

Chapter 841. WORKFORCE INVESTMENT ACT

The Texas Workforce Commission (Commission) proposes amendments to §§841.31, 841.32, 841.34, 841.38, 841.39, 841.41, 841.44, and 841.46 and proposes the repeal of and new §§841.40, 841.43, 841.45, and 841.47 regarding the Eligible Training Provider Certification System (ETPS) required under the Workforce Investment Act of 1998.

The 74th Texas Legislature and the Governor enacted Texas' landmark legislation, House Bill 1863 (H.B. 1863), in 1995, now codified in part in Texas Labor Code Chapter 302 and Texas Government Code Chapter 2308. This state law reformed both the welfare and workforce systems and made Texas the nation's leader among reform-minded states. H.B. 1863 provided local elected officials the opportunity to form local workforce development boards (Boards) that enjoy the flexibility and authority to design and oversee the delivery of workforce development services that meet the needs of local employers and workers.

A key goal of the federal Workforce Investment Act (WIA) of 1998 (42 U.S.C.A. Section 2801 et seq.) was that of improving the effectiveness and efficiency of federally-funded job training programs. WIA recognized the strides made in the Texas workforce development system and specifically provided for the state to maintain many of the features of H.B. 1863.

The Commission, as the entity responsible for overseeing the implementation of WIA, has endeavored to provide formal and informal opportunities for comment and input by all interested parties. While developing the ETPS, the Commission has continued to work closely with representatives of the training provider community, Boards and partner agencies. The Commission ensures compliance with the WIA while providing options for the Boards and the training provider community. The Commission continues to seek options for streamlining processes, including those for the certification process and for performance reporting by eligible training providers. A key objective is to maximize participant access to education and training options, while minimizing providers' reporting burdens. The purpose of Subchapter C is to address the ETPS as required under the Act. Changes are proposed for the purposes of streamlining the ETPS, reflecting changes necessitated by the implementation of the automated, Internet-based ETPS and to allow Boards discretion to permit the ETPS and the use of Individual Training Accounts (ITAs) to apply to other workforce services funded through the Commission. In addition to the proposed changes, the Commission invites the public to comment on methods to simplify the ETPS. The language in many of the sections remains the same with the following exceptions:

Section 841.31 addresses the scope and coverage of this subchapter. The ETPS and the use of ITAs to secure and pay for adult training services are primary service delivery mechanisms under the WIA. A sentence is added that acknowledges the Boards' option to use these mechanisms for adult training services funded by Choices, Food Stamp Employment and Training (FS E&T), Welfare-to-Work (WtW), Trade Adjustment Assistance (TAA) and North American Free Trade Agreement-Transitional Adjustment Assistance (NAFTA-TAA).

Section 841.32 addresses training services. The changes to the language include adding a sentence to subsection (a) that acknowledges the expanded coverage of the rule to cover adult training services funded by Choices, FS E&T, WtW, TAA and NAFTA-TAA.

Section 841.34 addresses ITAs. The changes include adding a subsection (c) that acknowledges the expanded coverage of the rule to cover adult training services funded by Choices, FS E&T, WtW, TAA and NAFTA-TAA.

Section 841.38 addresses the initial certification process for exempt providers. A change is made in the first sentence to clarify Board responsibilities for developing local requirements, rather than a written application, for the submission of initial eligibility applications for exempt programs.

Section 841.39 addresses the alternative application for initial eligibility determination by non-exempt training providers. Changes are made to subsection (b) to address modifications in application requirements due to conversion to the automated, Internet-based ETPS and to specify the exemption of providers that are subject to Texas or another state's regulation or audit from the requirement to submit financial stability documentation.

Changes are also made to subsection (c) to remove the requirement that training provider applicants provide performance information regarding the percentage of all individuals participating in the applicable program who obtained unsubsidized employment in an occupation related to the program conducted.

Section 841.40 addresses the submission of an initial eligibility application. Language is added to address the required use of the automated, Internet-based ETPS for application submission and review and to address provider compliance with state law.

Section 841.41 addresses initial eligibility determination. Language in subsection (b) related to a mandatory six-month waiting period for reapplication after Board denial of an initial eligibility application is deleted in order to provide additional flexibility with regard to the development of local appeals policy.

Section 841.43 addresses application for subsequent eligibility determination. The option to request a specific certification date is removed since it is not applicable to the subsequent eligibility determination process. Language

is added to address the required use of the automated, Internet-based ETPS for application submission and review and to address provider compliance with state law. Language is added to allow for adjusting the certification renewal period if an appeal is approved to ensure that the period of certification is one year in length. Section 841.44 addresses the determination of subsequent eligibility. In subsection (e) language related to a mandatory six-month waiting period for reapplication after Board denial of an initial eligibility application is deleted in order to provide additional flexibility with regard to the development of local appeals policy. Section 841.45 addresses the annual adoption of standards of performance. Changes are made to clarify the process for annual adoption and issuance of performance standards. Section 841.46 addresses the requirements for submission and retention of verifiable program-specific performance information. The requirement that performance information be submitted on a quarterly basis is deleted since submission of required data is not subject to this stringent timeline and the subsections are re-lettered accordingly. Section 841.47 addresses the certified provider list and the name is modified to reflect that the training provider list includes "eligible" training providers. Language related to Board submission of certified provider lists, and applicable performance and cost data, is deleted to reflect process changes related to the conversion to the automated, Internet-based ETPS. The remaining subsections are re-lettered accordingly. The remaining rules in Subchapter C, §841.48 and §841.49, contain no changes to the prior rules.

Randy Townsend, Chief Financial Officer, has determined that for the first five years the rules are in effect, the following statements will apply:

- there are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules;
- there are no estimated reductions in costs to the state or to local governments expected as a result of enforcing or administering the rules;
- there are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules;
- there are no foreseeable implications relating to costs or revenues to the state or to local governments as a result of enforcing or administering the rules; and
- there are no anticipated costs to persons who are required to comply with the rules as proposed.

Mr. Townsend has also determined that there is no anticipated adverse impact on small businesses as a result of enforcing or administering these rules because any regulatory burdens or impact on small businesses (including micro-businesses) as well as foreseeable adverse economic effects or costs, if any, would be a result of federal statute and regulations, which are the basis for these proposed rules, and second, as far as can be determined, small businesses (including micro-businesses) are not required to do anything as a result of these rules that is not required to receive WIA funding for training. In the event that a Board, Board's contractor, or a subrecipient of the Agency is required to expend funds as a result of applying for the training provider certification, the expense may in part or whole be covered by the grant. Likewise, the expenses may be larger for larger entities and smaller for smaller entities but proportionate to the amount of training activities provided and for which certification is sought. Barbara Cigainero, Director of Workforce Development, has determined that for each year of the first five years that the rules will be in effect the public benefit anticipated as a result of the adoption of the proposed rules will be to improve and simplify for consumers the ETPS; maintain sufficient provisions to meet state requirements; ensure efficient use of funds to meet the needs of employers, job seekers, and the training provider community; and strengthen the relationship among the Commission, the Boards and training providers in developing a seamless network of services.

James Barnes, Director of Labor Market Information, has determined that there is no foreseeable negative impact upon employment conditions in this state as a result of these proposed rules.

Comments on the proposed sections may be submitted to John Moore, Texas Workforce Commission, 101 East 15th Street, Room 608, Austin, Texas 78778; fax number (512) 463-1426; or e-mail to john.moore@twc.state.tx.us. Comments must be received by the Agency no later than 30 days from the date this proposal is published in the *Texas Register*.

Subchapter C. ELIGIBLE TRAINING PROVIDER CERTIFICATION **40 TAC §§841.31, 841.32, 841.34, 841.38 - 841.41, 841.43 - 841.47**

The amendments and new sections are proposed under Texas Labor Code §301.061 and §302.002, which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed amendments and new sections affect the Texas Labor Code, Title 4.

§841.31.Scope and Coverage.

This subchapter establishes rules governing the state's eligible training provider certification system as required by WIA §122 and is applicable to providers of training services for adults and dislocated workers. At the discretion of the Board, the Eligible Training Provider Certification System (ETPS) may be applied to the delivery of training services funded through the Commission including Choices, Food Stamp Employment and Training (FS E&T), Welfare to Work (WtW), Trade Adjustment Assistance (TAA) and North American Free Trade Agreement-Transitional Adjustment Assistance (NAFTA-TAA).

§841.32.Training Services.

(a) As used in this subchapter, training services shall mean those services which are described in WIA §134(d)(4)(D) and are provided by an LWDB to eligible adults and dislocated workers. At the discretion of the Board, the eligible training provider certification system may be applied to the delivery of training services funded through the Commission including Choices, FS E&T, WtW, TAA and NAFTA-TAA.

(b)-(d) (No change.)

§841.34.Individual Training Accounts.

(a)-(b) (No change.)

(c) At the discretion of the Board, ITAs may be used as a payment mechanism for the delivery of training services funded through the Commission including Choices, FS E&T, WtW, TAA and NAFTA-TAA.

§841.38.Initial Certification Process.

Each LWDB shall develop local application requirements [~~a written application process~~] for initial certification for the following providers of training services when offering the programs described:

(1)-(2) (No change.)

§841.39.Alternative Application for Initial Eligibility Determination.

(a) (No change.)

(b) All training provider applicants shall provide the following information to the LWDB:

(1) (No change.)

(2) documentation of financial stability of the applicant, which may include audits or financial statements , unless the applicant is one of the following entities that are subject to regulatory or audit provisions of Texas or another state regarding financial stability: a public university, college, community or technical college ;

(3)-(5) (No change.)

~~[(6) a brief description of the training facility or training provider, not to exceed 100 words;]~~

~~[(7) a brief description of each program of training services;]~~

(6) [~~(8)~~] a description of the skill set which will be acquired through each program of training services;

(7) [~~(9)~~] a list of occupations determined by using a coding system specified by the Commission, in which these skill sets are of primary interest;

(8) [~~(10)~~] if all [~~any~~] of the occupations described in paragraph (7) of this subsection [~~above~~] are not on the Occupations in Demand List provided by the LWDB, evidence from employers, in a format and meeting specification set by the LWDB, that demonstrates that the occupation is in demand;

(9) [~~(11)~~] description of the class size, instructor/student ratio;

(10) [~~(12)~~] information on whether the students in the course are eligible for Title IV of the Higher Education Act funding (Pell grant);

(11) [~~(13)~~] an outline of the course or program curriculum, including criteria for successful completion;

(12) [~~(14)~~] the qualifications of the training instructors;

(13) [~~(15)~~] a description of any minimum entry level requirement (e.g. reading or math level, previous education requirements such as high school diploma or GED);

(14) [~~(16)~~] description of equipment utilized in the course and equipment/student ratio;

(15) [~~(17)~~] description of employer support of the program; and

(16) [~~(18)~~] any additional information that is required by the LWDB in the LWDA in which the training provider is located.

(c) Training provider applicants who provide training on the date of application through a program for which they are seeking certification shall include in their application the following verifiable performance information, or appropriate portion of verifiable performance information, for the program(s) of training services:

(1)-(2) (No change.)

~~[(3) the percentage of all individuals participating in the applicable program who obtained unsubsidized employment in an occupation related to the program conducted;]~~

(3) [~~(4)~~] the wages at placement in employment of all individuals participating in the applicable program; and

(4) [~~(5)~~] a description of the methodology that will be utilized to collect and verify performance information.

(d)-(e) (No change.)

§841.40. Application Submission.

(a) Applications for initial eligibility determination shall be submitted to the LWDB in the LWDA in which the provider of training services desires to provide training. Applications will be accepted throughout the year.

(b) Provider application submission and LWDB and Commission application review shall be conducted via the automated, Internet-based eligible training provider certification system.

(c) Training provider applicants shall be in compliance with applicable state law, including Texas Education Code Chapter 132, related to Proprietary Schools.

§841.41. Initial Eligibility Determination.

(a) (No change.)

(b) LWDB policy shall determine the circumstances under which reconsideration of an application may be afforded to an entity whose initial application for provider certification was denied. [An entity whose application for certification was denied may reapply no sooner than 6 months after the date of the written notice of denial.]

§841.43. Application for Subsequent Eligibility Determination.

(a) All training services providers, including training providers who were determined to be eligible under §841.38 and §841.39 of this chapter, shall annually, from date of certification, establish continuing eligibility to receive funds from WIA to provide training services.

(b) Provider application submission and LWDB and Commission application review shall be conducted via the automated, Internet-based eligible training provider certification system.

(c) Training provider applicants shall be in compliance with applicable state law, including Texas Education Code Chapter 132, related to Proprietary Schools.

(d) If an application for subsequent eligibility determination is denied and later approved on appeal, the Agency may adjust the certification period to ensure that the certification period is one year in length.

(e) Each training services provider shall provide verifiable program-specific performance information as required, and in a format and on a schedule determined by the Commission.

(f) The Commission and the LWDB may accept program-specific performance information consistent with the requirements for eligibility under Title IV of the Higher Education Act of 1965 from the provider for purposes of enabling the provider to fulfill the applicable requirements of this section if the information is substantially similar to the information otherwise required.

§841.44. Determination of Subsequent Eligibility

(a)-(d) (No change.)

(e) Board policy shall determine the circumstances under which reconsideration may be afforded to an entity whose application for subsequent eligibility certification determination was denied. [An entity whose application for recertification was denied may reapply no sooner than six months after the date of the written notice of denial.]

§841.45. Standards of Performance.

(a) The Commission shall annually adopt performance standards for WIA-supported participants and for all individuals enrolled in the program of training services, as applicable.

(b) Each LWDB shall adopt local performance standards within 30 calendar days of the Commission's annual publication of state performance standards. LWDB standards shall meet or exceed the standards adopted by the Commission.

(c) Performance standards may be adjusted by the LWDB for local conditions.

§841.46. Verifiable Program-Specific Performance Information.

(a)-(b) (No change.)

(c) Subject to approval by the Commission, alternate procedures may be used to collect and verify supplemental performance information in addition to those described in subsection [§841.46-](b) of this section . Approval or use of an alternate procedure shall not release the training provider from the obligation to provide the information required by subsection [§841.46-](b) of this section . Submission of supplemental performance data obtained through use of an alternate procedure must be in accordance with formats determined by the Commission.

(d) (No change.)

~~(e) Verifiable program performance information shall be submitted on a calendar quarter basis in a format and on a schedule established by the Commission. If the Commission determines that the size of the program or other circumstances exist that would justify a different reporting schedule, the Commission may approve a different reporting schedule for an LWDB that makes such a request.~~

(e) [~~(f)~~] The Commission may conduct performance verification throughout the year and may require training providers to submit additional information to resolve performance reporting anomalies or irregularities.

(f) [~~(g)~~] Providers of training services shall retain participant program records for a period of three years from the date the participant completes the program.

§841.47. Eligible Training Provider Lists.

(a) At least annually, the LWDB shall publish in a newspaper of general circulation in the LWDA an invitation to training providers to submit an application.

(b) Each LWDB shall develop an eligible training provider list that includes the list of providers determined to be eligible to receive training funds as authorized under WIA and state rules.

(c) The Commission shall publish the program, performance, and cost information of each program receiving eligibility certification.

(d) The Commission may remove a provider from the list of eligible providers or restrict WIA funding eligibility if the Commission determines that:

(1) the provider does not meet the performance levels established by the Commission, or

(2) the training provider has committed fraud or has violated applicable state or federal law, including prohibitions against discrimination and requirements related to the Americans with Disabilities Act.

(e) If the Commission, after consultation with an LWDB, determines that a provider, or an individual providing information on behalf of the provider, has intentionally supplied inaccurate program performance information, the Commission shall terminate the eligibility of the provider to receive funds for training services for a period of not less than two years.

(f) The Commission shall provide written notice of the removal of a provider from the list of eligible providers to both the LWDB and the training provider. The notice will include a description of the appeal process.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on July 26, 2001.

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John Moore

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Earliest possible date of adoption: September 9, 2001

For further information, please call: (512) 463-2573

Subchapter C. TRAINING PROVIDER CERTIFICATION

40 TAC §§841.40, 841.43, 841.45, 841.47

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Workforce Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under Texas Labor Code §301.061 and §302.002, which provides the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed repeal affects the Texas Labor Code, Title 4.

§841.40. Application Submission.

§841.43. Application for Subsequent Eligibility Determination.

§841.45. Standards of Performance.

§841.47. Certified Provider Lists.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on July 26, 2001.

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For further information, please call: (512) 463-2573