the Commission Chair is appointed and by whom.

RESPONSE: The Governor of Texas appoints the Commission Chair. No changes were made in response to this comment.

COMMENT: Year Up Austin asked what the requirements referenced in §810.21 are for nonprofit organizations.

RESPONSE: Regarding which entities are eligible to receive a grant under this program, please refer to Texas Education Code Chapter 134A. No changes were made in response to this comment.

COMMENT: Year Up Austin asked if there is a list of high-growth career fields currently available to view, as referenced under §810.24(b).

RESPONSE: TWC will publish a list of high-growth career fields to this program's dedicated webpage following the formal rule adoption and Commission adoption of such a list. No changes were made in response to this comment.

COMMENT: Year Up Austin recommended that TWC amend §810.24(c)(1) to specify which reports are required by the applicant.

RESPONSE: Reporting requirements may vary from year to year. However, all reporting requirements will be included in the contract between TWC and the grant recipient. No changes were made in response to this comment.

COMMENT: Year Up Austin asked if there were additional limits on the grant amount that can be awarded other than those listed in §810.25.

RESPONSE: Neither the statute nor this proposed rule identifies a financial limit aside from the \$15,000 per training program participant. However, the Commission may adopt limitations to the grant amount from time to time. No changes were made in response to this comment.

COMMENT: Year Up Austin recommended that TWC amend the rule by adding the following to the end of §810.26(2): "and promote enhanced educational and career mobility."

RESPONSE: The Commission appreciates the comment; however, this requested change is outside the scope of the proposed rulemaking. No changes were made in response to this comment.

COMMENT: Year Up Austin recommended that TWC amend §810.28(a) to specifically identify where the reporting requirement rules exist.

RESPONSE: Section 810.28 outlines reporting requirements that are defined by Texas Education Code Chapter 134A. However, additional reporting requirements and penalties may be enforced in the contract between TWC and the grant recipient. No changes were made in response to this comment.

SUBCHAPTER A. GENERAL PROVISIONS REGARDING THE LONE STAR WORKFORCE OF THE FUTURE FUND

40 TAC §§810.1 - 810.4

STATUTORY AUTHORITY

The new rules are adopted under the specific authority of House Bill 1755, 88th Texas Legislature, Regular Session (2023), which enacted Texas Education Code §134A.012, which requires TWC

to adopt rules necessary for the administration of Texas Education Code Chapter 134A.

The rules are adopted under the general authority of Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

§810.2. Definitions.

In addition to the definitions contained in §800.2 of this title, the following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

(1) Advisory board--the advisory board of education and workforce stakeholders created pursuant to the applicable statute.

(2) Agency--the unit of state government established under Texas Labor Code Chapter 301 that is presided over by the Commission and administered by the Executive Director to operate the integrated workforce development system and administer the unemployment compensation insurance program in this state as established under the Texas Unemployment Compensation Act, Texas Labor Code, Title 4, Subtitle A, as amended. The definition of "Agency" shall apply to all uses of the term in rules contained in this part, unless otherwise defined, relating to the Texas Workforce Commission.

(3) Commission--the body of governance of the Texas Workforce Commission composed of three members appointed by the governor as established under Texas Labor Code §301.002 that includes one representative of labor, one representative of employers, and one representative of the public. The definition of "Commission" shall apply to all uses of the term in rules contained in this part, unless otherwise defined, relating to the Texas Workforce Commission.

(4) Eligible applicant--has the same meaning as identified under Texas Education Code §134A.007.

(5) Executive Director--the Executive Director of the Texas Workforce Commission.

(6) Grant recipient--a recipient of the Lone Star Workforce of the Future Fund.

(7) Public junior college--any junior college certified by the Texas Higher Education Coordinating Board in accordance with Texas Education Code §61.003.

(8) Public technical institute--the Lamar Institute of Technology or the Texas State Technical College System, in accordance with Texas Education Code §61.003.

(9) Statute--Texas Education Code, Chapter 134A, Lone Star Workforce of the Future Fund.

(10) Workforce training program--a program that provides performance-based workforce training that:

(A) leads to skill development and experiences required for employment in high demand occupations;

(B) are developed and provided based on consultation with and input from employers that are hiring in high demand occupations;

(C) create pathways to employment for program participants; and

(D) are delivered through classroom-based or online instruction, work-based experiences, internships or apprenticeships, or through a combination of those methods.

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

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Les Trobman
General Counsel
Texas Workforce Commission
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For further information, please call: (512) 850-8356



SUBCHAPTER B. ADVISORY BOARD COMPOSITION, MEETING GUIDELINES

40 TAC §§810.11 - 810.13

The new rules are adopted under the specific authority of House Bill 1755, 88th Texas Legislature, Regular Session (2023), which enacted Texas Education Code §134A.012, which requires TWC to adopt rules necessary for the administration of Texas Education Code Chapter 134A.

The rules are adopted under the general authority of Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

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

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SUBCHAPTER C. PROGRAM ADMINISTRATION

40 TAC §§810.21 - 810.28

The new rules are adopted under the specific authority of House Bill 1755, 88th Texas Legislature, Regular Session (2023), which enacted Texas Education Code §134A.012, which requires TWC to adopt rules necessary for the administration of Texas Education Code Chapter 134A.

The rules are adopted under the general authority of Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

§810.22. Procedure for Requesting Funding.

An eligible applicant, as defined by Texas Education Code §134A.007, shall present to the Executive Director, or designee, an application for funding to acquire grant funds for the provision of workforce training as may be identified by the eligible applicant.

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

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