

itations on Storage of Recyclable Materials) or §335.17(a)(8) of this title (relating to Special Definitions for Recyclable Materials and Non-hazardous Recyclable Materials);

(2) if unrecycled components cause the discharge or imminent threat of discharge of a contaminant into or adjacent to waters in the state without specific authorization from the commission;

(3) if unrecycled components create or maintain a nuisance;

(4) if unrecycled components endanger the public health and welfare; or

(5) if directed to perform closure by the executive director.

(f) The executive director is authorized to receive and spend funds as a beneficiary of financial assurance established in this subchapter.

§328.451. Recordkeeping Requirements.

In addition to other applicable recordkeeping requirements under local, state, or federal law, the owner of a recycling facility must maintain records for activities conducted under this subchapter for a minimum of three years including but not limited to manifests, bills of lading, records of quantities of components recycled onsite or offsite, records of waste disposal, and any documentation used to establish the information reported to the executive director under §328.431 of this title (relating to Reporting Requirements). The owner of the recycling facility must furnish to the executive director, upon request and within a reasonable time, records maintained under 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.

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Texas Commission on Environmental Quality

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For further information, please call: (512) 239-0682



## **TITLE 40. SOCIAL SERVICES AND ASSISTANCE**

### **PART 12. TEXAS BOARD OF OCCUPATIONAL THERAPY EXAMINERS**

#### **CHAPTER 374. DISCIPLINARY ACTIONS/DETRIMENTAL PRACTICE/COMPLAINT PROCESS/CODE OF ETHICS/LI-CENSURE OF PERSONS WITH CRIMINAL CONVICTIONS**

##### **40 TAC §374.1**

The Texas Board of Occupational Therapy Examiners proposes an amendment to 40 Texas Administrative Code §374.1, Disciplinary Actions.

The amendment to §374.1 will correct a typographical error to replace "4safety" with "safety" in subsection (d)(1)(B) of the section. The amendment is proposed to correct the typographical error in the provision.

#### **FISCAL NOTE ON STATE AND LOCAL GOVERNMENTS**

Ralph A. Harper, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the proposed amendment is in effect, there will be no fiscal impact to state or local governments as a result of enforcing or administering the amendment as proposed under Texas Government Code §2001.024(a)(4) because the amendment does not impose a cost on state or local governments.

#### **LOCAL EMPLOYMENT IMPACT**

Mr. Harper has determined that the proposed amendment would not impact a local economy. Therefore, a local employment impact statement is not required under Texas Government Code §2001.022 and §2001.024(a)(6).

#### **PUBLIC BENEFIT AND COST NOTE**

Mr. Harper has determined under Texas Government Code §2001.024(a)(5) that for each of the first five years the proposed amendment would be in effect, the public benefit will be enhanced orthographic accuracy in the section. There would not be an additional anticipated economic cost to persons required to comply with the proposed amendment because Texas Occupations Code Chapter 454, the Occupational Therapy Practice Act, already allows for the Board to impose an administrative penalty and proposed changes do not exceed that amount authorized by Texas Occupations Code §454.3521(b).

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

Mr. Harper has determined there would be no costs or adverse economic effects on small businesses, micro-businesses, or rural communities. Therefore, no economic impact statement or regulatory flexibility analysis is required under Texas Government Code §2006.002.

#### **TAKINGS IMPACT ASSESSMENT**

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

#### **GOVERNMENT GROWTH IMPACT STATEMENT**

Mr. Harper has determined under Texas Government Code §2001.0221 that during the first five years the rule would be in effect:

- (1) the rule will not create or eliminate a government program;
- (2) the rule will not require the creation of new employee positions or the elimination of existing employee positions;
- (3) the rule will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rule will not require an increase or decrease in fees paid to the agency;

(5) the rule will not create new regulations and will not repeal an existing regulation;

(6) the rule will not expand certain existing regulations or limit certain existing regulations;

(7) the rule will not increase or decrease the number of individuals subject to the rule's applicability; and

(8) the rule will neither positively nor adversely affect this state's economy.

#### COSTS TO REGULATED PERSONS

The rule is not subject to Texas Government Code §2001.0045 because the rule is necessary to protect the health, safety, and welfare of the residents of this state and the Board is required to adopt a schedule of administrative penalties and other sanctions by rule pursuant to Texas Occupations Code §454.3025(a). The administrative penalties in the Schedule of Sanctions are necessary to deter the practice of occupational therapy in a manner detrimental to the public health and welfare. In addition, the rule does not impose a cost on another state agency, a special district, or a local government.

#### ENVIRONMENTAL IMPACT STATEMENT

Mr. Harper has determined that the proposed amendment does not require an environmental impact analysis because the rule is not a major environmental rule under Texas Government Code §2001.0225.

#### PUBLIC COMMENT

Comments on the proposed amendments may be submitted in writing to Lea Weiss, Occupational Therapy Coordinator, Texas Board of Occupational Therapy Examiners, 1801 Congress Ave Ste 10.900, Austin, Texas 78701 or to lea@ptot.texas.gov within 30 days following the publication of this notice in the *Texas Register*. Any interested person or a person required to comply with the proposed rule may submit information related to the cost, benefit, or effect of the proposed rule, including any applicable data, research, or analysis. It is requested when sending a comment that individuals include the rule section to which the comment refers and that comments sent by email include "Public Comment" in the email's subject line.

#### STATUTORY AUTHORITY

The amendment is proposed under Texas Occupations Code §454.102, which authorizes the Board to adopt rules to carry out its duties under Chapter 454. The amendment is also proposed under §454.3025, which requires the Board by rule to adopt a schedule of administrative penalties and other sanctions that the Board may impose under this chapter, and under §454.3521, which authorizes the Board to impose an administrative penalty, not to exceed \$200 for each day a violation continues or occurs, under this chapter for a violation of this chapter or a rule or order adopted under this chapter.

#### CROSS REFERENCE TO STATUTE

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

#### §374.1. *Disciplinary Actions.*

(a) The board, in accordance with the Administrative Procedure Act, may deny, revoke, suspend, or refuse to renew or issue a license, or may reprimand or impose probationary conditions, if the licensee or applicant for licensure has been found in violation of the

rules or the Act. The board will adhere to procedures for such action as stated in the Act, §§454.301, 454.302, 454.303, and 454.304.

(b) The board recognizes four levels of disciplinary action for its licensees.

(1) Level I: Order and/or Letter of Reprimand or Other Appropriate Disciplinary Action (including but not limited to community service hours).

(2) Level II: Probation--The licensee may continue to practice while on probation. The board orders the probationary status which may include but is not limited to restrictions on practice and continued monitoring by the board during the specified time period.

(3) Level III: Suspension--A specified period of time that the licensee may not practice as an occupational therapist or occupational therapy assistant. Upon the successful completion of the suspension period, the license will be reinstated upon the licensee successfully meeting all requirements.

(4) Level IV: Revocation--A determination that the licensee may not practice as an occupational therapist or occupational therapy assistant. Upon passage of 180 days, from the date the revocation order becomes final, the former licensee may petition the board for re-issuance of a license. The former licensee may be required to re-take the Examination.

(c) The board shall utilize the following schedule of sanctions in all disciplinary matters.

Figure: 40 TAC §374.1(c) (No change.)

(d) The board shall consider the following factors in conjunction with the schedule of sanctions when determining the appropriate penalty/sanction in disciplinary matters:

(1) the seriousness of the violation, including:

(A) the nature, circumstances, extent, and gravity of the violation; and

(B) the hazard or potential hazard created to the health, safety [4safety], or economic welfare of the public;

(2) the history of previous violations;

(3) the amount necessary to deter future violations;

(4) efforts to correct the violation;

(5) the economic harm to the public interest or public confidence caused by the violation;

(6) whether the violation was intentional; and

(7) any other matter that justice requires.

(e) Licensees who provide occupational therapy services are responsible for understanding and complying with Chapter 454 of the Occupations Code (the Occupational Therapy Practice Act), and the Texas Board of Occupational Therapy Examiners' rules.

(f) Final disciplinary actions taken by the board will be routinely published as to the names and offenses of the licensees.

(g) A licensee who is ordered by the board to perform certain act(s) will be monitored by the board to ensure that the required act(s) are completed per the order of the board.

(h) The board may expunge any record of disciplinary action taken against a license holder before September 1, 2019, for practicing in a facility that failed to meet the registration requirements of §454.215 of the Act (relating to Occupational Therapy Facility Registration), as

that section existed on January 1, 2019. The board may not expunge a record under this subsection after September 1, 2021.

(i) A licensee or applicant is required to report to the board a felony of which he/she is convicted within 60 days after the conviction occurs.

(j) A licensee shall submit to the board a copy of any judgment or settlement in a malpractice claim or any disciplinary action taken against the licensee by a licensing authority of another territory or state of the U.S. within 30 days after the judgment, settlement, or disciplinary action is signed.

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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Ralph A. Harper

Executive Director

Texas Board of Occupational Therapy Examiners

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For further information, please call: (512) 305-6900



## PART 20. TEXAS WORKFORCE COMMISSION

### CHAPTER 809. CHILD CARE SERVICES SUBCHAPTER F. FRAUD FACT-FINDING AND IMPROPER PAYMENTS

#### 40 TAC §§809.111 - 809.117

The Texas Workforce Commission (TWC) proposes amendments to the following sections of Chapter 809, relating to Child Care Services:

Subchapter F. Fraud Fact-Finding and Improper Payments, §§809.111 - 809.115 and 809.117

TWC proposes the following new section to Chapter 809, relating to Child Care Services:

Subchapter F. Fraud Fact-Finding and Improper Payments, §809.116

#### PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed Chapter 809 rule change is to strengthen the integrity of the child care services program by enhancing fraud detection, prevention, and enforcement mechanisms. The amendments clarify procedures for investigating suspected fraud, specify corrective actions, establish clear accountability measures for Local Workforce Development Boards (Boards), and reinforce TWC's authority to recover improper payments. These changes are designed to safeguard public funds and ensure that child care subsidies are directed to eligible Texas families and qualified providers.

#### PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

## SUBCHAPTER F. FRAUD FACT-FINDING AND IMPROPER PAYMENTS

TWC proposes the following amendments to Subchapter F:

### §809.111. General Fraud Fact-Finding Procedures

Section 809.111 is amended to clarify TWC's authority over fraud cases and its oversight role with Boards and to better align the definition of fraud. Amendments to §809.111 also include technical corrections regarding the use of "Agency" and "Commission."

Section 809.111(b) is amended to redefine the knowledge standard for fraud from "knowing it to be false" to "knew or should have known" standard, consistent with program integrity best practices.

Section 809.111(e), (f), and (g) are amended to clarify TWC's procedures and Board responsibilities for reporting, investigating, and documenting cases of suspected fraud.

New §809.111(h) explicitly states TWC's jurisdiction to intervene in fraud cases when a Board fails to adhere to established procedures or needs assistance.

New §809.111(i) requires Fraud Deterrence and Compliance Monitoring approval before a Board restricts a provider's eligibility to provide Commission-funded child care services due to a finding of fraud, which will allow TWC to ensure consistent standards are applied.

### §809.112. Suspected Fraud

Section 809.112 is amended to make several technical edits including correcting the use of "Agency" and "Commission," clarifying that suspected fraud includes payments, clarifying what constitutes suspected fraud, and removing reference to specific eligibility periods.

### §809.113. Action to Prevent or Correct Suspected Fraud

Section 809.113 is amended to more clearly delineate the corrective actions that TWC or a Board may take against a provider versus a parent when fraud is found. A key amendment adds language allowing TWC to prohibit future eligibility for providers or individuals who are connected with a program determined to have committed fraud, and is a critical tool to prevent fraudulent actors from reentering the program under a new business name.

### §809.114. Failure to Comply with Commission Rules and Board Policies

Section 809.114 is renamed "Failure to Comply with Commission Rules and Agency and Board Policies."

Section 809.114 is amended to require parents and providers to comply with TWC's policies, to include "other contracted entity" to the list of parties subject to corrective action, which reinforces that all entities involved in the child care system must comply with Commission rules. New §809.114(d) requires Boards to develop and implement a plan to monitor child care providers compliance with Commission rules and TWC and Board policies. The monitoring plan must include in-person site visits. New subsection (e) clarifies the authority for the Director of Child Care Services to issue corrective actions or sanctions for a Board's failure to comply with the requirements of Chapter 809.

### §809.115. Corrective Adverse Actions

Section 809.115 is amended to make several technical edits including correcting the use of "Agency" and "Commission."

### §809.116. Referral for Criminal Prosecution