

1 **CHAPTER 800. GENERAL ADMINISTRATION**

2
3 **ADOPTED RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS***
4 ***REGISTER*. THIS DOCUMENT WILL HAVE NO SUBSTANTIVE CHANGES BUT IS**
5 **SUBJECT TO FORMATTING CHANGES AS REQUIRED BY THE *TEXAS REGISTER*.**
6

7 **ON JANUARY 5, 2021, THE TEXAS WORKFORCE COMMISSION ADOPTED THE**
8 **BELOW RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.**
9

10 Estimated date of publication in the *Texas Register*: **January 22, 2021**
11 The rules will take effect: **January 25, 2021**
12

13 The Texas Workforce Commission (TWC) adopts the following new subchapter to Chapter 800,
14 relating to General Administration, *without* changes, as published in the October 23, 2020, issue
15 of the *Texas Register* (45 TexReg 7545):
16

17 Subchapter L. Workforce Diploma Pilot Program, §§800.500 - 800.505
18

19 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

20 Senate Bill (SB) 1055, 86th Texas Legislature, Regular Session (2019), added Texas Labor
21 Code, Chapter 317, requiring TWC, in consultation with the Texas Education Agency (TEA), to
22 create and administer a Workforce Diploma Pilot Program (Program). As outlined in Texas
23 Labor Code, Chapter 317, the Program will allow eligible high school diploma--granting entities
24 to be reimbursed for helping adult students obtain high school diplomas and industry-recognized
25 credentials and develop technical career-readiness and employability skills.
26

27 SB 1055 stipulates that Texas Labor Code, Chapter 317 expires on September 1, 2025, and
28 requires TWC to develop rules that:

- 29 --outline the application process to become a qualified provider;
30 --define the minimum performance standards for qualified providers, which include a graduation
31 rate of at least 50 percent and a program cost per graduate of \$7,000 or less for the previous
32 calendar year; and
33 --develop formulas to make the appropriate calculations to determine the graduation rate and
34 program cost per graduate.
35

36 SB 1055 includes the stipulation that TWC "is required to implement a provision of this Act only
37 if the legislature appropriates money specifically for that purpose. If the legislature does not
38 appropriate money specifically for that purpose, the Texas Workforce Commission may, but is
39 not required to, implement a provision of this Act using other appropriations available for that
40 purpose." TWC is developing rules to implement the Program upon allocation of funds for its
41 implementation.
42

43 New Chapter 800, Subchapter L, Workforce Diploma Pilot Program, provides the rules for
44 implementing new Texas Labor Code, Chapter 317, as added by SB 1055.
45

46 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

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

3
4 **SUBCHAPTER L. WORKFORCE DIPLOMA PILOT PROGRAM**

5 TWC adopts new Subchapter L:

6
7 **§800.500. Purpose**

8 New §800.500 provides the purpose of the Program, which is to reimburse qualified providers
9 that provide assistance to adult students to obtain high school diplomas and attain industry-
10 recognized credentials and to develop technical career-readiness and employability skills, to the
11 extent that funding is available for this purpose.

12
13 **§800.501. Definitions**

14 New §800.501 provides the following definitions for Subchapter L:

15
16 --"Academic resiliency" is a student's ability to persist and academically succeed despite
17 adversity.

18
19 --"Academic skill intake assessment" is a formal and/or informal assessment used at intake to
20 gather information on a student's current knowledge and skills in specific academic areas (for
21 example, literacy and numeracy). That information is then used to determine the student's
22 appropriate instructional level as well as accommodations and/or remediation that the student
23 needs.

24
25 --"Career Pathway" is a combination of rigorous and high-quality education, training, and other
26 services that:

27 --aligns with the skill needs of industries in the economy of the state or regional economy
28 involved;

29 --prepares an individual to be successful in any of a full range of secondary or postsecondary
30 education options;

31 --includes counseling to help an individual achieve his or her education and career goals;

32 --includes, as appropriate, education offered concurrently with, and in the same context as,
33 workforce preparation activities and training for a specific occupation or occupational cluster;

34 --organizes education, training, and other services to meet the particular needs of an individual
35 in a manner that accelerates his or her educational and career advancement to the extent
36 practicable;

37 --enables an individual to attain a secondary school diploma or its recognized equivalent, and
38 at least one recognized postsecondary credential; and

39 --helps an individual enter or advance within a specific occupation or occupational cluster (29
40 USC §3102, Definitions).

41
42 --"Eligible participant" is an individual who is over the age of compulsory school attendance
43 prescribed by Texas Education Code, §25.085 and who, as required by TWC:

44 --is a Texas resident;

45 --lacks a high school diploma;

46 --is authorized to work in the United States; and

1 --is able to work immediately upon graduation from the Program.
2
3 --"Employability skills certification program" refers to a certification in general skills that are
4 necessary for success in the labor market at all employment levels and in all industry sectors.
5 Employability skills include problem-solving, collaboration, organization, and adaptability.
6
7 --"Half credit" is based on the Carnegie Unit, which refers to the standard award of credit given
8 for a course that lasts one semester. When determining credits, qualified providers should
9 consider instructional time plus the amount of time that the student would take to complete the
10 coursework in a high school semester or academic year. In traditional education models, a
11 student typically attends a class for 55 to 60 minutes a day for four or five days a week, in
12 addition to studying independently.
13
14 --"High school diploma" is a credential awarded by an entity based on completion of all state
15 graduation requirements as outlined in Texas Education Code, §28.025 and §39.023 and 19
16 Texas Administrative Code (TAC) Chapter 74, Curriculum Requirements, and Chapter 101,
17 Assessment.
18
19 --"Industry-recognized credential" is a state-approved credential that verifies an individual's
20 qualifications and competence and is issued by a third party with the relevant authority to issue
21 such credentials (US Department of Labor, 2010). Industry-recognized credentials offered by
22 qualified providers must align with TWC's mission to target high-growth, high-demand, and
23 emerging occupations that are crucial to state and local workforce economies and must reflect
24 the target occupations for the local workforce development areas (workforce areas) in which
25 services will be provided. Qualified providers may also reference the list of industry-based
26 certifications for public school accountability that TEA publishes.
27
28 --"Learning Plan Development" is the process by which an individualized learning plan is
29 developed after student intake; it is maintained through coaching and mentoring.
30
31 --"One credit" is based on the Carnegie Unit, which refers to the standard award credit given for
32 a course that lasts a full academic year. When determining credits, qualified providers should
33 consider instructional time plus the amount of time that the student would take to complete the
34 coursework in a high school semester or academic year. In traditional education models, a
35 student typically attends a class for 55 to 60 minutes a day for four or five days a week in
36 addition to studying independently.
37
38 --"Program" refers to the Workforce Diploma Pilot Program set forth in Texas Labor Code,
39 Chapter 317.
40
41 --"Qualified provider" that may participate in the Program and receive reimbursement is a
42 provider that:
43 --is a public, nonprofit, or private entity that is:
44 --authorized under the Texas Education Code or other state law to grant a high school
45 diploma, or

1 --accredited by a regional accrediting body, as established by the US Secretary of Education
2 pursuant to 20 USCS §1099b, Recognition of Accrediting Agency or Association;
3 --has at least two years of experience providing dropout reengagement services to adult
4 students, including recruitment, learning plan development, and proactive coaching and
5 mentoring, leading to the obtainment of a high school diploma;
6 --is equipped to:
7 --provide:
8 --academic skill intake assessment and transcript evaluations;
9 --remediation coursework in literacy and numeracy;
10 --a research-validated academic resiliency assessment and intervention;
11 --employability skills development aligned to employer needs;
12 --career pathways coursework;
13 --preparation for the attainment of industry-recognized credentials; and
14 --career placement services; and
15 --develop a learning plan that integrates academic requirements and career goals; and
16 --offers a course catalog that includes all courses necessary to meet high school graduation
17 requirements in Texas, as authorized under 19 TAC Chapter 74, Subchapter B, Graduation
18 Requirements.

19
20 --"Regional accrediting body" must meet the criteria established by the US Secretary of
21 Education pursuant to 20 USCS §1099b, Recognition of Accrediting Agency or Association, and
22 appear on the US Secretary of Education's list of federally recognized accrediting agencies in the
23 *Federal Register* as stated in 34 CFR §602.2. A copy of the list may be obtained from the US
24 Department of Education.

25
26 **§800.502. Request for Qualifications and List of Qualified Providers**

27 New §800.502 describes the Program's Request for Qualifications (RFQ) provisions, as outlined
28 in Texas Labor Code, Chapter 317, to the extent that TWC funding is available.

29
30 Texas Labor Code, Chapter 317 requires TWC to publish an RFQ no later than October 15th of
31 each year to identify Program providers. New §800.502 outlines the application process for
32 qualified providers as follows:

33
34 TWC will identify qualified providers to participate in the Program through a statewide RFQ
35 process conducted in accordance with state requirements.

36
37 Potential providers will apply directly to TWC using the RFQ process, and, once identified as a
38 qualified provider, must meet all deadlines, requirements, and guidelines set forth in the
39 published RFQ.

40
41 TWC will publish a list of qualified providers by November 15th of each year to participate in
42 the Program the next calendar year.

43
44 Each provider on the qualified provider list will be eligible to receive monthly reimbursements
45 for this Program based on monthly invoices submitted to TWC, as prescribed in the RFQ's terms.
46

1 Each year, TWC will review and update the list of qualified providers. Qualified providers that
2 do not meet the minimum performance standards outlined in §800.503 will be placed on
3 probation for the remainder of the calendar year. Failure to meet both minimum performance
4 standards for two consecutive years will result in disqualification from the Program.

5
6 TWC's determinations in the RFQ process will be based on the affirmation of the qualified
7 provider to effectively perform all services and activities outlined in Texas Labor Code, Chapter
8 317.

9
10 **§800.503. Minimum Performance Standards**

11 As required by Texas Labor Code, Chapter 317, new §800.503 describes the minimum
12 performance standards needed for qualified providers to remain on the qualified provider list.

13
14 New §800.503(a) states that the minimum performance standards for the calendar year must
15 include a:

- 16 --graduation rate of at least 50 percent; and
- 17 --program cost per graduate of \$7,000 or less.

18
19 New §800.503(b) provides the requirements for TWC actions if a qualified provider fails to
20 maintain minimum performance standards. Section 800.503(b) requires TWC to annually review
21 data from each participating provider to ensure that the services offered by the provider are
22 meeting the minimum performance standards. If TWC determines that a provider did not meet
23 the minimum performance standards in the previous calendar year, TWC shall place the provider
24 on probationary status for the remainder of the current calendar year.

25
26 New §800.503(c) requires TWC to remove any provider that does not meet the minimum
27 performance standards for two consecutive calendar years from the published provider list, as
28 authorized by Texas Labor Code, §317.005.

29
30 **§800.504. Graduation Rate and Graduate Cost Formulas**

31 As required by Texas Labor Code, Chapter 317, new §800.504(a) and (b) describe the formulas
32 for calculating the graduation rate and Program cost per graduate.

33
34 Graduation rate is defined as and determined by dividing the number of students who received a
35 high school diploma from the qualified provider by the number of students for whom the
36 qualified provider sought and received reimbursements.

37 New §800.504(b) provides the Program cost per graduate formula as the product of the number
38 of students who received a high school diploma during the previous calendar year multiplied by
39 \$7,000; that product may not exceed the total annual cost (reimbursements paid) to the qualified
40 provider for the total number of services provided.

41
42 **§800.505. Reimbursement Rates**

43 New §800.505 provides the reimbursement amounts that a qualified provider may receive (to the
44 extent that funding is available). Pursuant to Texas Labor Code, §317.006, those reimbursement
45 rates will be as follows:

- 1 --\$250 for completion of a half credit
- 2 --\$250 for completion of an employability skills certification program equal to at least one credit
- 3 or the equivalent
- 4 --\$250 for the attainment of an industry-recognized credential requiring not more than 50 hours
- 5 of training
- 6 --\$500 for the attainment of an industry-recognized credential requiring at least 50 but not more
- 7 than 100 hours of training
- 8 --\$750 for the attainment of an industry-recognized credential requiring more than 100 hours of
- 9 training
- 10 --\$1,000 for the obtainment of a high school diploma

11
12 Additionally, §800.505 clarifies that a provider may not be reimbursed twice for one attainment
13 of an industry-recognized credential.

14
15 TWC hereby certifies that the rules have been reviewed by legal counsel and found to be within
16 TWC's legal authority to adopt.

17
18 **PART III. PUBLIC COMMENTS**
19 The public comment period ended on November 23, 2020. No comments were received.

20
21 **PART IV. STATUTORY AUTHORITY**
22 The rules are adopted under Texas Labor Code, §301.0015 and §302.002(d), which provide
23 TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the
24 effective administration of TWC services and activities.

25
26 The adopted rules implement the requirements of Texas Labor Code, Chapter 317.

27

1 (F) enables an individual to attain a secondary school diploma or its
2 recognized equivalent, and at least one recognized postsecondary
3 credential; and

4
5 (G) helps an individual enter or advance within a specific occupation or
6 occupational cluster (29 USC §3102, Definitions).

7
8 (4) Eligible participant--An individual who is over the age of compulsory school
9 attendance, as prescribed by Texas Education Code, §25.085, and as required by
10 the Agency, must:

11 (A) be a Texas resident;

12 (B) lack a high school diploma;

13 (C) be authorized to work in the United States; and

14 (D) be able to work immediately upon graduation from the program.

15
16 (5) Employability skills certification program--Refers to a certification in general
17 skills that are necessary for success in the labor market at all employment levels
18 and in all industry sectors. Employability skills include problem-solving,
19 collaboration, organization, and adaptability.

20 (6) Half credit--The standard award of credit given for a course that lasts one
21 semester, and which is based on the Carnegie Unit. When determining credits,
22 qualified providers should consider instructional time plus the amount of time
23 that the student would take to complete the coursework in a high school
24 semester or academic year. In traditional education models, a student typically
25 attends a class for 55 to 60 minutes a day for four or five days a week in
26 addition to studying independently.

27 (7) High school diploma--A credential awarded by an entity, based on completion
28 of all state graduation requirements as outlined in Texas Education Code,
29 §28.025 and §39.023 and 19 TAC Chapter 74 (relating to Curriculum
30 Requirements) and Chapter 101 (relating to Assessment).

31 (8) Industry-recognized credential--A state-approved credential verifying an
32 individual's qualifications and competence and is issued by a third party with
33 the relevant authority to issue such credentials (US Department of Labor, 2010).
34 Industry-recognized credentials offered by qualified providers must align with
35 the Agency's mission to target high-growth, high-demand, and emerging
36 occupations that are crucial to the state and local workforce economies, and
37 must reflect the target occupations for the workforce areas in which services
38 will be provided. Qualified providers may also reference the list of industry-
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44
45

1 based certifications for public school accountability published by the Texas
2 Education Agency.

3
4 (9) Learning Plan Development--The process by which an individualized learning
5 plan is developed after student intake; it is maintained through coaching and
6 mentoring.

7
8 (10) One credit--The standard award credit given for a course that lasts a full
9 academic year, and which is based on the Carnegie Unit. When determining
10 credits, qualified providers should consider instructional time plus the amount
11 of time that the student would take to complete the coursework in a high school
12 semester or academic year. In traditional education models, a student typically
13 attends a class for 55 to 60 minutes a day for four or five days a week, in
14 addition to studying independently.

15
16 (11) Program--Refers to the Workforce Diploma Pilot Program, set forth in Texas
17 Labor Code, Chapter 317.

18
19 (12) Qualified provider--A provider that may participate in the Program and receive
20 reimbursement and that:

21
22 (A) is a public, nonprofit, or private entity that is:

23
24 (i) authorized under the Texas Education Code or other state law to
25 grant a high school diploma; or

26
27 (ii) accredited by a regional accrediting body, as established by the US
28 Secretary of Education, pursuant to 20 USCS §1099b, Recognition
29 of Accrediting Agency or Association;

30
31 (B) has at least two years of experience providing dropout reengagement
32 services to adult students, including recruitment, learning plan
33 development, and proactive coaching and mentoring, leading to the
34 obtainment of a high school diploma;

35
36 (C) is equipped to:

37
38 (i) provide:

39
40 (I) academic skill intake assessment and transcript evaluations;

41
42 (II) remediation coursework in literacy and numeracy;

43
44 (III) a research-validated academic resiliency assessment and
45 intervention;

46
47 (IV) employability skills development aligned to employer needs;

1
2 (V) career pathways coursework;

3
4 (VI) preparation for the attainment of industry-recognized
5 credentials; and

6
7 (VII) career placement services; and

8
9 (ii) develop a learning plan that integrates academic requirements and
10 career goals; and

11
12 (D) offers a course catalog that includes all courses necessary to meet high
13 school graduation requirements in Texas, as authorized under 19 TAC
14 Chapter 74, Subchapter B (relating to Graduation Requirements).

15
16 (13) Regional accrediting body--Must meet the criteria established by the US
17 Secretary of Education pursuant to 20 USCS §1099b, Recognition of
18 Accrediting Agency or Association, and appear on the US Secretary of
19 Education's list of federally recognized accrediting agencies in the *Federal*
20 *Register*, as stated in 34 CFR §602.2. A copy of the list may be obtained from
21 the US Department of Education.

22
23 **§800.502. Request for Qualifications and List of Qualified Providers.**

24
25 (a) The Agency will identify qualified providers to participate in the Program through a
26 statewide Request for Qualifications (RFQ) process conducted in accordance with
27 state requirements. The Agency will publish an RFQ no later than October 15th of
28 each year to identify Program providers.

29
30 (b) Potential providers will apply directly to the Agency using the RFQ process, and,
31 once identified as a qualified provider, must meet all deadlines, requirements, and
32 guidelines set forth in the published RFQ.

33
34 (c) The Agency will publish a list of qualified providers no later than November 15th of
35 each year to participate in the Program the next calendar year.

36
37 (d) Each provider on the qualified provider list will be eligible to receive monthly
38 reimbursements for this Program based on monthly invoices submitted to the
39 Agency, as prescribed in the RFQ's terms.

40
41 (e) Each year, the Agency shall review and update the list of qualified providers.
42 Qualified providers that do not meet the minimum performance standards outlined in
43 §800.503 of this subchapter will be placed on probation for the remainder of the
44 calendar year. Failure to meet both minimum performance standards for two
45 consecutive years will result in disqualification from the Program.
46

1 (f) The Agency's determinations in the RFQ process will be based on the affirmation of
2 the qualified provider to effectively perform all services and activities outlined in
3 Texas Labor Code, Chapter 317.

4
5 **§800.503. Minimum Performance Standards.**

6
7 (a) The minimum performance standards for the calendar year must include:

8
9 (1) a graduation rate, as defined in §800.504(a) of this subchapter, of at least 50
10 percent; and

11
12 (2) a program cost per graduate of \$7,000 or less, as calculated pursuant to
13 §800.504(b) of this subchapter.

14
15 (b) Each year, the Agency shall review data from each participating provider to ensure
16 that the services offered by the provider are meeting the minimum performance
17 standards. If the Agency determines that a provider did not meet the minimum
18 performance standards in the previous calendar year, the Agency shall place the
19 provider on probationary status for the remainder of the current calendar year.

20
21 (c) The Agency shall remove any provider that does not meet the minimum performance
22 standards for two consecutive calendar years from the provider list published under
23 Texas Labor Code, §317.005.

24
25 **§800.504. Graduation Rate and Graduate Cost Formulas.**

26
27 (a) Graduation rate is defined as and determined by dividing the number of students who
28 received a high school diploma from the qualified provider by the number of students
29 for which the qualified provider sought and received reimbursements.

30
31 (b) The Program cost per graduate formula is determined as the product of the number of
32 students who received a high school diploma the previous calendar year multiplied by
33 \$7,000; the product may not exceed the total annual cost (reimbursements paid) to the
34 qualified provider for the total number of services provided.

35
36 **§800.505. Reimbursement Rates.**

37
38 (a) The reimbursement amounts that a qualified provider may receive, to the extent that
39 funding is available, shall be as follows:

40
41 (1) \$250 for completion of a half credit;

42
43 (2) \$250 for completion of an employability skills certification program equal to at
44 least one credit or the equivalent;

- 1 (3) \$250 for the attainment of an industry-recognized credential requiring not more
2 than 50 hours of training;
3
4 (4) \$500 for the attainment of an industry-recognized credential requiring at least
5 50 but not more than 100 hours of training;
6
7 (5) \$750 for the attainment of an industry-recognized credential requiring more
8 than 100 hours of training; and
9
10 (6) \$1,000 for the obtainment of a high school diploma.
11 (b) A provider shall not be reimbursed more than one time for one attainment of an
12 industry-recognized credential.